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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



Doc# 2104219069 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/11/2021 12:06 PM PG: 1 OF 29

The property identified as: **PIN:** 26-08-408-033-0000

Address:

Street: 4000 E. 106TH STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60453

Lender: FIRST SAVINGS BANK

Borrower: FD TAMPA, LLC

Loan / Mortgage Amount: \$164,000.00

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.

C@H120028964 1/2

Certificate number: 50408AAB-BB96-4A65-89B6-D01CA2C09F17

Execution date: 12/23/2020

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RECORDATION REQUESTED BY:

First Savings Bank,
501 E. Lewis & Clark Parkway
Clarksville, IN 47129

WHEN RECORDED MAIL TO:

Suzanne Saganich, Esq.
FisherBroyles, LLP
21623 Avalon Drive
Rocky River, Ohio 44116

THIS INSTRUMENT PREPARED BY:

Tarun Chandran, Esq.
FisherBroyles, LLP
345 North Canal Street
Suite C202
Chicago, Illinois 60606

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is dated as of December ~~13~~, 2020, and made by FD TAMPA, LLC, a Florida limited liability company ("Grantor"), in favor of FIRST SAVINGS BANK ("Lender").

SECTION 1: DEFINITIONS

1.1 Definitions. The following words shall have the following meanings when used in this Mortgage. Terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Loan Agreement.

Borrower. The word "Borrower" means FD TAMPA, LLC a Florida limited liability company, and its successors and permitted assigns.

Business Day. The words "Business Day" mean any day that is not a Saturday, Sunday or other day on which commercial banks in Chicago, Illinois, are required or permitted by law to be closed.

Charges. The word "Charges" has the meaning set forth in Section 3.3(a).

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Default Rate. The words “Default Rate” mean an interest rate equal to the lesser of ten percent (10%) per annum or the maximum rate per annum permitted by applicable law.

Environmental Laws. The words “Environmental Laws” mean any Federal, state or local law, rule, regulation, ordinance, order, code or statute applicable to Borrower or its respective property, in each case as amended (whether now existing or hereafter enacted or promulgated), controlling, governing or relating to the pollution or contamination of the air, water or land concerning hazardous, special or toxic materials, wastes or substances, petroleum and petroleum by-products or any fraction thereof and asbestos, or any judicial or administrative interpretation of such laws, rules, regulations, including, the Water Pollution Control Act (33 U.S.C. §1251 et seq.), Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), Safe Drinking Water Act (42 U.S.C. §3000(f) et seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Clean Air Act (42 U.S.C. §7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 and Hazardous Materials Transportation Act (49 U.S.C. §1801, et seq.).

Excluded Swap Obligation. The words “Excluded Swap Obligation” mean, with respect to (i) a guarantor of a Swap Obligation, including the grant of a Security Interest to secure the guaranty of such Swap Obligation, or (ii) any Grantor other than a Borrower, any Swap Obligation if, and to the extent that, such Swap Obligation is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such guarantor’s or Grantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty or grant of such Security Interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Swap Obligation or Security Interest is or becomes illegal.

Event of Default. The words “Event of Default” have the meaning set forth in Section 7.1.

Grantor. The word “Grantor” means FD Tampa, LLC, a Florida limited liability company and its successors and permitted assigns. Grantor is the mortgagor under this Mortgage.

Hedging Agreement. The words “Hedging Agreement” mean any agreement with respect to any swap, collar, cap, future, forward or derivative transaction, whether exchange-traded, over-the-counter or otherwise, including any involving, or settled by reference to, one or more interest rates, currencies, commodities, equity or debt instruments, any economic, financial or pricing index or basis, or any similar transaction, including any option with respect to any of these transactions and any combination of these transactions.

Hedging Obligation. The words “Hedging Obligation” mean, with respect to any Person, any liability of such Person under any Hedging Agreement, including any and all

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cancellations, buy backs, reversals, terminations or assignments under any Hedging Agreement.

Improvements. The word “Improvements” means and includes without limitation all site improvements, existing and future buildings, structures, facilities, fixtures, landscaping, additions, replacements, installed equipment, and other construction to be placed on the Real Property.

Indebtedness. The word “Indebtedness” is used in its most comprehensive sense and means and includes without limitation any and all obligations, debts, liabilities and indebtedness of Borrower to Lender, of any and every kind or nature, arising from the transactions contemplated by the Loan Agreement, this Mortgage or any other Related Document; whether now or hereafter existing, voluntary or involuntary incurred, due or not due, absolute or contingent, liquidated or unliquidated; whether arising by operation of law, contract or otherwise, under the Loan Agreement, this Mortgage or any other Related Document, or acquired by Lender from any other source; whether Borrower may be liable individually or jointly with others; whether Borrower may be obligated as a guarantor, surety, or otherwise; and whether recovery on such Indebtedness may be or hereafter may become barred or unenforceable by any statute of limitation or otherwise. Notwithstanding the foregoing, Indebtedness does not include Excluded Swap Obligations of (i) a guarantor, or (ii) a Grantor other than Borrower.

Lender. The word “Lender” means **FIRST SAVINGS BANK**, its successors and assigns. Lender is the mortgagee under this Mortgage.

Loan(s). The word “Loan” or “Loans” means any and all loans and financial accommodations from Lender to Borrower related to or arising out of the loan transactions contemplated by the Loan Agreement, whether now or hereafter existing, and however evidenced, including those loans and financial accommodations described on any exhibit or schedule attached to the Loan Agreement from time to time.

Loan Agreement. The words “Loan Agreement” mean that certain Loan Agreement between the Lender and the Borrower dated of even date herewith.

Material Adverse Effect. The words “Material Adverse Effect” mean (a) a material adverse change in, or a material adverse effect upon, the assets, affairs, business, properties, prospects, condition (financial or otherwise) or results of the operations of the Borrower taken as a whole, (b) a material impairment of the ability of Borrower or Grantor, as applicable, to pay or perform any of its obligations under this Mortgage, the Loan Agreement or any other Related Document, or (c) a material adverse change in (i) the condition, value or operation of any portion of the collateral, (ii) the legality, validity, binding effect or enforceability against Borrower or Grantor of this Mortgage, the Loan Agreement or any other Related Document, (iii) the perfection or priority of any Security Interest granted to Lender under this Agreement, this Mortgage, the Loan Agreement or any

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other Related Document, or (iv) the rights or remedies of Lender under this Mortgage, the Loan Agreement or any other Related Document.

Maximum Amount Secured. The words "Maximum Amount Secured" mean the amount ONE HUNDRED SIXTY-FOUR THOUSAND AND 00/100 DOLLARS (\$164,000.00).

Mortgage. The word "Mortgage" means this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing between Grantor and Lender, and includes without limitation all Security Interest provisions relating to the Personal Property and Rents.

Note. The word "Note" mean that certain Note from Borrower to Lender in the amount of ONE HUNDRED SIXTY-FOUR THOUSAND AND 00/100 DOLLARS (\$164,000.00), together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory note.

Person. The word "Person" means any individual, sole proprietorship, corporation, partnership, limited partnership, limited liability partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, cooperative, institution, government (whether foreign, federal, state, provincial, county, city, municipal or otherwise including without limitation any instrumentality, division, agency, body, department or political subdivision thereof) or other party or entity of any kind.

Personal Property. The words "Personal Property" mean all Rents, equipment, fixtures, and other articles of personal property now or hereafter owned by Borrower or Grantor, now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds from any sale or other disposition of the Property, including without limitation all insurance proceeds, refunds of premiums and proceeds of any condemnation award or purchase in lieu of condemnation.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" have the meaning set forth in Section 2.1.

Related Documents. The words "Related Documents" mean and include all promissory notes, credit agreements, loan agreements, guarantees, security agreements, mortgages, deeds of trust, collateral assignments, financing statements, consents, contracts, subordination agreements, chattel mortgages, pledges, control agreements, powers of attorney and any and all other instruments, agreements and documents, whether heretofore now or hereafter existing, executed in connection with the Indebtedness as any or all of the foregoing may be amended or modified.

Rents. The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals,

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profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases, of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payments and proceeds thereunder.

Security Interest. The words "Security Interest" mean and include any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge or title retention contract, lease or consignment intended as a security device, or any other security or lien, interest, claim or encumbrance whatsoever, whether created by law, contract, or otherwise.

Swap Obligation. The words "Swap Obligation" mean any Hedging Obligation that constitutes a "swap" within the meaning set for in Section 1a(47) of the Commodity Exchange Act, as amended from time to time.

UCC. The word "UCC" means the Uniform Commercial Code of the State of Illinois, as in effect from time to time. Provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of Lender's security interest in any collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of Illinois, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

SECTION 2: GRANT OF MORTGAGE

2.1 Grant of Mortgage. For valuable consideration, Grantor irrevocably mortgages, grants, conveys and assigns to Lender, with right of entry and possession, all estate, right, title, and interest which Grantor now has or may hereafter acquire in, to under or derived from any or all of the following: (i) the real property located in Cook County, Illinois, commonly known as 4000 E. 106th Street, Chicago, Illinois 60617, and legally described on the attached **Exhibit A** (the "**Land**"); (ii) all Improvements; (iii) appurtenances, easements, rights of way, water and water rights, pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals, oil rights, and gas rights, now or later used or useful in connection with, appurtenant to or related to the Land and other rights, liberties and privileges of the Land or in any way now or hereafter appertaining thereto, including any claim at law or in equity, as well as any after acquired title, franchise or license and the reversions and remainders thereof; (iv) all rents, issues, deposits, accounts and profits accruing and to accrue from the real property and the avails thereof; (v) all tenants' security deposits, tax and insurance deposits, utility deposits and insurance premium rebates to which Grantor may be holding; (vi) licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Grantor in, to, under or derived from all trade names or business names relating to the Land or the present or future development, construction, operation or use of

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the Land; (vii) all Personal Property, excluding personal property owned by O'Reilly's Auto Parts ("Tenant") under its lease (the "Lease"), whether or not the same be attached to such Improvements and all proceeds of any of the foregoing, it being intended and agreed that all such property owned by Grantor and placed by it on the real property or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purposes of this Mortgage to be part of the real estate and covered by this Mortgage (collectively, the "Real Property"). The Real Property tax identification number is shown on the attached **Exhibit A**.

2.2 SCOPE. THIS MORTGAGE, THE ASSIGNMENT OF LEASES AND RENTS AND THE SECURITY INTEREST IN THE PERSONAL PROPERTY AND RENTS, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF BORROWER OR GRANTOR UNDER THE LOAN AGREEMENT, THIS MORTGAGE AND UNDER THE OTHER RELATED DOCUMENTS. ANY EVENT OF DEFAULT UNDER THE LOAN AGREEMENT OR ANY OTHER RELATED DOCUMENT REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE TERMS SET FORTH HEREIN.

SECTIONS 3: GRANTOR'S AGREEMENTS

3.1 Performance. Grantor shall strictly perform all of Grantor's obligations under this Mortgage.

3.2 Possession, Use and Maintenance of the Property. Grantor agrees that the following provisions shall govern Grantor's possession, use and maintenance of the Property:

(a) Possession and Use. Until the occurrence of an Event of Default, Grantor may: (i) remain in possession and control of the Property; and (ii) use, operate or manage the Property.

(b) Duty to Maintain. Grantor shall maintain, and cause its lessees to maintain, the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

(c) Hazardous Substances. Comply, and cause the Grantor to comply, with all Environmental Laws applicable to Borrower, Grantor or the Real Property. Without in any way limiting the foregoing, Grantor agrees that all hazardous waste and hazardous substances that may be used by any Person for any purpose upon the Real Property, shall be used or stored thereon only in a safe, approved manner, in accordance with commercially reasonable standards and all applicable Environmental Laws for such storage, that the Real Property will not be used for the principal purpose of storing such hazardous waste and substances, and that no such storage or use will otherwise be allowed on the Real Property which causes, or which will increase the likelihood of causing, the release or threatened release of any hazardous waste or hazardous substances onto the Real Property. The disposal of any hazardous waste or substances will be done in compliance with all

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applicable Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Real Property to make such inspections, tests and audits at Grantor's expense, as Lender may deem appropriate to determine compliance of the Real Property with this section of the Mortgage all in form, manner and type as Lender may then require. Grantor shall fully cooperate and make the Real Property available to Lender at such times as Lender may reasonably request in order to conduct such inspections, tests and audits. Any inspection, test or audit made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other Person. Grantor hereby (i) releases and waives any present and future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (ii) agrees to indemnify and hold Lender harmless against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Real Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of the Mortgage and shall not be affected by Lender's acquisition of any interest in the Real Property, whether by foreclosure or otherwise. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," used herein, shall have the same meanings as set forth in any applicable Environmental Law.

(d) Compliance with Laws; Permits and Authorizations. In addition to Grantor's obligation to comply with all environmental laws as set forth in Subsection (c) above, Grantor shall promptly comply with all federal, state and local laws, regulations and orders applicable to Grantor or the Property. Grantor shall obtain and maintain any and all licenses, permits, franchises, governmental authorizations, patents, trademarks, copyrights or other rights necessary for the ownership of its properties and the advantageous conduct of its business and as may be required from time to time by applicable law. Grantor agrees that if Lender determines that a particular federal, state or local qualification or registration is necessary or advisable to effectuate the intent of this Mortgage or any other Related Document, Grantor shall promptly obtain such qualification or registration.

(e) Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance or commit, permit, or suffer any stripping of or waste on or to the Property or any portion thereof. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

(f) Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without the prior written consent of Lender. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with improvements of at

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least equal value, quality, condition and functionality free from any Security Interests, subject to the terms of the Lease.

(g) Lender's Right to Enter. Subject to the terms of the Lease, in addition to Lender's right to inspect the Property for its compliance with environmental laws, Lender and its agents and representatives may enter upon the Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the other terms and conditions of this Mortgage.

(h) Duty to Protect. Grantor agrees to neither abandon nor leave the Property unattended. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are necessary to protect and preserve the Property.

(i) Defense of Title. Grantor agrees to forever defend the title to the Property against the claims of all Persons. In the event any action or proceeding is commenced that questions Grantor's title to the Property or the interest of Lender under this Mortgage, Grantor shall defend such action or proceeding at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the action or proceeding and to be represented by counsel of Lender's own choice (at Grantor's expense), and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

3.3 Liens, Taxes and Charges. Grantor agrees to comply with the following provisions regarding liens, taxes and charges:

(a) Liens and Payment. Grantor shall not create, suffer or permit to be created, suffered or filed against the Property any mortgage, lien, claim or encumbrance, except for the lien of taxes and assessments not due, and except as otherwise provided in the following Subsection (b). Grantor shall pay when due and owing (and in all events prior to delinquency) all indebtedness, obligations, assessments, taxes or charges ("**Charges**") imposed upon, levied against or on account of the Property before any additional amount required to be paid, penalty or interest accrues thereon.

(b) Right to Contest. Grantor will not be required to pay and discharge any such Charges so long as: (i) the legality of the same shall be promptly contested in good faith by appropriate proceedings and the Grantor promptly notifies Lender of such Charge; (ii) Grantor shall have deposited with Lender cash, a sufficient corporate surety bond or other security satisfactory in form and substance to Lender in an amount adequate to provide for the release of such Charge, plus any interest, costs, reasonable attorneys' fees or other amounts that could accrue as a result of foreclosure or sale of the Property as a result of such unpaid Charge; (iii) such contest operates to suspend collection of the Charge; and (iv) none of the collateral is subject to forfeiture or loss (or the loss of priority of any Security Interest in such collateral) by reason of the institution or prosecution of such contest as determined by Lender. Grantor, upon demand of Lender, will furnish to Lender evidence of payment of

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such Charges, and will authorize the appropriate obligor or governmental official to deliver to Lender at any time a written statement of any such Charges.

(c) **Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted against the Property on account of such work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances reasonably satisfactory to Lender that Grantor can and will pay, or cause to be paid the cost of such work, services, or materials.

3.4 Insurance; Property Damage Insurance and Condemnation. Grantor agrees to comply with the provisions of the Loan Agreement relating to the maintenance of insurance on or with respect to the Property and the use of any such insurance or condemnation (or purchase in lieu of condemnation) proceeds.

3.5 [Reserved.]

3.6 Representations and Warranties. Grantor makes the following representations, warranties and agreements regarding title to the Property and compliance with applicable laws:

(a) **Title.** Grantor represents and warrants that: (i) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens, security interests and encumbrances, other than those set forth in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (ii) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

(b) **Environmental Condition of Property.** Other than as disclosed in that certain Phase 1 Environmental Report dated July 29, 2020, and prepared by Swift Creek Environmental, Incorporated, and waste generated, handled, stored, or transported from Grantor's or Borrower's properties and/or disposed of in the ordinary course of Grantor's, Borrower's or a tenant's business in accordance and compliance with applicable Environmental Laws: (i) there has not been any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or hazardous substance by any Person on or under the Property; (ii) any actual or threatened litigation or claims of any kind by any Person relating to such matters; and (iii) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Property except in compliance with all applicable Environmental Laws. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for hazardous waste and hazardous substances.

(c) **Compliance With Laws.** In addition to Grantor's representations and warranties concerning the environmental condition of the Property in Subsection 3.6(b), Grantor represents and warrants that the Property and Grantor's use of the Property complies with all

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existing applicable federal, state and local laws, and such rules, regulations and ordinances adopted pursuant to any of the foregoing.

3.7 Lender's Rights as to Rents. Lender is hereby given and granted the following rights, powers and authority:

(a) **No Transfer of Rents.** Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents.

(b) **Lender May Collect Rents.** Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all leases of the Property and all Rents from the Property. Upon the occurrence of an Event of Default, Lender shall have the right, to collect and receive the Rents, including amounts past due and unpaid and Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Unless and until Lender exercises its right to collect the Rents, Grantor may collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of such Rents as cash collateral in a bankruptcy proceeding.

(c) **Notice to Tenants.** Lender may send notices to any and all tenants of the Property advising them of this Mortgage and directing all Rents to be paid directly to Lender or as Lender directs. Payments by tenants or any other Person liable therefore to Lender shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed

(d) **Property Manager.** To the extent that Grantor has employed a manager or agent to manage the Property or collect the Rents, Grantor shall immediately inform such manager or agent of this Mortgage and such manager or agent shall attorn to the rights of Lender hereunder.

(e) **Lease the Property.** After obtaining possession of the Property, Lender may rent or lease the whole or any part of the Property to any Person for such term or terms and on such conditions as Lender may deem appropriate

(f) **Future Leases.** Grantor agrees to assign and transfer to Lender all future leases upon all or any part of the Property and to execute and deliver, at the request of Lender, all such further assurances and assignments in the Property, as Lender shall from time to time require.

(g) **Employ Agents.** Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

(h) **Other Acts.** Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

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(i) **Application of Rents.** Except as set forth in Section 7.2(c), Lender shall determine the order of application of any and all Rents received by it; however (subject to Section 7.2(c)), any Rents received by Lender that are not applied to costs and expenses as set forth in this Section 3.7, shall be applied to the Indebtedness, notwithstanding the fact that such portion of the Indebtedness may not be due and payable or that such portion of the Indebtedness is otherwise adequately secured.

3.8 Expenditures by Lender. If Grantor fails to comply with any provision of this Mortgage, or if any action or proceeding is commenced that would adversely affect Lender's interests in the Property, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate. Any amount that Lender expends in so doing will be payable on demand together with interest at the Default Rate from the date paid by Lender to the date of repayment by Grantor and secured by this Mortgage. The rights provided for in this section shall be in addition to any other rights or any remedies to which Lender may be entitled on account of an Event of Default. Any such action by Lender shall not be construed as curing any Event of Default and shall not bar Lender from any remedy that it otherwise would have had but for such payment.

3.9 Changes In Tax Laws. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Lender, Borrower, Grantor or the Real Property, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Borrower and Grantor, jointly and severally, agree to pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Real Property for the purpose of taxation any lien thereon, or imposing upon Lender the payment of the whole or any part of the taxes required to be paid by the Borrower or Grantor changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Lender in the Real Property, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness, then Borrower and Grantor upon demand by Lender shall pay such taxes or reimburse Lender therefor, unless Lender determines, in Lender's exclusive judgment, that such payment or reimbursement is unlawful; in which event Lender may elect to declare the Indebtedness due within thirty (30) days after giving notice thereof to Borrower and Grantor, excepting only such tax which may be levied against the income of Lender as a complete or partial substitute for taxes required to be paid pursuant hereto.

SECTION 4: SECURITY AGREEMENT

4.1 Security Agreement. This Mortgage is a Security Agreement pursuant to which Grantor grants Lender a Security Interest to any of the Property constituting fixtures, Rents and other Personal Property, and Lender shall have all of the rights of a secured party under the UCC with respect thereto.

4.2 Security Interest. Grantor authorizes Lender to file any financing statements (including any financing statements filed by Lender prior to the date of this Mortgage) and take whatever other action is requested by Lender to perfect and continue Lender's Security Interest in the Property constituting fixtures, Rents and other Personal Property. In addition to recording this

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Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing such Security Interest. Upon an Event of Default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Lender and make it available to Lender within five (5) Business Days after notice from Lender.

4.3 Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the Security Interest granted by this Mortgage may be obtained (each as required by the UCC), are set forth on Schedule 9.1(l) of this Mortgage.

SECTION 5: FURTHER ASSURANCES; ATTORNEY-IN-FACT

5.1 Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, control agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor under this Mortgage and any other Related Documents to which it is a party, and (b) the Security Interests created by this Mortgage as first and prior liens and Security Interests on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all reasonable costs and expenses incurred in connection with the matters referred to in this section.

5.2 Attorney-in-Fact. If Grantor fails to do any of the things referred to in Section 5.1, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's opinion, to accomplish the matters referred to in Section 5.1.

SECTION 6: DUE ON SALE; FULL PERFORMANCE

6.1 Due on Sale; Consent by Lender. Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property, or any, right, title or interest therein. A "sale or transfer" means the conveyance of the Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of a Real Property interest EXCEPT that Grantor may transfer not more than forty-nine percent (49%) of the Real Property to a lineal descendant (or trust or entity for his/her benefit) or may transfer all of the Real Property to an

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entity (a corporation, partnership or limited liability company) in which Grantor retains at least fifty-one (51%) of the voting stock, partnership interests or membership interests, and in all cases, the Grantor remains responsible for the full performance of this Loan as outlined herein. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than forty-nine percent (49%) of the voting stock, partnership interests or membership interests, as the case may be, or the termination for any reason of a member's right as a manager of Grantor. Without limiting the generality of the foregoing, any sale, conveyance, assignment, hypothecation or transfer prohibited in the Loan Agreement shall be deemed a sale, conveyance, assignment, hypothecation or other transfer prohibited by the foregoing sentence. However, Lender shall not exercise this option if such exercise is prohibited by federal law or the law of the State of Illinois.

6.2 Full Performance. Lender shall execute and deliver to Grantor a suitable release of this Mortgage and suitable statements of termination for any financing statement on file evidencing Lender's Security Interest in the Rents and the Personal Property upon presentment of satisfactory evidence that all Indebtedness secured by this Mortgage has been fully paid.

SECTION 7: EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default. It shall be an "Event of Default" hereunder in the event of an Event of Default under the Note.

7.2 Rights and Remedies. Upon the occurrence of any Event of Default and at any time thereafter, Lender, at its option and without affecting the lien hereby created or the priority of said lien or any other rights of Lender hereunder, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law or equity:

- (a) **Accelerate Indebtedness.** Lender shall have the right without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment fee which Borrower would be required to pay.
- (b) **UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the UCC.
- (c) **Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and, as provided in Section 3.7(b), to collect the Rents, and to apply the net proceeds, over and above Lender's costs, to payment of the Indebtedness. In furtherance of this right, Lender may require any tenant, licensee or other user of the Property to make payments of rent, license fees or use fees directly to Lender. Payments by tenants, licensees or other users of the Property to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subsection either in person, by agent, or through a receiver.
- (d) **Mortgagee in Possession or Receiver.** Lender shall have the right to be placed as mortgagee in possession or to have a receiver appointed without the requirement of the

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posting of any bond, to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The mortgagee in possession or receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount or the Persons liable for payment of the Indebtedness are solvent or insolvent. Employment by Lender shall not disqualify a person from serving as a receiver.

(e) Sale of Property and Judicial Foreclosure. Lender shall be permitted to: (i) immediately judicially foreclose the lien of this Mortgage; or (ii) if allowed under Illinois law at the time of such Event of Default, immediately sell the Property or any part of the Property either in whole or in separate parcels, as prescribed by Illinois law, under power of sale, which power is hereby granted to Lender to the full extent permitted by Illinois law, and thereupon, to make and execute to any purchaser(s) thereof deeds of conveyance pursuant thereto.

(f) Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Mortgage.

(g) Rent. During the continuance of any Event of Default and if Lender or any judicially appointed receiver has a right to exclude Grantor from all or part of the Property, Grantor agrees to pay the fair and reasonable rental value for the use and occupancy of the Property, or any portion thereof which are in its possession and being occupied for such period and, upon default of any such payment, will vacate and surrender possession of the Property to Lender or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of premises for non-payment of rent, however, designated.

(h) Other Rights and Remedies. Lender shall have all other rights and remedies provided in this Mortgage, any other Related Document or available at law or in equity.

7.3 Sale of the Property. Lender shall be under no obligation to marshal any assets in favor of Borrower, or any other Person, or against or in payment of any or all of the Indebtedness. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

7.4 Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property subject to Lender's Security Interest or of the time after which any private sale or other intended disposition of such Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of any public sale or the time after which disposition may be made by a private sale.

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7.5 Election of Remedies. Lender's election to pursue rights or remedy under this Agreement shall be cumulative and non-exclusive of any other rights and remedies that Lender may have under this Mortgage or any other Related Document, by operation of law or otherwise.

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SECTION 8: MISCELLANEOUS PROVISIONS

8.1 MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

(a) Interpretation. (i) Where the context so requires, words used in the singular shall include the plural, and vice versa, and in particular the words "Borrower" and "Grantor" shall be construed to include any one or more of them or all of them and words of one gender shall include all genders; (ii) Section, Schedule and Exhibit references are to this Mortgage unless otherwise specified; the words "hereof" and "hereunder" and words of similar import when used in this Agreement shall refer to this Mortgage as a whole and not to any particular provision of this Mortgage; (iii) the term "including" is not limiting, and means "including, without limitation"; (iv) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including;" and (v) the words "to Grantor's knowledge", "known to Grantor", or "knowledge of Grantor", or words of such import shall mean all knowledge (actual or constructive) of an individual Grantor or the officers, directors, general partners, managers or managing members of a Grantor who is not an individual, after reasonable and diligent inquiry.

(b) Joint and Several Obligations. Each Grantor hereunder shall be fully bound by the terms of this Mortgage and any other Related Document to which it is a party, the obligations hereunder and thereunder being joint and several. Lender shall have the right to proceed immediately against either Grantor or any other grantor to enforce its rights hereunder or thereunder and Lender is not required to take any action or proceeding of any kind against any other Person or any Property of Borrower, grantor or other Person before proceeding against Grantor.

(c) Missing Information. If this Mortgage contains any blanks when executed by Grantor, Lender is hereby authorized, without notice to Grantor, to complete any such blanks according to the terms upon which this Mortgage is executed by Grantor and is accepted by Lender.

(d) Entire Agreement; Amendments. This Mortgage, together with the other Related Documents, constitutes the complete understanding and agreement of the parties as to the matters set forth in this Mortgage and supersedes all prior written or oral understandings, discussions and agreements with respect thereto and there are no promises, undertakings, representations or warranties by Lender relative to the subject matter thereof not expressly set forth or referred to herein or in the other Related Documents. No amendment, modification, termination or waiver of any provision of this Mortgage shall be effective unless evidenced in writing and signed by the party or parties sought to be charged or bound by the amendment, modification, termination or waiver.

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(e) **Reliance by Lender; Survival.** All representations, warranties and covenants made by Grantor in this Mortgage or in any certificate or other instrument delivered by Grantor to Lender under this Mortgage or any other Related Document shall be considered to have been relied upon by Lender, regardless of any investigation made by Lender or on Lender's behalf, and shall survive the making of any Loans to Borrower, the satisfaction any payment of the Indebtedness and release of this Mortgage.

(f) **Loan Agreement.** The Loan Agreement is hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length. In the event of express and direct contradiction between any of the provisions of the Loan Agreement and any of the provisions contained herein, then the provisions contained in the Loan Agreement shall control.

(g) **Governing Law.** This Mortgage and all acts, agreements, certificates, assignments, transfers and transactions hereunder, and all rights of the parties hereto, shall be governed as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws and decisions of the State of Illinois, including laws regulating interest, loan charges, loan fees and brokerage commissions without regard to conflicts of law principles. Grantor and Lender agree that the transaction evidenced by this Mortgage bears a reasonable relationship to the State of Illinois.

(h) **Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be invalid, illegal or unenforceable as to any Person or circumstance, such finding shall not render that provision invalid, illegal or unenforceable as to any other Person or circumstance. If feasible, any such offending provision shall be deemed to be modified to be within the limits of validity, legality and enforceability; provided, however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Mortgage in all other respects shall remain valid and enforceable.

(i) **Advice of Counsel; Joint Interpretation.** Grantor acknowledges that it has been advised by its competent counsel with respect to this transaction and this Mortgage, including all waivers, consents, indemnification obligations and releases contained herein. The parties hereto have participated jointly in the negotiation and drafting of this Mortgage and in the event an ambiguity or question of intent or interpretation arises, this Mortgage shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Mortgage or any schedules or exhibits attached hereto or any amendment hereof.

(j) **Caption Headings.** The sections, titles and caption headings in this Mortgage are for convenience purposes only, without substantive meaning, and are not to be used to interpret or define the provisions of this Mortgage.

(k) **Time is of the Essence.** Time is of the essence in the performance and observance of each covenant, agreement, provision and term of this Mortgage and in making payments of all amounts due to Lender hereunder.

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(l) Notices. Any notice, demand, request, consent, approval, declaration or other communication (“**Notice**”) shall or may be given, served or delivered upon any party by another party, or whenever any party desires to give, serve or deliver upon another party any Notice, each such Notice shall be in writing and shall be delivered in person (by personal delivery, delivery service or reputable overnight courier service), or facsimile transmission and confirmed immediately in writing by a copy mailed by United States mail, postage prepaid, addressed as hereafter set forth, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed to those Persons at those addresses set forth on Schedule 8.1(l) or at such other address as may be substituted by Notice given as herein provided. The giving of any Notice required hereunder may be waived in writing by the party entitled to receive such Notice. Every Notice shall be deemed to have been duly given, served or delivered on the date on which (i) personally delivered (whether in person, by delivery service, or by reputable overnight courier service), (ii) the date of the facsimile transmission (provided the confirmation mailing was sent as provided herein), or (iii) on the date of receipt (other than as provided in (ii) above) if sent by United States mail; provided, however, that if any Notice is tendered to an addressee and delivery thereof is refused by such addressee, such Notice shall be effective upon such tender unless expressly set forth in such Notice. Failure or delay in delivering copies of any Notice to Persons designated to receive copies, if any, shall in no way adversely affect the effectiveness of such Notice.

(m) Successors and Assigns. All covenants, conditions and agreements contained herein by or on behalf of Grantor shall bind Grantor’s heirs, executors, administrators, successors and assigns (including each and every record owner from time to time of the Real Property or any Person having an interest therein), and shall inure to the benefit of Lender and its successors and assigns (including each and every record owner from time to time of the Real Property or any other Person having an interest therein). Wherever Lender is referred to herein such reference shall be deemed to include the holder from time to time of any Note; and each holder of such Note shall have all the rights afforded hereby, and may enforce the provisions hereof, as fully as if Lender had designated such holder of the Note herein by name. If ownership of the Property becomes vested in a Person other than Grantor, Lender, without notice to Grantor, may deal with Grantor’s heirs, executors, administrators, successors and assigns with reference to this Mortgage and the Indebtedness by way of forbearance, extension or any other modification without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

(n) Waivers and Consents. Lender’s failure to require strict compliance and performance of any provision of this Mortgage shall not suspend, waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith. Any suspension or waiver by Lender of any right under this Mortgage shall not suspend, waive, affect or diminish such right under this Mortgage, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character. None of the obligations, undertakings, agreements, warranties, covenants and representations of Grantor, or rights of Lender contained in this Mortgage, shall be deemed to have been suspended or waived by Lender unless such suspension or waiver is in writing signed by Lender, and directed to Grantor specifying such suspension or waiver. No prior suspension or waiver by Lender,

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nor any course of dealing between Lender and Grantor, shall constitute a suspension or waiver of any of Lender's rights or of any obligations of Grantor as to any future transactions. Grantor agrees that foregoing waivers are intended to benefit the Lender and shall not limit or otherwise affect Grantor's liability hereunder or the enforceability of this Mortgage.

(o) Lender's Discretion. Whenever this Mortgage requires either Lender's consent, election, approval, waiver or similar action or otherwise vests in Lender the authority to make decisions or determinations, such actions, decisions or determinations shall be made or withheld in Lender's sole and absolute discretion, unless specifically provided otherwise by a more restrictive standard and the granting of any consent, election, approval, waiver or similar action by Lender, or any decision or determination made by Lender, in any instance shall not constitute Lender's continuing consent, election, approval, waiver or similar action, or Lender's decision or determination, in subsequent instances where such action, decision or determination is required.

(p) Costs and Attorneys' Fees. Grantor agrees to pay upon demand all of Lender's reasonable out-of-pocket costs, expenses and fees, paid or incurred in connection with or related to this Mortgage, including Lender's reasonable attorneys' fees, costs and expenses (and those fees, costs and expenses of attorneys and paralegals who may be employees of Lender, its parent or Affiliate) if Lender, after the date of the Mortgage, employs counsel for advice or other representation (i) with respect to the amendment, modification, enforcement or validity of this Mortgage or the protection of its interests in, or with respect to any Property (whether or not there is a lawsuit), (ii) to take any action in or with respect to any litigation, contest, dispute, suit or proceeding (whether instituted by Grantor or any other Person), including bankruptcy proceedings (and any action therein to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services or to commence any action in any way or respect relating to this Mortgage, (iii) to enforce any of the rights or remedies of Lender with respect to Grantor or the Property (whether at law or in equity); and (iv) take any action to protect, preserve, appraise, prepare for sale, sell or otherwise dispose of any Property. Without limiting the generality of the foregoing, such costs, expenses and fees shall include any fees for accountants, consultants, surveyors and appraisers and the cost of searching records, obtaining title reports (including foreclosure reports) and title insurance.

(q) Agency. Nothing in this Mortgage shall be construed to constitute the creation of a partnership or joint venture between Lender and Grantor or any other Person. Lender is not considered a partner or joint venturer by reason of its becoming a mortgagee in possession or pursuing any rights pursuant to this Mortgage or any other Related Document. Lender is not an agent or representative of Grantor. This Mortgage does not create a contractual relationship with, shall not be construed to benefit or bind Lender in any way with, or create any contractual duties by Lender to, any contractor, subcontractor, materialman, laborer, or any other Person other than Grantor.

(r) Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of

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Lender in any capacity, without the written consent of Lender.

(s) **Subrogation.** If any part of the Indebtedness is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Property or any part thereof, then Lender shall be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

(t) **Option to Subrogate.** At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Real Property upon the execution by Lender and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Real Property is situated, of a unilateral declaration to that effect.

(u) **Effect of Extensions and Amendments.** If the payment of the Indebtedness, or any part thereof, is extended or varied, or if any part of the security or guarantees therefor is released, all Persons now or at any time hereafter liable therefor, or interested in the Property, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such Persons being expressly reserved by Lender; notwithstanding any such extension, variation or release. Any Person taking a junior mortgage, or other lien upon the Real Property or any part thereof or any interest therein, shall take said mortgage or other lien subject to the rights of Lender to amend, modify, extend or release the Note, this Mortgage or any other Related Document, in each case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

(v) **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 or power of direction of such trust.

(w) **Covenants Run with Land.** All of the covenants of this Mortgage shall run with the land constituting the Real Property and be binding on any successor owners thereof.

(x) **Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Illinois as to all Indebtedness secured by this Mortgage.

(y) **Waiver of Right of Redemption.** NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS MORTGAGE, GRANTOR HEREBY WAIVES, TO THE EXTENT PERMITTED UNDER 735 ILCS 5/15-1601(b) OR ANY SIMILAR LAW EXISTING AFTER THE DATE OF THIS MORTGAGE, ANY AND ALL RIGHTS OF REDEMPTION ON BEHALF

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OF GRANTOR AND ON BEHALF OF ANY OTHER PERSONS PERMITTED TO REDEEM THE PROPERTY.

(z) **FORUM SELECTION AND CONSENT TO JURISDICTION.** GRANTOR HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION, SUIT OR PROCEEDING ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS MORTGAGE SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN ANY STATE OR FEDERAL COURT IN THE COUNTY WHERE THE REAL PROPERTY IS SITUATED OR CHICAGO, ILLINOIS; PROVIDED THAT NOTHING IN THIS MORTGAGE SHALL BE DEEMED TO OR OPERATE TO PRECLUDE LENDER FROM TAKING LEGAL ACTION, FILING SUIT OR COMMENCING A PROCEEDING IN ANY OTHER JURISDICTION. GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT IN THE COUNTY WHERE THE REAL PROPERTY IS SITUATED OR CHICAGO, ILLINOIS FOR THE PURPOSE OF ANY SUCH LEGAL ACTION, SUIT OR PROCEEDING AS SET FORTH ABOVE. GRANTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ILLINOIS. GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LEGAL ACTION, SUIT OR PROCEEDING IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LEGAL ACTION, SUIT OR PROCEEDING HAS BEEN BROUGHT IN ANY INCONVENIENT FORUM.

(aa) **WAIVER OF JURY TRIAL.** GRANTOR AND LENDER EACH IRREVOCABLY AND KNOWINGLY WAIVE (TO THE FULLEST EXTENT PERMITTED BY LAW) ANY RIGHT TO A TRIAL BY JURY IN ANY LEGAL ACTION, SUIT OR PROCEEDING (INCLUDING, WITHOUT LIMITATION, ANY COUNTERCLAIM) BROUGHT TO ENFORCE OR DEFEND ANY RIGHTS OR RESOLVE ANY DISPUTES (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) AMONG THEM, ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO (i) THIS MORTGAGE, OR ANY OTHER RELATED DOCUMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT THAT MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR ANY OTHER RELATED DOCUMENT OR TRANSACTIONS RELATED HERETO OR THERETO, OR (ii) ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR OTHER RELATED DOCUMENT, AND AGREE THAT ANY SUCH LEGAL ACTION, SUIT OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GRANTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY INDEMNIFIED PERSON UNDER THIS MORTGAGE OR ANY OTHER RELATED DOCUMENT ON ANY THEORY OF

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LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

(bb) ILLINOIS LAW PROVISIONS.

In the event of any inconsistencies between this Section 8(bb) and any of the other terms and provisions of this Mortgage, the terms and provisions of this Section 8(bb) shall control and be binding. With respect to the Property, notwithstanding anything contained herein to the contrary.

- (i) It is the intention of Mortgagor and Lender that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law, 735 ILCS 15-1101, et seq. (the "Act"). If any provision of this Mortgage is inconsistent with any applicable provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.
- (ii) Without in any way limiting or restricting any of Lender's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, Lender shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to Lender any rights, remedies, powers or authorities upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with all of the rights, remedies, powers and authorities granted in the Act to the fullest extent permitted by law.
- (iii) Without limiting the generality of the foregoing, all expenses incurred by Lender, to the extent reimbursable, under Sections 5/15-1510, 5/15-1512, or any other provision of the Act ("**Protective Advances**"), whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the Secured Obligations secured by this Mortgage and by the judgment of foreclosure.
- (iv) Mortgagor waives, to the extent permitted by law, (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale of any portion of the Property, (ii) all rights of redemption (consistent with Section 8(y), valuation, appraisement, homestead, moratorium, exemption, extension, stay of execution, notice of election to mature or declare due the whole of the Secured Obligations in the event of foreclosure of the liens hereby created, (iii) all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Illinois pertaining to the rights and remedies of sureties, (iv) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce the Secured Obligations, and (v) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in a particular order. Without limiting the generality of the preceding sentence, Mortgagor, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage, hereby

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irrevocably waives any and all rights of redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Property and/or any other property now or hereafter constituting security for any of the Secured Obligations secured hereby marshaled upon any foreclosure of this Mortgage or of any other security for any of said Secured Obligations. Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, on behalf of itself and all persons now or hereafter interested in the Property, voluntarily and knowingly hereby acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in the Act) or residential real estate (as defined in the Act).

- (v) This Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County in which the Property is situated with respect to any and all fixtures included within the term "Property" as used herein, and with respect to any goods or other personal property that may now be or hereafter become such fixtures. For purposes of such financing statement, Mortgagor is the "debtor" and Lender is the "secured party", and their respective mailing addresses are those set out in this Mortgage. Mortgagor grants to Lender a security interest in all existing and future goods which are now or in the future become fixtures relating to the Property and the proceeds thereof. Mortgagor covenants and agrees that the filing of this Mortgage in the Official Records of the County where the Property are located shall also operate from the date of such filing as a fixture filing in accordance with Section 9-502 of the Illinois Uniform Commercial Code.
- (vi) Mortgagor stipulates, represents, warrants, affirms and agrees that each of the loans and other credit obligations secured hereby constitute (i) a "business loan" within the meaning of Section 205/4(1)(c) of Chapter 815 of the Illinois Compiled Statutes, as amended and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of Section 205/4(1)(l) of Chapter 815 of the Illinois Compiled Statutes, as amended.
- (vii) Any property management agreement for or relating to all or any part of the Property, whether now in effect or entered into hereafter by Mortgagor or on behalf of Mortgagor, shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Mortgage and the Loan Documents any and all mechanic's lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law, including, without limitation, Illinois Compiled Statutes, Chapter 770, Section 60/1. Such property management agreement or a short form thereof, including such

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subordination, shall, at Lender's request, be recorded with the office of the recorder of deeds for the county in which the Property is located.

- (viii) Collateral Protection Insurance. The following notice is provided pursuant to paragraph (3) of Section 180/10 of Chapter 815 of the Illinois Compiled Statutes (1998): As used herein, "you" means Mortgagor and "we" means Lender. Unless you provide evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.
- (ix) Possession/Receiver. In addition to any provision herein 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 5/15-1701 and 5/15-1702 of the Act, 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 powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.
- (x) Forbidden Entity. Mortgagor hereby certifies that it is not a "forbidden entity" as that term is defined in Section 22.6 of the Illinois Deposit of State Moneys Act, 15 ILCS 520/22.6; Public Act 094-0079.
- (xi) Variable Rate: Additional Interest. The Secured Obligations secured by this Mortgage include, among other things, the obligation to pay interest on the unpaid principal balance of the loans at a variable rate.
- (xii) Maturity Date. The latest maturity date of the Note is January 5, 2033.

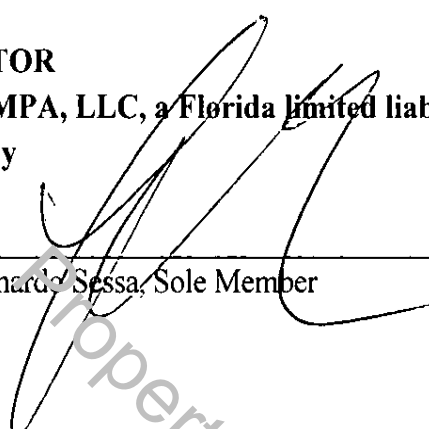
[SIGNATURE PAGE FOLLOWS]

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GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR
FD TAMPA, LLC, a Florida limited liability
company

By: _____
Leonardo Sessa, Sole Member



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[ATTACH PROPER ACKNOWLEDGEMENT]

GRANTOR'S ACKNOWLEDGEMENT

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

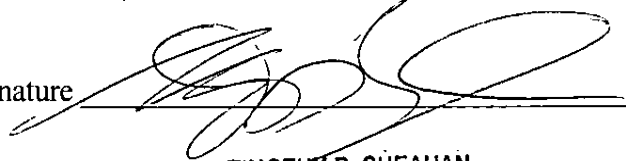
STATE OF NEW YORK)
) ss.
COUNTY OF NASSAU)

On DECEMBER 15, 2020, before me, LEONARDO SESSA

_____ (insert name and title of the officer)
personally appeared Leonardo Sessa, the Sole Member of FD Tampa, LLC, a Florida limited liability company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature 

(Seal)

TIMOTHY P. SHEAHAN
Notary Public-State of New York
No. 02SH6293836
Qualified in Suffolk County
Commission Expires December 18, 2021

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EXHIBIT "A" LEGAL DESCRIPTION

LOT 2 IN ALDI O'REILLY PLAT OF SUBDIVISION BEING A RESUBDIVISION OF PART OF SECTION 8, TOWNSHIP 37 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED APRIL 10, 2014 AS DOCUMENT NO. 1410016027 AND RE-RECORDED APRIL 11, 2014 AS DOCUMENT NO. 1410116007 IN COOK COUNTY ILLINOIS.

COMMON ADDRESS: 4000 E. 106th Street, Chicago, IL 60453
PIN: 26-08-408-033-0000

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Schedule 8.1(l)

Names and Addresses for Providing Notices

Notices in writing to the Grantor shall be directed as follows:

FD Tampa, LLC
132 East 43rd Street, Suite 441
New York, NY 10017

Notices in writing to Lender shall be directed as follows:

First Savings Bank
702 North Shore Drive, Suite 300
Jeffersonville, Indiana 47130

4832-5938-7079, v. 1

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