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2114622026

Doc# 2114622026 Fee \$101.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 05/26/2021 02:41 PM PG: 1 OF 26

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN:** 14-16-103-006-0000

21134093 10FS

Address:

Street: 750-810 W Montrose Ave.

Street line 2:

City: Chicago

State: IL

ZIP Code: 60640

Lender: MWC 49 HOLDINGS, LLC

Borrower: MONTROSE AND CLARENDON, LLC

Loan / Mortgage Amount: \$85,200,000.00

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: 12A5DA43-A557-487A-AB43-8E5FFC3375EE

Execution date: 5/25/2021

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RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019-6099
Attention: Noah Bilenker, Esq.

Permanent Index Number:

14-16-103-006-0000, 14-17-229-008-0000,
14-17-229-014-0000, 14-17-229-015-0000,
14-17-229-016-0000, 14-17-229-017-0000,
14-17-229-018-0000, 14-17-229-019-0000

MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of May 25, 2021, by **MONTROSE AND CLARENDON, LLC**, a Delaware limited liability company, as Mortgagor ("Mortgagor"), to **MWC 49 HOLDINGS, LLC**, a Delaware limited liability company ("Mortgagee").

ARTICLE 1. GRANT IN TRUST

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Security Instrument, Mortgagor irrevocably mortgages, warrants, grants, conveys, conveys and assigns to Mortgagee, with right of entry and possession, all of that real property located in the County of Cook, State of Illinois, described on Exhibit A attached hereto (the "Land"), together with all right, title, interest and privileges of Mortgagor in and to the following property, rights, title, interests and estates:
- (a) All streets, ways, roads and alleys used in connection with or pertaining to such real property, and together with all development rights or credits, air rights, water, water rights and water stock related to such real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the Land, and all appurtenances, easements, rights and rights of way appurtenant or related thereto (collectively with the Land, the "Real Property");
 - (b) All buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, renovations, replacements and other improvements and fixtures now or hereafter located on the Real Property (collectively, the "Improvements");
 - (c) All apparatus, equipment, inventory and appliances used in the operation or occupancy of the Real Property, including, without limitation, all other property of every kind and nature, whether tangible or intangible, whatsoever, now or hereafter located upon the Real Property, or appurtenant thereto and usable in connection with the present or future

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operation and occupancy of the Real Property and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Real Property, or appurtenant or affixed thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Real Property (collectively, the “**Equipment**”), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any “security interest” as defined in the Illinois Commercial Code, as amended and recodified from time-to-time (the “**UCC**”);

- (d) All awards and payments, including interest thereon, that may heretofore and hereafter be made with respect to the Real Property, Improvements, or Equipment, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value thereof (collectively, the “**Awards and Payments**”);
- (e) To the extent assignable by Mortgagor, all leases, license agreements, concession agreements and other occupancy agreements of any nature, whether oral or written or implied by course of conduct, now or hereafter affecting all or any part of the Real Property, the Improvements, the Equipment or the Awards and Payments (collectively, the “**Leases**”) and all other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct or any activity upon or in or relating to, the Real Property, the Improvements, the Equipment or the Awards and Payments, and any and all guarantees, extensions, renewals, replacements and modifications thereof (collectively, the “**Operating Agreements**”);
- (f) All rents, issues, income and profits, including, without limitation, charges for parking, maintenance, taxes and insurance, deficiency rents and damages following default, all proceeds payable under any policy of insurance covering loss of rent resulting from any destruction or damage to the Real Property, Improvements or Equipment, and all other rights and claims of any kind which Mortgagor may have against any tenant or any other occupant of the Real Property, Improvements or Equipment, all rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), all receivables, customer obligations and other obligations now existing or hereafter arising or created out of the sale, sublease, license, franchise, concession or other grant of the right of the use and occupancy of Real Property, or Improvements, or rendering of services by Mortgagor or any operator or manager of the Real Property, Improvements or Equipment (collectively, the “**Rents**”);
- (g) All proceeds of and any unearned premiums on any insurance policies covering the Real Property, Improvements or Equipment (regardless as to whether required hereby) including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Real Property, Improvements or Equipment, in each case in accordance with the terms of Section 5.4 of the Loan Agreement (collectively, the “**Insurance Proceeds**”);
- (h) The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Real Property, Improvements, Equipment, Awards and Payments, Operating Agreements, Rents or Insurance Proceeds and to commence

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any action or proceeding to protect the interest of Mortgagee therein (collectively, the “**Claims**”);

- (i) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing, including, without limitation, the Insurance Proceeds and Awards and Payments, into cash or liquidation claims;
- (j) All accounts, escrows, documents, instruments, chattel paper, notes, drafts, letters of credit, interest rate hedge, cap, swap or similar agreements, title insurance policies, all reserves and accounts established under that certain Loan Agreement between Mortgagor, as borrower, and Mortgagee, as lender, dated as of even date herewith (the “**Loan Agreement**”), and, to the extent assignable, all permits, consents, approvals, licenses, authorizations and other rights given or granted by or obtained from any governmental entity with respect to the Real Property, Improvements, Equipment, Awards and Payments, Operating Agreements, Rents or Insurance Proceeds, all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect thereto, all loan funds held by Mortgagee, whether or not disbursed, all funds deposited with Mortgagee or another depository pursuant to the Loan Agreement or any other Loan Document, all reserves, deferred payments, deposits, accounts, refunds and payments of any kind related thereto or any portion thereof, together with all books, claims, deposits and general intangibles, as the foregoing are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, franchise agreements, management agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, renovation or other work upon the Real Property or Improvements), approvals, actions, refunds, rebates or credits of real estate taxes and assessments (and any other governmental impositions related to the Real Property, Improvements or Equipment), and causes of action that now or hereafter relate to, are derived from or are used in connection thereto, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, the “**Intangibles**”);
- (k) All water and water rights, ditches and ditch rights, reservoirs and storage rights, wells and well rights, springs and spring rights, groundwater rights (whether tributary, nontributary or not nontributary), water contracts, water allotments, water taps, shares in ditch or reservoir companies, and all other rights of any kind or nature in or to the use of water, which are appurtenant to, historically used on or in connection with, or located on or under the Land, together with any and all easements, rights of way, fixtures, personal property, contract rights, permits or decrees associated with or used in connection with any such rights;
- (l) The Interest Rate Protection Agreement, including, but not limited to, all “accounts”, “chattel paper”, “general intangibles” and “investment property” (as such terms are defined in the UCC as from time to time in effect) constituting or relating to the foregoing; and all products and proceeds of any of the foregoing;
- (m) All rights and interests of Mortgagor as the “Developer” under and pursuant to the Redevelopment Agreements, including, without limitation, all rights and interests to receive payments under and pursuant to the City Notes (collectively, the “**Developer Rights**”); and

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- (n) All interests or estate which Mortgagor may hereafter acquire in the Real Property, Improvements, Equipment, Awards and Payments, Operating Agreements, Rent or Insurance Proceeds, and all additions and accretions thereto, and the proceeds of any of the foregoing.

The above listing of specific rights or property shall not be interpreted as a limitation of general terms. The Real Property, Improvements, Equipment, Awards and Payments, Operating Agreements, Rents, Insurance Proceeds and Intangibles are referred to herein collectively as the “**Property**”.

TO HAVE AND TO HOLD the Property, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Property after the occurrence of any Event of Default; Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Security Instrument for the purpose of securing the following obligations (“**Secured Obligations**”):
- (a) Payment to Mortgagee of all sums at any time owing under that certain Promissory Note Secured by Mortgage (“**Note**”) of even date herewith, in the maximum principal amount of EIGHTY FIVE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$85,200,000.00) executed by Mortgagor, as borrower, and payable to the order of Mortgagee, as lender; and
 - (b) Payment and performance of all covenants and obligations of Mortgagor under this Security Instrument; and
 - (c) Payment and performance of all covenants and obligations on the part of Mortgagor under (i) the Loan Agreement; and (ii) each other Loan Document to which Mortgagor is a party, but expressly excluding the Environmental Indemnity Agreement and the Carveout Guaranty; and
 - (d) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Security Instrument; and
 - (e) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.
- 2.2 **OBLIGATIONS.** The term “**obligations**” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, exit fees, default interest, protective advances, reimbursements, penalties, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.
- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. Capitalized terms not specifically defined herein have the meaning given such terms in the Loan Agreement. All persons who may have or

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acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and reborrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** As security for the Secured Obligations, Mortgagor hereby irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all Operating Agreements; and (b) the Rents, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Operating Agreements, including under the Leases ("Payments"). This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Operating Agreements (including all Leases) and Payments is not contingent upon, and may be exercised without possession of, the Property.
- 3.2 **GRANT OF LICENSE.** Subject to the terms and conditions of that certain Cash Management Agreement of even date herewith between Mortgagor and Mortgagee ("Cash Management Agreement"), and subject to the terms of the Loan Agreement, Mortgagee confers upon Mortgagor a license ("License") to collect and retain the Payments as they become due and payable and otherwise act as owner under the Operating Agreements and in respect of the Property, until the occurrence of an Event of Default (as hereinafter defined). Upon the occurrence and during the continuance of an Event of Default, at Mortgagee's option in its sole and absolute discretion, the License shall be automatically revoked and Mortgagee may collect and apply the Payments pursuant to the Loan Agreement and the other Loan Documents without further notice and without taking possession of the Property. Mortgagor hereby irrevocably authorizes and directs the lessees under the Operating Agreements and any operator and manager of the Property to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any Rents, Payments or other sums which may at any time become due or payable from the Property or under the Operating Agreements, or for the performance of any of the lessees' or occupants' undertakings under the Operating Agreements or any other agreements pertaining to the Property, and the lessees, occupants, managers, operators, licensors shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the lessees, occupants, managers, operators, licensors, and others from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Operating Agreements (including the Leases) or under other agreements pertaining to the operation or management of the Property; or (c) responsible or liable for any waste committed on the Property by any persons under any of the Operating Agreements for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee, occupant, invitee or other person (in each case, except to the extent caused by the gross negligence, fraud or willful misconduct of Mortgagee, its employees, contractors or agents). Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder; or (ii) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor arising under

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the Operating Agreements (in each case, except to the extent arising from the gross negligence, fraud or willful misconduct of Mortgagee, its employees, contractors or agents).

- 3.4 **COVENANTS.** Subject to the terms and conditions of the Loan Agreement, Mortgagor shall (a) timely perform in all material respects all obligations that are required to be performed by Mortgagor under the Operating Agreements and (b) enforce all rights of Mortgagor under the Terms of the Operating Agreements. Without in any way limiting the requirement of Mortgagee's consent hereunder, if the provisions of the Cash Management Agreement shall be in effect, any sums received by Mortgagor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Operating Agreement shall be applied as provided in the Cash Management Agreement (if applicable).

ARTICLE 4. COLLATERAL ASSIGNMENT OF DEVELOPER RIGHTS

- 4.1 **ASSIGNMENT.** As additional security for the Secured Obligations, Mortgagor hereby sells, assigns, transfers and sets over to Mortgagee, and grants to Mortgagee a security interest in, the property described below:
- (a) all of the Mortgagor's right, title and interest in and to the Developer Rights, but not its obligations, under (a) the Redevelopment Agreements, (b) the City Notes, and (c) any and all other documents delivered or to be delivered by Chicago DPD pursuant to the Redevelopment Agreements; and
 - (b) all amounts payable under the Redevelopment Documents and the City Notes; and
 - (c) all proceeds of all of the foregoing.

So long as no Event of Default exists hereunder, the Mortgagor shall have the right to exercise the Developer Rights subject to the representations, covenants and restrictions contained herein, in the Loan Agreement, in the Loan Documents and in the TIF Documents.

- 4.2 **SECURITY AGREEMENT.** This Security Instrument is intended, *inter alia*, to be a security agreement for purposes of the UCC with respect to the collateral assignment of the Developer Rights hereunder.
- 4.3 **COVENANTS.** Subject to the terms and conditions of the Loan Agreement, Mortgagor shall do, execute, acknowledge and deliver all and every further acts, security agreements, financing statements and other documents and assurances necessary or advisable, in the reasonable judgment of Mortgagee, for the creation, perfection and continued perfection of the security interests intended to be created hereby in the Developer Rights, including, without limitation, filing or authorizing Mortgagee to file UCC-1 financing statements and continuations thereof and recording a memorandum hereof with the Recorder of Cook County, Illinois.

ARTICLE 5. SECURITY AGREEMENT AND FIXTURE FILING

- 5.1 **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Mortgagee a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or

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are to be incorporated into, used in connection with, or appropriated for use on (i) the real property described on Exhibit A attached hereto and incorporated by reference herein (to the extent the same are not effectively made a part of the real property pursuant to Section 1.1 above) or (ii) the Improvements (which real property and Improvements are collectively referred to herein as the Property); together with all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to Article 3); all inventory, accounts, cash receipts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing or operation of the Property or any business now or hereafter conducted thereon by Mortgagor; all rights of Mortgagor under any interest rate hedge, cap, swap or similar agreement; all permits consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee or another depository pursuant to the Loan Agreement or any other Loan Documents; all reserves, deferred payments, deposits, accounts, refunds and payments of any kind related to the Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Security Instrument constitutes a financing statement and fixture filing under Sections 9-334 and 9-502 of the UCC, as amended or recodified from time to time. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinbelow set forth. This Security Instrument is to be filed for recording with the Recorder of Deeds of Cook County, Illinois. Mortgagor is the record owner of the Property.

- Name and Address of Debtor:

Montrose and Clarendon, LLC
 7 Giralda Farms
 Madison, New Jersey 07940
 Attention: David J. Barra
 Email: David.Barra@pgim.com

- Name and Address of Secured Party:

MWC 49 Holdings, LLC
 c/o Mesa West Capital, LLC
 11755 Wilshire Boulevard, Suite 2100
 Los Angeles, California 90025
 Attention: Loan Notices

- This document covers goods which are or are to become fixtures.
- The name of the record owner is MONTROSE AND CLARENDON, LLC.

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- 5.2 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) Mortgagor has, or will have, good title to the Collateral; (b) Mortgagor has not previously assigned or encumbered the Collateral, and Mortgagor has not delivered or authorized any other person to deliver any financing statement covering any of the Collateral to any other person or entity, other than the assignment in favor of any prior lender to Mortgagee, which assignment is being terminated on or before the date of this Security Instrument; and (c) Mortgagor's principal place of business is located at the address shown in Section 8.14.
- 5.3 **RIGHTS OF MORTGAGEE.** In addition to Mortgagee's rights as a "Secured Party" under the UCC, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; (c) subject to the rights of tenants, licensees and other occupants under the Leases, inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under UCC §9-620 and 9-621 as amended or recodified from time to time, or other applicable law.
- 5.4 **RIGHTS OF MORTGAGEE ON EVENT OF DEFAULT.** Upon the occurrence and during the continuance of an Event of Default under this Security Instrument, then in addition to all of Mortgagee's rights as a "Secured Party" under any Loan Document, the UCC or otherwise, to the fullest possible extent permitted by law or equity:
- (a) Mortgagee may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) with forty-eight (48) hours prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; and (iii) sell, assign and deliver at any place and in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales;
 - (b) Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Mortgagee deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Mortgagee may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral; and
 - (c) Notwithstanding any other provision hereof, Mortgagee shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagor shall make an express written election of said remedy under UCC §9-621 as amended or recodified from time to time, or other applicable law.
- 5.5 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Mortgagee may, without the obligation to do so, in Mortgagee's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of

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Mortgagee's security interests and rights in or to any of the Collateral, and take any other action required of Mortgagee herein; provided, however, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee. Notwithstanding the foregoing, Mortgagee agrees that it shall not exercise the power of attorney set forth in this Section 5.5 prior to the occurrence and during the continuance of an Event of Default.

- 5.6 **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Article 5 or the other Loan Documents, so long as no Event of Default exists under this Security Instrument or any of the Loan Documents, Mortgagor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Mortgagor's business and in accordance with the Loan Agreement.

ARTICLE 6. RIGHTS AND DUTIES OF THE PARTIES

- 6.1 **TITLE.** Mortgagor represents and warrants that, except as disclosed to Mortgagee in a writing which refers to this warranty or as provided in the Title Policy, Mortgagor lawfully holds and possesses, or will hold and possess, fee simple title to the Real Property without limitation on the right to encumber, and this Security Instrument is a first and prior lien on the Property.
- 6.2 **TAXES AND ASSESSMENTS.** Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Mortgagee by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Mortgagee pursuant to any Secured Obligation. Without limitation, if at any time any law is enacted which deducts from the value of real property, for taxation purposes, any lien thereon, or changes in any way the laws now in force for the taxation of mortgages, deeds of trust or debts secured thereby, or the manner of collection of any such taxes so as to affect any interest of Mortgagee under this Security Instrument then Mortgagor shall pay such tax if it may lawfully do so. If Mortgagor is not permitted by applicable law to pay such tax, or if such payment would violate any applicable law, then the whole of the principal sum secured by this Security Instrument, together with accrued interest thereon, at the option of Mortgagee, upon not less than sixty (60) days prior written notice, shall become due and payable; provided, however, that notwithstanding the terms of the Loan Agreement, no Prepayment Premium shall be due from Mortgagor in connection therewith. The terms of this Section 6.2 shall be subject to Mortgagee's rights to contest all such taxes, assessments, levies and charges pursuant to Section 9.21 of the Loan Agreement.
- 6.3 **INTENTIONALLY BLANK.**
- 6.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation when due.
- 6.5 **LIENS, ENCUMBRANCES AND CHARGES.** Subject to Mortgagor's rights under Section 12.7 of the Loan Agreement, Mortgagor shall (i) immediately discharge any lien not approved by Mortgagee in writing that has or may attain priority over this Security Instrument and (ii) pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto.
- 6.6 **PERFORMANCE OF OTHER AGREEMENTS.** Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to

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the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

- 6.7 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Mortgagor shall comply with the requirements of the Loan Agreement with respect to maintenance of the Property, including, without limitation, those contained in Section 9.2 of the Loan Agreement.
- 6.8 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Mortgagee hereunder against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage (other than immaterial damage) to the Property or Collateral and of any condemnation offer or action.
- 6.9 **INTENTIONALLY BLANK.**
- 6.10 **COMPENSATION; EXCULPATION; INDEMNIFICATION.**
- (a) Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of (i) the proper exercise of the rights, remedies or powers granted to Mortgagee in this Security Instrument; (ii) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Security Instrument; or (iii) any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property after an Event of Default or from any other act or omission of Mortgagee in managing the Property after an Event of Default unless the loss is caused by the gross negligence or willful misconduct of Mortgagee and no such liability shall be asserted against or imposed upon Mortgagee, and all such liability (other than that arising from the gross negligence or willful misconduct of Mortgagee (or any of its employees, contractors, or agents)) is hereby expressly waived and released by Mortgagor.
- (b) Mortgagor indemnifies Mortgagee (and their respective successors, assigns and participants) for, from and against, and holds Mortgagee (and their respective successors, assigns and participants) harmless from, all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other expenses which either may suffer or incur, and, as permitted by Applicable Law, regardless of whether caused in whole or in part by the negligence or strict liability of Mortgagee (but expressly excluding losses caused by the gross negligence or willful misconduct of Mortgagee or its employees, contractors or agents): (i) by reason of this Security Instrument; (ii) by reason of the execution of this trust or in performance of any act required or permitted hereunder or required by law; (iii) as a result of any failure of Mortgagor to perform Mortgagor's obligations; or (iv) by reason of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations of Mortgagor contained in any other document related to the Property.
- (c) Mortgagor shall pay all amounts and indebtedness arising under this Section 6.10 within ten (10) Business Days after demand by Mortgagee (or their respective successors, assigns or participants) together with interest thereon from the date of such demand at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 6.11 **INTENTIONALLY BLANK.**

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- 6.12 **DUE ON SALE OR ENCUMBRANCE.** If the Property or any interest therein, or if any portion of the corporate stock, general partnership interests or limited liability company interests or other equity interests in Mortgagor, shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Mortgagee, except as otherwise expressly permitted pursuant to Section 9.9 of the Loan Agreement, THEN Mortgagee, in its sole discretion, may declare all Secured Obligations immediately due and payable.
- 6.13 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations (“Interested Parties”), Mortgagee may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement with Mortgagor or the applicable obligor extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Security Instrument upon the Property and Collateral.
- 6.14 **REPAYMENT AND RELEASE.** Upon indefeasible repayment in full of all sums owing and outstanding under the Loan Documents and full satisfaction of all other obligations under the Loan Documents, Mortgagee shall terminate and release the lien of this Security Instrument, without warranty.
- 6.15 **SUBROGATION.** Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to this Security Instrument or by the proceeds of any loan secured by this Security Instrument.
- 6.16 **LEASING.** Mortgagor shall comply with the requirements of the Loan Agreement with respect to leasing, including, without limitation, those contained in section 9.3 of the Loan Agreement.
- 6.17 **RIGHT OF INSPECTION.** Mortgagee, its agents and employees, may enter the Property at any reasonable time, after reasonable notice to Mortgagor, and in all cases subject to the rights of tenants, licensees and other occupants under the Leases, for the purpose of inspecting the Property and ascertaining Mortgagor’s compliance with the terms hereof.

ARTICLE 7. DEFAULT PROVISIONS

- 7.1 **DEFAULT.** For all purposes hereof, the term “Event of Default” shall mean “Event of Default”, as defined in the Loan Agreement.
- 7.2 **RIGHTS AND REMEDIES.** At any time after the occurrence and during the continuance of an Event of Default, Mortgagee shall each have all the following rights and remedies, subject to the terms and conditions of the Loan Agreement and other Loan Documents (and, for the avoidance of doubt, Mortgagee shall have no rights to cure any Event of Default):
- (a) With or without notice, to declare all Secured Obligations immediately due and payable;
 - (b) With or without notice, and without releasing Mortgagor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any Event of Default of Mortgagor and, in connection therewith, to the extent permitted under applicable law, to enter upon the

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Property and do such acts and things as Mortgagee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Security Instrument or the rights or powers of Mortgagee under this Security Instrument; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority to this Security Instrument, the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Security Instrument; or (v) to employ counsel, accountants, contractors and other appropriate persons as deemed necessary by Mortgagee in connection with the exercise of its rights and remedies under this Security Instrument.

- (c) To the extent permitted under applicable law, to commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;
- (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment. Such receiver may be appointed by any court of competent jurisdiction upon ex parte application (Mortgagor hereby waiving any right to any hearing or notice of hearing prior to the appointment of a receiver);
- (e) To enter upon, possess, manage and operate the Property or any part thereof (subject to the rights of tenants, licensees and other occupants under the Leases), to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property, to make, terminate, enforce or modify Operating Agreements of the Property upon such terms and conditions as Mortgagee deems proper, to make repairs, alterations and improvements to the Property as reasonably necessary, in Mortgagee's sole judgment, to protect or enhance the security hereof;
- (f) To execute a written notice of such Event of Default and of its election to cause the Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Mortgagee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Mortgagee, without notice to or demand upon Mortgagor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Mortgagee in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Mortgagor nor any other person or entity other than Mortgagee shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Mortgagee may from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale. Mortgagee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Mortgagee, Mortgagor or Mortgagee may purchase at the sale;

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- (g) To the extent permitted under applicable law, to resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Mortgagee determines in its sole discretion.
- (h) Upon sale of the Property at any judicial or non-judicial foreclosure, to the extent permitted under applicable law, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, reasonable attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Mortgagee; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any) for the Secured Obligations; and (vii) such other factors or matters that Mortgagee (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios previously discussed between Mortgagor and Mortgagee; and (z) Mortgagee's credit bid may be (at Mortgagee's sole and absolute discretion) higher or lower than any appraised value of the Property.

7.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** After deducting all reasonable costs, fees and expenses in connection with the sale, including, without limitation, cost of evidence of title and actual third party attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Mortgagee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Mortgagee under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

7.4 **APPLICATION OF OTHER SUMS.** All sums received by Mortgagee under Section 7.2, Section 3.2 or Section 4.1, less all reasonable costs and expenses incurred by Mortgagee or any receiver under Section 7.2, including, without limitation, actual third party attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Mortgagee shall determine in its sole discretion; provided, however, Mortgagee shall have no liability for funds not actually received by Mortgagee.

7.5 **NO CURE OR WAIVER.** Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues,

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profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Mortgagee or any receiver shall cure or waive any breach, Event of Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any license, franchise, tenancy, lease or option or a subordination of the lien of this Security Instrument.

- 7.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Mortgagee, within ten (10) days after demand, all out-of-pocket costs and expenses incurred by Mortgagee pursuant to Section 7.2 (including, without limitation, court costs and actual third party attorneys' and paralegals' fees, whether internal or external and whether incurred in litigation or not) with interest from the date of notice of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 7.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** After the occurrence and during the continuance of an Event of Default, Mortgagor hereby irrevocably appoints Mortgagee and its successors and permitted assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Operating Agreements and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Collateral, and (d) Mortgagee may perform any obligation of Mortgagor hereunder; provided, however, that: (i) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (ii) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act under this Section.

ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Security Instrument and to the Property and such further rights and agreements are incorporated herein by this reference.
- 8.2 **NO RELATIONSHIP.** The relationship between Mortgagor and Mortgagee is solely that of debtor and creditor, and Mortgagee has no fiduciary or other special relationship with Mortgagor, and no term or condition of the Loan Agreement, the Note, this Security Instrument or any other Loan Document shall be construed so as to deem the relationship between Mortgagor and Mortgagee to be other than that of debtor and creditor.
- 8.3 **MERGER.** No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Property unless Mortgagee consents to a merger in writing.

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- 8.4 **NO RELIANCE ON MORTGAGEE; RELIANCE ON MORTGAGOR.** The general partners, members, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Mortgagor is relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Mortgagor is not relying on Mortgagee's expertise, business acumen or advice in connection with the Property. Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Mortgagee is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 6 of the Loan Agreement and Section 2(a) of the Environmental Indemnity Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Mortgagee, that such reliance existed on the part of Mortgagee prior to the date hereof, that the warranties and representations are a material inducement to Mortgagee in making the Loan; and that Mortgagee would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 6 of the Loan Agreement and Section 2(a) of the Environmental Indemnity Agreement.
- 8.5 **OBLIGATIONS OF MORTGAGOR, JOINT AND SEVERAL.** If more than one person has executed this Security Instrument as "Mortgagor", the obligations of all such persons hereunder shall be joint and several.
- 8.6 **RECOURSE TO SEPARATE PROPERTY.** Any married person who executes this Security Instrument as a Mortgagor agrees that any money judgment which Mortgagee obtains pursuant to the terms of this Security Instrument or any other obligation of that married person secured by this Security Instrument may be collected by execution upon that person's separate property, and any community property of which that person is a manager.
- 8.7 **WAIVER OF MARSHALING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property, hereby waives (i) all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation ("**Other Property**") marshaled upon any foreclosure of this Security Instrument or on a foreclosure of any other security for any of the Secured Obligations; and (ii) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Property. Mortgagee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Mortgagee may designate.
- 8.8 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Property" means all and any part of the Property and any interest in the Property.
- 8.9 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the parties hereto; provided, however, that this Section 8.9 does not waive or modify the provisions of Section 6.12.
- 8.10 **EXECUTION IN COUNTERPARTS.** This Security Instrument may be executed in any number of counterparts, each of which, when executed and delivered to Mortgagee, will be

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deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

- 8.11 **Governing Law.** THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK BY MORTGAGEE, AND MADE BY MORTGAGEE IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN SHALL BE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND, EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 9-301 9-307 OF THE UCC, IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER 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 (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA; PROVIDED, HOWEVER, THAT AT ALL TIMES THE PROVISIONS HEREIN FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE OF ILLINOIS. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT.
- 8.12 **INCORPORATION.** Exhibit A, as attached, is incorporated into this Security Instrument by this reference.
- 8.13 **EXCULPATION.** Section 2.12 of the Loan Agreement is hereby incorporated in this Security Instrument as if fully set forth herein.
- 8.14 **NOTICES.** All notices, demands, requests, consents, approvals, waivers or other communications required or permitted to be given pursuant to the provisions of this Security Instrument shall be in writing and shall be considered as properly given if delivered to the appropriate party in the manner and to the address set forth in Section 12.4 of the Loan Agreement.

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove. Mortgagor shall forward to Mortgagee, without delay, any notices, letters or other communications delivered to the Property or to Mortgagor naming Mortgagee, "Lender" or any similar designation as addressee, or which is reasonably likely to affect the ability of Mortgagor to perform its obligations to Mortgagee under the Note or the Loan Agreement.

- 8.15 **CONFLICT WITH LOAN AGREEMENT.** In the event of any conflict between the terms and requirements of this Security Instrument and the Loan Agreement, the terms and requirements of the Loan Agreement shall prevail.

ARTICLE 9. ILLINOIS STATE-PROVISIONS

- 9.1 **PRINCIPLES OF CONSTRUCTION.** In the event of any inconsistencies between the terms and conditions of this Article 10 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 10 shall control and be binding.

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9.2 **ILLINOIS MORTGAGE FORECLOSURE LAW.** It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Security Instrument shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.), as amended from time to time (the "Act") and with respect to such Act, Mortgagor agrees and covenants that:

- (a) Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee 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. Notwithstanding anything herein to the contrary, to the extent any provision in this Security Instrument shall be inconsistent with any provision of the Act, the provisions of this Security Instrument shall take precedence over the provisions of the Act, to the extent permitted under Applicable Law but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. All expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Security Instrument, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure. If any provision of this Security Instrument shall grant to Mortgagee any rights or remedies upon the occurrence and during the continuation of an Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.
- (b) Wherever provision is made in this Security Instrument or the Loan Agreement for insurance policies to bear Security Instrument clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.
- (c) In addition to any provision of this Security Instrument authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties and provisions for in Sections 15-1701, 15-1703 and 15-704 of the Act.
- (d) Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act and upon the occurrence and during the continuation of an Event of Default to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601 and 15-602 of the Act.
- (e) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, on its own

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behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.

- (f) The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless Mortgagor provides evidence of the insurance coverage required by the Loan Documents in the time and manner required by the Loan Documents, Mortgagee may, subject to the terms of the Loan Agreement and the provisions of 815 ILCS 180/25 of the Collateral Protection Act, purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor may make or any claim that is made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing evidence that Mortgagor has obtained insurance as required by this Security Instrument and the other Loan Documents. If Mortgagee purchases insurance for the Property, then, subject to 815 ILCS 180/25 of the Collateral Protection Act, Mortgagor will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges that Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the obligations secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on Mortgagor's own.
- (g) Upon the occurrence and during the existence of an Event of Default hereunder, Mortgagee shall, at its option and without notice or demand, be entitled to enter upon the Property (subject to the rights of tenants, licensees and other occupants under the Leases) to take immediate possession of any personal property owned by Mortgagor. Upon request, but subject to any applicable rights of tenants under the Leases, Mortgagor shall assemble and make such personal property available to Mortgagee at a place designated by Mortgagee which is reasonably convenient to both parties. Mortgagee may sell all or any portion of such personal property at public or private sale in accordance with the UCC or in accordance with the foreclosure sale provisions under this Security Instrument. Mortgagor agrees that a commercially reasonable manner of disposition of such personal property during the existence of an Event of Default shall include, without limitation and at the option of Mortgagee, the sale of such personal property, in whole or in part, concurrently with a foreclosure sale of the Property in accordance with the provisions of this Security Instrument.
- (h) Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Property. Except to the extent contrary to law, Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any valuation or appraisal before sale of any portion of the Property, (ii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement and collection of the Secured Obligations or creating or extending a period of redemption from any sale made in collecting the Secured Obligations, and (iii) any rights and remedies which Mortgagor may have or be able to assert by reason of (y) the laws of the State of Illinois pertaining to the rights and remedies of sureties or (z) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in

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a particular order. If any law now or hereafter in force referred to in this clause (h) of which Mortgagor or Mortgagor's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph and Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

- (i) If certain conditions are satisfied, Mortgagee is obligated under the terms of the Loan Documents to make advances as provided therein, and Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be secured by the lien of this Security Instrument, as provided in Section 15-1302(b)(1) of the Act. Mortgagor covenants and agrees that this Security Instrument shall secure the payment of all loans and advances made pursuant to the Loan Documents as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Security Instrument and although there may be no advances made at the time of the execution of this Security Instrument and although there may be no other indebtedness outstanding under the Loan Documents at the time any advance is made. The lien of this Security Instrument shall be valid as to all such obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Property is located. The total amount of the obligations secured hereby may increase or decrease from time to time. This Security Instrument also secures any and all future obligations arising under or in connection with this Security Instrument, the Note, the Loan Agreement and the Loan Documents, which future obligations shall have the same priority as if all such obligations were made on the date of execution hereof. This Security Instrument shall be valid and shall have priority over all subsequent liens and encumbrances, including any statutory liens except taxes and assessments levied on the Property or such other liens that shall have priority by operation of law, to the extent of the maximum amount secured hereby.
- (j) All advances, disbursements and expenditures made by Mortgagee in accordance with the terms of this Security Instrument and the other Loan Documents, whether before and during a foreclosure of this Security Instrument, and before and after judgment of foreclosure therein, and at any time prior to sale of the Property, and, where applicable, after sale of the Property, and during the pendency of any related proceedings, in addition to those otherwise authorized by the Act, shall have the benefit of all applicable provisions of the Act, including without limitation advances, disbursements and expenditures for the following purposes:
- (1) all advances by Mortgagee in accordance with the terms of this Security Instrument or the other Loan Documents to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Property; (ii) preserve the lien of this Security Instrument or the priority thereof; or (iii) enforce this Security Instrument, as referred to in Section 15-1302(b)(5) of the Act;

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- (2) payments by Mortgagee of (i) principal, interest or other obligations in accordance with the terms of any senior Security Instrument or other prior lien or encumbrance, (ii) 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, (iii) other obligations authorized by this Security Instrument, or (iv) 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 Act;
- (3) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
- (4) actual out-of-pocket third party attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Security Instrument as referred to in Sections 15-1504(d)(2) and 15-1510(b) of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Security Instrument or arising from the interest of Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Security Instrument or the Property;
- (5) Mortgagee's out-of-pocket fees and costs, including actual out-of-pocket third party attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the Act;
- (6) expenses deductible from proceeds of sale as referred to in Sections 15-1512(a) and (b) of the Act; and
- (7) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Property imposed by Section 15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee 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; (vi) 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; (vii) if any portion of the credit facilities secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable Loan Documents; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement

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for occupancy of the Property; and (ix) if this Security Instrument is required to be insured under the Loan Agreement, payment of FHA or private Security Instrument insurance required to keep such insurance in force.

- (k) Notwithstanding anything contained in this Security Instrument to the contrary, the proceeds of any foreclosure sale of the Property shall be distributed and applied in accordance with Section 15-1512 of the Act in the following order of priority: first, on account of all out-of-pocket costs and expenses incident to the foreclosure proceedings or such other remedy; second, on account of all out-of-pocket costs and expenses in connection with securing possession of the Property prior to such foreclosure sale, and the out-of-pocket costs and expenses incurred by or on behalf of Mortgagee in connection with holding, maintaining and preparing the Property for sale; third, in satisfaction of all claims in the order of priority adjudicated in the foreclosure judgment or order confirming sale; and fourth, any remainder in accordance with the order of court adjudicating the foreclosure proceeding.
- (l) Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.
- 9.3 **USE OF LOAN PROCEEDS.** Mortgagor covenants and agrees (i) that the proceeds of the loan evidenced by the Note and secured by this Security Instrument will be used for business purposes as specified in 815 ILCS 205/4(1)(c), as amended, and that the entire principal obligation secured hereby constitutes a business loan which comes within the purview of such Section, and (ii) that the loan evidenced by the Note and secured by this Security Instrument is a “loan secured by a mortgage on real estate” within the purview and operation of 815 ILCS 205/4(1)(l).
- 9.4 **MAXIMUM SECURED SUM.** Notwithstanding anything herein to the contrary, it is agreed that the maximum principal amount of the indebtedness secured by this Security Instrument, including all advancements, at any one time shall not exceed two hundred percent (200%) of the maximum principal amount of the Note.
- 9.5 **VARIABLE RATE; ADDITIONAL INTEREST.** This Security Instrument secures the full and timely payment of the Secured Obligations, including, among other things, the obligation to pay interest on the unpaid principal balance at a variable rate of interest to the extent provided in the Loan Agreement.
- 9.6 **RESTRICTIONS ON TRANSFER.** In determining whether or not to make the loan evidenced by the Note, the Mortgagee evaluated the background and experience of the Mortgagor and its members in owning and operating property such as the Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Property which is the Mortgagee’s security for the Note. The Mortgagor and its members are well experienced in borrowing money and owning and operating property such as the Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at

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arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. The Mortgagor further recognizes that any secondary junior financing placed upon the Property (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force the Mortgagee to take measures and incur expenses to protect its security; (iii) would detract from the value of the Property should the Mortgagee come into possession thereof with the intention of selling same; and (iv) would impair the Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by the Mortgagee would be necessary to clear the title to the Property. In accordance with the foregoing and for the purposes of (a) protecting the Mortgagee's security, both of repayment and of value of the Property; (b) giving the Mortgagee the full benefit of its bargain and contract with the Mortgagor; (c) allowing the Mortgagee to raise the interest rate and collect assumption fees; and (d) keeping the Property free of subordinate financing liens, the Mortgagor agrees that if any provision of this Security Instrument is deemed a restraint on alienation, that it is a reasonable one.

- 9.7 **SUBORDINATION OF PROPERTY MANAGER'S LIEN.** Any property management agreement for the Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Property shall be subject and subordinate to the lien of this Security Instrument and shall provide that the Mortgagee may terminate such agreement, without penalty or cost, at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at the Mortgagee's request, shall be recorded with the Recorder of Deeds of Cook County, Illinois. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, the Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with the Mortgagee, 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 Security Instrument.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, Mortgagee has executed this Security Instrument as of the day and year set forth above.

MORTGAGOR:

MONTROSE AND CLARENDON, LLC,
a Delaware limited liability company

By: Montrose and Clarendon Holdings, LLC, a
Delaware limited liability company, its sole
member

By: *[Signature]*
Name: **VINCENT G. FORGIONE**
Title: Authorized Signatory

STATE OF Illinois)
) SS
COUNTY OF Cook)

I, Bridget Torres a Notary Public in and for said County, in the State aforesaid, do hereby certify that VINCENT G. FORGIONE AUTHORIZED of Montrose and Clarendon, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as her/his own free and voluntary act, for the uses and purposes therein set forth, including the waiver of right of homestead.

GIVEN under my hand and notarial seal, this 27th day of April, 2021.



[Signature]
NOTARY PUBLIC
(SEAL)

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EXHIBIT A DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

PARCEL 2:

LOT 1 AND ALL OF LOTS 2, 3 AND 4 IN LYDSTON'S RESUBDIVISION OF LOTS 3 TO 7 IN BLOCK 1 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 1 AND 2 (EXCEPT THE NORTH 105 FEET OF THE EAST 85 FEET OF SAID LOTS) IN BLOCK 1 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

THAT PART OF THE NORTH 1/2 OF THE EAST AND WEST 16 FOOT VACATED PUBLIC ALLEY, LYING WEST OF THE WEST LINE OF CLARENDON AVENUE, LYING EAST OF A LINE 18 FEET EAST OF AND PARALLEL TO THE WEST LINE OF LOT 1 AND SAID WEST LINE PRODUCED SOUTH 16 FEET IN LYDSTON'S RESUBDIVISION OF LOTS 3 TO 7 OF BLOCK 1 AFORESAID, SAID VACATED ALLEY LYING SOUTH AND ADJOINING PARCELS 2 AND 3, IN COOK COUNTY, ILLINOIS

PARCEL 5:

LOT 18 (EXCEPT THE WEST 18 FEET THEREOF DEDICATED FOR PUBLIC ALLEY, BY INSTRUMENT RECORDED AUGUST 20, 1992 AS DOCUMENT 92618869) AND LOTS 19 AND 20 IN BLOCK 1 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

LOTS 1 TO 4, BOTH INCLUSIVE, IN THE SUBDIVISION OF LOT 2 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 7:

THAT PART OF THE SOUTH 1/2 OF THE EAST AND WEST 16 FOOT VACATED PUBLIC ALLEY, LYING WEST OF THE WEST LINE OF CLARENDON AVENUE, LYING EAST OF A LINE 18 FEET EAST OF AND PARALLEL TO THE WEST LINE OF LOT 1 AND SAID WEST LINE PRODUCED SOUTH 16 FEET IN LYDSTON'S RESUBDIVISION OF LOTS 3 TO 7 OF BLOCK 1 AFORESAID, SAID VACATED ALLEY LYING NORTH AND ADJOINING PARCELS 4 AND 5 AFORESAID, IN COOK COUNTY, ILLINOIS.

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PARCEL 8:

THE WEST 103 FEET OF THE SOUTH 147 FEET (EXCEPT THE NORTH 14 FEET OF THE EAST 51.6 FEET THEREOF) OF LOT 4 IN SCHOOL TRUSTEE'S SUBDIVISION OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 9:

THE NORTH 105 FEET OF THE EAST 85 FEET OF LOTS 1 AND 2 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address commonly known as:

750-810 W Montrose Ave Chicago, IL 60640

PIN#: 14-16-103-006-0000, 14-17-229-008-0000, 14-17-229-014-0000,
14-17-229-015-0000, 14-17-229-016-0000, 14-17-229-017-0000, 14-17-229-018-0000,
14-17-229-019-0000

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