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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



Doc# 2116834126 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 06/17/2021 01:37 PM PG: 1 OF 35

The property identified as: PIN: 17-09-219-016-0000

Address:

Street: 660-678 NORTH DEARBORN

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60654

Lender: PNC BANK, NATIONAL ASSOCIATION

Borrower: GRAMERCY ROW, LLC

Loan / Mortgage Amount: \$44,000,000.00

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

Certificate number: 4AE81A7A-6448-414B-B3E4-C6975BCCEA2A

Execution date: 6/15/2021

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(3 of 18)

CCH12103362LD D6

This document was prepared by,
and after recording, return to:

Todd A. Bickel, Esq.
Robbins, Salomon & Patt, Ltd.
180 North LaSalle Street, Suite 3300
Chicago, Illinois 60601

PERMANENT TAX INDEX NUMBER:

(As set forth on Exhibit A attached hereto)

PROPERTY ADDRESS:

660-678 North Dearborn Street, Chicago, IL 60654
(As set forth on Exhibit A attached hereto)

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

This **MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING** (the "Mortgage"), is made effective as of June 15, 2021 and is granted by **GRAMERCY ROW, LLC**, an Illinois limited liability company ("Mortgagor") whose address is at c/o TLC Management, 1 North LaSalle St., Suite 400, Chicago, Illinois 60602, to **PNC BANK, NATIONAL ASSOCIATION**, a national banking association, its successors and/or permitted assigns, as secured party (collectively, "Lender"), having an office at One North Franklin Street, Suite 2150, Chicago, Illinois 60606. The following recitals form the basis for this Mortgage and are incorporated in this Mortgage and are made a material part hereof:

RECITALS:

A. Pursuant to the terms and conditions of that certain Loan Agreement dated of even date herewith (as amended, modified, renewed and/or restated from time to time collectively, the "Loan Agreement") and that certain Promissory Note dated of even date herewith (as amended, modified, renewed and/or restated from time to time collectively, the "Note") Lender has agreed to extend a term loan on a joint and several basis to Mortgagor, **THE MAYFAIR, LLC**, an Illinois limited liability company, **WOODLAWN HOUSE, LLC**, an Illinois limited liability company, **CAMPUS COURT, LLC**, an Illinois limited liability company, **THE REGAL APARTMENTS, LLC**, an Illinois limited liability company and **PLAISANCE APARTMENTS, LLC**, an Illinois limited liability company (collectively, the "Affiliate Borrowers") (the Mortgagor and the Affiliate Borrowers are hereinafter each individually and all collectively, on a joint and several basis, referred to as, the "Borrower") in the original principal amount of FORTY-FOUR MILLION AND NO/100 DOLLARS (\$44,000,000.00) (the "Loan"). Capitalized terms used in the recitals and in the body of this Mortgage and not otherwise defined herein shall have the meanings as provided in the Loan Agreement. The representations and warranties and covenants set forth in the Loan Agreement are hereby incorporated into this Mortgage by this reference as if fully set forth herein.

#3841502v1
Gramercy Row, LLC
660-678 N. Dearborn St., Chicago, IL

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B. The Note shall be due on the Maturity Date (as defined in **Recital Paragraph E** hereof), except as may be accelerated pursuant to the terms hereof and the terms of the Loan Documents.

C. The Note and the Loan Agreement provide for an adjustable and variable rate of interest as set forth therein which is incorporated herein by this reference.

D. The Maturity Date of the Note is June 15, 2026 (the "**Maturity Date**").

E. The Borrower and the Lender (or any other direct or indirect subsidiary of The PNC Financial Services, Group, Inc.) may enter into from time to time after the date hereof, or the Borrower has provided, is providing or may provide from time to time a guaranty of, or collateral security for, one or more Interest Rate Protection Products, the termination of which could produce payments owing to the Lender, pursuant to an ISDA Master Agreement or other similar agreement (as the same may be amended, supplemented or replaced from time to time collectively, the "**Interest Rate Agreement**") (the obligations owing by any Borrower to the Lender or any other direct or indirect subsidiary of The PNC Financial Services, Group, Inc., whether now owing or existing or later arising or created, under any Interest Rate Agreement, as supplemented by the Interest Rate Protection Products, being herein called, the "**Hedge Obligations**").

F. A condition precedent to Lender's extension of the Loan to Borrower is the execution and delivery by Mortgagor of this Mortgage.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby covenants and agrees as follows:

Mortgagor by these presents does hereby MORTGAGE, GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM, ASSIGN, TRANSFER, WARRANT, AND SET OVER unto Lender its successors and permitted assigns, all estate, right, title and interest which Mortgagor now has or may later acquire in and to ALL OF THE FOLLOWING PROPERTY forever and hereby grants to Lender a continuing security interest in, the following described property, rights and interests, whether now owned or hereafter acquired by Mortgagor (referred to collectively herein as the "**Premises**"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily;

THE REAL ESTATE located in the City of Chicago, County of Cook, State of Illinois and legally described on **Exhibit A** attached hereto and made a part hereof ("**Real Estate**");

TOGETHER WITH all the estate, right, title, claim or demand whatsoever of Mortgagor, in possession or expectancy, in and to the Real Estate or any part thereof;

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of

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every nature whatsoever now or hereafter owned by Mortgagor and on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf (“Improvements”);

TOGETHER WITH all easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, development rights, air rights, oil rights, gas rights, mineral rights, and all other rights and appurtenances thereunto belonging or appertaining, and all estates, rights, titles, interests, privileges, liberties, licenses, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and any reversions, remainders, rents, issues, profits and revenue thereof, and all land lying in the bed of any street, road or avenue, in front of or adjoining the Real Estate to the center line thereof; and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to all of the foregoing. The foregoing assignment of oil rights, gas rights, mineral rights and all other rights shall include, without limitation, all of the Mortgagor’s right and interest in any oil, gas or other mineral lease, pipeline agreement or other instrument related to the production or sale of oil, gas or any other mineral arising or issuing from the Real Estate, now or hereafter entered into (collectively, “**Mineral Agreements**” and each a “**Mineral Agreement**”), and is intended as a present, absolute and unconditional assignment and not merely the granting of a security interest. Notwithstanding the foregoing: (a) the Lender agrees that it shall only exercise such rights related to Mineral Agreements, if at all, during the existence of an Event of Default (as hereinafter defined) and following written notice to Mortgagor of the same, and (b) the Lender hereby grants to the Mortgagor a limited and conditional license to execute Mineral Agreements provided that the Lender shall have first provided its written consent to such Mineral Agreement, which consent may be granted or withheld in the Lender’s sole and absolute discretion;

TOGETHER WITH, subject to the terms of the Assignment (as defined below), all rents, revenues, issues, profits, proceeds, income, royalties, Letter of Credit Rights (as defined in the Uniform Commercial Code of the State wherein the Premises are located (the “**Uniform Commercial Code**”) in effect from time to time, Deposit Accounts (as defined in the Uniform Commercial Code) including all monies deposited therein, accounts, accounts receivable, escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by the Mortgagor thereon (collectively, the “**Rents and Profits**”), to be applied against the Obligations; provided, however, that Mortgagor, so long as no Event of Default exists hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof, and may retain, use and enjoy the same and all benefits of the Leases (including any guaranties);

TOGETHER WITH, subject to the terms of the Assignment, all interest of Mortgagor in, to and under all leases, subleases, licenses, occupancy agreements or other agreements, pursuant

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to which any person or entity is granted a possessory interest in or right to use or occupy all or any portion of any space in the Premises, now existing or subsequently entered into by Mortgagor and whether written or oral, and all guaranties of any of the foregoing (collectively, as any of the foregoing may be amended, restated, extended, renewed or modified from time to time, the "Leases") together with all rights of Mortgagor in respect of cash and security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Leases and to retain, use and enjoy the same and all benefits of the Leases (including any guaranties);

TOGETHER WITH all goods, fixtures, chattels, machines, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever, now or hereafter owned by Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, and all goods that are or are hereafter to become fixtures related to the Real Estate or the Improvements, (together with, in each case, attachments, components, parts and accessories), including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, escalators, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, awnings, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, doors, windows, window coverings, wiring, furniture and furnishings, heating, electrical and mechanical equipment, lighting, switchboards, plumbing, ventilating, air conditioning and air-cooling apparatus, refrigerating and incinerating equipment, escalators, elevators, loading and unloading equipment and systems, stoves, ranges, laundry equipment, cleaning systems, communication systems, computers and related equipment, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, engines, machinery, pipes, pumps, tanks, conduits, appliances, fittings, tools, jigs, files and fixtures of every kind and description (all of the foregoing property and similar or after-acquired property being hereinafter collectively referred to as, the "Equipment") and all appurtenances and additions thereto and all renewals, substitutions or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Obligations; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Lender, as secured party, and Mortgagor, as Debtor, all in accordance with the Uniform Commercial Code;

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TOGETHER WITH all right, title and interest of Mortgagor, in any trade names, trademarks, logos, copyrights, goodwill, books and records and computer software relating to or used in connection with the operation of the Premises or any part thereof;

TOGETHER WITH, subject to the terms of the Loan Agreement and this Mortgage, all unearned premiums under insurance policies now or subsequently obtained by Mortgagor relating to the Real Estate or Equipment and Mortgagor's interest in and to all proceeds of any such insurance policies (including title insurance policies) including the right to collect and receive such proceeds; and all awards and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the present or any subsequent owner of the Real Estate or equipment by the United States, the state where the Real Estate or Equipment is located, or any agency, department or instrumentality of any of them, now existing or subsequently created (collectively, "Governmental Authority") for the taking by eminent domain, condemnation or otherwise, of all or any part of the Real Estate or any easement or other right therein;

TOGETHER WITH all of the Mortgagor's interests in General Intangibles, including Payment Intangibles and Software (each as defined in the Uniform Commercial Code) now owned or hereafter acquired and related to the Premises, including, without limitation, all of the Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which the Mortgagor is or may become a party and which relate to the Premises, but solely to the extent the same is permitted to be so assigned or pledged pursuant to Applicable Law; (ii) all obligations and indebtedness owed to the Mortgagor thereunder; (iii) all intellectual property related to the Premises; and (iv) subject to the terms of the Loan Agreement and this Mortgage, all choses in action and causes of action relating to the Premises;

TOGETHER WITH all of the Mortgagor's accounts now owned or hereafter created or acquired as related to the Premises and/or the business and operations conducted thereon, including, without limitation, all of the following, in each case now owned or hereafter created or acquired by the Mortgagor: (i) Accounts (as defined in the Uniform Commercial Code), contract rights, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not earned by performance on the part of the Mortgagor); (v) Securities, Investment Property, Financial Assets and Securities Entitlements (each as defined in the Uniform Commercial Code); (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (vii) provided the same is permitted to be assigned pursuant to the terms thereof, all warranties, guarantees, permits and licenses in favor of the Mortgagor with respect to the Premises;

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TOGETHER WITH all right, title and interest of Mortgagor in and to: (i) all contracts from time to time executed by Mortgagor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Real Estate or Equipment or any part thereof and all agreements relating to the purchase or lease of any portion of the Real Estate or any property which is adjacent or peripheral to the Real Estate, together with the right to exercise such options (collectively, the “**Contracts**”); (ii) solely to the extent each is permitted to be assigned pursuant to Applicable Law, all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Real Estate or any part thereof (collectively, the “**Permits**”); and (iii) all drawings, plans, specifications and similar or related items relating to the Real Estate (collectively, the “**Plans**”);

TOGETHER WITH any and all monies now or subsequently on deposit, if any, for the payment of real estate taxes or special assessments against the Premises or for the payment of premiums on insurance policies covering the foregoing property or otherwise on deposit with or held by Lender as provided in this Mortgage;

TOGETHER WITH all accessions to any of the foregoing and all substitutions, renewals, improvements and replacements of and additions thereto; all after-acquired property of the nature described above; all products and proceeds of any of the foregoing, including, without limitation, insurance proceeds (subject to the terms of the Loan Agreement and this Mortgage), whether cash or noncash, immediate or remote, including without limitation, all income, accounts, contracts rights, general intangibles, chattel paper, notes, drafts, acceptances, instruments and other rights to the payment of money arising out of the sale, rental, lease, exchange, or other disposition of any of the foregoing items; and

TOGETHER WITH all proceeds of the foregoing including, without limitation, subject to the terms of the Loan Agreement and this Mortgage, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof. Proceeds hereunder include: (i) whatever is now or hereafter received by Mortgagor upon the sale, exchange, collection or other disposition of any item of the Premises, whether such proceeds constitute inventory, accounts, accounts receivable, general intangibles, instruments, securities, credits, documents, letters of credit, chattel paper, documents of title, warehouse receipts, leases, deposit accounts, money, contract rights, goods, equipment or real property; (ii) any such items which are now or hereafter acquired by Mortgagor with any proceeds of the Premises; and (iii) any insurance now or hereafter payable by reason of loans or damage to any item of the Premises or any proceeds thereof.

TO HAVE AND TO HOLD the Premises and every party thereof, unto Lender and its successors and assigns, forever, for the purposes and upon the uses herein set forth, Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

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FOR THE PURPOSE OF SECURING: the payment and performance of the Obligations (as defined in the Loan Agreement and incorporated herein by this reference) which include, without limitation, all Hedge Obligations. Obligations shall not include any Excluded Hedge Liabilities (as such term is defined in the Loan Agreement).

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.** Mortgagor represents, warrants and covenants that (a) Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except for Permitted Exceptions; and (b) Mortgagor has legal power and authority to mortgage, grant, bargain and sell, convey and confirm, assign, transfer and set over the Premises.

2. **Maintenance, Repair, Restoration, Prior Liens.** Mortgagor covenants that, so long as any portion of the Obligations, other than contingent Obligations which survive repayment of the Debt, remains unpaid and/or unsatisfied, Mortgagor will:

(a) subject to the terms hereof and provided Lender makes the proceeds of insurance available to Mortgagor, promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose;

(b) keep the Premises in good condition and repair (ordinary wear and tear excepted), without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to the Mortgagor's right to contest liens as permitted by the terms of **Section 28** hereof);

(c) pay when due any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and upon written request exhibit satisfactory evidence of the discharge of such lien to the Lender (subject to the Mortgagor's right to contest liens as permitted by the terms of **Section 28** hereof);

(d) comply in all material respects with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;

(e) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage;

(f) make no material alterations in the Premises except in compliance with Section 5.5 of the Loan Agreement;

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- (g) pay when due all operating costs of the Premises;
- (h) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without the Lender's prior written consent;
- (i) complete any Improvements now or at any time in the process of erection upon the Premises; and
- (j) not permit or consent to any material change in the use or general nature of the occupancy of the Premises, without the Lender's prior written consent;

3. **Taxes and Assessments.** The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Obligations, or any obligation or agreement secured hereby, subject to the Mortgagor's right to contest the same, as provided by the terms hereof; and the Mortgagor will, upon written request, furnish to the Lender duplicate receipts therefor within ten (10) days after the Lender's written request. Mortgagor shall not claim, demand, or be entitled to receive any credit against the principal and interest secured by this Mortgage for the payment of any Taxes.

4. **Tax Deposits.** At any time during the existence of an Event of Default, upon the Lender's written notice, Mortgagor shall deposit with Lender, on the first day of each month until the Obligations are fully paid, other than contingent Obligations which survive repayment of the Debt, a sum equal to one twelfth (1/12th) of one hundred five percent (105%) of the most recent ascertainable annual Taxes on the Premises; and Mortgagor shall also deposit with Lender an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as reasonably estimated by Lender. Such deposits are to be held without any allowance of interest and are to be used for the payment of Taxes next due and payable when they become due. Lender shall, to the extent of available deposits, pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from the Mortgagor to Lender) or shall release sufficient funds to the Mortgagor for the payment thereof. If the funds so deposited are insufficient to pay any such Taxes for any year (or installments thereof, as applicable) when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Lender. Lender, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

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If the Event of Default is waived in writing by Lender if Lender so elects in its sole and absolute discretion, Lender shall return all funds deposited pursuant to this **Section 4** of this Mortgage to Mortgagor or as directed by Mortgagor. Lender reserves the right to reinstate the requirement under the terms of this **Section 4** for Mortgagor to make monthly tax deposits upon the occurrence of any subsequent Event of Default.

5. Lender's Interest In and Use of Deposits.

While an Event of Default exists, the Lender may, at its option, apply any monies at the time on deposit pursuant to **Section 4** hereof to cure an Event of Default or to pay any of the Obligations in such order and manner as the Lender may elect. If such deposits are used to cure an Event of Default or pay any of the Obligations, the Mortgagor shall immediately, upon demand by the Lender, deposit with the Lender an amount equal to the amount expended by the Mortgagor from the deposits. When the Obligations has been fully paid, any remaining deposits shall promptly be returned to the Mortgagor. Such deposits are hereby pledged as additional security for the Obligations and shall not be subject to the direction or control of the Mortgagor. The Lender shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless the Mortgagor, prior to an Event of Default, shall have requested the Lender in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. The Lender shall not be liable for any act or omission taken in good faith or pursuant to the instruction of Mortgagor.

6. Insurance.

(a) The Mortgagor shall obtain and maintain the insurance specified in Section 5.1 of the Loan Agreement in accordance with the requirements of said Section.

(b) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless the Lender is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to the Lender and such separate insurance is otherwise acceptable to the Lender.

(c) In the event of loss, the Mortgagor shall give prompt notice thereof to the Lender, who, if such loss exceeds the lesser of ten percent (10%) of the Obligations or TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00) (the "**Threshold**"), shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i), (ii), (iii) and (iv) of the immediately succeeding sentence are not satisfied, then the Lender, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if: (i) such loss is equal to or less than the Threshold; (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists; (iii) the Lender determines that the work required to complete the repair or restoration of the Premises

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necessitated by such loss can be completed no later than six (6) months prior to the Maturity Date; and (iv) the total of the insurance proceeds and such additional amounts placed on deposit with the Lender by the Mortgagor for the specific purpose of rebuilding or restoring the Improvements equals or exceeds, in the reasonable discretion of the Lender, the reasonable costs of such rebuilding or restoration, then the Lender shall endorse to the Mortgagor any such payment and the Mortgagor may collect such payment directly. Subject to the provisions of **Subsection (d)** below, the Lender shall have the right to apply any insurance proceeds received by the Lender pursuant to the terms of this section, after the payment of all of the Lender's expenses, either: (x) on account of the Obligations, irrespective of whether such principal balance is then due and payable, whereupon the Lender may declare the whole of the balance of Obligations to be due and payable without payment of any premium or penalty; or (y) to the restoration or repair of the property damaged as provided in **Subsection (d)** below. If insurance proceeds are made available to the Mortgagor by the Lender as hereinafter provided, the Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event of foreclosure of this Mortgage, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

(d) Notwithstanding anything to the contrary set forth herein, Lender shall make insurance proceeds available to the Mortgagor, to the extent received by Lender, to restore the Premises provided the conditions in **Subsections 6(c)(ii)-(iv)** inclusive above are satisfied, and in which event Mortgagor shall comply with the following conditions:

(i) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, the Mortgagor shall obtain from the Lender its approval (which shall not be unreasonably withheld, conditioned or delayed) of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(ii) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Premises to the extent permitted in **Subsection (c)** above (which payment or application may be made, at the Lender's option, through an escrow, the terms and conditions of which are reasonably satisfactory to the Lender and the cost of which is to be borne by the Mortgagor), the Lender shall be satisfied as to the following:

- (A) no Event of Default or any event which, with the passage of time or giving of notice would constitute an Event of Default, exists;
- (B) either such Improvements have been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuild the Premises,

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free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Premises, the Mortgagor has deposited with the Lender such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Premises; and

- (C) prior to each disbursement of any such proceeds, the Lender shall be furnished with a statement of the Lender's architect (the cost of which shall be borne by the Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by the Lender and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and the Lender shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(iii) If the Mortgagor shall fail to restore, repair or rebuild the Improvements within a time reasonably deemed satisfactory by the Lender and no force majeure has occurred, then the Lender, at its option, may: (A) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of the Mortgagor; or (B) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Obligations irrespective of whether such Obligations is then due and payable without payment of any premium or penalty.

(A)

(e) **ADDITIONAL INSURANCE PROVISIONS. IN ADDITION TO THE FOREGOING PROVISIONS OF THIS SECTION 6 HEREOF, THE FOLLOWING SHALL APPLY: UNLESS THE MORTGAGOR PROVIDES THE LENDER EVIDENCE OF THE INSURANCE COVERAGES REQUIRED HEREUNDER, THE LENDER MAY PURCHASE INSURANCE AT THE MORTGAGOR'S EXPENSE TO COVER THE LENDER'S INTEREST IN THE PREMISES. THE INSURANCE MAY, BUT NEED NOT, PROTECT THE MORTGAGOR'S INTEREST. THE COVERAGES THAT THE LENDER PURCHASES MAY NOT PAY ANY CLAIM THAT THE MORTGAGOR MAKES OR ANY CLAIM THAT IS MADE AGAINST THE MORTGAGOR IN CONNECTION WITH THE PREMISES. THE MORTGAGOR MAY LATER CANCEL ANY INSURANCE PURCHASED BY THE LENDER, BUT ONLY AFTER PROVIDING THE LENDER WITH EVIDENCE THAT THE**

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MORTGAGOR HAS OBTAINED INSURANCE AS REQUIRED BY THIS MORTGAGE. IF THE LENDER PURCHASES INSURANCE FOR THE PREMISES, THE MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF SUCH INSURANCE, INCLUDING, WITHOUT LIMITATION, INTEREST AND ANY OTHER REASONABLE CHARGES WHICH THE LENDER 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. THE COST OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE THE MORTGAGOR MAY BE ABLE TO OBTAIN ON ITS OWN.

7. **Condemnation.** If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Obligations, is hereby assigned to the Lender who is empowered to collect and receive the same and to give proper receipts therefor in the name of the Mortgagor and the same shall be paid forthwith to the Lender. Such award or monies shall be applied on account of the Obligations, irrespective of whether such Obligations is then due and payable and, at any time from and after the taking the Lender may declare the whole of the balance of the Obligations to be due and payable without payment of any premium or penalty. Notwithstanding the provisions of this section to the contrary, if any condemnation or taking of less than the entire Premises occurs and provided that no Event of Default and no event or circumstance which with the passage of time, the giving of notice or both would constitute an Event of Default then exists and if such partial condemnation, in the reasonable discretion of the Lender, has no material adverse effect on the operation or value of the Premises, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by the Mortgagor, and the Lender hereby agrees that in such event it shall not declare the Obligations to be due and payable, if it is not otherwise then due and payable.

8. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or become due in respect of the execution and delivery of this Mortgage, the Loan Agreement, the Note or any of the other Loan Documents, Mortgagor shall pay such tax in the manner required by any such law. Mortgagor further agrees to reimburse Lender for any sums which Lender may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income, branch profits or franchise taxes of Lender.

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9. Assignment of Leases and Rents.

(a) Mortgagor acknowledges that, concurrently herewith, Mortgagor has executed and delivered to Lender, as additional security for the repayment of the Obligations, an Assignment of Leases and Rents (together with any Amendments thereto, the "Assignment") pursuant to which Mortgagor has, absolutely and unconditionally transferred and assigned to Lender interests in the Leases of the Premises and the rents and income from the Premises as more particularly set forth therein. THE ASSIGNMENT IS AN ABSOLUTE ASSIGNMENT AND NOT AN ASSIGNMENT FOR SECURITY ONLY. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. In the event of a conflict between the provisions of this Mortgage and the Assignment, the provisions of the Assignment shall control. Mortgagor agrees to abide by all of the provisions of the Assignment.

(b) Mortgagor shall not execute an assignment or pledge of any Lease or other occupancy or use agreement relating to all or any portion of the Premises other than in favor of Lender.

(c) All Leases entered into by Mortgagor after the date hereof, if any, shall be subject and subordinate to this Mortgage unless Lender shall otherwise elect in writing.

(d) Within ten (10) Business Days after written request by Lender (but in no event more frequently than quarterly if an Event of Default does not exist), Mortgagor shall furnish Lender with a statement of all lease security deposits by lessees and copies of all Leases not theretofore delivered to Lender which statement shall be certified by Mortgagor.

10. Effect of Extensions of Time and Other Changes. If the payment of the Obligations or any part thereof is extended or varied, if any part of any security for the payment of the Obligations is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation, release or change.

11. Effect of Changes in Laws Regarding Taxation. If any law is enacted after the date hereof requiring: (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation; or (b) the imposition upon Lender of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Mortgagor; or (c) a change in the method of taxation of mortgages or debts secured by mortgages or Lender's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Obligations or the Lender, then Mortgagor, upon written demand by Lender, shall pay such Taxes or charges, or reimburse Lender therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income

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or franchise taxes of Lender. Notwithstanding the foregoing, if in the opinion of counsel for Lender it is or may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may declare all of the Obligations to be immediately due and payable without payment of any premium or penalty but subject, however, to any Interest Rate Agreements and any payments due thereunder and to payment of any break funding indemnification amounts owing pursuant to the Loan Agreement.

12. Lender's Performance of Defaulted Acts and Expenses Incurred by Lender.

During the existence of an Event of Default, Lender may, but need not, make any payment or perform any act required of Mortgagor herein and/or under the Loan Agreement in any form and manner deemed expedient by Lender, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any Lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including actual out-of-pocket attorneys' fees, and any other monies advanced by Lender in regard to any tax referred to in **Section 11** above or to protect the Premises or the lien hereof, shall constitute Protective Advances and shall be paid by Mortgagor and Borrower on a joint and several basis as provided in the Loan Agreement. Lender's failure to act shall never be considered as a waiver of any right accruing to Lender on account of any Event of Default. Should any amount paid out or advanced by Lender hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Security Agreement. Mortgagor and Lender agree that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code with respect to: (a) all of Mortgagor's right, title and interest in all sums at any time on deposit for the benefit of Mortgagor or held by the Lender (whether deposited by or on behalf of Mortgagor) pursuant to any of the provisions of this Mortgage or the other Loan Documents; and (b) all of Mortgagor's right, title and interest in and to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-102(a)(41) of the Uniform Commercial Code) (which property is hereinafter referred to as "**Personal Property**"), and all replacements of, substitutions for, additions to, and the proceeds thereof and the "**Supporting Obligations**" (as defined in the Uniform Commercial Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "**Collateral**"), and that a security interest in and to the Collateral is hereby granted to the Lender, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Lender, all to secure payment of the Obligations. All of the

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provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (being the Debtor as that term is used in the Uniform Commercial Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Lender and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(b) The Collateral is to be used by Mortgagor solely for business purposes.

(c) The Collateral will be kept at the Real Estate and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Lender (being the Secured Party as that term is used in the Uniform Commercial Code). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

(d) The only persons having any interest in the Premises are Mortgagor, Lender, the tenants of the Premises under the Leases as permitted under the Loan Documents and holders of interests, if any, expressly permitted hereby.

(e) No Financing Statement (other than Financing Statements showing Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto or as or will be released pursuant to a filed UCC-3 termination on or prior to the date hereof; and Mortgagor, at its own cost and expense, upon demand, will promptly furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form reasonably satisfactory to Lender and will do all such acts as Lender may request in writing at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Obligations, subject to no other liens or encumbrances, other than Permitted Exceptions; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Lender in its sole discretion to be necessary to perfect the security interests granted to Lender hereunder. The Mortgagor hereby irrevocably authorizes the Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto, without the signature of the Mortgagor that: (i) indicate the Collateral: (A) is comprised of all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed; or (B) as being of an equal or lesser scope or within greater detail as

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the grant of the security interest set forth herein; and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including: (A) whether the Mortgagor is an organization, the type of organization and any organizational identification number issued to the Mortgagor; and (B) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Collateral relates. The Mortgagor agrees to furnish any such information to the Lender promptly upon reasonable written request. The Mortgagor shall make appropriate entries on its books and records disclosing the Lender's security interests in the Collateral.

(f) During the existence of an Event of Default hereunder, Lender shall have the remedies of a secured party under the Uniform Commercial Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, but subject to the rights of tenants under Leases, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Uniform Commercial Code), and during the existence of an Event of Default hereunder, Lender shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Uniform Commercial Code. During the existence of an Event of Default hereunder, Lender may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. During the existence of an Event of Default hereunder, Lender may require Mortgagor to assemble the Collateral and make it available to Lender for its possession at the Real Estate. Lender will give Mortgagor at least twenty (20) Business Days' notice (or such longer period as is required pursuant to the Uniform Commercial Code) of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least twenty (20) Business Days before the time of the sale or disposition. Lender may buy at any public sale. Lender may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Lender so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Lender, shall be applied against the Obligations in such order or manner as Lender shall select. Lender will account to Mortgagor for any surplus realized on such disposition.

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(g) The terms and provisions contained in this **Section 13**, unless the context otherwise requires, shall have the meanings and be construed as provided in the Uniform Commercial Code.

(h) This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Uniform Commercial Code with respect to the Collateral and the goods described herein, which goods are or may become "Fixtures" relating to the Premises. The addresses of the Mortgagor (Debtor) and the Lender (Secured Party) are as set forth on Page 1 of this Mortgage. This Mortgage is to be filed for recording in the Deed Books of the county or counties where the Premises is located. The Mortgagor is the record owner of the Premises.

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

(j) The Mortgagor represents and warrants that: (i) the Mortgagor is the record owner of the Premises; (ii) the Mortgagor's chief executive office is located in the State of Illinois; (iii) the Mortgagor's state of formation is the State of Illinois; and (iv) the Mortgagor's exact legal name is as set forth on Page 1 of this Mortgage.

(k) The Mortgagor hereby agrees that: (i) where Collateral is in possession of a third party, upon Lender's written request, the Mortgagor will join with the Lender in notifying the third party of the Lender's interest and will use commercially reasonable efforts to obtain an acknowledgment from the third party that it is holding the Collateral for the benefit of the Lender; (ii) upon Lender's written request, the Mortgagor will cooperate with the Lender in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and (iii) until the Obligations are paid in full, other than contingent Obligations which survive the repayment of the Debt, Mortgagor will not change the state where it is located or change its name or form of organization without giving the Lender at least thirty (30) days prior written notice in each instance.

14. Restrictions on Transfer or Encumbrance of the Property.

(a) Mortgagor, without the prior written consent of Lender, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "**Prohibited Transfer**":

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(i) The Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called “**Obsolete Collateral**”) no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

(ii) All or any part of the beneficial interest of a land trust Mortgagor;

(iii) Any shares of capital stock of a corporate Mortgagor, a corporation which is a general partner or managing member/manager in a partnership or limited liability company Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers’ Automated Quotation System);

(iv) All or any part of the membership interests of a limited liability company Mortgagor;

(v) All or any part of the managing member or manager interests, as the case may be, in a limited liability company Mortgagor or a limited liability company which is a general partner of a partnership Mortgagor; or

(vi) All or any part of the general partner or joint venture interest, as the case may be, of a partnership Mortgagor or a partnership which is a manager of a limited liability company Mortgagor or the conversion of a partnership Mortgagor to a corporation or limited liability company; or

(vii) If there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable, which directly or indirectly Controls the day to day operations and management of Mortgagor and/or owns a Controlling interest in the Mortgagor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this **Section 14** shall not apply to transfers of any direct or indirect ownership interest in Mortgagor or its manager by Stuart Handler or any trust of Stuart Handler to his spouse, lineal ancestors, descendants, or a trust or trusts, established by or for the benefit of such spouses, ancestors or descendants subject to Stuart Handler (or any replacement guarantor approved by Lender pursuant to the terms of the Loan Agreement) retaining Control of Mortgagor (any of the

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foregoing, an “**Exempt Transfer**”). “**Control**” for the purposes hereof shall be defined as the right to direct the management and policies of Mortgagor, without veto rights or approval rights in any other person. Each Exempt Transfer is subject to the following conditions: (A) at the time of each such transfer there is no Event of Default under this Mortgage or any of the Loan Documents and no event or occurrence which, with the passage of time or giving of notice, or both, would constitute an Event of Default, (B) such transfer(s) are made in compliance with the terms and requirements of the operating agreement of the Mortgagor and the governing documents of any constituent entity in which the interest purporting to be transferred is held, and (C) each Loan Party is in compliance with and shall comply with the Lender’s “Know Your Customer” and anti-money laundering standards as provided in Section 5.21 of the Loan Agreement captioned, “Certificate of Beneficial Ownership and Other Additional Information”. At the time of any sale, pledge or transfer of ownership interests is made in accordance with the requirements of this paragraph to any one individual which results in such individual owning twenty-five percent (25%) or more of the Mortgagor, or any other constituent entity of Mortgagor, the Mortgagor shall provide Lender with written notice of such sale, pledge or transfer and also provide Lender with a new completed Certificate of Beneficial Ownership prepared on Lender’s form, as amended or modified by Lender from time to time in its sole discretion.

(b) In determining whether or not to make the Loan, Lender evaluated the background and experience of Mortgagor and Stuart Handler in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which, in part, is Lender’s security for the Note. Mortgagor and Stuart Handler are well experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm’s length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor further recognizes that any secondary junior financing placed upon the Premises other than liens in favor of Lender: (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 Lender to take measures and incur expenses to protect its security; (iii) would detract from the value of the Premises should Lender come into possession thereof with the intention of selling same; and (iv) would impair Lender’s right to accept a deed in lieu of foreclosure, as a foreclosure by Lender would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of: (A) protecting Lender’s security, both of repayment and of value of the Premises; (B) giving Lender the full benefit of its bargain and contract with Mortgagor; (C) allowing Lender to raise the interest rate and collect assumption fees; and (D) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this **Section 14** is deemed a restraint on alienation, that it is a reasonable one.

15. **Single Asset Entity**. Mortgagor has not and shall not hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than

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the Premises, and has not and shall not become a shareholder of or a member or partner in any entity which acquires any property other than the Premises, until such time as the Indebtedness has been fully repaid. Mortgagor's articles of organization or operating agreement, as applicable, shall limit its purpose to the acquisition, operation, management and disposition of the Premises, and such purposes shall not be amended without the prior written consent of Lender. Mortgagor covenants:

- (a) To maintain its assets, accounts, books, records, financial statements, stationery, invoices, and checks separate from and not commingled with any of those of any other person or entity;
- (b) To conduct its own business in its own name, pay its own liabilities out of its own funds, allocate fairly and reasonably any overhead for shared employees and office space, and to maintain an arm's length relationship with its affiliates;
- (c) To hold itself out as a separate entity, correct any known misunderstanding regarding its separate identity, and intends to maintain adequate capital in light of its contemplated business operations, and observe all organizational formalities;
- (d) Not to guarantee or become obligated for the debts of any other entity or person or hold out its credits as being available to satisfy the obligations of others, including not acquiring obligations or securities of its partners, members or shareholders;
- (e) Not to pledge its assets for the benefit of any other entity or person or make any loans or advances to any person or entity;
- (f) Not to enter into any contract or agreement with any party which is directly or indirectly controlling, controlled by or under common control with Mortgagor (an "Affiliate"), except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any Affiliate;
- (g) Neither Mortgagor nor any constituent party of Mortgagor will seek the dissolution or winding up, in whole or in part, of Mortgagor, nor will Mortgagor merge with or be consolidated into any other entity;
- (h) Mortgagor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any constituent party of Mortgagor, Affiliate, any guarantor of the Note or any other person; and
- (i) Mortgagor now has and will hereafter have no debts or obligations other than obligations incurred in connection with the construction of the Project as contemplated by the Loan Agreement, normal accounts payable in the ordinary course of business, this

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Mortgage and the Loan and any other indebtedness or other obligation of Mortgagor that has been paid in full.

16. **Event of Default; Acceleration.** The occurrence of any Event of Default (as such term is defined in the Loan Agreement) shall constitute an “**Event of Default**” under this Mortgage. If an Event of Default exists, Lender may, at its option, declare the whole of the Obligations to be immediately due and payable without further notice to Mortgagor, with interest thereon accruing until paid at the Default Rate.

17. **Foreclosure; Expense of Litigation.**

(a) During the existence of an Event of Default, the Lender shall have the right to foreclose the lien hereof for such Obligations or part thereof and/or exercise any right, power or remedy provided in this Mortgage in accordance with any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1401 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the “**Act**”). In the event of a foreclosure sale, the Lender is hereby authorized, without the consent of the Mortgagor, to assign any and all rights of Mortgagor in any insurance policies for the Premises to the purchaser at such sale or to take such other steps as the Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of the Lender for reasonable attorneys’ fees, appraisers’ fees, outlays for documentary and expert evidence, stenographers’ charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as the Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this section and such other expenses and fees as may be incurred in the enforcement of the Mortgagor’s obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Lender in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by the Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

18. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Act and, unless

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otherwise specified therein, in such order as the Lender may determine in its sole and absolute discretion.

19. **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage during the existence of an Event of Default, the court in which such complaint is filed shall, upon petition by the Lender, appoint a receiver for the Premises in accordance with the Act. Such appointment may be made either before or after sale, upon notice to Mortgagor, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and the Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises: (a) during the pendency of such foreclosure suit; (b) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not; and (c) during any further times when the Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other reasonable powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of: (i) the Obligations, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (ii) any deficiency upon a sale and deficiency.

20. **Lender's Right of Possession in Case of Default.** At any time during the existence of an Event of Default, the Mortgagor shall, upon demand of the Lender, surrender to the Lender possession of the Premises. The Lender, in its discretion, may, during the existence of an Event of Default with process of law, peacefully enter upon and, subject to rights of tenants under leases, take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude the Mortgagor and its employees, agents or servants therefrom, and the Lender may then hold, operate, manage and control the Premises, either personally or by its agents. During the existence of an Event of Default, the Lender shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, the Lender shall have full power during the existence of an Event of Default to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same if proper under any lease;
- (b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

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(c) extend or modify any then-existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as the Lender deems are necessary;

(e) insure and reinsure the Premises and all risks incidental to the Lender's possession, operation and management thereof; and

(f) receive all of such avails, rents, issues and profits.

21. **Application of Income Received by Lender.** During the existence of an Event of Default, the Lender, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as the Lender may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to the Lender and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any Obligations, including any deficiency which may result from any foreclosure sale.

22. **Compliance with Illinois Mortgage Foreclosure Law.**

(a) If any provision in this Mortgage shall be inconsistent with any provision of the Act, 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 be construed in a manner consistent with the Act.

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(b) If any provision of this Mortgage shall grant to the Lender (including the Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of **Section 19** of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in the Lender or in such receiver under the Act in the absence of said provision, the Lender and such receiver shall be vested with the powers, rights and remedies to the full extent available under and/or permitted by the Act to the fullest extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Lender 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 in **Sections 12, 17 or 29** of this Mortgage, shall be added to the Obligations and/or by the judgment of foreclosure.

23. **Rights Cumulative.** Each right, power and remedy herein conferred upon Lender 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 Lender, 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 Lender 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.

24. **Lender's Right of Inspection.** Lender and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times on a Business Day upon providing reasonable prior notice to Mortgagee, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

25. **Release Upon Payment and Discharge of the Obligations or a Partial Release of the Premises.** Lender shall promptly release this Mortgage and the lien hereof by proper instrument upon: (a) payment and discharge of all Obligations, other than contingent Obligations which survive repayment of the Debt; or (b) the payment of the Release Price for the Premises to Lender and the Borrower's compliance with the requirements of Section 1.17 of the Loan Agreement to effect a Partial Release of the Premises, in either case, including payment of all reasonable actual out-of-pocket expenses incurred by Lender in connection with the execution of such release.

26. **Notices.** Any notices, communications and waivers under this Mortgage shall be in writing and shall be: (a) delivered in person; (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested; or (c) sent by overnight express carrier, addressed in each case as follows:

1

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To the Lender: PNC Bank, National Association
One North Franklin Street, Suite 2150
Chicago, Illinois 60606
Attn: Susan Lunt, Vice President

With a copy to: Robbins, Salomon & Patt, Ltd.
180 North LaSalle Street, Suite 3300
Chicago, Illinois 60601
Attn: Todd A. Bickel, Esq.

To the Mortgagor: c/o TLC Management
1 North LaSalle St., Suite 400
Chicago, Illinois 60602
Attn: Stuart Handler

With a copy to: Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400,
Chicago, Illinois 60606
Attn: Jeffrey P. Gray, Esq.

or to any other address as to any of the parties hereto as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Section shall be deemed received: (a) if personally delivered, then on the date of delivery; (b) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent; or (c) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

27. **Waiver of Rights.** The 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 Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) The Mortgagor hereby expressly waives any and all rights of reinstatement and if and only to the extent allowable under the Act, any and all rights of redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own 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 the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the Act or any other Applicable Law;

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(b) The 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 the Lender 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; and

(c) If the Mortgagor is a trustee, the Mortgagor represents that the provisions of this section (including the waiver of reinstatement and redemption rights) were made at the express direction of the Mortgagor's beneficiaries and the persons having the power of direction over the Mortgagor, and are made on behalf of the trust estate of the Mortgagor and all beneficiaries of the Mortgagor, as well as all other persons mentioned above.

28. **Contests.** Notwithstanding anything to the contrary herein contained, the Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (each, a "**Contested Liens**"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

(a) The Mortgagor shall forthwith give notice of any Contested Lien to the Lender at the time the same shall be asserted;

(b) The Mortgagor shall either pay under protest or deposit with the Lender the full amount (the "**Lien Amount**") of such Contested Lien, together with such amount as the Lender may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment the Mortgagor may furnish to the Lender a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be reasonably satisfactory to the Lender;

(c) The Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit the Lender to be represented in any such contest and shall pay all reasonable expenses incurred, in so doing, including fees and expenses of the Lender's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand); and

(d) The Mortgagor shall pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon: (i) if and to the extent that any such Contested Lien shall be determined adverse to the Mortgagor; or (ii) forthwith upon demand by the Lender if, in the reasonable opinion of the Lender, and notwithstanding any such contest, the Premises shall be in imminent jeopardy or in danger of being forfeited or foreclosed; provided that if the Mortgagor shall fail so to do, the Lender may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the reasonable judgment of the Lender to obtain the release and discharge of such liens; and any amount expended by the Lender in so doing

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shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that the Lender may in such case use and apply monies deposited as provided in **Subsection (b)** above and may demand payment upon any bond or title indemnity furnished as aforesaid.

29. Expenses Relating to Loan Documents.

(a) The Mortgagor recognizes that, during the term of this Mortgage, the Lender:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which the Lender shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, the Lender's taking possession of and managing the Premises, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the Obligations or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Lender's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

(b) All actual out-of-pocket expenses, charges, costs and fees described in this **Section 29** shall constitute Loan Expenses and shall be paid by Mortgagor and Borrower as provided in Section 8.18 of the Loan Agreement.

30. Additional Obligations Secured. All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more

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than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note, any of the other Loan Documents or any other document or instrument evidencing, securing or otherwise affecting the Obligations, including, without limitation, any and all amounts expended by the Lender to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

31. **Subordination of Property Manager's Lien.** Any property management agreement for the Premises entered into by Mortgagor 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 Premises shall be subject and subordinate to the lien of this Mortgage and shall provide that the Lender may terminate such agreement, without penalty or cost, at any time after the occurrence of an Event of Default hereunder.

32. **Compliance with Environmental Laws.** Concurrently herewith the Mortgagor and Guarantor have executed and delivered to the Lender that certain Environmental Indemnity Agreement dated as of the date hereof (the "Indemnity") pursuant to which the Mortgagor and the Guarantor have jointly and severally indemnified the Lender for environmental matters concerning the Premises, as more particularly described therein.

33. **Extension, Release, Etc**

(a) Without affecting the lien or charge of this Mortgage upon any portion of the Premises not then or theretofore released as security for the full amount of the Obligations, Lender may, from time to time and without notice (except to Borrower), agree to: (i) release any person liable for the Obligations; (ii) extend the maturity; (iii) grant other indulgences; (iv) release or reconvey, or cause to be released or reconveyed at any time at Lender's option any parcel, portion or all of the Premises; (v) take or release any other or additional security for any obligation herein mentioned; or (vi) make compositions or other arrangements with debtors in relation thereto.

(b) No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Premises or upon any other property of Mortgagor shall affect the lien of this Mortgage or any liens, rights, powers or remedies of Lender hereunder, and such liens, rights, powers and remedies shall continue unimpaired until the Obligations shall be paid in full.

(c) Unless expressly provided otherwise, in the event that the Lender of this Mortgage and title to the Premises or any estate therein shall become vested in the same Person, this Mortgage shall not merge in such title but shall continue as a valid lien on the Premises for the amount recorded hereby.

34. **Remedies Not Exclusive.** During the existence of an Event of Default, Lender shall be entitled to enforce payment of the Obligations to exercise all rights and powers under this

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Mortgage, the Note or under any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by deed of trust, mortgage, security agreement, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender in accordance with the terms hereof and the other Loan Documents, it being agreed that for so long as an Event of Default exists, Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as Lender may determine in its absolute discretion. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by the Note or any of the Loan Documents to Lender or to which it may otherwise be entitled, may be exercised during the existence of an Event of Default, concurrently or independently, from time to time and as often as may be deemed expedient by Lender. In no event shall Lender, in the exercise of the remedies provided in this Mortgage, be deemed a "Lender in possession," and Lender shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies

35. Miscellaneous.

(a) Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Lender, its successors and permitted assigns. Lender's permitted assigns for purposes of this Mortgage shall be as provided in Section 6.1 of the Loan Agreement. In the event that ownership of the Premises becomes vested in a Person other than Mortgagor, Lender may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage or the Obligations in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment and performance of the Obligations or being deemed a consent to such vesting.

(b) Invalidity of Provisions; Governing Law. If any term, covenant or provision of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, the remainder of this Mortgage shall remain in full force and effect and shall be construed without such term, covenant or provision, to the maximum extent permitted by Applicable Law, including the Act, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage, shall be governed by, and be construed in accordance with the laws of the State of Illinois (excluding application of any principle of conflicts of laws which would direct the application of the law of any other jurisdiction) and any applicable laws of the United States of America.

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(c) **Municipal Requirements.** Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement under Applicable Law, including the Act, and Mortgagor hereby assigns to Lender any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement under Applicable Law, including the Act. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

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

(e) **Option of Lender to Subordinate.** 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 condemnation or eminent domain award) to any and all Leases of all or any part of the Premises upon the execution by Lender of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(f) **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Premises by Lender pursuant to this Mortgage.

(g) **Relationship of Lender and Mortgagor.** Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Lender shall not be deemed to be such partner, joint venturer, agent or associate on account of Lender becoming a Lender in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of Mortgagor and Lender hereunder is solely that of debtor/creditor.

(h) **Time of the Essence.** Time is of the essence of the payment by Mortgagor of all amounts due and owing to Lender under the Note and the other Loan Documents and

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the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

(i) **No Merger.** The parties hereto intend that this Mortgage and the lien hereof shall not merge in fee simple title to the Premises, and if Lender acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) **CONSENT TO JURISDICTION.** MORTGAGOR AND LENDER AGREE THAT, SUBJECT TO THE LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS. THE MORTGAGOR AND LENDER HEREBY CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON THE OTHER, AND AGREE THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO THE OTHER AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

(k) **WAIVER OF JURY TRIAL.** THE MORTGAGOR AND THE LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE MORTGAGOR AND LENDER AGREE THAT NEITHER WILL ASSERT ANY CLAIM AGAINST THE OTHER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

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

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Lender. In the event of any inconsistency between the terms of this Mortgage and the terms of the Loan Agreement, the terms of the Loan Agreement shall govern.

(m) **Covenants; Captions; Counterparts.** The captions or headings used herein are for the convenience of the parties and are not a part of this Mortgage. This Mortgage may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

(n) **Subrogation.** To the extent proceeds of the Loan or advances under this Mortgage are used to pay any outstanding Lien, charge or prior encumbrance against the Premises, Lender is hereby subrogated to any and all rights and Liens held by any owner or holder of such outstanding Liens, charges and prior encumbrances, irrespective of whether said Liens, charges or encumbrances are released.

(o) **Invalid Payments.** To the extent that Lender receives any payment on account of the Obligations and any such payment(s) or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside, subordinated and/or required to be repaid to a trustee, receiver or any other party under any Bankruptcy Law, state or federal law, common law or equitable cause, then, to the extent of such payment(s) received, the Obligations or part thereof intended to be satisfied and any and all Liens, security interests, mortgages and/or other encumbrances upon or pertaining to any assets of Mortgagor and theretofore created and/or existing in favor of Lender as security for the payment and performance of the Obligations shall be revived and continue in full force and effect, as if such payment(s) had not been received by Lender and applied on account of the Obligations.

(p) **Amendments.** This Mortgage cannot be terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought. To the extent permissible under Applicable Law, including the Act, any amendments or modifications hereof or of the Loan Documents shall not affect the priority of the lien of this Mortgage.

(q) **Incorporation of Terms of Recitals.** The foregoing recitals contained in the Recitals section of this Mortgage are incorporated into this Mortgage as if fully set forth herein.

(r) **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the Loan exceed an amount equal to EIGHTY-EIGHT MILLION AND NO/100 DOLLARS (\$88,000,000.00); provided, however, in no event shall Lender be obligated to advance funds in excess of the face amount of the Note.

36. **Priority of Mortgage Lien.** Lender, at Lender's option, is authorized and empowered to do all things provided to be done by a mortgagee under the Act, and any present or future amendments or supplements thereto, for the protection of Lender's interest in the Premises.

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IN WITNESS WHEREOF, the Mortgagor has executed and caused to be delivered this Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing effective as of the day and year first above written.

MORTGAGOR:

GRAMERCY ROW, LLC,
an Illinois limited liability company

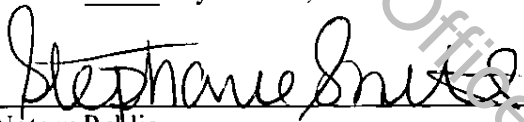
By: TLC Management Co.,
an Illinois corporation, Manager

By: 
Name: Stuart Handler
Its: Chief Executive Officer

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Stephanie Smith, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **STUART HANDLER**, the Chief Executive Officer of TLC Management Co., an Illinois corporation and the manager of **GRAMERCY ROW, LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10 day of June, 2021


Notary Public



My Commission Expires: 7/25/2022

Signature and Notary Page to Mortgage, Security Agreement,
Assignment of Leases and Rents and Fixture Filing

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EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

LOTS 1 THROUGH 8, BOTH INCLUSIVE IN THE ASSESSOR'S DIVISION OF BLOCK 26; ALSO LOTS 1 THROUGH 4, INCLUSIVE IN KNIGHT'S DIVISION OF LOT 25 IN THE ASSESSOR'S DIVISION OF BLOCK 26, ALL IN WOLCOTT'S ADDITION TO CHICAGO, IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT TAX INDEX NUMBERS:

17-09-219-016-0000
17-09-219-017-0000
17-09-219-018-0000
17-09-219-019-0000
17-09-219-020-0000

PROPERTY ADDRESS:

660-678 North Dearborn Street, Chicago, IL 60654

Exhibit A

#3841502v1
Gramerey Row, LLC
660-678 N. Dearborn St., Chicago, IL