

Illinois Anti-Predatory
Lending Database
Program

Doc#: 2133607052 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 12/02/2021 06:23 AM Pg: 1 of 37

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: PIN: 17-22-107-101-0000

Address:

Street: 1419 S. Wabash

Street line 2:

City: Chicago

State: IL

ZIP Code: 60605

Lender: Lakeside Bank

Borrower: 1419 S. Wabash Development Corporation

Loan / Mortgage Amount: \$19,000,000.00

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

Certificate number: 90B25DB8-EBB5-4808-97BA-B013252525BC

Execution date: 11/22/2021

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

Michael R. Brancheau
Higgins & Brancheau LLC
200 West Adams Street, Suite 2220
Chicago, Illinois 60606

Permanent Real Estate Tax Index No.:
See Exhibit A attached hereto

Address:
See Exhibit A attached hereto

This space reserved for Recorder's use only.

LEASEHOLD MORTGAGE AND SECURITY AGREEMENT

THIS LEASEHOLD MORTGAGE AND SECURITY AGREEMENT ("*Leasehold Mortgage*"), dated as of November 30, 2021 (the "*Effective Date*"), is made by 1419 S. WABASH DEVELOPMENT CORPORATION, a Delaware corporation ("*Mortgagor*"), in favor of LAKESIDE BANK, its successors and assigns ("*Mortgagee*").

RECITALS

Mortgagee has agreed to loan to Mortgagor in the principal amount of Nineteen Million and No/100 Dollars (\$19,000,000.00) ("*Loan*"). The Loan is evidenced by that certain Promissory Note ("*Note*") in the principal amount of the Loan, made of even date herewith by Mortgagor and made payable to the order of and delivered to Mortgagee. Mortgagor promises to pay the said principal sum and variable rate of interest in the manner and at the rates as provided in the Note. The terms and provisions of the Note are by this reference incorporated herein and made a part hereof.

The unpaid principal amount and all accrued and unpaid interest due under the Loan as described in that certain Loan Agreement ("*Loan Agreement*") of even date herewith by and among Mortgagor, 1415 Borrower (as defined in the Loan Agreement) and Mortgagee, and as evidenced by the Note, if not sooner paid, shall be due on December 1, 2026 ("*Maturity Date*"). All such payments on account of the Indebtedness evidenced by the Note shall be applied as set forth in the Note being made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, at the address indicated in Paragraph 28 hereof, or at such other address as Mortgagee may from time to time designate in writing. Terms not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

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In addition to this Leasehold Mortgage and the Note, there have been executed and delivered to and in favor of Mortgagee certain other loan documents (the Note, this Leasehold Mortgage and all other documents and instruments, whether now or hereafter existing, which secure or guarantee payment of the Note or are otherwise executed in connection with the Loan, as the same may hereafter be amended, modified, supplemented or replaced from time to time, are collectively referred to herein as the "*Loan Documents*").

ACCORDINGLY, Mortgagor, to secure: (i) the payment of said principal sum of money and all interest, late charges and other indebtedness evidenced by the Note and by any extensions, renewals or refinancing thereof, including Mortgagor's covenant to repay all future advances with interest thereon; (ii) the performance and observance of the covenants, terms, conditions and agreements contained in the Note, this Leasehold Mortgage and the Loan Documents (as hereinafter defined); and (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Leasehold Mortgage or any of the Loan Documents, with interest thereon as provided herein or therein; and also in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, ASSIGN, REMISE, RELEASE, WARRANT, AND CONVEY unto Mortgagee, its successors and assigns, all of Mortgagor's estate, right, title and interest (the "*Leasehold Interest*") as the tenant to that certain Ground Lease dated January 1, 2018 by and between the 1415 Borrower, as landlord and Mortgagor, as tenant (the "*Ground Lease*"), in connection with the real estate legally described in Exhibit A attached hereto and made a part hereof ("*Real Estate*"), together with the tangible and intangible property hereinafter described, is collectively referred to herein as "*Property*";

TOGETHER with all of the rights, title and interest of Mortgagor in buildings, structures and improvements now or hereafter constructed upon or erected upon or located on the Real Estate, all common areas, air rights, tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the Real Estate, and all rents, issues, royalties, income, proceeds, profits, letter-of-credit rights (as defined in the Code hereinafter defined) and other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and, to the extent of Mortgagor's interest therein, all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain and drapery fixtures, partitions, attached floor coverings, now or hereafter, therein or thereon, equipment, systems, risers, all fixtures, apparatus, mechanical devices and piping now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing): all fixtures, apparatus, equipment and articles, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned;

TOGETHER with all other leasehold and subleasehold estates and the right, title and interest of Mortgagor in, to and under any and all leases, subleases, management agreements, arrangements, concessions or agreements, written or oral, relating to the use and occupancy of the

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Real Estate or any portion thereof, now or hereafter existing or entered into (collectively, the "Leases");

TOGETHER all rents, issues, profits, proceeds, income, revenues, royalties, advantages, avails, claims against guarantors, security and other deposits (whether in the form of cash, letters of credit or other forms), advance rentals and any and all other payments or benefits now or hereafter derived, directly or indirectly, from the Real Estate, whether under the Leases or otherwise (collectively, the "Rents"); subject, however, to the right, power and authority granted Mortgagee in the Assignment of Rents and Leases executed by Mortgagee to and in favor of Mortgagee of even date herewith to collect and apply the Rents as provided therein;

TOGETHER with all right, title and interest of Mortgagee in and to any and all contracts, written or oral, express or implied, now existing or hereafter entered into or arising, in any manner related to the improvement, use, operation, sale, conversion or other disposition of any interest in the Property, including, without limitation, all options to purchase or lease the Real Estate or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Property, now owned or hereafter acquired by Mortgagee (collectively, the "Contract Rights");

TOGETHER with all of Mortgagee's interests in "general intangibles" including "payment intangibles" and "software," each as defined in the Code (as hereinafter defined), now owned or hereafter acquired, including, without limitation, all of Mortgagee's right, title and interest in and to: (i) all agreements, ordinances, permits and contracts to which Mortgagee is or may become a party and which relate to the Property; (ii) all obligations and Indebtedness owed to Mortgagee thereunder; (iii) all intellectual property related to the Property; and (iv) all causes of action relating to the Property;

TOGETHER with all of Mortgagee's accounts now owned or hereafter created or acquired, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagee: (i) cash, securities, certificates of deposit, accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or Indebtedness owing to Mortgagee arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) Mortgagee's rights in, to and under all purchases, orders for goods, services or other property; (iii) Mortgagee's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to Mortgagee 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 yet earned by performance on the part of Mortgagee); (v) "securities," "investment property," "financial assets," and "securities entitlements" (each as defined in the Code), and (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 all warranties, guarantees, permits and licenses in favor of Mortgagee with respect to the Property;

TOGETHER with the Tax deposits and Tax Reserve;

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All of the Leasehold Interest, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Leasehold Mortgage deemed to be real estate and conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate or does not constitute a "fixture" (within the meaning of Section 9-102(41) of the Uniform Commercial Code enacted in the State of Illinois ("*Code*"), as amended and in effect from time to time), this Leasehold Mortgage is hereby deemed to also be a Security Agreement under the Code for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as Secured Party (as defined in the Code), as more particularly provided in Paragraph 11 of this Leasehold Mortgage.

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

MORTGAGOR hereby covenants with and warrants to Mortgagee and with the purchaser at any foreclosure sale that at the execution and delivery hereof, Mortgagor owns the Leasehold Interest in the Property and has a good and infeasible leasehold estate therein; that the Property is free from all encumbrances whatsoever (and any claim of any other Person (as defined below)); that Mortgagor has good and lawful right to sell, convey, mortgage and encumber the Leasehold Interest; and that Mortgagor and its successors and assigns shall forever warrant and defend the title to the Leasehold Interest against all claims and demands whatsoever. As used herein, "*Person*" means any natural person, corporation, limited liability company, partnership, firm, association, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

AGREEMENT

1. **Agreements, Covenants and Conditions.** Mortgagor hereby covenants, warrants and agrees with Mortgagee as follows:

(a) Mortgagor will duly and punctually perform, observe and comply in all material respects with all applicable laws and all of the terms, provisions, conditions, covenants and agreements on its part to be performed, observed and complied with hereunder and under the Loan Documents and any other document or instrument executed in connection with the Loan or pursuant to this Leasehold Mortgage and will not suffer or permit any default or Event of Default to exist and continue beyond any applicable cure period hereunder or thereunder.

(b) Mortgagor represents and covenants that (a) Mortgagor is the holder of the Leasehold Interest under the Ground Lease to the Property, free and clear of all liens and encumbrances, except any liens, claims, exceptions, or encumbrances which are specifically

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agreed to, in writing, by Mortgagee ("*Permitted Encumbrances*"), and (b) Mortgagor has legal power and authority to mortgage and convey the Leasehold Interest. Mortgagor hereby covenants and agrees to comply with all of the terms and provisions of the Permitted Encumbrances.

(c) Subject to Mortgagor's contest rights under this Leasehold Mortgage, Mortgagor will pay, or cause to be paid, all taxes, assessments, and other similar charges which are assessed, levied, confirmed, imposed or which become a lien upon or against the Property any portion thereof or which become payable with respect thereto or with respect to the occupancy, use or possession of the Property, before the same become delinquent, and will promptly deliver to Mortgagee, unless paid by Mortgagee, paid receipts therefor, subject to the provisions of this Leasehold Mortgage.

(d) Mortgagor will allow Mortgagee, its representatives or agents, at any time during normal business hours upon reasonable prior written notice, access to the records and books of account, including any supporting or related vouchers or papers, kept by or on behalf of Mortgagor, its representatives or agents in connection with or relating to the Property, such access to include the right to make extracts or copies hereof.

(e) Upon the reasonable request of Mortgagee, Mortgagor will execute and, if required, record and file (and pay all fees, taxes or other expenses relating thereto) all such further documents and do all such other acts and things as Mortgagee may reasonably request to effectuate the transactions herein contemplated.

(f) Intentionally deleted.

(g) Mortgagor hereby covenants and agrees that Mortgagor has delivered to Mortgagee true, correct and complete copies of all Leases, including all existing modifications and amendments, and including all existing guaranties of any Leases. Mortgagor represents and warrants that there are no defaults by Mortgagor under the Leases and, to the best of Mortgagor's knowledge, there are no defaults by any of the tenants under the Leases. Except only for rent and additional rent for the current month, Mortgagor has not accepted any payment of rent more than one (1) month in advance of its due date, nor any security deposit in an amount exceeding one month's rent. Mortgagor shall perform all material obligations of landlord under any and all Leases. Mortgagor shall not, without the prior written consent of Mortgagee, which consent may be granted or withheld in Mortgagee's sole and absolute discretion, (i) enter into or extend any Lease, or (ii) cancel, terminate or accept surrender of any Lease, except in the case of a material default thereunder, or (iii) modify or amend any Lease in any way or reduce any rent under any Lease, or (iv) consent to a full or partial assignment of the tenant's interest or to a subletting of all or any portion of the premises under any Lease, or (v) accept any payment of rent more than one (1) month in advance of its due date, or accept any security deposit in an amount exceeding one month's rent; or (vi) enter into any option to purchase the Property. If any of the acts described in this paragraph are done without the prior written consent of Mortgagee, which consent may be granted or withheld in Mortgagee's sole and absolute discretion, at the option of Mortgagee, they shall be of no force or effect and shall constitute a default under this Agreement. Mortgagor shall pay all costs and expenses incurred by Mortgagee, including reasonable attorneys' fees, in connection with any Lease, including in connection with any subordination agreement, or

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non-disturbance agreement. In no event shall the restrictions set forth in this Section 1(g) apply to the Leases for the ground floor commercial space or to the apartment Leases that Borrower may execute as landlord with individual tenants upon expiration of the Sonder Lease.

2. Payment of Indebtedness.

(a) Mortgagor shall pay promptly the Indebtedness at the times and in the manner provided in the Note and the Loan Documents. As used in this Paragraph and elsewhere in this Leasehold Mortgage, the term "*Indebtedness*" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee hereunder, and all other sums at any time secured by this Leasehold Mortgage. All such sums payable by Mortgagor shall be paid without demand, counterclaim, offset, deduction or defense. Mortgagor hereby waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

(b) Intentionally deleted.

(c) Any funds outstanding from time to time under the Note shall bear interest at the Loan Rate and on the payment terms set forth in the Note.

(d) Mortgagor shall pay all expenses, charges, costs and fees of the Loan, including, without limitation, (i) Mortgagee's reasonable attorneys' fees and costs, in connection with the arranging, negotiation, documentation, administration, servicing and enforcement of the Loan, (ii) any fees and costs charged by any appraiser, (iii) the cost of any and all searches and credit checks run by Mortgagee, including UCC, tax and judgment lien searches, (iv) all filing, recording and registration fees and charges, (v) all documentary stamp and other taxes and charges imposed by law on the issuance or recording of any of the Loan Documents, (vi) all title examination fees and charges, (vii) all title, casualty, liability, payment, performance or other insurance charges or bond premiums, (viii) escrow fees, survey costs and the costs of any bonds required by Title Company, (ix) all fees and disbursements of architects, engineers, consultants, and any inspector engaged by Mortgagor and Mortgagee, and (x) any and all other costs, expenses, charges, and fees referred to in or necessitated by the terms of this Leasehold Mortgage or the other Loan Documents (collectively, "*Loan Expenses*"). Except for Loan Expenses paid on the Effective Date, the Loan Expenses shall be paid by Mortgagor within thirty (30) days of Mortgagee's demand thereof, delivered together with applicable invoices. Mortgagor hereby requests and authorizes Mortgagee to make disbursements directly to itself for payment and reimbursement of all Loan Expenses should Mortgagor fail to pay such amounts after such amounts are due.

3. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, Etc. Mortgagor shall (a) promptly repair, restore or rebuild (or cause to be promptly repaired, restored or rebuilt) any buildings or improvements now or hereafter on the Real Estate which may become damaged or be destroyed, subject to Mortgagee making insurance proceeds available for such repair, restoration or rebuilding as set forth in the Loan Agreement; (b) keep the Property in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest by appropriate proceedings

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diligently prosecuted the validity or amount of any such lien if and only if Mortgagor shall within thirty (30) days after the filing thereof (1) place a letter of credit or such other commercially reasonable security with Mortgagee in an amount, form, content and issued by a financial institution reasonably acceptable to Mortgagee for the payment of any such lien, or (2) cause the title company which has issued the loan policy of title insurance to Mortgagee insuring the lien of this Leasehold Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) subject to the right to contest as set forth in (b) above, immediately pay when due any Indebtedness which may be secured by a lien or charge on the Property superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (d) complete within a reasonable time any buildings or any other improvements now or at any time in process of construction upon the Real Estate; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Real Estate and the use and development thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) except as otherwise expressly permitted by the Loan Documents, make no material structural or non-structural alterations to the Property or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Mortgagee; (g) not suffer or permit change in the general nature of the occupancy of the Property, without the prior written consent of Mortgagee; (h) not initiate or acquiesce in any zoning reclassification without the prior written consent of Mortgagee; (i) provide, improve, grade, surface and hereafter maintain, clean, repair and adequately light all parking areas upon the Real Estate, such parking areas being of sufficient size to accommodate the greater of the amount of standard-size vehicles required by (A) law, ordinance or regulation; or (B) the terms of any Leases; together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and rights-of-way to and from the adjacent thoroughfares necessary or desirable for the use thereof; (j) pay each item of Indebtedness secured by this Leasehold Mortgage when due according to the terms hereof or of the Note; (k) duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Note, the Loan Agreement or in the Loan Documents on the part of Mortgagor to be performed and observed; (l) forever warrant and defend its title to the Property and the validity, enforceability and priority of the lien and security interests granted in and by this Leasehold Mortgage and the Loan Documents against the claims and demands of all persons; and (m) not use the Property as a residence or for agricultural purposes.

4. **Payment of Taxes and Assessments.** Subject to the obligations of Mortgagee to disburse funds for such purposes from the Tax Reserve (as defined in the Loan Agreement) pursuant to the terms and conditions of the Loan Agreement, Mortgagor shall pay before any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Property or the Leasehold Interest, or any interest therein, of any nature whatsoever when due, and shall furnish to Mortgagee duplicate receipts of payment therefor promptly upon Mortgagee's request. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid on or prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Property or the Leasehold Interest, so long as such protest is conducted in good faith by appropriate legal proceedings.

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diligently prosecuted and Mortgagor shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Mortgagee, insuring over any exception created by such protest.

5. **Tax Deposits.** Mortgagor shall deposit monthly with Mortgagee, a sum equal to one-twelfth (1/12th) of the annual taxes and assessments (general and special) on the Property, as disclosed by the most recent ascertainable Second Installment Cook County Real Estate Tax Bill for the Property to the Tax Reserve (as defined in the Loan Agreement), commencing on the same day of each month installments of interest or principal are due under the Note. Such deposits are to be held, and the Tax Reserve shall be governed, in accordance with the terms of the Loan Agreement.

6. **Mortgagee's Interest In and Use of Deposits.** If an "Event of Default" (as hereinafter defined) occurs pursuant to any of the provisions contained in this Leasehold Mortgage or the Note secured hereby, or under any other Loan Documents, Mortgagee may at its option, without being required to do, and upon written notice to Mortgagor, apply any monies at the time on deposit pursuant to Paragraph 5 hereof in such order and manner as Mortgagee may elect. When the Indebtedness secured hereby has been fully paid, any remaining deposits under this Paragraph 6 shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the Indebtedness hereunder and shall be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes and assessments any amount so deposited unless Mortgagor, so long as no Event of Default has occurred, shall have requested Mortgagee in writing to make application of such funds to the payment of which they were deposited, accompanied by the bills for such taxes and assessments. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of Mortgagor, any appropriate taxing authority.

7. **Insurance.**

(a) Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property owned by Mortgagor now or hereafter situated on the Property insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation: (i) all risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of all buildings, improvements, fixtures and articles of personal property owned by Mortgagor now or hereafter situated on the Property, with agreed upon amount and inflation guard endorsements; (ii) upon leasing any portion of the Property, rent and rental value or business loss insurance for the same perils described in (i) above payable at the rate per month and for the period specified from time to time by Mortgagee; (iii) broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Property shall contain a boiler and sprinkler system, respectively; (iv) if the improvements on the Property are located in a flood hazard district, flood insurance in the maximum amount obtainable up to the amount of the Indebtedness hereby secured; and (v) such other insurance as Mortgagee may from time to time reasonably require as specified in the Loan Agreement. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workers' compensation insurance covering the Property and any employees.

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thereof, with such limits for personal injury, death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, companies, amounts and deductibles reasonably satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies or certificates not less than thirty (30) days prior to their respective dates of expiration. The coverage amounts shall be specified in the Loan Agreement.

(b) 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 Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee. Mortgagor immediately shall notify Mortgagee whenever any such separate insurance is taken out and promptly shall deliver to Mortgagee the policy or policies of such insurance.

(c) In the event of loss Mortgagor shall give immediate notice to Mortgagee, who, if such loss exceeds One Hundred Fifty Thousand Dollars (\$150,000.00), shall have the sole right to make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for any such loss exceeding One Hundred Fifty Thousand Dollars (\$150,000.00) directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly. Any insurance proceeds so received by Mortgagee, or any part thereof, shall be applied by Mortgagee, after the payment of all of Mortgagee's expenses, including costs and reasonable attorneys' fees, to the restoration or repair of the property damaged as provided in Paragraph 8 hereof. In the event of foreclosure of this Leasehold Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. Mortgagor shall furnish Mortgagee, without cost to Mortgagee, at the request of Mortgagee, from time to time, evidence of the replacement value of the Property.

(d) Unless Mortgagor provides Mortgagee with evidence of the insurance coverage as required by this Leasehold Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest. This insurance may, but need not, also protect Mortgagor's interest. If the collateral becomes damaged, the coverage Mortgagee purchases may not pay any claim Mortgagor makes or any claim made against Mortgagor. Mortgagor may later cancel this coverage by providing evidence that Mortgagor has obtained property coverage elsewhere. Mortgagor is responsible for the cost of any insurance purchased by Mortgagee. The cost of this insurance may be added to Mortgagor's loan balance. If the cost is added to Mortgagor's loan balance, the interest rate on the underlying loan will apply to this added amount. The effective date of coverage may be the date Mortgagor's prior coverage lapsed or the date Mortgagor failed to provide proof of coverage. The coverage Mortgagee purchases may be considerably more expensive than insurance Mortgagor can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

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8. **Condemnation.** Mortgagor shall give Mortgagee prompt notice upon receiving knowledge of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (a "Taking") of all or any part of the Property including any easement thereon or appurtenance thereto (including severance of, consequential damage to or change in grade of streets) and shall deliver to Mortgagee copies of any and all papers received by Mortgagor in connection with any such proceeding. If all or any part of the Property is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain or by any Taking, the amount of any award or other payment for such taking or damages related to the Leasehold Interest made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its expenses, including costs and reasonable attorneys' fees, to the restoration or repair of the property damaged as provided in Paragraph 9 hereof, if in the reasonable judgment of Mortgagee the property can be restored or repaired to the condition existing immediately prior to the taking. If in the reasonable judgment of Mortgagee the said property cannot be restored or repaired to the condition existing immediately prior to the taking, then such award or monies received after the payment of expenses of Mortgagee as aforesaid shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking, upon thirty (30) days prior written notice to Mortgagor, Mortgagee may declare the whole of the Indebtedness hereby secured to be due and payable. Any application to the unpaid principal balance of the Note pursuant to this Paragraph 8 shall not extend the due date or reduce the amount of the principal and interest installments required to be paid under the Note. Notwithstanding the provisions of this paragraph to the contrary, if any condemnations or taking of less than a material portion of the Property occurs, and provided that no Event of Default exists, and, in the reasonable determination of Mortgagee, such event has no material adverse effect on the operation or value of the Property, then the award for such taking or damages resulting herefrom may be collected and received by Mortgagor and applied to the restoration or repair of the Property as set forth in Paragraph 9 hereof.

9. **Disbursement of Insurance or Eminent Domain Proceeds.**

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

(b) Prior to the payment or application of insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Real Estate as provided in Paragraphs 6 and 7 above, Mortgagee shall be entitled to evidence of the following:

(i) That no Event of Default exists which has not been, or will not be, cured to the reasonable satisfaction of Mortgagee, in Mortgagee's sole and absolute judgment;

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(ii) That any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Property as a result of the occurrence of any such casualty or taking will be covered out of (a) the Net Proceeds (as defined in the Loan Agreement), (b) the insurance coverage referred to in Section 11(a) of the Loan Agreement, if applicable, or (c) other funds of Mortgagor.

(iii) That Mortgagee shall be given reasonably satisfactory proof that either (A) such improvements have been fully restored, as reasonably determined by Mortgagee, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Property, free and clear of all liens, claims and encumbrances, except the lien of this Leasehold Mortgage;

(iv) That in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore or rebuild the said improvements, Mortgagor shall deposit with Mortgagee funds equaling such deficiency, which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Property; and

(v) That prior to the disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 9 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagor's architect, certifying the extent of the repair and restoration completed to the date thereof, if any, and such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Property; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Property, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Property as provided in Paragraphs 7 and 8 above, there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer who claims that no liability exists as to Mortgagor or the then owner or other insured under the policy of insurance in question; and

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are reasonably required by Mortgagee.

(d) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Property within a reasonable time subject to force majeure, then Mortgagee, at its option, and upon not less than thirty (30) days written notice to Mortgagor, may commence to restore, repair or rebuild the said improvements for or on behalf of Mortgagor, and for such purpose, may perform all necessary acts to accomplish such restoration, repair or rebuilding. In the event insurance proceeds or condemnation award shall exceed the amount

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necessary to complete the repair, restoration or rebuilding of the improvements upon the Property, such excess shall be applied on account of the unpaid principal balance of the Note irrespective of whether such balance is then due and payable.

(e) In the event Mortgagor commences the repair or rebuilding of the improvements located on the Property, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 9; or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Property within a reasonable time subject to force majeure, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above; then Mortgagee may, at its option, accelerate the Indebtedness evidenced by the Note and apply all or any part of the insurance proceeds or condemnation award against the Indebtedness secured hereby.

(f) In the event of any conflicts between the terms and provisions of this Mortgage and the Loan Agreement related to any casualty or taking, the Loan Agreement shall govern and control.

10. **Observance of Lease Assignment.** As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained in the Loan Documents, Mortgagor, as lessor, has assigned to Mortgagee the entire lessor's right, title and interest in and to all Leases, including, without limitation, any subleases, which now or hereafter affect all or any portion of the Property and in and to all Rents of or from all or any portion of the Property pursuant to the Assignment of Leases and Rents of even date herewith. All of the provisions of the Leasehold Assignment of Leases and Rents are incorporated herein as if fully set forth at length in the text of this Leasehold Mortgage.

11. **Security Agreement and Financing Statement.** Mortgagor and Mortgagee agree that: (i) this Leasehold Mortgage shall constitute a Security Agreement within the meaning of the Code including with respect to all sums on deposit with Mortgagee pursuant hereto ("**Deposits**") and for all property included in the definition herein of the word "**Property**" which property may not be deemed to form a part of the Real Estate or may not constitute a "**fixture**" (within the meaning of Section 9-102(41) of the Code); all replacements of such property, substitutions for such property, additions to such property, books and records relating to the Property, operation thereof, the proceeds thereof, the "supporting obligations" (as defined in the Code) (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "**Collateral**"); (ii) a security interest in and to the Collateral and the Deposits is hereby granted to Mortgagee; and (iii) the Deposits and all of Mortgagor's right, title and interest therein are hereby collaterally assigned to Mortgagee, all to secure payment of the Indebtedness hereby secured and to secure performance by Mortgagor of the terms, covenants and provisions hereof. This Leasehold Mortgage, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the Code with respect to any and all fixtures included within the foregoing description and definition of the Property and any Collateral that may now be or hereafter become "fixtures" within the meaning of the Code.

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(a) Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the 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, 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 Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days' notice 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 ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If Mortgagee so elects, the Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(b) Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Property any of the Collateral except that so long as no Event of Default exists hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Property, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Leasehold Mortgage and covered hereby.

(c) Mortgagor shall, from time to time, upon written request of Mortgagee and at Mortgagor's sole cost, deliver to Mortgagee: (i) such further security documents and assurances as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. Mortgagor represents and covenants that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereof, unless Mortgagee otherwise consents, will be free and clear of liens,

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encumbrances, title retention devices and security interests of others, except as permitted hereunder and/or as referenced in the Loan Agreement. Except as expressly permitted in the Loan Agreement, if the Collateral is sold in connection with a sale of the Property, Mortgagor shall notify Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agree to assume Mortgagor's obligations as to the security interests herein granted and to execute whatever agreements and filings are deemed necessary by Mortgagee to maintain Mortgagor's first perfected security interest in the Collateral and the Deposits.

(d) This Leasehold Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth herein. This Leasehold Mortgage is to be filed for recording with the Recorder of Deeds of the county where the Property is located. Mortgagor is the record owner of the Leasehold Interest and has rights in and the power to transfer the Collateral.

(e) Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in 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 as being of an equal or lesser scope or within greater detail, 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 whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and 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 real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Leasehold Mortgage.

(f) Mortgagor represents and warrants that: (i) Mortgagor is the owner and holder of the Leasehold Interest; (ii) Mortgagor's principal office is located in the State of Illinois; (iii) Mortgagor's state of organization as a limited liability company is the State of Delaware; (iv) Mortgagor is qualified to do business in the State of Illinois; (v) Mortgagor's exact legal name is as set forth herein; and (vi) Mortgagor's organizational identification number in the State of Illinois is 7120-993-8.

(g) Mortgagor agrees that where Collateral is in possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee.

12. Effect of Extensions of Time. If the payment of said Indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the Indebtedness be

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released, all persons now or at any time hereafter liable therefor, or interested in the Property or having an interest in Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

13. **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 becomes due in respect of the execution and delivery of this Leasehold Mortgage or the issuance of the Note hereby secured, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note secured hereby. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

14. **Effect of Changes in Laws Regarding Taxation:** In the event of the enactment after this date of any law of the state in which the Property is located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Property, or the manner of collection of taxes, so as to adversely affect this Leasehold Mortgage or the Indebtedness secured hereby or the holders thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall indemnify and hold Mortgagee harmless from and against any and all losses and costs resulting from such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee.

15. **Mortgagee's Reliance on Tax Bills and Claims for Liens.** Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, 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; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, provided that if no Event of Default then exists hereunder Mortgagee shall give to Mortgagor ten (10) days prior written notice thereof.

16. **Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.** Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, 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 Property or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Property. Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of any uncompleted buildings or other improvements now or at any time hereafter on the Property, and rent, operate and manage the Property and such buildings and improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Property and such buildings and

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improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies disbursed by Mortgagee in regard to any tax or to protect the Property or the lien hereof, shall be so much additional Indebtedness secured hereby, and shall become due and payable within ten (10) days after written notice from Mortgagee and with interest thereon at the Default Rate (as defined in the Note). In addition to the foregoing, any costs, expenses and fees reasonably incurred, including reasonable attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Leasehold Mortgage or its priority, (b) protecting and enforcing any of Mortgagee's rights hereunder, (c) recovering any Indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this Leasehold Mortgage, the Property or any guarantor or co-maker of the Note or this Leasehold Mortgage, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable after ten (10) days written notice and with interest thereon at the Default Rate. The interest accruing under this Paragraph 16 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional Indebtedness evidenced by the Note and secured by this Leasehold Mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or disbursed by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the loan evidenced by the Note, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Property or any part thereof, then as additional security hereunder, Mortgagee 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, however remote, regardless of whether said liens, charges and Indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

17. Representations and Warranties. Mortgagor represents, warrants and covenants with Mortgagee as follows:

(a) Mortgagor owns, holds and possesses the Leasehold Interest under the Ground Lease, without limitation on the right to convey and encumber, and that this Leasehold Mortgage is a first and prior lien on the Leasehold Interest. The Property is owned by 1415 Borrower free and clear of any lien or encumbrances, except for the Permitted Encumbrances. The Leasehold Interest is owned by Mortgagor free and clear of any lien or encumbrances, except for the Permitted Encumbrances.

(b) Mortgage is a duly formed limited liability company organized under the laws of the State of Delaware, validly existing, in good standing and fully qualified to do business in the State of Illinois. Mortgagor has full power and authority to conduct its business as presently conducted, to own the Leasehold Interest and operate the Property, to enter into this Leasehold Mortgage and to perform all of its duties and obligations under this Leasehold Mortgage and under the Loan Documents; such execution and performance have been duly authorized by all necessary legal requirements.

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(c) Mortgagor has full power and authority to execute and deliver this Leasehold Mortgage and the other Loan Documents and to perform its obligations hereunder and thereunder. Upon the execution and delivery thereof, this Leasehold Mortgage and each Loan Document will be valid, binding and enforceable upon Mortgagor in accordance with their respective terms. Execution and delivery of this Leasehold Mortgage and the other Loan Documents will not contravene, conflict with, violate or constitute a default under (i) the articles of organization and operating agreement governing Mortgagor, or (ii) any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which Mortgagor is a party or is bound, or which is binding upon or applicable to the Property or any portion thereof.

(d) There is not any undisclosed condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending, threatened, affecting Mortgagor, the Leasehold Interest or the Property or the use or operation thereof or which would prevent Mortgagor from complying with or performing its obligations under this Leasehold Mortgage, the Note, or any of the other Loan Documents within the time limits set forth therein for such compliance or performance, and no basis for any such matter exists.

(e) All financial statements submitted to Mortgagee relating to Mortgagor and Guarantor are true and correct, and fairly and completely present the financial condition of the Person to which they pertain and the other information therein described. No adverse change has occurred in the financial condition of Mortgagor or Guarantor since the dates of said financial statements.

(f) The Property will not violate any laws, statutes, ordinances, rules, orders or regulations of any kind whatsoever (including without limitation, those relating to environmental protection, public highway, water use, zoning, building, fire health or safety), any contractual arrangements with third parties or any covenants, conditions, easements, rights of way or restrictions of record, neither Mortgagor nor any agent thereof has received any notice, written or otherwise, alleging any such violation. The Property is in full compliance with current zoning requirements, and no right to any off-site facilities is necessary to insure compliance by the Property with any environmental protection, public highway, water use, zoning, building, fire, health, safety or similar statutes, laws, ordinances, codes, rules, regulations, permits, orders and decrees.

(g) Mortgagor shall pay all premiums on all insurance policies required from time to time hereunder, and thirty (30) days before any such policies of insurance expire, Mortgagor shall furnish to Mortgagee with premiums prepaid, additional and renewal insurance policies in form, and with companies, coverage, deductibles and amounts required by the Loan Agreement.

18: **Transfer of Property; Further Encumbrance.** In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor, Mortgagor's members and any co-maker of the Note (if applicable), found it acceptable and relied and continues to rely upon same as the means of repayment of the Note. Mortgagee also evaluated

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the background and experience of Mortgagor, Mortgagor's members and any co-maker of the Note (if applicable) in operating property such as the Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Property which is Mortgagee's security for the Note. Mortgagor, Mortgagor's members and co-maker of the Note (if applicable) are well-experienced in borrowing money and operating property such as the Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan secured hereby 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 recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary, mezzanine or junior financing placed upon the Property or the Leasehold Interest, other than as contemplated by the Loan Agreement, (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Property should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, or a foreclosure by Mortgagee would be necessary to clear the title to the Property or the Leasehold Interest. In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment and of value of the Property and the Leasehold Interest; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and collect assumption fees; and (iv) keeping the Property and the Leasehold Interest, or any interest in the Property or the Leasehold Interest, free of subordinate financing liens. Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one, and that, any sale, conveyance, assignment, further encumbrance or other transfer of title to the Property or the Leasehold Interest, or any interest in the Property or the Leasehold Interest, including without limitation, the entering into of an installment agreement for the sale of the Property or the Leasehold Interest, the placement or granting of liens on all or any part of the Property or the Leasehold Interest or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create a lien on the personal property utilized in the operation of the Property, or the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, without Mortgagee's prior written consent shall be an Event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events, shall be deemed to be an unpermitted transfer of title to the Property and therefore an Event of Default hereunder:

- (a) Any sale, conveyance, assignment or other transfer of, or the grant of a possessory interest or security interest in, all or any part of the title to the Property or the Leasehold Interest; or
- (b) Any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any interest in Mortgagor or its member; or
- (c) Any transfer or the occurrence of any other event which results in a breach under the terms of the Loan Documents; or

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(d) Any controlling interest in Mortgagor or its member shall be transferred or assigned, or any security interest or other lien or encumbrance shall be created on any interest, directly or indirectly in Mortgagor or on the proceeds of or distribution rights with respect to any such membership interest; or

(e) Any ownership interest in any entity that directly or indirectly owns an equity interest in Mortgagor shall be transferred or assigned, or any security interest or other lien or encumbrance shall be created on any ownership interest in any such entity or on the proceeds of or distribution rights with respect to any ownership interest in any such entity.

Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent Event of Default under this Paragraph 18. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 18 (each a "*Prohibited Transfer*") shall be void and of no force or effect.

19. Acceleration of Indebtedness in Event of Default. Any breach of Mortgagor's obligations hereunder, any Event of Default under the Loan Agreement or any other Loan Document shall constitute an "*Event of Default*" for purposes of this Leasehold Mortgage.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the Indebtedness hereby secured to be immediately due and payable to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate. If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Property, Mortgagee shall be or become entitled to, and shall accelerate the Indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the Indebtedness hereby secured and any excess held by it over the amount of Indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

20. Foreclosure; Expense of Litigation. When the Indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Leasehold Mortgage or any of the other Loan Documents. It is further agreed that if an Event of Default occurs as an alternative to the right of foreclosure for the full secured Indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said Indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured Indebtedness due (such proceeding being hereinafter referred to as a "*partial foreclosure*"), and provided that if foreclosure sale is made because of default of a part of the secured Indebtedness, such sale may be made subject to the continuing lien of this Leasehold Mortgage for the unmaturing part of the secured Indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmaturing part of the secured Indebtedness, but as to such unmaturing part of this Leasehold Mortgage, the lien hereof shall remain in full force and effect.

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just as though no foreclosure sale had been made under the provisions of this paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured Indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured Indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured Indebtedness without exhausting the power to foreclose and to sell the Property pursuant to any such partial foreclosure for any other part of the secured Indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee 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 Mortgagee 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 Property. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Property and the maintenance of the lien of this Leasehold Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Leasehold Mortgage, the Note, or the Property, 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 Mortgagor, with interest thereon at the Default Rate and shall be secured by this Leasehold Mortgage.

21. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure (or partial foreclosure) sale of the Property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 16 hereof; second, all other items which may under the terms hereof constitute secured Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, satisfaction of claims in order of priority adjudicated in the judgment of foreclosure or order confirming the sale; and fifth, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

22. Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose (or partially foreclose) this Leasehold Mortgage, the court in which such complaint is

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filed may appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of, and the right to sell, the Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his, her or its hands in payment in whole or in part of: (a) the Indebtedness secured hereby, or by any decree foreclosing this Leasehold 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 (b) the deficiency in case of a sale and deficiency.

23. Mortgagee's Right of Possession After an Event of Default: After an Event of Default, Mortgagor shall forthwith and upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of the Leasehold Interest or any part thereof personally, or by its agents or attorneys. Mortgagee's rights and remedies under this Paragraph 23 shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due and payable hereunder, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the Leasehold Interest, Mortgagee in its discretion may, with applicable process of law, enter upon and take and maintain possession of all or any part of said Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor or its employees, agents or servants, wholly therefrom. In such case Mortgagee, under the powers herein granted, may hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents. Mortgagee 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 Property, including actions for the recovery of rent, actions, in forcible detainer and actions in distress for rent, Mortgagee shall have full power:

(a) To cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;

(b) To elect to disaffirm any lease or sublease which is then subordinate (and not otherwise subject to a subordination, non-disturbance and attornment agreement) to the lien hereof;

(c) To extend or modify any then existing sales contracts, it being understood and agreed that any such modifications or termination, such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any

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redemption from sale, discharge of the mortgage Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) To make any repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as to it may seem judicious;

(e) To insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and

(f) To receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease, sales contract, or any obligation, duty or liability of Mortgagor. To the extent provided by law, Mortgagor shall and does hereby agree to protect, indemnify, defend and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment hereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any lease or sales contract, or in connection with any obligation, duty or liability of Mortgagor, except for such claims and demands as result directly from the negligent or willful actions of Mortgagee. Should Mortgagee incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable on demand.

24. Application of Income Received by Mortgagee. Mortgagee, 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 Property to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) To the payment of the expenses of the Property, including cost of completing any construction, management of the Property, or sales of any portion of the Property (which shall include reasonable compensation to Mortgagee and its agent or agents), and shall also include sales commissions and other compensation and expenses of seeking and procuring Unit purchasers and entering into sale contracts, establishing 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 Property;

(c) To the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Property of any kind or nature therein;

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and of placing the Property in such condition as will, in the judgment of Mortgagee, make them readily saleable; and

(d) To the payment of any Indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

25. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or any other document given to secure the Note or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

26. Mortgagee's Right of Inspection. Mortgagee and/or its representative shall have the right to inspect the Property at all reasonable times on not less than forty-eight (48) hours prior notice, and access thereto shall be permitted for that purpose.

27. Release Upon Payment and Discharge of Mortgagor's Obligation. Mortgagee shall release this Leasehold Mortgage and the lien thereof by proper instrument upon payment and discharge of all Indebtedness secured hereby, including payment of reasonable expenses incurred by Mortgagee in connection with the execution of such release.

28. Notices. Any notice, request, demand, statement, authorization, approval, consent or acceptance made hereunder shall be in writing and shall be (a) hand delivered, or (b) sent by overnight delivery via reputable overnight courier service; or (c) sent by registered or certified mail, postage prepaid with return receipt requested, or (d) sent by electronic mail (with a confirmatory duplicate copy sent by reputable overnight courier service for overnight delivery) and shall be deemed given (i) upon delivery, if delivered in person, or (ii) one (1) business day after being deposited with reputable overnight courier service for overnight delivery, or (iii) three (3) business days after being postmarked if sent by registered or certified mail return receipt requested, or (iv) upon receipt if sent by electronic mail, in each case addressed as follows:

To Mortgagee:

Lakeside Bank
3855 S. Halsted Street
Chicago, Illinois 60609
Attention: Nick Wycklendt
Email: nwycklendt@lakesidebank.com

With copy to:

Michael R. Brancheau
Higgins & Brancheau LLC
200 West Adams Street
Suite 2220

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Chicago, Illinois 60606
 Email: mbrancheau@higginsbrancheau.com

To Mortgagor: 1415 S. Wabash LLC
 225 W. Ohio Street, 6th Floor
 Chicago, Illinois 60654
 Attention: Colin M. Kihnke
 Email: cmk@cmkdev.com

With copy to: David J. O'Keefe
 Schain Banks
 70 West Madison Street
 Suite 2300
 Chicago, Illinois 60602
 Email: dokeefe@schainbanks.com

Each party may designate a change of address or electronic mail address by notice to the other party sent pursuant to this Paragraph 28, given at least fifteen (15) days before such change of address is to become effective. Mortgagee's failure to deliver the courtesy copy to the last addressee above shall in no way affect any of the rights of Mortgagee under any of the Loan Documents, nor grant in any manner, any rights to such party.

29. **Waiver of Defenses.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured. Mortgagor agrees that it will not assert any claim against Mortgagee or any other person indemnified under this Leasehold Mortgage on any theory of liability for special, indirect consequential, incidental or punitive damages.

30. **Waiver of Rights.** Mortgagor hereby covenants and agrees that to the extent permitted by law, Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "*Moratorium Laws*", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Leasehold Mortgage, but hereby waives the benefit of such laws. To the extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety.

31. **Expenses Relating to Note and Mortgage.** Mortgagor will pay all reasonable expenses, charges, costs and fees incurred by Mortgagee relating to the Loan secured by this Leasehold Mortgage or necessitated by the terms of the Note, this Leasehold Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing, enforcement and closing of the Note, this Leasehold Mortgage and the other Loan Documents, all filing, registration or recording fees, all other expenses incident to the execution and acknowledgment of this Leasehold Mortgage and all federal, state, county and municipal taxes, and other taxes (provided

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Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Leasehold Mortgage. Mortgagor recognizes that, during the term of the Mortgage, Mortgagee:

(a) 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 Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Property are involved directly or indirectly;

(b) 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;

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

(d) 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;

(e) May enter into negotiations with Mortgagor, any member, guarantor or co-maker of the Note, or any of their respective agents, employees or attorneys, in connection with the existence or curing of any Event of Default hereunder, the sale of the Property, the assumption of liability for any of the Indebtedness represented by the Note or the transfer of the Property in lieu of foreclosure; or

(f) May enter into negotiations with Mortgagor, any member of Mortgagor or guarantor or co-maker of the Note, or any of their respective agents, employees or attorneys, pertaining to Mortgagee's approval of actions taken or proposed to be taken, by Mortgagor, any member of Mortgagor, or any guarantor or co-maker of the Note, which approval is required by the terms of this Leasehold Mortgage.

All expenses, charges, costs and fees described in this Paragraph 31 shall be so much additional Indebtedness secured hereby, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

32. Business Purpose. Mortgagor covenants that the proceeds of the loan evidenced by the Note and secured by this Leasehold Mortgage will be used for the purposes specified in 815 ILCS 205/4 (1994), as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph.

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33. **Financial Statements.** Mortgagor shall cause to be delivered to Mortgagee such financial statements and other financial reports as required pursuant to the Loan Agreement.

34. **Statement of Indebtedness.** Mortgagor, within ten (10) days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Leasehold Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against the Mortgage debt or, if such offsets or defenses are alleged to exist, the nature thereof.

35. **Further Instruments.** Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Leasehold Mortgage and of the other Loan Documents.

36. **Indemnity.** Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Leasehold Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: the making of the loan evidenced by the Note and secured by this Leasehold Mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Leasehold Mortgage or for the purpose of protecting the lien of this Leasehold Mortgage; the offer for sale or sale of all or any portion of the Property; and/or the ownership, leasing, use, operation or maintenance of the Property. All costs provided for herein and paid for by Mortgagee shall be so much additional Indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

37. **Waiver of Right of Redemption.** Mortgagor hereby releases and waives any and all rights to retain possession of the Property after the occurrence of an Event of Default hereunder and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Mortgagor and each and every person acquiring any interest in, or title to, the Property described herein subsequent to the date of this Leasehold Mortgage, and on behalf of all other persons to the extent permitted by the provisions of applicable law.

38. **Miscellaneous.**

(a) **Successors and Assigns.** This Leasehold Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its successors and permitted assigns, any subsequent owner or owners of the Property who acquire the Property subject to this Leasehold Mortgage and all persons claiming under or through Mortgagor, and the word "*Mortgagor*" when used herein shall include all such persons and all persons liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Leasehold

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Mortgage. This Leasehold Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions. In the event one or more of the provisions contained in this Leasehold Mortgage or the Note or in any security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall at the option of Mortgagee, not affect any other provision of this Leasehold Mortgage, and this Leasehold Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Leasehold Mortgage shall be construed and governed by the substantive laws of the State of Illinois.

(c) Rights of Purchasers or Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Leasehold Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any Unit purchaser or tenant of the Property having an interest in the Property. The failure to join any such Unit purchaser or tenant of the Property as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

(d) Option of Mortgagee to Subordinate. At the option of Mortgagee, in its sole and absolute discretion, this Leasehold Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Property upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the Property are situated, of a unilateral declaration to that effect.

(e) Use of Proceeds. Mortgagor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

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

(g) Relationship of Mortgagee and Mortgagor. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any beneficiary, lessee, operator, concessionaire or licensee of Mortgagor in the conduct of its business, and without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a Mortgagee in possession or exercising any rights pursuant to this Leasehold Mortgage, any of the other Loan Documents, or otherwise.

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(h) Time of the Essence. Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Leasehold Mortgage.

(i) No Merger. It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Leasehold Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Leasehold Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) Value for Purposes of Insurance. Upon request by Mortgagee, Mortgagor agrees to furnish evidence of replacement value, without cost to Mortgagee, of the type which is regularly and ordinarily made for insurance companies, with respect to the buildings and improvements on the Property.

(k) Late Charge. Except for the payment of interest and principal due and payable on the Maturity Date, the Note requires the payment of a late charge in the event any installment of principal and/or interest due hereunder and/or any escrow fund payment for taxes and insurance due hereunder shall become overdue for a period in excess of ten (10) days. The Note requires the payment to Mortgagee of a late charge of one cent (1¢) for each dollar so overdue to defray part of the cost of collection. Said late charge shall be secured hereby as Indebtedness, as that term is defined in Paragraph 2 hereof.

(l) Servicing Fees. Mortgagor acknowledges and agrees that Mortgagee shall impose certain reasonable administrative processing fees (the "*Servicing Fees*") in connection with (a) the extension, renewal, modification, amendment and termination of the Loan Documents; (b) the release or substitution of collateral therefor; (c) the consideration of any consents, waivers and approvals with respect to the Property or Mortgagor; (d) the review of any Lease or proposed Lease or the preparation or review of any tenant estoppel certificate or any subordination, nondisturbance and attornment agreement; or (e) any other services provided by Mortgagee or any of its agents to or on behalf of Mortgagor in connection with the Property, the Loan Documents or the Indebtedness secured thereby (the occurrence of any of the foregoing shall hereafter be referred to as a "*Servicing Action*"). Mortgagor hereby acknowledges and agrees to pay, immediately, upon demand, all such Servicing Fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature that may be imposed by Mortgagee from time to time in connection with a Servicing Action. Mortgagor shall also be responsible for the payment of all reasonable fees and expenses of Mortgagee's outside counsel in the event that Mortgagee, in its sole discretion, shall determine that the assistance of an outside attorney is necessary or appropriate to accomplish the Servicing Action.

39. Subordination of Commercial Broker's and Property Manager's Lien. Any commercial broker or property management agreement for the Property entered into hereafter by Mortgagor with any manager, shall contain a "no lien" provision whereby such manager waives

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and releases any and all mechanics' lien rights that such manager or anyone claiming by, through or under the manager may have. In addition, Mortgagor shall cause the manager to enter into a Subordination of Management Agreement with Mortgagee, in recordable form, whereby the manager subordinates present and future lien rights and those of any party claiming by, through or under the manager, to the lien of this Leasehold Mortgage.

40. Compliance with Environmental Laws. Mortgagor acknowledges that concurrently herewith, Mortgagor has executed and delivered to Mortgagee an Environmental Indemnity Agreement ("*Indemnity Agreement*") pursuant to which Mortgagor and Guarantor have fully indemnified Mortgagee for certain environmental matters concerning the Property, as more particularly described therein. The provisions of the Indemnity Agreement are herein incorporated and this Leasehold Mortgage shall secure the obligations of Mortgagor thereunder. Mortgagor agrees to abide by all of the provisions of the Indemnity Agreement. An Event of Default under the Indemnity Agreement shall constitute an Event of Default hereunder. Mortgagor hereby agrees to comply and cause all tenants of the Secured Property to comply with any and all Environmental Laws (as such term is defined in the Indemnity Agreement). Mortgagor shall defend, indemnify and save and hold Mortgagee harmless from and against any and all claims, costs or expenses relating to such environmental protection provisions notwithstanding any exculpatory or limitation of liability provisions contained in this Leasehold Mortgage and the other Loan Documents.

41. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision of this Leasehold Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law 735 ILCS 5/15-1101 et seq. (1994), as amended (herein called the "*Act*"), the provisions of the Act shall take precedence over the provisions of this Leasehold Mortgage, but shall not invalidate or render unenforceable any other provision of this Leasehold Mortgage that can be construed in a manner consistent with the Act.

(b) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under any Paragraph of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraphs 13 or 16 of this Leasehold Mortgage, shall be added to the Indebtedness secured by this Leasehold Mortgage or by the judgment of foreclosure.

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

42. Collateral Protection Act. Pursuant to the terms of the Illinois Collateral Protection Act (815 ILCS 180/1 et seq., as amended), Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Leasehold Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property; which insurance may, but need not, protect the interest of

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Mortgagor in the Property. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed 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 total obligation secured by this Leasehold Mortgage. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

43. **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness secured by this Leasehold Mortgage exceed an amount equal to two hundred percent (200%) of the Loan; provided however, in no event shall Mortgagee be obligated to advance funds in excess of the face amount of the Note.

44. **Ground Lease.** This Leasehold Mortgage is intended to cover and affect, among other property, the Leasehold Interest, and all leasehold estates, options, rights to amend or modify and interests created by and contained in the Ground Lease. The following terms and provisions shall apply with regarding to such leasehold estates, options, rights to amend or modify and interests and such Ground Lease in addition to the other terms and provisions hereof:

(a) Mortgagor will pay, on or before the dates due, all rents and other amounts payable under the provisions of the Ground Lease and will timely and fully observe and perform all of the terms, covenants, agreements and conditions of the Ground Lease required therein to be observed and performed by Mortgagor as tenant. Mortgagor covenants and agrees to immediately deliver to Mortgagee a copy of any notice of default or other notices it receives under or pursuant to the Ground Lease. In addition, Mortgagor will not do, or permit anything to be done, or refrain from doing, anything which would or might terminate or impair the security of this Leasehold Mortgage, or be grounds for terminating the Ground Lease or declaring a forfeiture thereof.

(b) Mortgagor agrees that in the event Mortgagor acquires the fee estate in and to the Property covered by the Ground Lease, or any part thereof, unless and until Mortgagee shall also acquire the Mortgagor's interest in the Leasehold Interest, the fee estate and the leasehold estate created by and existing under the Ground Lease will not merge, and the Ground Lease shall remain in full force and effect as a separate and distinct estate in the real property described on Exhibit A, and in such event the fee estate acquired by Mortgagor shall automatically (and without need for notice to, or execution of any further instruments by, Mortgagor or any other person or entity) be subject to all of the terms and provisions of this Leasehold Mortgage.

(c) Mortgagor agrees that in the event Mortgagee elects to make any payments or do any act or thing required to be paid or done by Mortgagor as tenant under the Ground Lease, Mortgagee shall, in addition to all other remedies given Mortgagee herein, be fully subrogated to any and all rights of Mortgagor as tenant under the Ground Lease arising from or relating to such payment or performance under the Ground Lease.

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(d) Mortgagor will not surrender the leasehold estate created by the Ground Lease or terminate or cancel the Ground Lease, and will not modify, change, supplement, alter or amend the Ground Lease (either orally or in writing), without Mortgagee's prior written consent in Mortgagee's sole discretion. As further security, Mortgagor hereby assigns to Mortgagee all of its rights and privileges to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease, and any such termination, cancellation, modification, change, supplementation, alteration or amendment of the Ground Lease without the prior written consent of Mortgagee shall be void and of no force and effect.

(e) The lien of this Leasehold Mortgage shall attach to any and all of Mortgagor's rights and remedies arising hereafter under or pursuant to Subsection 365(h) of the Bankruptcy Code, 11 U.S.C. §365(h), including all of Mortgagor's rights to remain in possession of the Property.

(f) Mortgagor shall not, without first obtaining Mortgagee's prior written consent, elect to treat the Ground Lease as terminated under Subsection 365(h)(1) of the Bankruptcy Code, 11 U.S.C. §365(h)(1). Any such election made without first obtaining Mortgagee's prior written consent shall be void.

(g) Mortgagor hereby unconditionally assigns, transfers and sets over to Mortgagee all of Mortgagor's claims and rights to the payment of damages arising from any rejection by the lessor of the Ground Lease under the Bankruptcy Code, 11 U.S.C. §101 *et seq.* ("*Bankruptcy Code*"). Mortgagee shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including the right to file and prosecute, with or without the joinder of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents in any case with respect to the Ground Lessor under the Ground Lease under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until this Leasehold Mortgage shall have terminated. Any amounts received by Mortgagee as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all costs and expenses of Mortgagee (including reasonable attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Paragraph and then applied in accordance with the provisions of this Leasehold Mortgage in the manner and order specified for condemnation proceeds.

(h) If any action, suit, proceeding, motion or notice shall be commenced or filed with respect to the 1415 Borrower, as landlord, under the Ground Lease in connection with any case under the Bankruptcy Code, Mortgagor shall participate in any such litigation to an extent and in a manner acceptable to Mortgagee. Mortgagor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Ground Lease in any such case under the Bankruptcy Code without first obtaining the prior written consent of Mortgagee, in Mortgagee's sole and absolute discretion.

(i) Mortgagor shall promptly after obtaining knowledge thereof notify Mortgagee orally, by telephone, of any filing by or against the landlord under the Ground Lease of a petition under the Bankruptcy Code. Mortgagor shall also immediately thereafter give written

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notice of such filing to Mortgagee, setting forth any information available to Mortgagor as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Mortgagor shall also promptly, after Mortgagor's receipt, deliver to Mortgagee any and all notices, summonses, pleadings, applications and other documents received by Mortgagor in connection with any such petition and in connection with any proceedings relating thereto.

(j) If there shall be filed by or against Mortgagor a petition under the Bankruptcy Code, and Mortgagor, as tenant under the Ground Lease, shall determine to reject the Ground Lease pursuant to Section 365(a) of the Bankruptcy Code, Mortgagor shall give Mortgagee prior written notice of the date on which Mortgagor shall apply to the Bankruptcy Court for authority to reject the Ground Lease. Such date of application by Mortgagor shall not be less than ten (10) days from the date such written notice is received by Mortgagee. Mortgagee shall have the right, but not the obligation, to serve upon Mortgagor, prior to the date Mortgagor has indicated as the date on which Mortgagor shall apply to the Bankruptcy Court for authority to reject the Ground Lease, a written notice stating: (a) that Mortgagee demands that Mortgagor assume and assign the Ground Lease to Mortgagee pursuant to Section 365 of the Bankruptcy Code; and (b) that Mortgagee covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under the Ground Lease. If Mortgagee serves upon Mortgagor the written notice described in the preceding sentence, Mortgagor shall not seek to reject the Ground Lease and shall comply with the demand provided for in clause (a) of the preceding sentence within thirty (30) days after such written notice shall have been given subject to the performance by Mortgagee of the covenant provided for in clause (b) of the preceding sentence.

(k) Effective upon the entry of any order for relief with respect to Mortgagor under Chapter 7 of the Bankruptcy Code, Mortgagor hereby assigns and transfers to Mortgagee a non-exclusive right to apply to the Bankruptcy Court under Subsection 365(d)(1) of the Bankruptcy Code for an order extending the period during which the Ground Lease may be rejected or assumed.

(l) The occurrence of a default, an event of default or a similar event (however denominated) by Mortgagor (or any other person or entity in possession of the leasehold estate) under the Ground Lease, after the expiration of any applicable grace or cure period thereunder, shall constitute an "Event of Default" under this Leasehold Mortgage and the Loan Agreement; provided, however, upon Mortgagee's receipt of a notice of default under the Ground Lease, Mortgagee shall be entitled (but not obligated) to take such action as is necessary to cure such default in accordance, and any sums expended by Mortgagee in curing such default shall be deemed a part of the Loan.

(m) The term "Property" as used herein shall include Mortgagor's estates, rights, titles and interests in and to the property covered by the leasehold estate created under and pursuant to the Ground Lease, including without limitation, the Leasehold Interest.

(n) Mortgagor represents and warrants to Mortgagee the following:

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(i) The Ground Lease is in full force and effect and there is no agreement amending, modifying or rearranging the Ground Lease or diminishing or impairing the liability of the lessor or landlord thereunder to perform fully its obligations in strict accordance with the Ground Lease or diminishing or impairing the obligation of any endorser, guarantor or surety for or of the Ground Lease to perform fully its obligations in strict accordance with the writings creating or evidencing the obligation of such endorser, guarantor or surety.

(ii) Mortgagor has heretofore obtained the written consent of all necessary parties, if any, required to be obtained under the Ground Lease or otherwise to authorize the assignment, transfer, pledge of and the grant of the lien and security interest in the Property evidenced by this Leasehold Mortgage (promptly upon request by Mortgagee, Mortgagor agrees to furnish to Mortgagee all executed original written consents, if any, as shall be required by Mortgagee in connection with or arising out of the lien and security interest granted hereby).

(iii) The Ground Lease is the valid and legally binding obligations of the parties thereto, enforceable in accordance with its terms, subject to principles of equity and creditors' rights.

(iv) A true, correct and complete copy of the Ground Lease has heretofore been delivered to Mortgagee.

(v) No default or event of default on the part of Mortgagor or on the part of any other party to the Ground Lease has occurred which is continuing.

45. CONSENT TO JURISDICTION. TO INDUCE MORTGAGEE TO ACCEPT THE NOTE, MORTGAGOR AND MORTGAGEE IRREVOCABLY AGREE THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS LEASEHOLD MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

46. WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE (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 LEASEHOLD 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 LEASEHOLD MORTGAGE OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS LEASEHOLD

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MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[Signatures on the following page]

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EXHIBIT A

LEGAL DESCRIPTION

THE SOUTH 20 FEET OF LOT 11 AND ALL OF LOT 12 IN BLOCK 16 IN HERRINGTON'S ADDITION TO CHICAGO IN THE NORTHWEST FRACTIONAL QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 17-22-107-101-0000

Commonly Known As: 1419 S. Wabash, Chicago, Illinois 60605

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