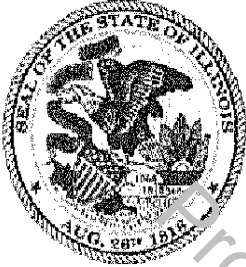


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## Illinois Anti-Predatory Lending Database Program

Doc#: 2135621213 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 12/22/2021 11:07 AM Pg: 1 of 30

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: **PIN:** 07-12-400-052

**Address:**

**Street:** 1600 McConnor Parkway

**Street line 2:**

**City:** Schaumburg

**State:** IL

**ZIP Code:** 60173

**Lender:** BOKF, N.A.

**Borrower:** BOF IL Windy Pointe I LLC

**Loan / Mortgage Amount:** \$25,943,000.00

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.

CC # 12107744 LI  
LR Oceg

**Certificate number:** 76F5B766-BDC8-4A69-9B42-32D99993455A

**Execution date:** 12/13/2021

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Prepared By and  
When Recorded Return To:

James H. Jones, Esq.  
**SNELL & WILMER L.L.P.**  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

CO 112 107744 LILK (1) 2022

[Reserved]

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,**  
**SECURITY AGREEMENT AND**  
**FIXTURE FILING**  
(Loan Agreement)

by

**BOF IL WINDY POINTE I LLC,**  
a Delaware limited liability company,  
as Mortgagor

and

**BOKF, NA d/b/a BOK Financial,**  
as Mortgagee

THIS MORTGAGE CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE MORTGAGED PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE ILLINOIS UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, MORTGAGEE IS THE "SECURED PARTY" AND MORTGAGOR IS THE "DEBTOR." MORTGAGOR IS THE RECORD OWNER OF THE PROPERTY DESCRIBED HEREIN. THE NOTE SECURED BY THIS MORTGAGE PROVIDES THAT THE OBLIGATIONS SECURED BY THIS MORTGAGE ACCRUE INTEREST AT A VARIABLE RATE CALCULATED PURSUANT TO A FORMULA DESCRIBED IN THE LOAN AGREEMENT.

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Mortgage, Assignment of Leases and Rents,  
Security Agreement and Fixture Filing  
(Loan Agreement)

This Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing is made as of December 16, 2021, by **BOF IL WINDY POINTE I, LLC**, a Delaware limited liability company (herein referred to as "Mortgagor"), whose address is c/o Bridge Office Fund II LP 111 E. Sego Lily Drive, Suite 400 Salt Lake City, UT 84070, to **BOKF, NA**, d/b/a BOK Financial ("Mortgagee"), whose address is 16767 N. Perimeter Dr., Suite 200, Scottsdale, Arizona 85260.

Recitals

Mortgagor has requested that Mortgagee make the Loan (as hereinafter defined) to Mortgagor. As a condition precedent to making the Loan, Mortgagee has required that Mortgagor execute and deliver this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing to Mortgagee.

Grants and Agreements

Now, therefore, in order to induce Mortgagee to make the Loan to Mortgagor, Mortgagor agrees as follows:

Article I  
Definitions.

As used in this Mortgage, the terms defined in the Preamble hereto or in the Loan Agreement shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"Accessories" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land. Accessories shall not include any items specifically excluded from the definition of "Personalty" below.

"Accounts" means all accounts of Mortgagor within the meaning of the Uniform Commercial Code of the State, derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon.

"Additions" means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.

"Claim" means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including reasonable fees, costs and expenses of attorneys, consultants, contractors and experts.

"Condemnation" means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by

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any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

“Condemnation Awards” means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

“Contract of Sale” means any contract for the sale of all or any part of the Property or any interest therein, whether now in existence or hereafter executed.

“Default” means an event or circumstance which, with the giving of Notice or lapse of time (subject to any applicable cure period), or both, would constitute an Event of Default under the provisions of this Mortgage.

“Encumbrance” means any Lien, easement, right of way, roadway (public or private), condominium regime, cooperative housing regime, condition, covenant or restriction (including any CC&Rs in connection with any condominium development or cooperative housing development), Lease or other matter of any nature that would affect title to the Property.

“Environmental Agreement” means the Environmental Indemnification and Release Agreement of even date herewith by and between Mortgagor, Guarantor and Mortgagee pertaining to the Property, as the same may from time to time be extended, amended, restated or otherwise modified. The Environmental Agreement is one of the Loan Documents, but this Mortgage does not secure the obligations of Mortgagor under the Environmental Agreement.

“Event of Default” means an event or circumstance specified in Article VI and the continuance of such event or circumstance beyond the applicable grace and/or cure periods therefor, if any, set forth in Article VI.

“Expenses” means all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by Mortgagee in making, funding, administering or modifying the Loan, in negotiating or entering into any “workout” of the Loan, or in exercising or enforcing any rights, powers and remedies provided in this Mortgage or any of the other Loan Documents, including reasonable attorneys’ fees, court costs, receiver’s fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling, the Property.

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

“Guarantor” means collectively and individually **BRIDGE OFFICE FUND LP**, a Delaware limited partnership, **BRIDGE OFFICE FUND I LP**, a Delaware limited partnership, **BRIDGE OFFICE FUND -A LP**, a Delaware limited partnership, and **BRIDGE OFFICE FUND INTERNATIONAL MASTER LP**, a Delaware limited partnership, and their respective successors and assigns.

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“Guaranty” means the Guaranty Agreement of even date herewith executed by Guarantor for the benefit of Mortgagee, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Improvements” means all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, together with any on-site improvements and off-site improvements in any way used or to be used in connection with the use, enjoyment, occupancy or operation of the Land.

“Insurance Proceeds” means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, in each case whether now or hereafter existing or arising.

“Land” means the real property described in Exhibit A attached hereto and made a part hereof.

“Laws” means all federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

“Leases” means all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties thereof, including any cash or security deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or security is to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due thereunder.

“Letter of Credit” means any letter of credit issued by Mortgagee for the account of Mortgagor or any affiliate of Mortgagor or its nominee as permitted by the Loan Agreement, together with any and all extensions, renewals or modifications thereof, substitutions therefor or replacements thereof.

“Lien” means any mortgage, deed of trust, pledge, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

“Loan” means the loan from Mortgagee to Mortgagor, the repayment obligations in connection with which are evidenced by the Note.

“Loan Agreement” means the Loan Agreement of even date herewith between Mortgagor and Mortgagee which sets forth, among other things, the terms and conditions upon which the proceeds of the Loan will be disbursed, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Loan Documents” means this Mortgage, the Note, the Guaranty, the Environmental Agreement, the Loan Agreement, any Swap Contract, any application or reimbursement agreement executed in connection with any Letter of Credit, and any and all other documents which Mortgagor, any affiliate of Mortgagor, Guarantor or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

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“Mortgage” means this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, as the same may from time to time be extended, renewed, amended, restated, supplemented or otherwise modified.

“Note” means the Promissory Note of even date herewith in the original principal amount of **TWENTY-FIVE MILLION NINE HUNDRED FORTY-THREE THOUSAND AND NO/100 DOLLARS (\$25,943,000.00)**, with an initial maturity date of **November 1, 2021**, made by Mortgagor to the order of Mortgagee, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Notice” means a notice, request, consent, demand or other communication given in accordance with the provisions of Section 10.8 of this Mortgage.

“Obligations” means all present and future debts, obligations and liabilities of Mortgagor to Mortgagee arising pursuant to, and/or on account of, the provisions of this Mortgage, the Note or any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) to pay all Expenses, indemnification payments, fees and other amounts due at any time under this Mortgage or any of the other Loan Documents, together with interest thereon as herein or therein provided; (c) to pay and perform all obligations of Mortgagor under any Swap Contract; (d) to perform, observe and comply with all of the other terms, covenants and conditions expressed or implied, which Mortgagor is required to perform, observe or comply with pursuant to this Mortgage or any of the other Loan Documents; and (e) to pay and perform all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties’ agreement that the advance or obligation be secured by this Mortgage; excluding, however, the debts, obligations and liabilities of Mortgagor under the Environmental Agreement. This Mortgage does not secure the Environmental Agreement, the Guaranty or any other Loan Document that is expressly stated to be unsecured.

“Permitted Encumbrances” means (a) any matters set forth in any policy of title insurance issued to Mortgagee and insuring Mortgagee’s interest in the Property which are acceptable to Mortgagee as of the date hereof, (b) the Liens and interests of this Mortgage, (c) Liens for taxes not yet due and payable, and (d) any other Encumbrance that Mortgagee shall expressly approve in its sole and absolute discretion, as evidenced by a “marked-up” commitment for title insurance initialed on behalf of Mortgagee, or as set forth in Mortgagee’s closing instructions to the issuer of the policy of title insurance, and (e) any other Encumbrance approved by Mortgagee, such approval not to be unreasonably withheld.

“Person” means an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any Governmental Authority or any other entity.

“Personalty” means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Mortgagor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Mortgage, and Mortgagee shall have no responsibility for the performance of Mortgagor’s obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols, except the trademarks and logos) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses,

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guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof; (e) all permits, licenses, variances, and other rights or approvals issued by or obtained from any Governmental Authority or other Person in connection with the development of the Land or the construction or repair of Improvements; (f) all of Mortgagor's rights and interests under all Swap Contracts, including all rights to the payment of money from Mortgagee under any Swap Contract and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Contract; and (g) all money, instruments, and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Mortgagor with Mortgagee related to the Property, including any such deposit account from which Mortgagor may from time to time authorize Mortgagee to debit and/or credit payments due with respect to the Loan; together with all Additions to and Proceeds of all of the foregoing exclusive of (i) all vehicles, (ii) tenant insurance premiums, (iii) packing supplies, (iv) retail revenue not owned by Mortgagor, and (v) all insurance policies and prepaid premiums (provided that Insurance Proceeds shall not be excluded). The Personalty shall also exclude rooftop solar panel systems pursuant to an agreement with a solar power producer, which producer may or may not be an affiliate of Mortgagor.

"Proceeds" when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

"Property" means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all Condemnation Awards, all Proceeds, and all of Mortgagor's right, title and interest in and to all Contracts of Sale.

"Property Assessments" means all Taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner's association assessments and charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof.

"Real Property" means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights of way, rights of ingress or egress, parking rights, and other rights, now or hereafter owned by Mortgagor and belonging or appertaining to the Land or Improvements, with the exception of any roof top solar panel systems which presently or may in the future be attached to any of the Improvements, (b) all Claims whatsoever of Mortgagor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing, exclusive of minerals, oil and gas rights and leases, royalties and profits therefrom.

"Rents" means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

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“State” means the state in which the Land is located.

“Swap Contract” means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, interest cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option, currency option or any other similar transaction (including any option to enter into the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into between Mortgagee (or its affiliate) and Mortgagor (or its affiliate) in connection with the Loan, together with any related schedules and confirmations, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing.

“Taxes” means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Mortgagor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

“Transfer” means any direct or indirect sale, assignment, conveyance or transfer, including any Contract of Sale and any other contract or agreement to sell, assign, convey or transfer, whether made voluntarily or by operation of Law or otherwise, and whether made with or without consideration.

## Article II Granting Clauses; Condition of Grant.

### Section 2.1 Conveyances and Security Interests

In order to secure the prompt payment and performance of the Obligations, Mortgagor (a) grants, bargains, sells, aliens, remises, releases, assigns, mortgages, hypothecates, deposits, pledges, sets over, confirms, warrants and conveys the Real Property unto Mortgagee, all estate, right, title and interest of Mortgagor in and to the Real Property, whether now owned or held or hereafter acquired by Mortgagor, to have and hold the Real Property unto Mortgagee, its successors and assigns forever; and to hold the Real Property unto Mortgagee in fee simple forever; provided that Mortgagor may retain possession of the Real Property until the occurrence of an Event of Default; (b) grants to Mortgagee a security interest in the Personalty; (c) assigns to Mortgagee, and grants to Mortgagee a security interest in, all Condemnation Awards and all Insurance Proceeds (subject to any restrictions contained in the Loan Agreement executed by the Mortgagor and Mortgagee concurrent with the execution of this document); and (d) assigns to Mortgagee, and grants to Mortgagee a security interest in, all of Mortgagor's right, title and interest in, but not any of Mortgagor's obligations or liabilities under all Contracts of Sale. All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have notice of, and will be bound by, the terms of the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations. Such terms include any provisions in the Note, the Loan Agreement or any Swap Contract which provide that the interest rate on one or more of the Obligations may vary from time to time.

This Mortgage is given to secure not only the existing Obligations, but also such future advances made pursuant to this Mortgage, the Obligations, any note or notes representing any portion of the Obligations, any loan agreement or other instrument evidencing or securing the Obligations or as requested by the Mortgagor, whether such advances are obligatory or are to be made at the option of the



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Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage.

## Section 2.2 Absolute Assignment of Leases and Rents.

In consideration of the making of the Loan by Mortgagee to Mortgagor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor absolutely and unconditionally assigns the Leases and Rents to Mortgagee. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Mortgagor to Mortgagee of all of Mortgagor's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist, however, and so long as Mortgagor is not in default in the performance of any obligation, covenant or agreement contained in the Leases, Mortgagor shall have a license (which license shall terminate automatically and without notice upon the occurrence of an Event of Default) to collect, but not prior to accrual, all Rents. Mortgagor agrees to collect and hold all Rents in trust for Mortgagee and to use the Rents for the payment of the cost of operating and maintaining the Property and for the payment of the other Obligations before using the Rents for any other purpose.

However, in no event shall this assignment of Leases and Rents diminish, alter, impair, or affect any other rights and remedies of Mortgagee, including but not limited to, the appointment of a receiver, nor shall any provision in this Section diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth herein. In addition, this assignment shall be fully operative without regard to value of the Property or without regard to the adequacy of the Property to serve as security for the obligations owed by Mortgagor to Mortgagee. Further, except for the notices required hereunder, if any, Mortgagor hereby waives any notice of default or demand for turnover of rents by Mortgagee.

## Section 2.3 Security Agreement, Fixture Filing and Financing Statement.

Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to time to file or record in any filing office in any Uniform Commercial Code jurisdiction, or in any county recorder's office or other public office for recording of public land records, any initial financing statements and amendments thereto that (a) indicate the Personal Property: (i) as all assets of Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Personal Property falls within the scope of Article 9 of the Illinois UCC (or Article 9 of the Uniform Commercial Code of such other jurisdiction), or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of Article 9 of the Illinois UCC (or by Part 5 of Article 9 of the Uniform Commercial Code of such other jurisdiction), for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and (ii) in the case of a financing statement filed as a fixture filing or indicating Personal Property as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Personal Property relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor also ratifies its authorization for Mortgagee to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Mortgagee is fully authorized to file, record, or otherwise utilize such documents as it deems necessary to perfect and/or enforce any security interest or lien granted hereunder. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Mortgagee and agrees that it will not do so without the prior written consent of Mortgagee, subject to Mortgagor's rights under Section 9-509(d)(2) of the Illinois UCC. Mortgagor will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Mortgagee to be necessary or desirable.

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In addition to Mortgagee's rights as a "Secured Party" under the Uniform Commercial Code, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Property or any rights or interests of Mortgagee therein; (c) inspect the Property; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Property. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under UCC Section 679.620 F.S., or other applicable law.

## Section 2.4 Release of Mortgage and Termination of Assignments and Financing Statements.

If and when Mortgagor has paid and performed all of the Obligations, and no further advances are to be made under the Loan Agreement, Mortgagee will provide a discharge of the Property and a release of the lien of this Mortgage and termination statements for filed financing statements, if any, to Mortgagor. Mortgagor shall be responsible for the recordation of such release and the payment of any recording and filing costs. Upon the recording of such release and the filing of such termination statements, the absolute assignments set forth in Section 2.2 shall automatically terminate and become null and void.

## Article III Representations and Warranties.

Mortgagor makes the following representations and warranties to Mortgagee, except as set forth in any title commitment, survey, property condition report or environmental report provided to Mortgagee in connection with the closing of the Loan:

### Section 3.1 Title to Real Property.

Mortgagor (a) owns fee simple title to the Real Property, (b) owns all of the beneficial and equitable interest in and to the Real Property, and (c) is lawfully seized and possessed of the Real Property. Mortgagor has the right and authority to mortgage and convey the Real Property and does hereby mortgage and convey the Real Property to Mortgagee. The Real Property is subject to no Encumbrances other than the Permitted Encumbrances.

### Section 3.2 Title to Other Property.

Mortgagor has good title to the Personalty, and the Personalty is not subject to any Encumbrance other than the Permitted Encumbrances. None of the Leases or Rents are subject to any Encumbrance other than the Permitted Encumbrances.

### Section 3.3 Property Assessments.

The Real Property is assessed for purposes of Property Assessments as a separate and distinct parcel from any other property, such that the Real Property shall never become subject to the Lien of any Property Assessments levied or assessed against any property other than the Real Property.

### Section 3.4 Independence of the Real Property.

No buildings or other improvements on property not covered by this Mortgage rely on the Real Property or any interest therein to fulfill any requirement of any Governmental Authority for the existence

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of such property, building or improvements; and none of the Real Property relies, or will rely, on any property not covered by this Mortgage or any interest therein to fulfill any requirement of any Governmental Authority. The Real Property has been properly subdivided from all other property in accordance with the requirements of any applicable Governmental Authorities.

## Section 3.5 Existing Improvements.

To Mortgagor's best knowledge, the existing Improvements, if any, were constructed, and are being used and maintained, in all material respects, in accordance with all applicable Laws, including zoning Laws.

## Section 3.6 Leases and Tenants.

The Leases are valid and are in full force and effect, and Mortgagor is not in material default under any of the terms thereof. Mortgagor has title to and the right to assign the Leases and Rents to Mortgagee, and no other assignment of the Leases or Rents has been granted.

## Section 3.7 Farm Products.

None of the Personal Property constitutes, or is the proceeds of, "farm products" as defined in Section 9-102(a) of the Illinois UCC.

## Article IV Affirmative Covenants.

### Section 4.1 Obligations.

Mortgagor agrees to promptly pay and perform all of the Obligations, time being of the essence in each case.

### Section 4.2 Property Assessments; Documentary Taxes.

Mortgagor (a) will promptly pay in full and discharge all Property Assessments, and (b) will furnish to Mortgagee, upon demand, the receipted bills or other reasonable evidence of payment upon request for such Property Assessments prior to the day upon which the same shall become delinquent. Property Assessments shall be considered delinquent as of the first day any interest or penalty commences to accrue thereon. Mortgagor will promptly pay all stamp, documentary, recordation, transfer and intangible taxes and all other taxes that may from time to time be required to be paid with respect to the Loan, the Note, this Mortgage or any of the other Loan Documents.

### Section 4.3 Permitted Contests.

Mortgagor shall not be required to pay any of the Property Assessments, or to comply with any Law, so long as Mortgagor shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to prevent the collection of, or other realization upon, such Property Assessments or enforcement of the Law so contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, (c) Mortgagee is not subjected to any Claim as a result of such contest, and (d) Mortgagor provides assurances satisfactory to Mortgagee (including the establishment of an appropriate reserve account with Mortgagee) of its ability to pay such Property Assessments or comply with such Law in the event Mortgagor is unsuccessful in its contest.

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Each such contest shall be promptly prosecuted to final conclusion or settlement, and Mortgagor shall indemnify and save Mortgagee harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Mortgagor shall comply with such Law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

## Section 4.4 Compliance with Laws.

Mortgagor will use commercially reasonable efforts to comply in all material respects with, and not violate, and cause to be complied with and not violated, all present and future Laws applicable to the Property and its use and operation.

## Section 4.5 Maintenance and Repair of the Property.

Mortgagor, at Mortgagor's sole expense, will (a) keep and maintain Improvements and Accessories in good condition, working order and repair, and (b) make all necessary or appropriate repairs and Additions to Improvements and Accessories, so that each part of the Improvements and all of the Accessories shall at all times be in good condition and fit and proper for the respective purposes for which they were originally intended, erected, or installed.

## Section 4.6 Additions to Security.

All right, title and interest of Mortgagor in and to all Improvements and Additions hereafter constructed or placed on the Property and in and to any Accessories hereafter acquired shall, without any further Mortgage, conveyance, assignment or other act by Mortgagor, become subject to the Lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clauses hereof. Mortgagor agrees, however, to execute and deliver to Mortgagee such further documents as may be required by the terms of the Loan Agreement and the other Loan Documents.

## Section 4.7 Subrogation.

To the extent permitted by Law, Mortgagee shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by Mortgagee whether or not from the proceeds of the Loan. This Section shall not be deemed or construed, however, to obligate Mortgagor to pay or discharge any Lien.

## Section 4.8 Leases.

(a) Except as expressly permitted in the Loan Agreement, Mortgagor shall not enter into any Lease with respect to all or any portion of the Property without the prior written consent of Mortgagee.

(b) Mortgagee shall not be obligated to perform or discharge any obligation of Mortgagor under any Lease. The assignment of Leases provided for in this Mortgage in no manner places on Mortgagee any responsibility for (i) the control, care, management or repair of the Property, (ii) the carrying out of any of the terms and conditions of the Leases, (iii) any waste committed on the Property, or (iv) any dangerous or defective condition on the Property (whether known or unknown).

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(c) No approval of any Lease by Mortgagee shall be for any purpose other than to protect Mortgagee's security and to preserve Mortgagee's rights under the Loan Documents, and no such approval shall result in a waiver of a Default or Event of Default.

## Article V

### Negative Covenants.

#### Section 5.1 Encumbrances.

(a) Except as otherwise provided in the Loan Agreement, Mortgagor will not permit any of the Property to become subject to any Encumbrance other than the Permitted Encumbrances. Within thirty (30) days after Mortgagor has knowledge of the filing of any mechanic's lien or other Lien or Encumbrance against the Property, Mortgagor will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as Mortgagee's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Mortgagee in its sole and absolute discretion, Mortgagor shall have the right to contest in good faith any Claim, Lien or Encumbrance, provided that Mortgagor does so diligently and without prejudice to Mortgagee. Mortgagor shall give Mortgagee Notice of any default under any Lien and Notice of any foreclosure or threat of foreclosure with respect to any of the Property.

(b) Mortgagor shall pay and promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Mortgage and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Mortgagor shall have the right to contest any such claim or lien so long as Mortgagor if required by Mortgagee, deposits a bond as contemplated by 770 ILCS 60/38.1 (or delivers other security reasonably satisfactory to Mortgagee) and otherwise complies with the requirements of Illinois law to release the Property from such lien or claim. Notwithstanding the foregoing, Mortgagor may (A) with the prior written consent of Mortgagee, contest the amount of any such lien or claim related to services, labor or materials in accordance with 770 ILCS 60/38.1 without previously recording a bond or (B) appropriately bond or reserve (in cash deposited with Mortgagee) for any such lien or claim, as determined in Mortgagee's reasonable discretion.

(c) If Mortgagor shall fail to remove and discharge any such lien, encumbrance or charge, or if Mortgagor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Property from the effect of such lien, encumbrance or charge by obtaining and depositing a bond in the name of and for the account of Mortgagor that complies with the requirements of Illinois law and recording such bond in the name of Mortgagor as contemplated by 770 ILCS 60/38.1 or other applicable law, or otherwise by giving security for such claim. Mortgagor shall, immediately upon demand therefor by Mortgagee, pay to Mortgagee an amount equal to all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

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## Section 5.2 Transfer of the Property.

Except as otherwise permitted or provided in the Loan Agreement, Mortgagor will not Transfer, or contract to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for certain Transfers related to Condemnation proceedings or Transfers of the Accessories expressly permitted in this Mortgage and transfers of all or a portion of the Property expressly permitted in the Loan Agreement). Notwithstanding the foregoing, Transfers of direct or indirect membership interests in Mortgagor may be made (direct or indirect) without notice to or consent of Mortgagee, provided that, at all times, Guarantor owns or controls directly or indirectly at least fifty-one percent (51%) of the membership interests of Mortgagor.

## Section 5.3 Removal, Demolition or Alteration of Accessories and Improvements.

Except to the extent permitted by the following sentence or in the Loan Agreement, no Improvements or material Accessories shall be removed, demolished or materially altered without the prior written consent of Mortgagee. Mortgagor may remove and dispose of, free from the Lien of this Mortgage, such Accessories as from time to time become worn out or obsolete.

## Section 5.4 Additional Improvements.

Except as permitted in the Loan Agreement and without the prior written consent of Mortgagee, Mortgagor will not construct any Improvements other than (a) those presently on the Land, (b) those described in the Loan Agreement and (c) the installation of rooftop solar panel systems, not owned by Mortgagor, if installed and operated pursuant to a written agreement. Mortgagor will complete and pay for, within a reasonable time, any Improvements which Mortgagor is permitted to construct on the Land. Mortgagor will construct and erect any permitted Improvements (a) strictly in accordance with all applicable Laws and any private restrictive covenants, (b) entirely on lots or parcels of the Land, (c) so as not to encroach upon any easement or right of way or upon the land of others, and (d) wholly within any building restriction and setback lines applicable to the Land.

## Section 5.5 Restrictive Covenants, Zoning, etc.

Except as permitted in the Loan Agreement and without the prior written consent of Mortgagee, Mortgagor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Property. Mortgagor (a) will promptly perform and observe, and cause to be performed and observed, all of the terms and conditions of all agreements affecting the Property in all material respects, and (b) will use commercially reasonable efforts to do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

## Article VI Events of Default.

The occurrence or happening, from time to time, of any one or more of the following shall constitute an Event of Default under this Mortgage:

### Section 6.1 Payment Obligations.

Mortgagor fails to pay any of the Obligations when due, whether on the scheduled due date or upon acceleration, maturity or otherwise, and Mortgagor fails to make such payment within five (5) days

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of when due and thereafter within three (3) Banking Days following written notice from Mortgagee to Mortgagor.

## Section 6.2 Transfers.

Mortgagor Transfers, or contracts to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for certain Transfers related to Condemnation proceedings or Transfers of the Accessories expressly permitted under this Mortgage and transfers of all or a portion of the Property expressly permitted in the Loan Agreement). Notwithstanding the foregoing, Transfers of direct or indirect membership interests in Mortgagor may be made (direct or indirect) without notice to or consent of Mortgagee, provided that, at all times, Guarantor owns or controls directly or indirectly at least fifty-one percent (51%) in the membership interests of Mortgagor. Any Transfer of membership interests in Mortgagor that results in Guarantor owning or controlling less than such percentage shall be deemed to be a prohibited Transfer of the Property constituting an Event of Default.

## Section 6.3 Other Obligations.

Mortgagor fails to promptly perform or comply with any of the Obligations set forth in this Mortgage (other than those expressly described in other Sections of this Article VI), and such failure continues uncured for a period of thirty (30) days after Notice from Mortgagee to Mortgagor, unless (a) such failure, by its nature, is not capable of being cured within such period, and (b) within such period, Mortgagor commences to cure such failure and thereafter diligently prosecutes the cure thereof, and (c) Mortgagor causes such failure to be cured no later than ninety (90) days after the date of such Notice from Mortgagee.

## Section 6.4 Event of Default Under Other Loan Documents.

An Event of Default (as defined therein) occurs under the Note or the Loan Agreement, or Mortgagor or Guarantor fails to promptly pay, perform, observe or comply with any obligation or agreement contained in any of the other Loan Documents (within any applicable grace or cure period).

## Section 6.5 Change in Zoning or Public Restriction.

Any final non-appealable change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Loan Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed, and use of the Property for its intended purposes would be actually prohibited or materially limited during the term of the Loan and such change would have a material adverse effect on all of the Loan Collateral (as defined in the Loan Agreement), provided, however, that the same shall only constitute an Event of Default if it continues for a period of more than thirty (30) days of the first date of such violation.

## Section 6.6 Default Under Other Lien Documents.

An Event of Default (as defined therein) after notice and cure occurs under any other mortgage, deed of trust or security agreement covering the Property, including any Permitted Encumbrances.

## Section 6.7 Execution; Attachment.

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Any execution or attachment is levied against any of the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after Mortgagor has actual notice of the same.

## Article VII Rights and Remedies.

Upon the occurrence and during the continuance of any Event of Default, Mortgagee shall have the right, in addition to any other rights or remedies available to Mortgagee under any of the Loan Documents or applicable Law, to exercise any one or more of the following rights, powers or remedies:

### Section 7.1 Acceleration.

Mortgagee may accelerate all Obligations under the Loan Documents whereupon such Obligations shall become immediately due and payable, without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby expressly waived by Mortgagor)

### Section 7.2 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) Mortgagee may demand that Mortgagor surrender the actual possession of the Property and upon such demand, Mortgagor shall forthwith surrender same to Mortgagee and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Property and may exclude Mortgagor and its agents and employees wholly therefrom.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or order conferring on Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession to Mortgagee, to the entry of which judgment or decree the Mortgagor hereby specifically consents.

(c) Mortgagee may from time to time: (i) continue and complete construction of, hold, store, use, operate, manage and control the Property and conduct the business thereof; (ii) make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional Personalty; (iii) insure or keep the Property insured; (iv) exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same; and (v) enter into agreements with others (including, without limitation, new Leases or amendments, extensions, or cancellations to existing Leases) all as Mortgagee from time to time may determine in its sole discretion. Mortgagor hereby constitutes and irrevocably appoints Mortgagee its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor, but at the option of said attorney-in-fact, to do any and all acts and execute any and all agreements that Mortgagee may deem necessary or proper to implement and perform any and all of the foregoing.

(d) The Mortgagee may, with or without taking possession of the Property as hereinabove provided, collect and receive all the Rents therefrom, including those past due as well as those accruing thereafter, and shall apply the monies so received first, to the payment of all costs and expenses (including, without limitation, costs of arbitration, reasonable attorneys'



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fees and expenses) incurred by Mortgagee and its agents in connection with the collection of same, whether or not in possession of the Property, and second, in such order as Mortgagee may elect, to the payment of the Obligations.

## Section 7.3 Proceedings To Recover Sums Due.

(a) If any installment or part of any Obligation shall fail to be paid when due subject to notice and cure provisions provided in the Loan Documents, Mortgagee shall be entitled to sue for and to recover judgment against the Mortgagor for the amount so due and unpaid together with all costs and expenses (including, without limitation, costs of arbitration, reasonable attorneys' fees and expenses) incurred by Mortgagee in connection with such proceeding, together with interest thereon at the default rate under the Note from the date incurred by Mortgagee. Any such judgment against the Mortgagor shall bear interest at the maximum rate permitted by Law. All such costs and expenses shall be secured by this Mortgage and shall be due and payable by Mortgagor immediately.

(b) If Mortgagor shall fail to pay upon the Mortgagee's demand, after acceleration as provided herein, all of the unpaid Obligations, together with all accrued interest thereon, Mortgagee shall be entitled to sue for and to recover judgment against the Mortgagor for the entire amount so due and unpaid together with all costs and expenses (including, without limitation, costs of arbitration, reasonable attorneys' fees and expenses) incurred by Mortgagee in connection with such proceeding, together with interest thereon at the default rate under the Note from the date incurred by Mortgagee. Any such judgment against the Mortgagor shall bear interest at the maximum rate permitted by Law. All such costs and expenses shall be secured by this Mortgage and shall be payable by Mortgagor immediately. Mortgagee's right under this subsection may be exercised by Mortgagee either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, including appellate proceedings.

(c) No recovery of any judgment as provided in subsections (i) and (ii) above and no attachment or levy of any execution upon any of the Property or any other property shall in any way affect the lien of this Mortgage upon the Property or any part thereof, or any lien, rights, powers, or remedies of Mortgagee hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

## Section 7.4 Foreclosure.

(a) Mortgagee may institute proceedings for the partial or complete foreclosure of this Mortgage and Mortgagee may, pursuant to any final judgment of foreclosure, sell the Property as an entirety or in separate lots, units, or parcels.

(b) In case of a foreclosure sale of all or any part of the Property, the proceeds of sale shall be applied in accordance with Section 7.14 hereof, and the Mortgagee shall be entitled to seek a deficiency judgment against the Mortgagor to enforce payment of any and all Obligations then remaining due and unpaid, together with interest thereon, and to recover a judgment against the Mortgagor therefor, which judgment shall bear interest at the maximum rate permitted by Law.

(c) The Mortgagee is authorized to foreclose this Mortgage subject to the rights of any tenants of the Property, or Mortgagee may elect which tenants Mortgagee desires to name as parties defendant in such foreclosure and failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by the

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Mortgagor to be, a defense to any proceedings instituted by the Mortgagee to collect the unpaid Obligations or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

(d) In the event of a foreclosure of this Mortgage or any other mortgage, deed to secure debt, deed of trust or similar security instrument securing the Obligations, the Obligations then due Mortgagee shall not be merged into any decree of foreclosure entered by the court or extinguished by such foreclosure, and Mortgagee may concurrently or subsequently seek to foreclose one or more mortgages, deeds to secure debt, deeds of trust or similar security instruments which also secure said Obligations.

(e) It is the express intention of Mortgagor and Mortgagee that the rights, remedies, powers and authorities conferred upon the Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Law (735 ILCS § 5/15-1101 et seq.) (hereinafter referred to as the "IMFL") and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage shall be inconsistent with any provision in the IMFL, the provisions of the IMFL shall take precedent over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF.

(f) The powers, authorities and duties conferred upon the Mortgagee, in the event that the Mortgagee takes possession of the Property, and upon a receiver hereunder, shall also include all such powers, authority and duties as may be conferred upon a "mortgage-in-possession" or receiver under and pursuant to the IMFL. To the extent the IMFL may limit the powers, authorities and duties purportedly conferred hereby, such power, authorities and duties shall include those allowed, and be limited as proscribed by the IMFL at the time of their exercise or discharge.

## Section 7.5 Receiver.

Mortgagee may apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Property, collect the Rents therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws of the State. To the extent permitted by Law, the right of the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Property or the solvency or insolvency of Mortgagor. The expenses, including receiver's fees, attorneys' fees, costs and agent's commission incurred pursuant to the powers herein contained, together with interest thereon at the default rate under the Note, shall be secured hereby and shall be due and payable by Mortgagor immediately without notice or demand. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Mortgage to the Mortgagee, and the Mortgagee shall have the right to offset the unpaid Obligations against any such cash or deposits in such order as Mortgagee may elect.

## Section 7.6 Uniform Commercial Code.

Mortgagee may exercise any or all of its rights and remedies under the Uniform Commercial Code-Secured Transactions as adopted by the State as in effect from time to time, (or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable law) or other applicable law as well as all other rights and remedies possessed by Mortgagee, all of which shall be cumulative. Mortgagee is hereby authorized and empowered to enter the Property or other place where

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the Personalty may be located without legal process, and to take possession of the Personalty without notice or demand, which hereby are waived to the maximum extent permitted by the laws of the State. Upon demand by Mortgagee, Mortgagor shall make the Personalty available to Mortgagee at a place reasonably convenient to Mortgagee. Mortgagee may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Any notification required by the Uniform Commercial Code shall be deemed reasonable and properly given if sent in accordance with the Notice provisions of this Mortgage at least ten (10) days before any sale or other disposition of the Personalty. Mortgagee may choose to dispose of some or all of the Property, in any combination consisting of both Personalty and Real Property, in one or more public or private sales to be held in accordance with the Law and procedures applicable to real property, as permitted by Article 9 of the Uniform Commercial Code. Mortgagor agrees that such a sale of Personalty together with Real Property constitutes a commercially reasonable sale and for such price as Mortgagee may deem commercially reasonable, any and all of the Personalty secured by this Mortgage, and any other security or property held by Mortgagee and Mortgagee may be the purchaser of any or all of the Personalty.

## Section 7.7 Oner.

Mortgagee may institute and maintain any suits and proceedings as the Mortgagee may deem advisable (i) to prevent any impairment of the Property by any acts which may be unlawful or in violation of this Mortgage, (ii) to preserve or protect its interest in the Property, and (iii) to restrain the enforcement of or compliance with any Laws that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such Laws might impair the security hereunder or be prejudicial to the Mortgagee's interest.

## Section 7.8 Remedies Cumulative and Concurrent.

No right, power or remedy of Mortgagee as provided in the Note, this Mortgage, the Guaranty, or the other Loan Documents is intended to be exclusive of any other right, power, or remedy of Mortgagee, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to Mortgagee now or hereafter existing at law or in equity and may be pursued separately, successively or together against Mortgagor, any Guarantor, or any endorser, co-maker, surety or guarantor of the Obligations, or the Property or any part thereof, or any one or more of them, at the sole discretion of Mortgagee. The failure of Mortgagee to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

## Section 7.9 Waiver, Delay or Omission.

No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of Mortgagee to exercise any right, power or remedy shall be construed to waive any such Event of Default or to constitute acquiescence therein.

## Section 7.10 Credit of Mortgagee.

To the maximum extent permitted by the laws of the State, upon any sale made under or by virtue of this Article, Mortgagee may bid for and acquire the Property, or any part thereof, and in lieu of paying cash therefor may apply to the purchase price, any portion of or all of the unpaid Obligations in such order as Mortgagee may elect.

## Section 7.11 Sale.

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Any sale or sales made under or by virtue of this Article shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of the Mortgagor and all Persons, except tenants pursuant to Leases approved by Mortgagee, claiming by, through or under Mortgagor in and to the properties and rights so sold, whether sold to Mortgagee or to others.

## Section 7.12 Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of the Property by any Governmental Authority, or other judicial proceedings affecting the Mortgagor, any Guarantor, any endorser, co-maker, surety, or guarantor of the Obligations, or any of their respective properties, the Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire unpaid Obligations at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

## Section 7.13 Waiver of Redemption, Notice, Marshalling, Etc.

Mortgagor hereby waives and releases, for itself and anyone claiming through, by, or under it, to the maximum extent permitted by the laws of the State:

- (a) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment,
- (b) unless specifically required herein, all notices of default, or Mortgagee's actual exercise of any option or remedy under the Loan Documents, or otherwise, and
- (c) any right to have the Property marshaled.

## Section 7.14 Application of Proceeds.

The proceeds of any sale of all or any portion of the Property shall be applied by Mortgagee first, to the payment of receiver's fees and expenses, if any, and to the payment of all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Mortgagee, together with interest thereon at the default rate under the Note from the date so incurred, in connection with any entry, action or proceeding under this Article and, second, in such order as Mortgagee may elect, to the payment of the Obligations. Mortgagor shall be and remain liable to Mortgagee for any difference between the net proceeds of sale and the amount of the Obligations until all of the Obligations have been paid in full.

## Section 7.15 Discontinuance of Proceedings.

If Mortgagee shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then except as may be provided in any written agreement between Mortgagor and Mortgagee providing for the discontinuance or abandonment of such proceedings, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been instituted.

## Section 7.16 Mortgagee's Actions.

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Mortgagee may, at any time without notice to any Person and without consideration, do or refrain from doing any or all of the following actions, and neither the Mortgagor, any Guarantor, any endorser, co-maker, surety or guarantor of the Obligations, nor any other Person (hereinafter in this Section collectively referred to as the "Obligor") now or hereafter liable for the payment and performance of the Obligations shall be relieved from the payment and performance thereof, unless specifically released in writing by Mortgagee: (a) renew or extend the terms of the Note, this Mortgage, the Guaranty and the other Loan Documents, or any of them; (b) forbear or extend the time for the payment or performance of any or all of the Obligations; (c) apply payments by any Obligor to the reduction of the unpaid Obligations in such manner, in such amounts, and at such times and in such order and priority as Mortgagee may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Property or any other collateral or any portion thereof now or hereafter held as security for the Obligations without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Mortgage upon the Property which is not released or substituted, or the validity and priority of any security interest of the Mortgagee in such other collateral which is not released or substituted; (f) subordinate the lien of this Mortgage or the lien of any other security interest in any other collateral now or hereafter held as security for the Obligations; (g) join in the execution of a plat or replat of the Land (provided, however, notwithstanding the foregoing, Mortgagee will join in such plat or replat of the Land so long as such plat or replat is acceptable to Mortgagee); (h) join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the Land; (i) consent to the granting of any easement on the Land; and (j) generally deal with any obligor or any other party as Mortgagee may see fit.

## Section 7.17 Right to Credit Bid.

Mortgagee shall have the right to credit bid and purchase at any foreclosure sale, UCC sale, any private or public sale and at any sale conducted under the provisions of the United States Bankruptcy Code, including Section 363 of the United States Bankruptcy Code

## Section 7.18 Other Remedies.

Mortgagee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by applicable Laws. Notwithstanding any other provision hereof, Mortgagee shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee.

## Article VIII Intentionally Omitted.

## Article IX Partial Releases.

### Section 9.1 Partial Release by Mortgagee; Dedications and Easements.

So long as no Default or Event of Default then exists, and Mortgagor obtains any required written joinders or consents from any other parties who have interests in any relevant portions of the Property, Mortgagee shall not unreasonably withhold its consent to, approval of or joinder (on a quitclaim basis only, without creating potential liability for Mortgagee) in any customary and standard roadway or utility easements or similar dedications that are reasonably necessary to complete the Improvements, or to otherwise properly develop the Property, or to satisfy any customary and standard legal requirements. To the extent any such easements or dedications are granted or made without receipt by Mortgagor of consideration therefor, Mortgagee shall provide appropriate partial releases from the lien of this Mortgage

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without charge to Mortgagor except for the reimbursement of any Mortgagee costs and expenses in connection therewith.

## Article X Miscellaneous.

### Section 10.1 Rights, Powers and Remedies Cumulative.

Each right, power and remedy of Mortgagee as provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Mortgagee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Mortgagee of any or all such other rights, powers or remedies.

### Section 10.2 No Waiver by Mortgagee.

No course of dealing or conduct by or among Mortgagee and Mortgagor shall be effective to amend, modify or change any provisions of this Mortgage or the other Loan Documents. No failure or delay by Mortgagee to insist upon the strict performance of any term, covenant or agreement of this Mortgage or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Mortgagee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, Mortgagee shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Neither Mortgagor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or of any other Person to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Mortgagee, or (c) Mortgagee's extending the time of payment or modifying the terms of this Mortgage or any of the other Loan Documents without first having obtained the consent of Mortgagor or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Mortgagee may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Mortgage or any of the other Loan Documents without in any way impairing or affecting the Lien of this Mortgage or the priority of this Mortgage over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Mortgage. Mortgagee may resort to the security or collateral described in this Mortgage or any of the other Loan Documents in such order and manner as Mortgagee may elect in its sole discretion.

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## Section 10.3 Waivers and Agreements Regarding Remedies.

To the full extent Mortgagor may do so, Mortgagor hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, exemption from civil process, extension of time for payment and notice of election to accelerate the Obligations;

(b) waives all rights to a marshalling of the assets of Mortgagor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Property without any prior or different resort for collection, or the right of Mortgagee to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

## Section 10.4 Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the Land and shall apply to and bind the successors and assigns of Mortgagor (including any permitted subsequent owner of the Property), and inure to the benefit of Mortgagee, its successors and assigns.

## Section 10.5 No Warranty by Mortgagee.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Mortgagor or to be given to Mortgagee pursuant to this Mortgage or any of the other Loan Documents, Mortgagee shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Mortgagee.

## Section 10.6 Amendments.

This Mortgage may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

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## Section 10.7 Severability.

In the event any one or more of the provisions of this Mortgage or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Loan Documents operates or would prospectively operate to invalidate this Mortgage or any of the other Loan Documents, then and in either of those events, at the option of Mortgagee, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

## Section 10.8 Notices.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the applicable address specified in the Preamble to this Mortgage. Any Notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, provided that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Mortgage or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

## Section 10.9 Joint and Several Liability.

If Mortgagor consists of two (2) or more Persons, the term "Mortgagor" shall also refer to all Persons signing this Mortgage as Mortgagor, and to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. Mortgagee may release, compromise, modify or settle with any of Mortgagor, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the others of Mortgagor hereunder or under the Note. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, any of Mortgagor.

## Section 10.10 Rules of Construction.

The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Mortgage in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants." The words "include" and "including" shall be interpreted as if followed by the words "without limitation." The headings of this Mortgage are for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles or Sections are to the respective Articles or Sections contained in this Mortgage unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial Code of the State, as in effect from time to time, which is not defined in this Mortgage shall have the meaning ascribed to that term in the Uniform Commercial Code of the



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State. If a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term shall have the meaning specified in Article 9.

## Section 10.11 Governing Law; Forum.

The validity of this Mortgage and the construction, interpretation, and enforcement hereof, and the rights of the parties hereto with respect to all matters arising hereunder or related hereto, shall be determined under, governed by, and construed in accordance with the Laws of the State without giving effect to conflict of laws principles (regardless of the location, residence, domicile or place of business of Mortgagor or any constituent principal thereof or the location of any collateral herefor). With regard to the exercise of remedies, the parties agree that all actions or proceedings arising in connection with this Mortgage shall be tried and litigated only in the state and federal courts located in the County of Salt Lake, State of Utah or, at the sole option of Mortgagee, in the state and federal courts located in either the County of Cook, State of Illinois or any other court in which Mortgagee shall initiate legal or equitable proceedings and which has subject matter jurisdiction over the matter in controversy. Mortgagor waives, to the extent permitted under applicable Law, any right it may have to assert the doctrine of forum non conveniens or any similar doctrine or to object to venue to the extent any proceeding is brought in accordance with this Section 10.11. Mortgagor hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Mortgagor hereby consents to process being served in any suit, action or proceeding in any state or federal court sitting in the state(s) specified above by (a) the mailing of a copy thereof certified or registered mail, return receipt requested, directed to Mortgagor at the address for notice to Mortgagor stated in the Preamble to this Mortgage, or at a subsequent address of which Mortgagee received actual notice from Mortgagor in accordance with the Loan Documents, and (b) serving a copy thereof personally upon the registered agent of Mortgagor (currently Corporation Service Company), the agent hereby designated and appointed by Mortgagor as Mortgagor's agent for service of process. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by Law or limit the right of Mortgagee to bring proceedings against Mortgagor in any other court or jurisdiction.

## Section 10.12 Entire Agreement.

The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Mortgagee to make the Loan are merged into the Loan Documents. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

## Article XI

### State Specific Provisions

#### Section 11.1 Business Loan.

Mortgagor declares represents, certifies and agrees that the Loan proceeds will be used solely for business purposes and that the Loan is exempt from interest limitations pursuant to the provisions of 815 ILCS 205/4.

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## Section 11.2 Protective Advances.

(a) Advances, disbursements and expenditures made by Mortgagee for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Mortgage, constitute "Protective Advances":

(i) all advances by Mortgagee in accordance with the terms of this Mortgage to: (A) register, preserve or maintain, repair, restore or rebuild the buildings located on the Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of 735 ILCS Section 5/15-1302;

(ii) payments by Mortgagee of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof (collectively, "Taxes"); (C) other obligations authorized by the Loan Documents; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Property, as referred to in 735 ILCS Section 5/15-1505 of the Foreclosure Law (as defined below);

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under any prior liens

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 735 ILCS Sections 5/15-1504(d)(2) and 5/15-1510; (B) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagees hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Mortgagees' fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of 735 ILCS Section 5/15-1508;

(vi) advances of any amount required to make up a deficiency in deposits for installments of Taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(vii) expenses properly deductible from proceeds of sale as referred to in Subsections (a) and (b) of 735 ILCS Section 5/15-1512; and

(viii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver are in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes

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possession of the Mortgaged Premises imposed by Subsection (c)(1) of 735 ILCS Section 5/15-1704; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Premises; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Premises; or (E) pursuant to a lease or other agreement for occupancy of the Property.

(b) All Protective Advances shall be additional Secured Obligations and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate (as defined in the Loan Agreement”).

(c) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of 735 ILCS Section 5/15-1302.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Illinois Mortgage Foreclosure Laws, 735 ILCS Section 5/15-1101, et. seq. (the “Foreclosure Law”), apply to and be included in the:

- (i) determination of the amount of Secured Obligations at any time;
- (ii) indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Foreclosure Law;
- (iv) application of income in the hands of any receiver or mortgagee in possession; and
- (v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Foreclosure Law.

## Section 11.3 Waiver of the Right of Redemption.

Mortgagor acknowledges that the Mortgaged Premises does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Foreclosure Law, or residential real estate, as defined in Section 5/15-1219 of the Foreclosure Law. To the fullest extent permitted by law, Mortgagor, on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to Section 5/15-1601(b) of the Foreclosure Laws, and (ii) any and all rights of reinstatement.

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## Section 11.4 Illinois Collateral Protection Act.

Mortgagor is hereby notified pursuant to the Illinois Collateral Protection Act (815 ILCS 180/1 et. seq.) that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by the Loan Agreement and this Mortgage, Mortgagee may purchase the required insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Premises. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by the Loan Agreement and this Mortgage. If Mortgagee purchases insurance for the Mortgaged Premises, Mortgagor will be responsible for the costs of that insurance, including interest on the amount so paid by Mortgagee at the Default Rate until paid to Mortgagee and any other charges Mortgagee may impose in connection with the placement of the insurance until the effective date of the cancellation or the expiration of the insurance. The costs of the insurance shall be added to Mortgagor's total outstanding balance or obligation and shall constitute additional indebtedness. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

## Section 11.5 Maximum Indebtedness.

Notwithstanding anything contained herein to the contrary, in no event will the Obligations exceed an amount equal to Fifty Million and 00/100 Dollars (\$50,000,000); provided, however, in no event will the Mortgagee be obligated to advance funds in excess of the face amount of the Note.

## Section 11.6 Construction Loan.

The Note evidences a debt created by one or more disbursements made by the Mortgagee to the Mortgagor to finance the cost of the construction of certain improvements upon the Property in accordance with the provisions of the Loan Agreement; therefore, this Mortgage is a construction mortgage as such term is defined in the Illinois UCC. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement will constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the Obligations immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended will be so much additional Obligations and any money expended in excess of the amount of the original principal will be immediately due and payable with interest until paid at the Default Rate. Upon completion of the improvements described in the Loan Agreement free and clear of mechanic's lien claims, and upon compliance with all of the terms, conditions and covenants of the Loan Agreement, the Loan Agreement and the terms of this Section 11.6 will become null and void and of no further force and effect. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement will apply and take precedence over this Mortgage.

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## Exhibit A

### Legal Description

All that parcel or parcels of real property located in Cook County, State of Illinois, and more particularly described as follows:

PARCEL 1:

LOT 1 IN WINDY POINT OF SCHAUMBURG A SUBDIVISION OF PART OF SECTION 12, TOWNSHIP 41 NORTH RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 99137488, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

PERPETUAL NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS, UTILITIES, STORM DRAINAGE, PARKING AND SIGNAGE FOR THE BENEFIT OF PARCEL 1 AFORESAID AS SET FORTH IN THE DECLARATION OF COVENANTS, RESTRICTIONS, RECIPROCAL RIGHTS AND EASEMENTS FOR WINDY POINT OF SCHAUMBURG SUBDIVISION RECORDED FEBRUARY 9, 1999, AS DOCUMENT NUMBER 99137488, AND AS AMENDED BY FIRST AMENDMENT RECORDED AS DOCUMENT NUMBER 99474175 AND BY SECOND AMENDMENT RECORDED AS DOCUMENT NUMBER 09025166, ASSIGNMENT OF DECLARANT'S RIGHTS EXECUTED BY WINDY POINT OF SCHAUMBURG, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO WELLS OPERATING PARTNERSHIP, L.P., A DELAWARE LIMITED PARTNERSHIP, RECORDED JANUARY 3, 2002 AS DOCUMENT 0020011721.

Common Street Address:

1600 McConnor Pkway  
Schaumburg, IL

0712400052