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\*2203322004\*

Doc# 2203322004 Fee \$147.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/02/2022 09:29 AM PG: 1 OF 49

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: PIN: 17-16-107-028-0000

Address:

Street: 550 W. Adams Street and 125 S. Jefferson Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60661

Lender: DEUTSCHE PFANDBRIEFBANK AG

Borrower: GLL BVK WEST ADAMS, L.P.

Loan / Mortgage Amount: \$92,500,000.00

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

Certificate number: ACF7AD3F-E451-46AA-ADC2-CB7BB8F804B6

Execution date: 1/28/2022

N  
49

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Execution Version

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

King & Spalding LLP  
1185 Avenue of the Americas  
New York, New York 10036  
Attention: Sebastian Kaufmann, Esq.

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

MORTGAGOR: GLL BVK WEST ADAMS, L.P., a Delaware limited partnership

MORTGAGEE: DEUTSCHE PFANDBRIEFBANK AG, a German banking corporation,  
as Agent and Lender

DATE: January 28, 2022

Street Address: 550 West Adams Street  
Chicago, Illinois 60661

This Document Serves as a Fixture Filing under the Illinois Uniform Commercial Code, Chapter 810 ILCS 5/9-502(b) *et seq.* Mortgagor's Organizational Identification Number: 5673100.

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4 Feb 2022  
CCHT@108391171

Property of Cook County Clerk's Office

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

**THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Mortgage**") is made as of this 28th day of January, 2022, by **GLL BVK WEST ADAMS, L.P.**, a Delaware limited partnership, having its principal place of business at c/o GLL Real Estate Partners, Inc., 200 South Orange Avenue, Suite 1375, Orlando, Florida 32801, as mortgagor ("**Mortgagor**") to **DEUTSCHE PFANDBRIEFBANK AG**, having an office at Parkring 28, 85748 Garching, Germany, as administrative agent (together with its successors and/or assigns in such capacity, "**Agent**") for itself as a lender and the other lenders from time to time party to the Loan Agreement (as hereafter defined) (collectively, together with their respective successors and/or assigns, "**Lender**"), as mortgagee ("**Mortgagee**").

### WITNESSETH:

WHEREAS, Mortgagor is the fee owner of the Real Property (as hereafter defined) and owner of all of the other Mortgaged Property (as hereafter defined);

WHEREAS, this Mortgage is given to secure a loan in the principal sum of up to Ninety-Two Million Five Hundred Thousand and 00/100 Dollars (\$92,500,000.00) (the "**Loan**") or so much thereof as may be advanced pursuant to that certain Loan Agreement, dated as of the date hereof, between Mortgagor, Agent and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"); capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Loan Agreement;

WHEREAS, the Loan is evidenced by that certain Promissory Note, in the aggregate principal amount of the Loan, dated as of the date hereof, made by Mortgagor to Lender (such note, together with any other note(s) evidencing the Loan from time to time made by Mortgagor to any lender, in each case together with all extensions, renewals, replacements, substitutions, split notes, restatements or modifications thereof being hereinafter collectively referred to as the "**Note**");

WHEREAS, this Mortgage is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Mortgagor of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents of even date herewith made by Mortgagor in favor of Mortgagee delivered in connection with this Mortgage (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Assignment of Leases**"), including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage (the Loan Agreement, the Note, this Mortgage, the Assignment of Leases and Rents, the Environmental Indemnity, the Assignment of Contracts, the Assignment of Management

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Agreement, the Clearing Account Agreement, any other account control or cash management agreement, the Fee Letter, any Officer's Certificate, the UCC Financing Statements, any disbursement request, and all other agreements, certificates or other documents now or hereafter evidencing or securing or entered into by Mortgagor or any Affiliate of Mortgagor in connection with the Loan (including all additional mortgages, deeds of trust, deeds to secure debt and assignments of leases and rents) or executed or delivered in connection therewith, are hereinafter referred to collectively as the "**Loan Documents**";

WHEREAS, Mortgagor desires to grant this Mortgage as security for the Obligations (as hereinafter defined); and

WHEREAS, Mortgagor and Mortgagee intend these Recitals to be a material part of this Mortgage.

NOW THEREFORE, in consideration of the making of the Loan by Mortgagee and the covenants, agreements, representations and warranties set forth in this Mortgage, it is hereby agreed as follows:

## ARTICLE 1

### **GRANTS OF SECURITY**

#### Section 1.1 Property Mortgaged.

Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Mortgagee, with and the right of entry and possession for the benefit of Mortgagee as Mortgagee in and to all of the property, rights, interests and estates now owned, or hereafter acquired by Mortgagor, if any, (collectively, the "**Mortgaged Property**") to the following:

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the Lien of this Mortgage;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, permits, licenses, rights of way and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any

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nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and/or the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, at law, in equity or otherwise, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All “goods” and “equipment,” as such terms are defined in Article 9 of the Uniform Commercial Code (as defined herein), now owned or hereafter acquired by Mortgagor, which are used at or in connection with the Improvements or the Land or are located thereon or therein (including, without limitation, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Mortgagor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants (as defined herein) under Leases (as defined herein) except to the extent that Mortgagor shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Mortgagor which is so related to the Land and/or Improvements forming part of the Mortgaged Property that it is deemed fixtures of real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Mortgaged Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, without limitation, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the “**Fixtures**”). Notwithstanding the foregoing, “Fixtures” shall not include any property which Tenants are entitled to remove pursuant to Leases except to the extent that Mortgagor shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles (including payment intangibles), contract rights, accounts, accounts receivable, deposit accounts, instruments, investment property, commercial tort claims, letter of credit rights, letters of credit, money, documents, chattel paper, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code

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(as defined herein)), other than Fixtures, which are now or hereafter owned by Mortgagor, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the “**Personal Property**”), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Mortgaged Property is located (the “**Uniform Commercial Code**”), superior in Lien to the Lien of this Mortgage and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases, licenses, franchises, concessions or grants of other possessory interests, tenancies, and any other agreements affecting the use, possession, enjoyment or occupancy of the Land and the Improvements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the “**Bankruptcy Code**”) (collectively, the “**Leases**”) and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, moneys payable as damages or in lieu of rent or rent equivalents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, deposits, accounts and receipts from the Land and the Improvements whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt); as used herein, “**Tenant**” shall mean any Person obligated by contract or otherwise to pay monies (including a percentage of gross income, revenue or profits) under any Lease now or hereafter affecting all or any part of the Mortgaged Property; as used herein, “**Person**” shall mean any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other entity, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing;

(i) Condemnation Awards. All awards, compensation or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Mortgaged Property or any portion thereof, by reason of any taking or Condemnation, whether from the exercise of the right of eminent domain (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

(j) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in Real Estate Taxes charged against the Mortgaged Property;



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(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, Net Proceeds and Net Restoration Awards, into cash or liquidation claims.

(m) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

(n) Agreements. All agreements (including all management and franchise agreements), contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default pursuant to any Loan Document, to receive and collect any sums payable to Mortgagor thereunder;

(o) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Mortgaged Property.

(p) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Mortgaged Property, including, without limitation, the Clearing Account, the Cash Management Account and all other Accounts established or maintained pursuant to the Loan Agreement or Cash Management Agreement, the together with all deposits or wire transfers made to such accounts, all cash, money, checks, drafts, certificates, securities, investment property, products, distributions or dividends or substitutions thereon and thereof;

(q) Letters of Credit. All letters of credit, all letter of credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter acquires relating to the Mortgaged Property, rights, titles and interests referred to in this Section 1.1 **Error! Reference source not found.**; and

(r) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (q) above.

AND without limiting any of the other provisions of this Mortgage, to the extent permitted by applicable law, Mortgagor expressly grants to Mortgagee, as secured party, a security interest in the portion of the Mortgaged Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures are collectively referred to herein as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Mortgage be deemed conclusively to be real estate and mortgaged hereby.

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## Section 1.2 Assignment of Leases and Rents.

Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases and Section 7.1(h) of this Mortgage, Mortgagee grants to Mortgagor a revocable license to exercise all of the rights of the landlord under the Leases and to perform all of the obligations of the landlord under the Leases, including the right to collect, receive, use and enjoy the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt (as hereinafter defined) and the Other Obligations (as hereinafter defined), for use in the payment of such sums.

## Section 1.3 Security Agreement.

This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. By executing and delivering this Mortgage, Mortgagor hereby grants to Mortgagee, as security for the Obligations (defined herein), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Mortgaged Property, whether now owned or hereafter acquired, to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (such portion of the Mortgaged Property so subject to the Uniform Commercial Code shall be referred to herein as the "**Collateral**"). If an Event of Default shall occur and be continuing, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limitation, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee after the occurrence and during the continuance of an Event of Default, Mortgagor shall, at its expense, assemble the Collateral and make it available to Mortgagee at a convenient place (at the Land if tangible property) reasonably acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand therefor any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) business days (any day other than Saturday or Sunday or any other day on which commercial banks located in New York, New York, are authorized or required by law to close, hereinafter, "**Business Days**") prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Mortgagee to the payment of the Debt in such order, priority and proportions as Mortgagee in its discretion shall deem proper. The principal place of business of Mortgagor (Debtor) is as set forth on page one hereof and the address of Mortgagee (Secured Party) is as set forth on page one hereof.



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## Section 1.4 Fixture Filing.

Certain of the Mortgaged Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Mortgage, and this Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement naming Mortgagor as the Debtor and Mortgagee as the Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Mortgaged Property that is or may become fixtures (as provided further herein).

## Section 1.5 Pledges of Monies Held.

Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter held by Mortgagee or on behalf of Mortgagee in connection with the Loan, including, without limitation, any sums deposited in the Clearing Account, the Cash Management Account, any other Account and any other deposit accounts maintained by Mortgagor and any Net Proceeds and Net Restoration Awards, as additional security for the Obligations until expended or applied as provided in this Mortgage.

## CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement, this Mortgage, and the other Loan Documents; Mortgagor shall well and truly perform the Other Obligations as set forth in this Mortgage and the other Loan Documents and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease and terminate; provided, however, that Mortgagor’s obligation to indemnify and hold harmless Mortgagee and Lender pursuant to the provisions hereof shall survive any such payment or release.

## ARTICLE 2

### DEBT AND OBLIGATIONS SECURED

#### Section 2.1 Debt.

This Mortgage and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the outstanding principal balance of the Loan, together with all interest accrued and unpaid thereon and all other sums, including, without limitation, any Additional Interest and any Prepayment Premium due to Lender in respect of the Loan under the Note, this Mortgage, or any other Loan Document (collectively, the “Debt”).

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## Section 2.2 Other Obligations.

This Mortgage and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the “**Other Obligations**”):

- (a) the performance of all other obligations of Mortgagor contained herein;
- (b) the performance of each obligation of Mortgagor contained in the Loan Agreement and any other Loan Document; and
- (c) the performance of each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

## Section 2.3 Debt and Other Obligations.

Mortgagor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the “**Obligations.**”

## ARTICLE 3

### MORTGAGOR COVENANTS

Mortgagor covenants and agrees that

#### Section 3.1 Payment of Debt.

Mortgagor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note, this Mortgage and each other Loan Document.

#### Section 3.2 Incorporation by Reference.

All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

#### Section 3.3 Insurance.

Mortgagor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Mortgaged Property as required pursuant to the Loan Agreement.

#### Section 3.4 Maintenance of Mortgaged Property.

Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish improvements, repairs or alterations

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required pursuant to the Leases and refurbishment of the Improvements to the extent permitted in the Loan Agreement) without the prior written consent of Mortgagee or as otherwise permitted pursuant to the Loan Agreement. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

## Section 3.5 Waste.

Mortgagor shall not commit, suffer or permit any physical waste of the Mortgaged Property or make any change in the use of the Mortgaged Property which will in any way increase the risk of fire or other hazard arising out of the operation of the Mortgaged Property, or take any action that might invalidate or allow the cancellation of any Insurance Policy, or do or permit to be done thereon anything that may in any way impair the value of the Mortgaged Property or the security of this Mortgage. Mortgagor will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

## Section 3.6 Payment for Labor and Materials.

Mortgagor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Mortgaged Property and never permit to exist beyond the due date thereof in respect of the Mortgaged Property or any part thereof any Lien or security interest, even though inferior to the Liens and security interests created hereby and by the other Loan Documents, and in any event never permit to be created or exist in respect of the Mortgaged Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests of the Loan Documents and other than the Permitted Encumbrances.

## Section 3.7 Performance of Other Agreements.

Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Mortgaged Property and any amendments, modifications or changes thereto.

## Section 3.8 Change of Name, Identity or Structure.

Mortgagor shall not change Mortgagor's name, identity (including its trade name or names) or, if not an individual, Mortgagor's corporate, partnership or other structure without first (a) notifying Mortgagee of such change in writing at least thirty (30) days prior to the effective date of such change, (b) taking all action required by Mortgagee for the purpose of perfecting or protecting the Lien and security interest of Mortgagee and (c) in the case of a change in Mortgagor's structure, without first obtaining the prior written consent of Mortgagee. Mortgagor shall promptly notify Mortgagee in writing of any change in its organizational identification number. If Mortgagor does not now have an organizational identification number and later obtains

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one, Mortgagor shall promptly notify Mortgagee in writing of such organizational identification number. Mortgagor shall execute and deliver to Mortgagee, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Mortgagee to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Mortgagee, Mortgagor shall execute a certificate in form satisfactory to Mortgagee listing the trade names under which Mortgagor intends to operate the Mortgaged Property, and representing and warranting that Mortgagor does business under no other trade name with respect to the Mortgaged Property.

## **Section 3.9 Letter of Credit Rights.**

If Mortgagor is at any time a beneficiary under a letter of credit relating to the Mortgaged Property, rights, title and interest referenced in Section 1.1 of this Mortgage now or hereafter issued in favor of Mortgagor, Mortgagor shall promptly notify Mortgagee thereof and, at the request and option of Mortgagee, Mortgagor shall, pursuant to an agreement in form and substance reasonably satisfactory to Mortgagee, and subject to the terms of any such letter of credit and the applicable agreement with which it is associated (including any Lease) either (a) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Mortgagee of the proceeds of any drawing under the letter of credit or (b) arrange for Mortgagee to become the transferee beneficiary of the letter of credit, with Mortgagee agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 7.2 of this Mortgage.

## **ARTICLE 4**

### **OBLIGATIONS AND RELIANCES**

#### **Section 4.1 Relationship of Mortgagor and Mortgagee.**

The relationship between Mortgagor, on the one hand, and Mortgagee and/or Lender, on the other, is solely that of debtor and creditor, and Mortgagee has no fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Loan Agreement, the Note, this Mortgage and the other Loan Documents shall be construed so as to deem the relationship between Mortgagor, on the one hand, and Mortgagee and/or Lender, on the other, to be other than that of debtor and creditor.

#### **Section 4.2 No Reliance on Mortgagee.**

The general partners, members, managers, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor are experienced in the ownership and operation of properties similar to the Mortgaged Property, and Mortgagor and Mortgagee are relying solely upon such expertise and business plan in connection with the ownership and operation of the Mortgaged Property. Mortgagor is not relying on Mortgagee's or any Lender's expertise, business acumen or advice in connection with the Mortgaged Property.

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## Section 4.3 No Mortgagee Obligations.

(a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Mortgagee is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee and/or Lender pursuant to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any Officer's Certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, Title Insurance Policy or Insurance Policy, neither Mortgagee nor any Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Mortgagee.

## Section 4.4 Reliance.

Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Mortgage and the other Loan Documents, Mortgagee is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in the Loan Agreement without any obligation to investigate the Mortgaged Property and notwithstanding any investigation of the Mortgaged Property by Mortgagee; that such reliance existed on the part of Mortgagee prior to the date hereof, that the warranties and representations are a material inducement to Mortgagee in making the Loan; and that Mortgagee would not be willing to make the Loan and accept this Mortgage in the absence of the warranties and representations as set forth in the Loan Agreement.

## ARTICLE 5

### FURTHER ASSURANCES

#### Section 5.1 Recording of Mortgage, etc.

Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Mortgage, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal Taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust or mortgage



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supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

## Section 5.2 Further Acts, etc.

Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all Legal Requirements. Mortgagor, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) with or without the signature of Mortgagor as authorized by applicable law, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Mortgagor also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Mortgage. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law, in equity or otherwise, including without limitation such rights and remedies available to Mortgagee pursuant to this Section 5.2. To the extent not prohibited by applicable law, Mortgagor hereby ratifies all acts Mortgagee has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

## Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a Tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay the tax, with interest and penalties thereon, if any. If Mortgagee is advised by counsel chosen by it that the payment of Tax by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury then Mortgagee shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Mortgagee



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shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Mortgage, or any of the other Loan Documents or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

## Section 5.4 Splitting of Mortgage.

This Mortgage and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Mortgagee, be split or divided into two or more Notes and two or more security instruments in such denominations as Mortgagee shall determine in its sole discretion, each of which shall cover all or a portion of the Mortgaged Property to be more particularly described therein. To that end, Mortgagor, upon written request of Mortgagee, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Mortgaged Property, to Mortgagee and/or its designee or designees substitute Notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Mortgagee.

## Section 5.5 Replacement Documents.

Upon receipt of an affidavit of an officer of Mortgagee as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Mortgagor will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

## ARTICLE 6

### DUE ON SALE/TRANSFER

#### Section 6.1 Mortgagee Reliance.

Mortgagor acknowledges that Mortgagee and Lender have examined and relied on the experience of Mortgagor and its general partners, members, principals and (if Mortgagor is a trust) beneficial owners in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan, and will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt and the performance of the Other Obligations. Mortgagor acknowledges that Mortgagee and Lender have a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt or the performance of the Other Obligations, Mortgagee can recover the Debt and the Other Obligations by a sale of the Mortgaged Property.

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## Section 6.2 No Sale/Transfer.

Mortgagor shall not Transfer the Mortgaged Property or any part thereof or any interest therein, or permit or suffer the Mortgaged Property or any part thereof or any interest therein to be Transferred, or cause, permit or suffer a Change of Control, in each case other than as expressly permitted pursuant to the terms of the Loan Agreement.

## ARTICLE 7

### RIGHTS AND REMEDIES UPON DEFAULT

#### Section 7.1 Remedies.

Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Mortgagee may take such action, without notice or demand, to the maximum extent permitted by law, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law, including, without limitation by judicial and non-judicial foreclosure, in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the maximum extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing Lien and security interest of this Mortgage for the balance of the Debt and the Other Obligations not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, all as may be required or permitted by law, and, without limiting the foregoing:
  - (i) in connection with any sale or sales hereunder, Mortgagee shall be entitled to elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Real Property covered hereby or any improvements without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of Real Property. Where the Mortgaged Property consists of Real Property,

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Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Mortgagee shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;

(ii) Mortgagee shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law;

(iii) should Mortgagee elect to sell any portion of the Mortgaged Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Mortgagee has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of Real Property, Mortgagee shall give such notice of default, if any, and such other notices as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Mortgagor, Mortgagee at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Mortgagee may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed herefor or by any other means permitted by applicable law;

(iv) if the Mortgaged Property consists of several lots, parcels or items of property, Mortgagee shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Mortgagee designates. Any Person, including Mortgagor or Mortgagee, may purchase at any sale hereunder. Should Mortgagee desire that more than one sale or other disposition of the Mortgaged Property be conducted, Mortgagee shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Mortgagee may designate, and no such sale shall terminate or otherwise affect the Lien of this Mortgage on any part of the Mortgaged Property not sold until all Obligations have been satisfied in full. In the event Mortgagee elects to dispose of the Mortgaged Property through more than one sale, except as otherwise provided by applicable law, Mortgagor agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;

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(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, any guarantor or indemnitor with respect to the Loan or of any other Person liable for the payment of the Debt or any part thereof;

(h) the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and Mortgagee may enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Mortgaged Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (ii) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (iv) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Mortgaged Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Mortgaged Property to the payment of the Debt and the performance of the Other Obligations, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and the Personal Property, or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Mortgagor at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Fixtures, the Equipment and/or the Personal Property sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee in accordance with the terms of the Loan Agreement, this Mortgage or any

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other Loan Document to the payment of the following items in any order, priority and proportion in its sole discretion:

- (i) Real Estate Taxes;
- (ii) Insurance Premiums;
- (iii) interest on the unpaid principal balance of the Note;
- (iv) amortization of the unpaid principal balance of the Note;
- (v) all other sums payable pursuant to the Note, the Loan Agreement, this Mortgage and the other Loan Documents, including without limitation, any Prepayment Premium, Additional Interest, Protective Advances and interest thereon, and advances made by Mortgagee pursuant to the terms of this Mortgage and interest thereon at the Default Rate;
- (k) pursue such other remedies as Mortgagee and/or Lender may have under applicable law; and/or
- (l) apply the undisbursed balance of any Net Proceeds or Net Restoration Awards, together with interest thereon, to the payment of the Debt and the Other Obligations in such order, priority and proportions as Mortgagee shall deem to be appropriate in its sole discretion.

The Mortgaged Property may be sold in such parcels or lots without regard to principles of marshaling and may be sold at one sale or in multiple sales, all as determined by Mortgagee in its sole discretion.

In the event of a sale, by foreclosure or otherwise, of less than all of Mortgaged Property, this Mortgage shall continue as a Lien and security interest on the remaining portion of the Mortgaged Property unimpaired and without loss of priority.

## Section 7.2 Application of Proceeds.

The purchase money, proceeds and avails of any disposition of the Mortgaged Property, or any part thereof, or any other sums collected by Mortgagee or Lender, as the case may be, pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Mortgagee or Lender, as the case may be, to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

## Section 7.3 Right to Cure Defaults.

Upon the occurrence and during the continuance of any Default or Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor, and without releasing Mortgagor from any Other Obligation, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized



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to enter upon the Mortgaged Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Default or Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

## Section 7.4 Actions and Proceedings.

Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole and absolute discretion, decides should be brought to protect its interest in the Mortgaged Property.

## Section 7.5 Recovery of Sums Required to Be Paid.

Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action for a Default or Event of Default by Mortgagor existing at the time such earlier action was commenced.

## Section 7.6 Examination of Books and Records

At reasonable times and upon reasonable notice (which may be given verbally), Mortgagee, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Mortgagor which reflect upon its financial condition, at the Mortgaged Property or at any office regularly maintained by Mortgagor where the books and records are located. Mortgagee and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice (which may be given verbally), Mortgagee, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Mortgagor pertaining to the income, expenses and operation of the Mortgaged Property during reasonable business hours at any office of Mortgagor where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

## Section 7.7 Other Rights, etc.

(a) The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Mortgagee to comply



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with any request of Mortgagor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any Person liable for the Debt or the Other Obligations or any portion thereof, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Mortgaged Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for any decline in the value of the Mortgaged Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Mortgagee's possession.

(c) Mortgagee may resort for the payment of the Debt or the performance of the Other Obligations to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce the Other Obligations or any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies stated herein but shall be entitled to every right and remedy now or hereafter afforded at law, in equity or otherwise.

## Section 7.8 Right to Release Any Portion of the Mortgaged Property.

Mortgagee may release any portion of the Mortgaged Property for such consideration as Mortgagee may require without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the Lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a Lien and security interest in the remaining portion of the Mortgaged Property.

## Section 7.9 Violation of Laws.

If the Mortgaged Property is not in material compliance with Legal Requirements, Mortgagee may impose additional requirements upon Mortgagor such that Mortgagor shall bring the Mortgaged Property in material compliance with any and all Legal Requirements that apply to the Mortgaged Property.

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## Section 7.10 Recourse and Choice of Remedies.

Notwithstanding any other provision of this Mortgage or the Loan Agreement, Mortgagee and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Mortgagor, any guarantor and indemnitor contained in Section 8.2 hereof and the Loan Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Mortgaged Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Mortgagee commences a foreclosure action against the Mortgaged Property, Mortgagee is entitled to pursue a deficiency judgment with respect to such obligations against Mortgagor and any guarantor or indemnitor (to the extent set forth in a separate guaranty agreement or indemnity agreement executed by such guarantor or indemnitor) with respect to the Loan (to the maximum extent permitted under applicable law). The liability of Mortgagor and any guarantor or indemnitor with respect to the Loan pursuant to Section 8.2 hereof and the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Mortgagee from foreclosing pursuant to this Mortgage or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Mortgage and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Mortgagor pursuant to Section 8.2 hereof and under the Loan Agreement, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Mortgagee shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity.

## Section 7.11 Right of Entry.

Upon reasonable notice (which may be given verbally) to Mortgagor, Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times, subject to the rights of the tenants at the Mortgaged Property, and Mortgagor agrees to grant such access as may be required by this Section 7.11.

## ARTICLE 8

### INDEMNIFICATION

#### Section 8.1 General Indemnification.

Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages (excluding exemplary, punitive or consequential damages, unless the same are asserted against any Indemnified Party and actually incurred), losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties (except to the extent of any claim arising solely from the gross negligence or willful

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misconduct of such Indemnified Party) and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, and the Note, the Loan Agreement, this Mortgage, or any other Loan Documents; (c) any and all lawful action that may be taken by Mortgagee in connection with the enforcement of the provisions of this Mortgage or the Loan Agreement or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Mortgagor, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Mortgagor to perform or be in compliance with any of the terms of this Mortgage; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made; (i) any failure of the Mortgaged Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article 8; (k) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (l) the payment of any commission, charge or brokerage fee to anyone claiming through Mortgagor which may be payable in connection with the funding of the Loan; or (m) any misrepresentation made by Mortgagor in this Mortgage or any other Loan Document. Any amounts payable to Mortgagee by reason of the application of this Section 8.1 shall become due and payable within five (5) Business Days of demand by the Indemnified Party and shall bear interest at the Default Rate from the date such payment is due until paid. For purposes of this Article 8, the term "**Indemnified Parties**" means Mortgagee, each Lender, each participant in the Loan, and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan secured hereby (including, but not limited to, custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Mortgagee's or any Indemnified Party's assets and business), provided, however, that Mortgagor shall not have any obligation to such Indemnified Party hereunder to the extent such Losses arise from the gross negligence or willful misconduct of

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such Indemnified Party, each as determined by a final non-appealable court of competent jurisdiction.

## Section 8.2 Mortgage and/or Intangible Tax.

Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any Tax on the making and/or recording of this Mortgage, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar Taxes.

## Section 8.3 Duty to Defend; Attorneys' Fees and Other Fees and Expenses.

Upon written request by any Indemnified Party, Mortgagor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Mortgagor and any Indemnified Party and Mortgagor and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Mortgagor, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Mortgagor's consent, which consent shall not be unreasonably withheld. Upon demand, Mortgagor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

## Section 8.4 Survival

The provisions of the Article 8 shall survive repayment of the Debt to the same extent provided in Section 13.1(f) of the Loan Agreement.

## ARTICLE 9

### WAIVERS

#### Section 9.1 Waiver of Counterclaim.

To the maximum extent permitted by applicable law, Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee arising out of or in any way connected with this Mortgage, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

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## Section 9.2 Marshalling and Other Matters.

To the maximum extent permitted by applicable law, Mortgagor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, to the maximum extent permitted by applicable law, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the maximum extent permitted by applicable law.

## Section 9.3 Waiver of Notice.

To the maximum extent permitted by applicable law, Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage or any other Loan Document specifically and expressly provide for the giving of notice by Mortgagee and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage or any other Loan Document does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

## Section 9.4 Waiver of Statute of Limitations.

To the maximum extent permitted by applicable law, Mortgagor hereby expressly waives and releases to the maximum extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

## ARTICLE 10

### NOTICES

#### Section 10.1 Notices.

All notices or other communications hereunder shall be delivered in accordance with Section 13.10 of the Loan Agreement.



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## ARTICLE 11

### APPLICABLE LAW

#### Section 11.1 Governing Law.

(A) THIS MORTGAGE WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY MORTGAGOR AND ACCEPTED BY MORTGAGEE IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, AND THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST MORTGAGEE OR MORTGAGOR ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY AT MORTGAGEE'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND MORTGAGOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE MORTGAGEE AND LENDER TO BRING PROCEEDINGS AGAINST



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THE MORTGAGOR IN THE COURTS OF ANY OTHER JURISDICTION. MORTGAGOR DOES HEREBY DESIGNATE AND APPOINT

CT Corporation System  
28 Liberty Street  
New York, NY 10005

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO MORTGAGOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON MORTGAGOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. MORTGAGOR (I) SHALL GIVE PROMPT NOTICE TO MORTGAGEE OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

## Section 11.2 Usury Laws.

Notwithstanding anything to the contrary, (a) all agreements and communications between Mortgagor and Mortgagee are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Mortgagee shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Mortgagor to Mortgagee, and (c) if through any contingency or event, Mortgagee receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Mortgagor to Mortgagee, or if there is no such indebtedness, shall immediately be returned to Mortgagor.

## Section 11.3 Provisions Subject to Applicable Law.

All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

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## ARTICLE 12

### DEFINITIONS

#### Section 12.1 Definitions.

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "**Mortgagor**" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "**Mortgagee**" shall mean "Mortgagee and any successor Agent under the Loan Agreement," the word "**Lender**" shall mean "each Lender and each and any subsequent holder(s) of the Note or any part thereof," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "**Mortgaged Property**" shall include any portion of the Mortgaged Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, without limitation, fees and disbursements at the pre-trial, trial and appellate levels and in any bankruptcy or insolvency proceeding incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property, the Leases and the Rents and enforcing its rights hereunder.

#### Section 12.2 Principles of Construction.

All references to sections and schedules are to sections and schedules in or to this Mortgage unless otherwise specified. Any reference in this Mortgage to any Loan Document shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, replaced and/or restated from time to time (and, in the case of any note or instrument, to any instrument issued in substitution therefor). Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Mortgage shall refer to this Mortgage as a whole and not to any particular provision of this Mortgage. Unless otherwise expressly provided, capitalized terms used in referenced defined terms or provisions or schedules or exhibits, as the case may be, shall have the meanings ascribed to such capitalized terms in the specific Loan Documents in which such defined terms or provisions appear or to which such schedules or exhibits are appended.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

#### Section 13.1 No Oral Change.

This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, restated, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, restatement, discharge or termination is sought.

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## Section 13.2 Successors and Assigns.

This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

## Section 13.3 Inapplicable Provisions.

If any term, covenant or condition of this Mortgage is held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

## Section 13.4 Headings, etc.

The headings and captions of various Sections of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

## Section 13.5 Number and Gender.

Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

## Section 13.6 Subrogation.

If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of the funds so used, Mortgagee shall be subrogated to all of the rights, claims, Liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, Liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the Lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Mortgagor's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 13.7 Waiver of Trial by Jury. TO THE FULLEST EXTENT ALLOWED BY LAW, MORTGAGOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THIS MORTGAGE, THE NOTE, OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF MORTGAGEE, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

## Section 13.8 Entire Agreement.

The Note, the Loan Agreement, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect

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to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Mortgage and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

## Section 13.9 Limitation on Mortgagee's Responsibility.

No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Mortgaged Property upon Mortgagee or any Lender, nor shall it operate to make Mortgagee or any Lender responsible or liable for any waste committed on the Mortgaged Property by the Tenants or any other Person, or for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Mortgagee or any Lender a "mortgagee in possession."

## ARTICLE 14

### STATE SPECIFIC PROVISIONS

#### Section 14.1 Principles of Construction.

In the event of any inconsistencies between the terms and conditions of this Article 14 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 14 shall control and be binding.

#### Section 14.2 Remedies Upon Default.

In addition to all other rights and remedies set forth in this Mortgage, upon an Event of Default, Mortgagee shall have the following remedies:

(a) Foreclosure of Mortgage. Upon the occurrence of any Event of Default, or at any time thereafter, Mortgagee may, at its option, proceed to foreclose the Lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Mortgaged Property is located and to exercise any other remedies of Mortgagee provided herein or in the other Loan Documents, or which Mortgagee may have at law or in equity. Any failure by Mortgagee to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

(b) Litigation Expenses. In any proceeding to foreclose the Lien of this Mortgage or enforce any other remedy of Mortgagee under the Note, this Mortgage, the other Loan Documents or in any other proceeding whatsoever in connection with the Mortgaged Property in which Mortgagee is named as a party, there shall be allowed and included, as additional Debt in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee, including, without limitation, reasonable attorneys' fees

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and expenses and court costs, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and any similar data and assurances with respect to title to the Mortgaged Property as Mortgagee may deem reasonably necessary, and any other expenses and expenditures which may be paid or incurred by or on behalf of Mortgagee and permitted by the Illinois Mortgage Foreclosure Law (as amended from time to time, 735 ILCS 5/15-1101, *et seq.*) (the "**IMF Law**") to be included in the decree of sale, either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to any such decree the true condition of the title to or value of the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the Lien of this Mortgage thereon, including, without limitation, the reasonable fees and expenses of, and court costs incurred by, any attorney employed by Mortgagee in any litigation affecting the Note, this Mortgage or any of the other Loan Documents or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor with interest thereon at the Default Rate (as defined in the Loan Agreement).

(c) Performance by Mortgagee. In the event of any Event of Default, or in the event any action or proceeding is instituted which materially affects, or threatens to materially affect, Mortgagee's interest in the Mortgaged Property, Mortgagee may, but need not, make any payment or perform any act on Mortgagor's behalf in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise or settle any tax Lien or other prior or junior Lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Mortgaged Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs, and any other monies advanced by Mortgagee to protect the Mortgaged Property and the Lien of this Mortgage, shall be so much additional Debt, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the Default Rate (as defined in the Loan Agreement) from the date an advance is made to and including the date the same is paid. The action or inaction of Mortgagee shall never be construed to be a waiver of any right accruing to Mortgagee by reason of any default by Mortgagor. Except as otherwise provided herein, Mortgagee shall not incur any personal liability because of anything it may do or omit to do hereunder, nor shall any acts of Mortgagee act as a waiver of Mortgagee's right to accelerate the maturity of the Indebtedness or to proceed to foreclose this Mortgage.

(d) Right of Possession. In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the Lien hereof or before or after sale thereunder, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agent or attorneys. In accordance with Sections 5-1701 and 5-1702



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of the IMF Law, Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers and accounts (other than the Operating Account) of Mortgagor or the then owner of the Mortgaged Property relating thereto, and may exclude Mortgagor, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

- (i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, whether legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits and avails of the Mortgaged Property, including, without limitation, actions for recovery of rent, and actions in forcible detainer, all without notice to Mortgagor;
- (ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Mortgagor to cancel the same;
- (iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage or subordinated to the Lien hereof;
- (iv) extend or modify any then-existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Property are subject to the Lien hereof and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and
- (v) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Mortgaged Property as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Property and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

Without limiting the generality of the foregoing, Mortgagee shall have all right, power, authority and duties as provided in the IMF Law. Nothing herein contained shall be construed as constituting



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Mortgagee as mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property.

(e) Appointment of Receiver. Upon, or at any time prior or after, the filing of any complaint to foreclose the Lien of this Mortgage or instituting any other foreclosure of the Liens and security interests provided for in this Mortgage or any other legal proceedings under this Mortgage, Mortgagee may, at Mortgagee's sole option, make application to a court of competent jurisdiction for appointment of a receiver pursuant to Section 15-1704 of the Act for all or any part of the Mortgaged Property, as a matter of strict right and without notice to Mortgagor, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Mortgagee, but nothing herein is construed to deprive Mortgagee of any other right, remedy or privilege Mortgagee may now have under the law to have a receiver appointed; provided that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of all of the rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Mortgage. Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Indebtedness; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the IMF Law, including the power to take possession, control and care of the Mortgaged Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Debt, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period. To the maximum extent permitted by law, such receiver may extend or modify any then existing leases and make new leases of the Mortgaged Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the Lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

(f) Foreclosure Sale. In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

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## Section 14.3 Compliance with the Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the IMF Law, the provision of the IMF Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Law.

(b) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

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

(d) All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of 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, in addition to those otherwise authorized by this Mortgage, the other Loan Documents or by the IMF Law (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the IMF Law, including, without limitation, those provisions of the IMF Law herein below referred to:

- (i) all advances by Mortgagee in accordance with the terms of this Mortgage or the other Loan Documents to: (A) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged 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 Section 15-1302 of the IMF Law;
- (ii) payments by Mortgagee of (A) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior Lien or encumbrance (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior Lien or encumbrance); (B) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other Liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the IMF Law;
- (iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior Liens (provided that

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nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior Lien);

- (iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d) and 15-1510 of the IMF Law; (B) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (C) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Mortgaged Property;
- (v) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection 15-1508(b)(1) of the IMF Law;
- (vi) expenses deductible from proceeds of sales referred to in Subsections 15-1512(a) and (b) of the IMF Law;
- (vii) 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 is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property imposed by Subsection 15-1704(c)(1) of the IMF Law; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments deemed by Mortgagee to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; and (D) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property.

All Protective Advances shall be additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note.

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 Section 15-1302 of the IMF Law.

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 IMF Law, apply to and be included in:

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(1) any determination of the amount of indebtedness secured by this Mortgage at any time;

(2) the indebtedness found due and owing to 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;

(3) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections 5-1603(d)(2) and (e) of the IMF Law;

(4) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMF Law;

(5) application of income in the hands of any receiver or mortgagee in possession; and

(6) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2), 15-1508(e) and Section 15-1511 of the IMF Law.

(e) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the IMF Law, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMF Law.

#### Section 14.4 Waiver of Right of Redemption and Other Rights.

To the maximum extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the Mortgaged Property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the maximum extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure. To the maximum extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof

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that any and all such rights of redemption of Mortgagor and such other persons are and shall be deemed to be hereby waived to the maximum extent permitted by applicable law. To the maximum extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the maximum extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the Lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law.

Section 14.5 Use of Proceeds. Mortgagor represents and warrants to Mortgagee (i) that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(l) (or any substitute, amended or replacement statute), and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(l), and (ii) that the Loan evidenced by the Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 et seq.

## Section 14.6 No Lien Management Agreements and Broker Agreements.

Mortgagor shall, if required by Mortgagee, include a “no lien” provision in any property management agreement hereafter entered into by Mortgagor with a property manager for the Mortgaged Property, whereby such property manager waives and releases any and all mechanics’ Lien rights that such property manager, or anyone claiming through or under such property manager, may have pursuant to the Illinois Mechanics Lien Act, 770 ILCS 60/1 *et. seq.* Such property management agreement containing such “no lien” provision or a short form thereof shall, at Mortgagee’s request, be recorded with the Recorder of Deeds of Cook County, Illinois, as appropriate. In addition, Mortgagor shall cause such property manager to enter into a subordination of management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future Lien rights and those of any party claiming by, through or under such property manager, to the Lien of this Mortgage. Any agreement entered into hereafter by Mortgagor with any “broker” (as defined in the Real Estate License Act of 2000, 225 ILCS 454/1 *et. seq.*) that is an affiliate of Mortgagor for the purpose of selling, leasing or otherwise conveying an interest in the Mortgaged Property shall contain a “no lien” provision whereby such broker waives and releases any and all Lien rights that such broker, or anyone claiming through or under such broker, may have pursuant to the Commercial Real Estate Broker Lien Act, 770 ILCS 15/1 *et. seq.* Mortgagor shall cause each such broker to enter into a subordination agreement with Mortgagee, in recordable form, whereby such broker, on its own behalf or on behalf of any party claiming by, through or under such broker, subordinates present and future Lien rights to the Lien of this Mortgage.

## Section 14.7 Fixture Financing Statement.

From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the Illinois Uniform Commercial Code (as amended from time to time) with respect to the Collateral and the goods described herein, which



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goods are or are to become fixtures related to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth below. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or the counties where the Mortgaged Property is located. For this purpose, the following information is set forth:

- (a) Name and Address of Debtor:

GLL BVK West Adams, L.P.  
c/o GLL Real Estate Partners, Inc.  
200 South Orange Avenue, Suite 1375  
Orlando, Florida 32801

- (b) Name and Address of Secured Party:

Deutsche Pfandbriefbank AG  
Parkring 28  
85748 Garching  
Germany

- (c) This document covers goods which are or are to become fixtures.
- (d) Debtor's state of formation is Delaware.
- (e) Debtor's exact legal name is as set forth in the first paragraph of this Mortgage.
- (f) Debtor's organizational identification number is 5673100.
- (g) Debtor agrees that:

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

(ii) Mortgagor will cooperate with Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) Until the Debt is paid in full, Mortgagor will not change the state where it is located or change its limited partnership name without giving Mortgagee at least thirty (30) days prior written notice in each instance.

Section 14.8 Interest Laws. It being the intention of Mortgagee and Mortgagor to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("**Excess Interest**") in excess of

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the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this Section 17.8 shall govern and control; (b) neither Mortgagor nor any other party obligated under the terms of the Note or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the Interest Rate (as that term is defined in the Note) shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Note, this Mortgage and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in the Applicable Interest Rate; and (e) neither Mortgagor nor any other party obligated under the terms of the Note or any of the other Loan Documents shall have any action against Mortgagee for any damages whatsoever arising out of the payment or collection of any Excess Interest.

Section 14.9 Other Amounts Secured; Maximum Indebtedness. Mortgagor acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Mortgagee in connection with the Loan, all in accordance with the Loan Documents. It is agreed that any future advances made by Mortgagee for the benefit of Mortgagor from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Mortgagee, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the indebtedness secured hereby over all subsequent Liens and encumbrances, including statutory Liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law. Notwithstanding anything in this Mortgage or any of the other Loan Documents to the contrary, under no circumstances shall the total indebtedness secured hereby exceed One Hundred Eighty-Five Million Dollars (\$185,000,000.00).

Section 14.10 Intentionally omitted.

Section 14.11 Deed in Trust. If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any Lien on the Mortgaged Property shall be construed as a similar

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prohibition or restriction against the creation of any Lien on or security interest in the beneficial interest of such trust.

Section 14.12 Collateral Protection Act. Unless Mortgagor provides Mortgagee with evidence of the insurance required by this Mortgage or any other Loan Document, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the indebtedness secured hereby. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required under this Mortgage or any other Loan Document. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the indebtedness secured hereby, Mortgagor shall be responsible for the costs of that insurance, including the insurance premium, interest and any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 *et. seq.*, Mortgagor hereby acknowledges Mortgagee's right pursuant to this paragraph to obtain collateral protection insurance.

Section 14.13 Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any Tenant or Tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Mortgagee. The failure to join any such Tenant or Tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Obligations, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

Section 14.14 Interest Rate. The Loan shall have a fixed interest rate as set forth in the Note and the Loan Agreement.

Section 14.15 Power of Sale. Any references to "power of sale" in this Mortgage are permitted only to the extent allowed by the laws of the State of Illinois.

Section 14.16 Security Agreement. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of the Note, the Loan Agreement, this Mortgage and (ii) the Collateral, and that Mortgagor hereby grants to Mortgagee, as security for the Obligations a security interest in and to the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned by Mortgagor to Mortgagee, all to secure payment of the Note. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other

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property comprising the Real Property; and the following provisions of this Section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (being the Debtor as that term is used in the Illinois Uniform Commercial Code) is and will be the true and lawful owner of the Collateral, subject to no Liens, charges or encumbrances other than the Lien hereof, other Liens and encumbrances benefitting Mortgagee and no other party, and Liens and encumbrances, if any, expressly permitted by the Loan Agreement;

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

(c) The Collateral will be kept at the Real Property (except for normal replacement of personal property) and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Illinois Uniform Commercial Code). The Collateral may be affixed to the Real Property but will not be affixed to any other real estate;

(d) The only persons having any interest in the Real Property are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby;

(e) No financing statement (other than financing statements showing Mortgagee as the sole secured party, or with respect to Liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may reasonably request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Debt, subject to no other Liens or encumbrances, other than Liens or encumbrances benefitting Mortgagee and no other party and Liens and encumbrances, if any, expressly permitted hereby; and Mortgagor hereby authorizes Mortgagee to file any and all financing statements or continuations thereof, and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this Mortgage in all public offices where filing or recording is deemed by Mortgagee to be desirable;

(f) During the continuance of an Event of Default, Mortgagee shall have the remedies of a secured party under the Illinois Uniform Commercial Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the IMF Law); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Illinois Uniform Commercial Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Real Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by

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Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least thirty (30) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinabove set forth at least thirty (30) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Real Property. If Mortgagee so elects, the Real Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Debt in such order or manner as Mortgagee shall select. To the extent required by law, Mortgagee will account to Mortgagor for any surplus realized on such disposition; and

(g) The terms and provisions contained in this Section 14.16, unless the context otherwise requires, shall have the meanings and be construed as provided in the Illinois Uniform Commercial Code.

**[NO FURTHER TEXT ON THIS PAGE]**




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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year first above written.

**MORTGAGOR:**

**GLL BVK West Adams, L.P.**, a Delaware limited partnership

By GLL BVK W. Adams GP, Inc., a Delaware corporation, its general partner

By: 

Name: *Brandon Bledsoe*  
Title: *President*

By: 

Name:  
Title: **J. Greer Cummings, Jr.**  
**Assistant Secretary**

Property of Cook County Clerk's Office

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STATE OF Florida )  
 ):ss.  
COUNTY OF Seminole )

On this 24 of January, 2022, before me, Emily Durys the undersigned notary public, personally appeared Brandon Benson, (name of document signer) proved to me through satisfactory evidence of identification, which were Driver License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose as President of GLL BVK W. Adams GP, Inc., a Delaware corporation.



Emily Durys  
Notary Public Signature  
My Commission Expires: 7/26/24

STATE OF TENNESSEE )  
 ):ss.  
COUNTY OF DAVIDSON )

On this 26<sup>th</sup> of January, 2022, before me, Katherine W. Eidson the undersigned notary public, personally appeared J. Greer Cummings Jr (name of document signer) proved to me through satisfactory evidence of identification, which were driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose as Asst. Secretary of GLL BVK W. Adams GP, Inc., a Delaware corporation.

(seal)



Katherine W. Eidson  
Notary Public Signature  
My Commission Expires: 11/6/2024

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## EXHIBIT A

### LEGAL DESCRIPTION

Real property in the City of Chicago, County of Cook, State of Illinois, described as follows:

Parcel 1:

Lot 7, except the North 18 feet thereof, and the North 60 feet of Lot 8 in Charles Wesencraft's Subdivision of Lots 3, 4, 5 and 6 in Block 47 of School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

Parcel 2:

Lots 4, 5 and 6 (except the West 2.20 feet, and excluding all or any portion of the two -story building located on the West 2.20 feet of lot 6) in W. B. Egan's Subdivision of Lots 7 and 8 in Block 47 of School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

Parcel 3:

All that part of the South 8 feet of Lot 3 lying East of the Northerly extension of the West line of Lot 6 in W. B. Egan's Subdivision of Lots 7 and 8 in Block 47 of School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

Parcel 4:

All that part of Lot 9 in Charles Wesencraft's Subdivision of Lots 3, 4, 5 and 6 in Block 47 of School Section Addition to Chicago, lying South of the Easterly extension of the North line of the South 8 feet of Lot 3 in W. B. Egan's Subdivision of Lots 7 and 8 in Block 47 of School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

Parcel 5:

The vacated north-south 10 foot public alley lying East of and adjoining Lot 9, lying West of and adjoining Lots 7 and 8 and lying South of the Westerly extension of the South line of the North 18 feet of Lot 7, all in Charles Wesencraft's Subdivision of Lots 3, 4, 5 and 6 in Block 47 of School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

Parcel 6:

Lot 8, except the North 60 feet thereof, in Charles Wesencraft's Subdivision of Lots 3, 4, 5 and 6 in Block 47 of School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

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Parcel 7:

Easement for the benefit of parcels 1 through 6 for ingress and egress to South Clinton street as created by the access easement agreement recorded as document 0011134342 over the following described real estate:

All that part of Lot 3 in W. B. Egan's Subdivision of Lots 7 and 8 in Block 47 of School Section Addition to Chicago, aforesaid, lying East of the Northerly extension of the West line of Lot 6 in W.B. Egan's Subdivision, and lying North of the North line of the South 8 feet of said Lot 3 in W. B. Egan's Subdivision and South of a Line 9.55 Feet North of and Parallel with said North line of the South 8 feet of said Lot 3 in W. B. Egan's Subdivision, all in Lot 3 in W. B. Egan's Subdivision of Lots 7 and 8 in Block 47 of School Section Addition to Chicago, in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

and

All that part of Lot 9 in Charles Wesencraft's Subdivision of Lots 3, 4, 5 and 6 in Block 47 of School Section Addition to Chicago, lying North of the Easterly extension of the North line of the South 8 feet of Lot 3 in W. B. Egan's Subdivision of Lots 7 and 8 in Block 47 in School Section Addition to Chicago in Section 16 aforesaid, and South of a line 9.55 feet North of and parallel with said Easterly extension of the North line of the South 8 feet of Lot 3 in W. B. Egan's Subdivision, All in said Lot 9 in Charles Wesencraft's Subdivision of Lots 3, 4, 5 and 6 in Block 47 in School Section Addition to Chicago in Section 16, Township 39 North Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 8:

Parking space units P-1, P-2, P-3, P-4, P-5, P-6, P-7, P-8, P-9, P-10, P-11, P-12, P-13, P-14, P-15 and P-16 in the Park Alexandria Condominium as delineated on a survey of the following described real estate:

(A) all of Lots 1, 2 and 3 except the South 8 feet of said Lot 3, in W.B. Egan's Subdivision of Lots 7 and 8 in Block 47 of School Section Addition to Chicago in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

And

(B) all of Lots 8, 9 and 10 in Ward's Subdivision of Lot 1 in Block 47 of School Section Addition to Chicago in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

And

(C) all those parts of Lot 7 in said Ward's Subdivision of Lot 1 in Block 47, and of Lot 2 in Block 47 of School Section Addition to Chicago, and of Lot 1 in Charles Wesencraft's Subdivision of Lots 3, 4, 5 and 6 in Block 47 of School Section Addition to Chicago, All lying South of a line

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124.86 feet South of and parallel with the South line of West Monroe street, in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

And

(D) that part of Lot 9 in Charles Wesencraft's Subdivision of Lots 3, 4, 5 and 6 in Block 47 of School Section Addition to Chicago, lying North of the Easterly extension of the North line of the South 8 feet of Lot 3 in W.B. Egan's Subdivision of Lots 7 and 8 in Block 47 of School Section Addition to Chicago in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

All the above taken as a tract excepting therefrom that part:

lying above a horizontal plane at the vertical elevation (Chicago City Datum) of 14.00 feet and below the horizontal plane and within the perimeter formed by connecting the vertices formed by connecting the vertical elevation points attached to the following calls of the property described as follows: beginning at the North west corner of said tract having a vertical elevation of 33.03 feet; thence South 00 degrees 26 minutes 50 seconds East along the West line of said tract, 59.84 feet to the Westerly extension of the centerline of an interior wall, having a vertical elevation of 33.03 feet (the following eighteen (18) calls being along the centerline of said interior walls); thence South 89 degrees 43 minutes 42 seconds East, 8.99 feet to a point having a vertical elevation of 33.03 feet; thence South 00 degrees 16 minutes 18 seconds West, 0.55 feet to a point having a vertical elevation of 33.03 feet; thence South 89 degrees 43 minutes 42 seconds East, 10.96 feet to a point having a vertical elevation of 33.03 feet; thence South 00 degrees 16 minutes 18 seconds West, 0.22 feet to a point having a vertical elevation of 33.03 feet; thence South 89 degrees 43 minutes 42 seconds East, 12.74 feet to a point having a vertical elevation of 33.03 feet; thence North 00 degrees 16 minutes 18 seconds East, 0.46 feet to a point having a vertical elevation of 33.03 feet; thence South 89 degrees 43 minutes 42 seconds East, 11.61 feet to a point having a vertical elevation of 33.03 feet; thence North 00 degrees 16 minutes 18 seconds East, 13.38 feet to a point having a vertical elevation of 33.03 feet; thence South 89 degrees 43 minutes 42 seconds East, 29.34 feet to a point having a vertical elevation of 33.03 feet; thence South 00 degrees 16 minutes 18 seconds West, 17.96 feet to a point having a vertical elevation of 33.03 feet; thence South 89 degrees 43 minutes 42 seconds East, 19.97 feet to a point having a vertical elevation of 33.03 feet; thence North 00 degrees 16 minutes 18 seconds East, 3.68 feet to a point having a vertical elevation of 33.03 feet; thence South 89 degrees 43 minutes 42 seconds East, 6.92 feet to a point having a vertical elevation of 33.03 feet; thence South 00 degrees 16 minutes 18 seconds West, 3.68 feet to a point having a vertical elevation of 33.03 feet; thence South 89 degrees 43 minutes 42 seconds East, 4.79 feet to a point having a vertical elevation of 33.03 feet; thence North 00 degrees 16 minutes 18 seconds East, 9.30 feet to a point having a vertical elevation of 33.03 feet; thence North 89 degrees 43 minutes 42 seconds West, 0.54 feet to a point having a vertical elevation of 33.03 feet; thence North 00 degrees 16 minutes 18 seconds East, 55.92 feet to a point on the North line of said tract having a vertical elevation of 33.03 feet; thence South 90 degrees 00 minutes 00 seconds West along the North line of said tract, 105.52 feet to the point of beginning, in Cook County, Illinois.



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and excepting that part:

lying above a horizontal plane at the vertical elevation (Chicago City Datum) of 14.00 feet and below the horizontal plane and within the perimeter formed by connecting the vertices formed by connecting the vertical elevation points attached to the following calls of the property described as follows: commencing at the Northwest corner of said tract; thence South 00 degrees 26 minutes 50 seconds East along the West line of said tract, 83.67 feet to the Westerly extension of the centerline of an interior wall, being the point of beginning and having a vertical elevation of 33.03 feet; (the following seven (7) calls being along the centerline of said interior walls); thence South 89 degrees 43 minutes 42 seconds East, 32.64 feet to a point having a vertical elevation of 33.03 feet; thence South 29 degrees 50 minutes 45 seconds East, 15.45 feet to a point having a vertical elevation of 33.03 feet; thence South 89 degrees 43 minutes 42 seconds East, 11.85 feet to a point having a vertical elevation of 33.03 feet; thence South 00 degrees 16 minutes 18 seconds West, 5.83 feet to a point having a vertical elevation of 33.03 feet; thence North 89 degrees 43 minutes 42 seconds West, 5.39 feet to a point having a vertical elevation of 33.03 feet; thence South 00 degrees 16 minutes 18 seconds West, 7.24 feet to a point having a vertical elevation of 33.03 feet; thence North 89 degrees 43 minutes 42 seconds West, 46.52 feet to a point on the West line of said tract having a vertical elevation of 33.03 feet; thence North 00 degrees 26 minutes 50 seconds West along the West line of said tract, 26.43 feet to the point of beginning, in Cook County, Illinois.

which survey is attached as exhibit "A" to the Declaration of Condominium recorded September 25, 2003 as document number 0326832189, and as amended from time to time, together with its undivided percentage interest in the common elements, all in Cook County, Illinois.

Parcel 9:

Non-exclusive easement appurtenant for the benefit of Parcel 8 for support, common walls, ceilings and floors, Equipment and Utilities as Contained in the Declaration of Easements, Reservations, Covenants and Restrictions for the condominium parcel recorded September 25, 2003 as document number 0326832188.

[legal description continued on next page]

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## Parcel IDs:

17-16-107-021-0000 - Affects parcel 6 (550 W Adams)  
17-16-107-028-0000 - Affects parcels 1, 4 and 5 (550 W Adams)  
17-16-107-032-0000 - Affects parcels 2 and 3, and the West 2.20' of Lot 6 (550 W Adams)  
17-16-107-037-1264 - Affects P-1, parcel 8 (125 S Jefferson)  
17-16-107-037-1265 - Affects P-2, parcel 8 (125 S Jefferson)  
17-16-107-037-1266 - Affects P-3, parcel 8 (125 S Jefferson)  
17-16-107-037-1267 - Affects P-4, parcel 8 (125 S Jefferson)  
17-16-107-037-1268 - Affects P-5, parcel 8 (125 S Jefferson)  
17-16-107-037-1269 - Affects P-6, parcel 8 (125 S Jefferson)  
17-16-107-037-1270 - Affects P-7, parcel 8 (125 S Jefferson)  
17-16-107-037-1271 - Affects P-8, parcel 8 (125 S Jefferson)  
17-16-107-037-1272 - Affects P-9, parcel 8 (125 S Jefferson)  
17-16-107-037-1273 - Affects P-10, parcel 8 (125 S Jefferson)  
17-16-107-037-1274 - Affects P-11, parcel 8 (125 S Jefferson)  
17-16-107-037-1275 - Affects P-12, parcel 8 (125 S Jefferson)  
17-16-107-037-1276 - Affects P-13, parcel 8 (125 S Jefferson)  
17-16-107-037-1277 - Affects P-14, parcel 8 (125 S Jefferson)  
17-16-107-037-1278 - Affects P-15, parcel 8 (125 S Jefferson)  
17-16-107-037-1279 - Affects P-16, parcel 8 (125 S Jefferson)

## Commonly known as:

550 W. Adams or 125 S. Jefferson Street – each as indicated next to the corresponding numbers  
Chicago, Illinois 60661