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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



Doc# 2203513024 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/04/2022 09:59 AM PG: 1 OF 27

The property identified as: PIN: 19-22-215-042-0000

Address:

Street: 6400 S Pulaski

Street line 2:

City: Chicago

State: IL

ZIP Code: 60629

Lender: Innovative Capital Advisors, LLC

Borrower: BL Branch Group III, LLC

Loan / Mortgage Amount: \$563,879.00

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

Certificate number: 339BB638-4282-445E-9707-7BAD6A37C5C1

Execution date: 1/28/2022

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This instrument prepared by
 And after recording return to:
 Ted J. Dale
 Husch Blackwell LLP
 4801 Main Street - Suite 1000
 Kansas City, Missouri 64112

SECOND MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FINANCING STATEMENT

CH2100012ms (548)
 (Cook County, IL)

THIS SECOND MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FINANCING STATEMENT (this "Mortgage"), made and entered into as of January 28, 2022, by and between: BL BRANCH GROUP III, LLC, a New York limited liability company ("Borrower"), with an address at 120 E. Washington St., Suite 201, Syracuse, NY 13202, as mortgagor; INNOVATIVE CAPITAL ADVISORS, LLC, an Illinois limited liability company, with an address at 8700 State Line Road Ste-380, Leawood, KS 66206, as mortgagee ("Mortgagee"), as agent for the benefit of the lenders described in the Note (as hereinafter defined) (collectively, the "Lenders").

WITNESSETH, THAT in consideration of the Lenders' agreement to make a loan to Borrower in the original principal amount of Five Hundred Sixty Three Thousand Eight Hundred Seventy Nine and 00/100 Dollars (\$563,879.00) (the "Loan") and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby warrants, represents, covenants and agrees as follows:

ARTICLE I Granting Clauses

Section 1.01 Grant of Real Estate Security. Borrower hereby irrevocably grants, bargains, sells, mortgages, warrants, transfers, conveys, assigns, sets over and pledges to Mortgagee all of the following described property (the "Mortgaged Estate"):

- (a) The real property located in the City of Chicago, County of Cook, State of Illinois, described on Exhibit A, attached hereto and incorporated herein, and all and

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singular the tenements, hereditaments and appurtenances thereto, together with all right, title and interest of Borrower in all easements, rights-of-way, gores or strips of land, surface waters, ground waters, watercourses, mineral interests and subsurface rights, alleys, streets and sidewalks, whether now owned or hereafter acquired, either in law or in equity, adjacent or appurtenant to or adjoining such real property (the "Land");

(b) Any and all buildings and improvements now or hereafter erected or located on the Land, including all fixtures, attachments, appliances, equipment, machinery and other articles attached to such buildings and improvements (the "Improvements");

(c) All right, title and interest of Borrower in and to all tangible personal property now owned or hereafter acquired by Borrower and now or at any time hereafter located on the Land or within the Improvements and used in connection therewith, including all building materials stored on the Land, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment, all furniture, furnishings, equipment and other personal property owned by Borrower and used in connection with the operation of the Mortgaged Estate, and all renewals and replacements thereof (excluding any such property owned by a tenant of the Mortgaged Estate) (the "Personal Property"). All of which property shall, so far as permitted by law, be deemed to form a part and parcel of the real property and for the purpose of this Mortgage to be real estate and covered by this Mortgage;

(d) All of Borrower's interest in all existing and future accounts, contract rights, general intangibles, files, books of account, agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, operation or management of the Mortgaged Estate, whether now existing or entered into or obtained after the date hereof, including the "Leases" and "Rents" (as defined herein);

(e) All agreements for use and occupancy of any part of the Mortgaged Estate, now existing or hereafter entered into, including any and all extensions or modifications thereto (the "Leases"), and all of the rents, royalties, security deposits, income, receipts, revenues and other sums now due or which may hereafter become due to Borrower under any Lease or arising from the use and enjoyment of any part of the Mortgaged Estate, and all rights and remedies which Borrower may have against any party under the Leases (the "Rents"); and

(f) All the estate, interest, right, title or other claim or demand with respect to the proceeds of insurance and any and all awards made for the taking of any part of the Mortgaged Estate by the power of eminent domain, or by any proceeding or purchase in lieu thereof.

TO HAVE AND TO HOLD the Mortgaged Estate unto Mortgagee and its successors and assigns, forever.

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Section 1.02 Grant of Security Interest. With respect to any portion of the Mortgaged Estate which constitutes Personal Property, fixtures or other property or interests governed by the Uniform Commercial Code of the state in which the Mortgaged Estate is located (the “UCC”), this Mortgage shall constitute a security agreement between Borrower, as the debtor, and Mortgagee, as the secured party, and Borrower hereby grants to Mortgagee a security interest in such portion of the Mortgaged Estate. Borrower agrees to execute and deliver to Mortgagee all financing and continuation statements and other information which are from time to time required to establish and maintain the validity and priority of the security interests herein granted. Upon the occurrence of an “Event of Default” (as defined herein), Mortgagee shall have all of the rights and remedies of a secured party available under the UCC with respect to the property encumbered by the security interests; provided, however, Mortgagee may, at its option, dispose of such property in accordance with Mortgagee’s rights and remedies under this Mortgage, in lieu of proceeding under the UCC. Borrower hereby appoints Mortgagee as its attorney-in-fact to execute, deliver and file any and all required financing statements, continuation statements and other instruments as Mortgagee may require in order to perfect and maintain the security interests granted herein.

Section 1.03 Assignment of Leases and Rents. Borrower hereby assigns and transfers to Mortgagee all of the Leases and Rents. The terms of such assignment are more specifically set forth in the separate Assignment of Leases and Rents dated as of the date hereof, executed by Borrower in favor of Mortgagee and recorded simultaneously with this Mortgage, the terms of which Assignment of Leases and Rents are specifically incorporated herein by this reference.

Section 1.04 Secured Obligations. This Mortgage shall secure the following indebtedness and obligations, including all replacements, renewals, amendments, extensions, substitutions and modifications thereof:

(a) (1) Payment of all indebtedness and performance of all obligations and covenants of Borrower under or pursuant to (i) the Promissory Note dated as of the date hereof, executed by Borrower in favor of Mortgagee, as agent for the benefit of Lenders, in the aggregate principal amount of the Loan, as it may be amended from time to time (the “Note”); (ii) this Mortgage; (iii) the Assignment of Leases and Rents; (iv) Environmental Indemnity Agreement dated as of the date hereof between Borrower and Mortgagee (the “Environmental Indemnity”); and (v) all other “Loan Documents” (as defined herein); and

(2) Payment of all future advances and all sums advanced by Mortgagee to protect the Mortgaged Estate or otherwise pursuant to the terms of the Loan Documents, with interest on all of the foregoing at the “Default Rate” (as defined in the Note) from the date of Mortgagee’s advance to the date of Borrower’s repayment of same; provided, however, that in no event shall the amount secured hereby exceed two hundred percent (200%) of the original principal amount of the loan.

(b) The indebtedness and the obligations secured by this Mortgage which are described in paragraph (a) above are hereinafter referred to as the “Secured Obligations.”

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(c) This Mortgage, the Note, the Assignment of Leases and Rents, the Environmental Indemnity, that certain loan commitment letter dated September 11, 2019, as amended, between Mortgagee and Borrower, and any other writing or instrument given to evidence or secure the payment or performance of any of the Secured Obligations are hereinafter collectively referred to as the "Loan Documents."

ARTICLE II Payment and Performance

Section 2.01 Payment of Secured Obligations. Borrower shall pay all sums due under the Loan Documents without offset, counterclaim or defense, as and when the same shall become due. Borrower shall fully and faithfully observe and perform all of the obligations of Borrower to be observed and performed under the Loan Documents.

Section 2.02 Warranty of Title. Borrower warrants and represents that: (i) Borrower has good and marketable title to an indefeasible estate in fee simple in the Land and Improvements; (ii) Borrower has good and marketable title to all of the rest of the Mortgaged Estate; and (iii) such title of Borrower is free and clear of any liens or encumbrances except for those exceptions shown in the title insurance policy in favor of Mortgagee insuring the lien of this Mortgage (the "Permitted Encumbrances"). Borrower shall preserve Borrower's title and interest in the Mortgaged Estate and will forever warrant and defend the validity and priority of the lien, security interest and assignment's created herein against the claims of all persons whomsoever, subject only to the Permitted Encumbrances.

ARTICLE III Taxes and Insurance

Section 3.01 Taxes. Borrower shall pay when due and before any penalty attaches or interest accrues, all general taxes, special taxes, assessments, water charges, sewer service charges, and other similar charges against or affecting the Mortgaged Estate or any property or equipment located on the Land, or which might become a lien upon the Mortgaged Estate (the "Taxes"). If any Tax may be legally paid in installments, Borrower shall have the right, at its option, to pay such Tax in installments.

Section 3.02 Insurance.

(a) Borrower shall at all times keep in full force and effect the following policies of insurance with respect to the Mortgaged Estate: (i) comprehensive general public liability insurance in an amount of not less than \$2,000,000.00, combined single limit coverage for injury to persons and damage to property, with a deductible limit satisfactory to Mortgagee; (ii) standard fire and extended coverage casualty insurance, with vandalism and malicious mischief coverage and so called "all risks" or "DIC" coverage in the amount of the full insurable value of the Mortgaged Estate on a replacement cost basis (but in any event not less than the amount of the Loan); (iii) loss of rents or business interruption insurance covering all Rents for a period of one (1) year; and (iv) such other policies of insurance as Mortgagee may from time to time require.

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(b) All insurance policies shall: (i) be issued by a company or companies rated “A” or better by A.M. Best & Company and otherwise satisfactory to Mortgagee; (ii) name Mortgagee as an additional insured and loss payee; and (iii) provide a minimum of thirty (30) days’ written notice to Mortgagee prior to the expiration or any cancellation or modification of such policies. Borrower shall provide Mortgagee with certificates evidencing all required insurance. In the event Borrower shall fail to maintain the insurance required by this section, Mortgagee may, but shall not be so obligated, procure such insurance as Mortgagee shall deem necessary, and any amount so expended by Mortgagee shall be secured by this Mortgage and be repayable by Borrower upon demand, with interest at the “Default Rate” (as defined in the Note).

(c) In the event of any damage or destruction to the Mortgaged Estate, Borrower shall promptly make proof of loss to the insurers, and Borrower shall not adjust or compromise any claim under such insurance without the prior written approval of Mortgagee. All proceeds of such insurance shall be paid directly to Mortgagee, and each insurer is hereby authorized and directed to make such payment directly to Mortgagee. Any proceeds shall be applied first to the payment of all costs and expenses incurred by Mortgagee in obtaining such proceeds. The balance of the proceeds, if any, shall be applied in accordance with the provisions of Article V, Restoration After Casualty/Condemnation.

Section 3.03 [Intentionally Deleted].

ARTICLE IV Eminent Domain

Section 4.01 Eminent Domain. If all or any part of the Mortgaged Estate is taken or damaged by the exercise of the power of eminent domain or a conveyance in lieu thereof (a “Condemnation”), or should Borrower receive any notice or other information regarding any such proceeding, Borrower shall give prompt written notice thereof to Mortgagee. Mortgagee may participate in any Condemnation proceedings, and Borrower shall consult with Mortgagee and its attorneys and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of Condemnation awards or sales in lieu thereof, and all judgments, decrees and awards for injury or damage to the Mortgaged Estate shall be paid to Mortgagee or Mortgagee’s designated agent and shall be applied first to all costs and expenses incurred by Mortgagee in obtaining the proceeds. The balance of the proceeds, if any, shall be applied in accordance with the provisions of Article V, Restoration After Casualty/Condemnation.

ARTICLE V Restoration After Casualty/Condemnation

Section 5.01 Restoration After Casualty/Condemnation. In the event of a damage or destruction by casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration (defined below) of the Mortgaged Estate:

(a) If the Mortgaged Estate shall be damaged or destroyed, in whole or in part, by fire or other casualty, or if the Mortgaged Estate or any portion thereof is taken

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by the power of eminent domain, Borrower shall give prompt notice of such damage or taking to Mortgagee and shall, upon receipt of the Net Proceeds, defined below, promptly commence and diligently prosecute completion of the repair and restoration of the Mortgaged Estate as nearly as possible to the condition the Mortgaged Estate was in immediately prior to such fire or other casualty or taking, with such alterations as may be approved by Mortgagee (the "Restoration").

(b) The term "Net Proceeds" for purposes of this Article V shall mean: (i) the net amount of all insurance proceeds under the policies carried pursuant to Subsections 3.02 (a) of this Mortgage as a result of such damage or destruction, after deduction of Mortgagee's reasonable costs and expenses (including, but not limited to reasonable attorney's fees), if any, in collecting the same, or (ii) the net amount of all awards and payments received by Mortgagee or Mortgagee's designated agent with respect to a taking referenced in Section 4.01 of this Mortgage, after deduction of Mortgagee's reasonable costs and expenses (including, but not limited to reasonable attorney's fees), if any, in collecting the same, whichever the case may be. If (i) the Net Proceeds do not exceed \$50,000.00 (the "Net Proceeds Threshold"); (ii) the costs of completing the Restoration as reasonably estimated by Borrower shall be less than or equal to the Net Proceeds; (iii) no Event of Default shall have occurred and be continuing under the Note, this Mortgage or any of the Loan Documents; (iv) the Mortgaged Estate and the use thereof after the Restoration will be in compliance with, and permitted under, all applicable zoning laws, ordinances, rules and regulations (including, without limitation, all applicable Environmental Requirements (defined in the Environmental Indemnity); (v) (A) in the event that the Net Proceeds are insurance proceeds, less than twenty-five percent (25%) of the total floor area of the Improvements has been damaged or destroyed, or rendered unusable as a result of such fire or other casualty; or (B) in the event that the Net Proceeds are condemnation awards, less than twenty-five percent (25%) of the Land constituting the Mortgaged Estate is taken, such Land that is taken is located along the perimeter or periphery of the Land, no portion of the Improvements is located in condemned Land, and such taking does not materially impair access to the Mortgaged Estate; and (vi) Mortgagee shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note which will be incurred with respect to the Mortgaged Estate as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower, then the Net Proceeds will be disbursed directly to Borrower.

(c) If the Net Proceeds are greater than the Net Proceeds Threshold, such Net Proceeds shall be forthwith paid to Mortgagee or Mortgagee's designated agent to be held by Mortgagee or such agent in a segregated account to be made available to Borrower for the Restoration in accordance with the provisions of this Section 5.01(c) and Section 5.02. The Net Proceeds held by Mortgagee or its designated agent pursuant to Section 5.01 (c) shall be made available to Borrower for payment or reimbursement of Borrower's expenses in connection with the Restoration, subject to the following conditions and subject to the disbursement provisions of Section 5.02:

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(i) No Event of Default shall have occurred and be continuing under the Note, this Mortgage or any of the Other Loan Documents;

(ii) Mortgagee shall, within a reasonable period of time prior to request for initial disbursement, be furnished with an estimate of the cost of the Restoration accompanied by an independent architect's or engineer's certification as to such costs and appropriate plans, which cost estimate and architect's or engineer's certificate shall be subject to Mortgagee's approval, not to be unreasonably withheld or delayed;

(iii) The Net Proceeds, together with any cash or cash equivalent deposited by Borrower with Mortgagee, are sufficient to cover the cost of the Restoration as such costs are certified by the independent architect;

(iv) Net Proceeds are less than the then outstanding principal balance of the Note;

(v) Mortgagee shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Mortgaged Estate as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower;

(vi) Mortgagee shall be satisfied that, upon the completion of the Restoration, the net cash flow of the Mortgaged Estate will be restored to a level sufficient to cover all carrying costs and operating expenses of the Mortgaged Estate, including, without limitation, debt service on the Note and all escrows for insurance premiums and Tax payments for the Mortgaged Estate.

(vii) The Restoration can reasonably be completed on or before the earliest to occur of (A) six (6) months prior to the Maturity Date (as defined in the Note); (B) the earliest date required for such completion under the terms of any major leases of the Mortgaged Estate; and (C) such time as may be required under all applicable zoning laws, ordinances, rules or regulations in order to repair and restore the Mortgaged Estate to as nearly as possible the condition it was in immediately prior to such fire or other casualty or to such taking, as applicable;

(viii) The Mortgaged Estate and the use thereof after the Restoration will be in compliance with, and permitted under, all applicable zoning laws, ordinances, rules and regulations (including, without limitation, all applicable Environmental Requirements (as defined in the Environmental Indemnity)).

Section 5.02 Disbursement of Net Proceeds.

(a) The Net Proceeds held by Mortgagee or Mortgagee's designated agent until disbursed in accordance with the provisions of this Article V shall constitute additional security for the Secured Obligations. The Net Proceeds other than the Net

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Proceeds paid under the Policy described in Section 3.02(a)(iii) shall be disbursed by Mortgagee or Mortgagee's designated agent to, or as directed by, Borrower, in an amount equal to the costs actually incurred from time to time for work in place (which may include construction management costs, attorney fees, and hard and soft costs) as part of the Restoration less customary retainage from time to time during the course of the Restoration, not more frequently than once per month, upon receipt of evidence satisfactory to Mortgagee that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Mortgaged Estate arising out of the Restoration which have not either been fully bonded and discharged of record or in the alternative fully insured to the satisfaction of Mortgagee by the title company insuring the lien of this Mortgage. The Net Proceeds paid under the Policy described in Section 3.02(a)(iii) shall be disbursed by Mortgagee or Mortgagee's designated agent to pay for debt service under the Loan evidenced by the Note, to pay other expenses incurred by Borrower in connection with the ownership and operation of the Mortgaged Estate, and the remainder thereof, to, or as directed by, Borrower to pay for the cost of the Restoration in accordance with this Section 5.02(a). Final payment shall be made after submission to Mortgagee of all licenses, permits, certificates of occupancy and other required approvals of governmental authorization having jurisdiction and certification from the Casualty Consultant (as defined below) of Mortgagee that the Restoration has been fully completed.

(b) Mortgagee shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Mortgagee and an independent consulting engineer selected by Mortgagee (the "Casualty Consultant"), such acceptance not to be unreasonably withheld or delayed. All costs and expenses incurred by Mortgagee in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(c) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Mortgagee, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Mortgagee or Mortgagee's designated agent before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Mortgagee or its designated agent shall be held by Mortgagee or its designated agent and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Article V shall constitute additional security for the Secured Obligations.

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(d) Except upon the occurrence and continuance of an Event of Default, Borrower shall settle any insurance claims with respect to the Net Proceeds which in the aggregate are less than the Net Proceeds Threshold. Mortgagee shall have the right to participate in and reasonably approve any settlement for insurance claims with respect to the Net Proceeds which in the aggregate are greater than the Net Proceeds Threshold. If an Event of Default shall have occurred and be continuing, Borrower hereby irrevocably empowers Mortgagee, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claim and to collect and to make receipt for any such payment. If the Net Proceeds are received by Borrower, such Net Proceeds shall, until the completion of the related work, be held in trust for Mortgagee and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof.

(e) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Mortgagee or Mortgagee's designated agent after (i) the Casualty Consultant certifies to Mortgagee that the Restoration has been completed in accordance with the provisions of this Article V, and (ii) the receipt by Mortgagee of evidence satisfactory to Mortgagee that all costs incurred in connection with the Restoration have been paid in full and all required permits, licenses, certificates of occupancy and other required approvals of governmental authorities having jurisdiction have been issued, shall be remitted by Mortgagee or its designated agent to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Mortgage or any of the Loan Documents.

ARTICLE VI

Maintenance; Alterations; and Inspections

Section 6.01 Maintenance. Borrower shall: (i) maintain the Mortgaged Estate in good condition and repair, subject to ordinary wear and tear; (ii) not commit or suffer to be committed any waste of the Mortgaged Estate; (iii) comply with all laws, ordinances, regulations and restrictions now or hereafter affecting the Mortgaged Estate; and (iv) not do or permit to be done any act which would otherwise diminish the value of the Mortgaged Estate.

Section 6.02 Alterations. Borrower shall not remove, demolish or alter any of the Improvements in excess of \$75,000 of any one property in any one year, without the prior written approval of Mortgagee; provided, however, that Borrower may complete the Demising Work (as such term is defined in the applicable lease covering the applicable portion of the Mortgaged Estate) without providing the Mortgagee notice or obtaining its consent. Borrower shall complete any construction or alteration of the Mortgaged Estate in a good and workmanlike manner. Borrower may make such structural repairs, maintenance and capital improvements as required to comply with Section 6.01.

Section 6.03 Inspections. Mortgagee shall have the right at any time, upon reasonable prior notice to Borrower, to enter upon the Mortgaged Estate for the purpose of inspecting the same or to exercise any of its rights and remedies under the Loan Documents.

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ARTICLE VII Events of Default; Remedies

Section 7.01 Events of Default. Each of the following shall be an “Event of Default” under this Mortgage:

(a) Failure of Borrower to make any payment of principal or interest or any other payment under the Note or any other sum evidenced by or secured under any Loan Document within five (5) days of the date such payment shall be due and payable (calculated by including the due date);

(b) Failure by Borrower to perform or observe any other covenant or agreement set forth in this Mortgage, and the continuance of such default for thirty (30) days after notice thereof from Mortgagee specifying such default (provided that if such default cannot reasonably be cured within such thirty (30) day period, no Event of Default shall be deemed to exist if Borrower shall commence to cure such default within such thirty (30) day period and proceed with due diligence to complete such cure; but in any event, such default must be cured within ninety (90) days after Mortgagee’s notice);

(c) The occurrence of a default or an “Event of Default” under any Loan Document other than this Mortgage which is not cured within the applicable cure period, if any, provided therein;

(d) Any suit or proceeding shall be filed against Borrower or any guarantor of Borrower under any Loan Document which, if adversely determined, could materially impair the ability of Borrower or such guarantor to perform any of its obligations under any Loan Document, in the opinion of Mortgagee, in its sole discretion;

(e) Any representation, warranty or statement made by Borrower, any guarantor or other party under any Loan Document or any other affidavit or instrument executed or delivered with respect to the Loan shall be determined by Mortgagee to be false or misleading in any material respect;

(f) Borrower shall convey, alienate, transfer, mortgage, encumber, lease or assign ownership or control of all or any part of the Mortgaged Estate or any interest therein, whether legal or equitable, or in Borrower, in each case in violation of Section 8.01 hereof and the other Loan Documents, or Borrower shall be divested of its title or any interest in the Mortgaged Estate in any manner, whether voluntarily or involuntarily, or if there is any merger, consolidation or dissolution affecting Borrower, not otherwise approved by Mortgagee;

(g) Borrower shall: (i) execute an assignment for the benefit of creditors or an admission in writing of Borrower’s inability or failure to pay debts generally as they become due; or (ii) allow the levy against the Mortgaged Estate or any part thereof of any execution, attachment, sequestration or other writ or action which is not vacated or discharged within sixty (60) days after such levy; or (iii) allow the appointment of a receiver, trustee or custodian of Borrower or the Mortgaged Estate or any part thereof, which receiver, trustee or custodian is not discharged within sixty (60) days after such

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appointment; or (iv) file as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of, any law granting relief to any debtor, or takes any action in furtherance thereof; or (v) file a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending, any of the rights or powers of Mortgagee granted under any Loan Document; or (vi) allow the filing of a petition, case, proceeding or other action against Borrower as a debtor under any law granting relief to a debtor, or shall seek or allow appointment of a receiver, trustee, custodian or liquidator of Borrower or of the Mortgaged Estate, or any part thereof, or of any significant portion of Borrower's other property, and (x) Borrower shall admit, acquiesce in or fail to contest diligently the allegations thereof, or (y) such petition, case, proceeding or other action shall result in the entry of an order for relief or order granting the relief sought against Borrower, or (z) such petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days following the date of filing;

(h) The occurrence of any event described in paragraph (g) above with respect to any guarantor of the Secured Obligations or any other person or entity obligated in any manner to pay or perform the Secured Obligations;

(i) Borrower shall permit any person or entity to conduct activities on the Mortgaged Estate relating to the laundry and/or dry cleaning of clothing or other materials which do not restrict itself to "drop-off" or "pickup" activities only. This covenant shall be liberally construed to preclude any activity relating to the preparation, use, application or storage of any chemical compound utilized in the laundry and/or dry cleaning process.

(j) Borrower shall be in default under the First Mortgage Loan (defined below) beyond the period (if any) provided in the First Mortgage Loan documents for the cure of such default.

Section 7.02 Remedies. Upon the occurrence of an Event of Default, Mortgagee shall have the right to take any one or more of the following actions:

(a) Declare all Secured Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind except as otherwise provided herein, and Borrower hereby waives notice of intent to accelerate the Secured Obligations;

(b) Commence an action to foreclose this Mortgage, appoint a receiver or specifically enforce any of the covenants of this Mortgage;

(c) Exercise any or all of the remedies available to a secured party under the UCC;

(d) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Estate or any part thereof

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and do any acts which it deems necessary or desirable to protect and preserve Mortgagee's security; or

(e) In addition to the other remedies provided to Mortgagee herein upon, or at any time after the filing of a complaint to foreclose this Mortgage, without notice to Borrower or anyone claiming under Borrower, and without regard to the value of the Mortgaged Estate, to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Estate by the court in which such complaint is filed, and Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all of the usual powers and duties of receivers in like or similar cases and all powers and duties of Mortgagee in case of entry as provided in Section 7.05.

If Mortgagee shall exercise its right to declare all Secured Obligations to be due and payable, then in addition any tender of payment after acceleration (other than pursuant to a statutory right to cure prior to foreclosure), Borrower shall pay Mortgagee or to Mortgagee's designated agent, as compensation to Mortgagee for premature payment of the Loan, a prepayment charge which shall be equal to the prepayment charge set forth in Section 4(c) of the Note.

Section 7.03 Remedies Not Exclusive; No Waiver. Every power or remedy given Mortgagee by any of the Loan Documents, or to which Mortgagee otherwise may be entitled, may be exercised without prejudice to any other power or remedy, concurrently, independently, in any order or any manner from time to time and as often as may be deemed expedient by Mortgagee. No remedy or power is intended to be exclusive of any other remedy or power, and Mortgagee may pursue inconsistent remedies. The acceptance by Mortgagee or Mortgagee's designated agent of the payment or performance of any Secured Obligation after the same shall be due shall not constitute a waiver of Mortgagee's right to the prompt payment or performance of same, or to declare a default as herein provided. The acceptance by Mortgagee or Mortgagee's designated agent of any sum in an amount less than the sum then due shall not constitute a waiver of Borrower's obligation to pay the entire sum, and such failure shall continue to be a default by Borrower notwithstanding Mortgagee's acceptance of such partial payment. Consent by Mortgagee to any action or inaction of Borrower which is subject to consent or approval shall not be deemed a waiver of any other or future right of Mortgagee to consent under this Mortgage. Nothing set forth in this Mortgage shall be construed to constitute Mortgagee as a "mortgagee in possession" in the absence of its actual taking possession of the Mortgaged Estate pursuant to the powers granted herein.

Section 7.04 Waivers. To the extent permitted by law, Borrower hereby agrees that it shall not at any time insist upon, plead, claim or take any benefit or advantage, in any way whatsoever, whether now or in the future, and Borrower hereby irrevocably waives, all of the following, whether the same exists under federal or state law, or otherwise at law or in equity:

- (a) Any right of redemption of any of the Mortgaged Estate after sale under this Mortgage;
- (b) All rights and claims it may have in or to any of the Mortgaged Estate as a "homestead exemption," or similar exemptions;

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(c) Any stay, extension or moratorium law which may extend the period for enforcement of this Mortgage or any period of redemption;

(d) Any and all right to require the marshaling of assets in connection with the exercise of any of Mortgagee's remedies under this Mortgage, it being agreed that Mortgagee shall have the right to determine, in its sole discretion, the order in which any of the Mortgaged Estate shall be sold, or the order in which any Secured Obligations are satisfied from the proceeds of such sale;

(e) Any right to trial by jury in any action, proceeding or counterclaim brought by any party against any other party on any matter arising out of or in any way connected with this Mortgage or the Loan Documents, the relationship between Borrower and Mortgagee, or Borrower's use and occupancy of the Mortgaged Estate;

(f) Any law providing for the valuation or appraisal of all or any part of the Mortgaged Estate prior to or after any sale or sales made pursuant to this Mortgage;

(g) Personal service of process in any action or proceeding at any time commenced to enforce this Mortgage or any of the Loan Documents, Borrower hereby agreeing that such process shall be deemed properly and adequately served if sent to Borrower as provided in Section 13 of the Note;

(h) All notices not herein specifically required of Borrower's default under any of the Loan Documents, or of Mortgagee's exercise, or election to exercise, any right, option or election under this Mortgage;

(i) Any and all technical or procedural errors, defects and imperfections in any of the Loan Documents or any proceedings instituted by Mortgagee under this Mortgage; and

(j) Any claim or defense of Borrower contesting or challenging the personal jurisdiction of the "Courts" (as defined in Section 7.06 below), and any objection that Borrower may now or hereafter have to the laying of venue in the Courts for any suit, action or proceeding arising out of or relating to this Mortgage or any other Loan Document or any objection that such suit, action or proceeding in the Courts has been brought in an inconvenient forum.

Section 7.05 Preservation of Security. Notwithstanding the provisions of this Article VII, and in addition to any other rights or remedies of Mortgagee under this Mortgage, should Borrower at any time fail to make any payment or perform any obligation under any Loan Document, Mortgagee, in its sole discretion, without obligation to do so and without notice to or demand upon Borrower, and without releasing Borrower from any Secured Obligation or waiving any of Mortgagee's rights under the Loan Documents, may cure such default of Borrower in such manner and to such extent as Mortgagee may deem necessary to protect the security of this Mortgage. In connection therewith, without limiting its general powers, Mortgagee shall have and is hereby given the right, but not the obligation:

(a) To enter upon and take possession of the Mortgaged Estate;

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(b) To direct Borrower to terminate any management agent and employ such management agent as Mortgagee may determine;

(c) To make additions, alterations, repairs and improvements to the Mortgaged Estate which Mortgagee may consider necessary or proper to keep the Mortgaged Estate in good condition and repair;

(d) To appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee;

(e) To pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which, in the judgment of Mortgagee, may affect the security of this Mortgage or be prior or superior hereto; and

(f) In exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants.

All costs and expenses incurred by Mortgagee in connection with the exercise of the foregoing rights, including costs of evidence of title, court costs, appraisals, surveys and reasonable attorneys' fees (which shall include the cost of paralegals), shall be secured by this Mortgage and be repayable by Borrower upon demand, with interest at the Default Rate.

Section 7.06 Consent to Jurisdiction; Waiver; Other Forums.

(a) Any suit, action or proceeding arising out of or relating to this Mortgage or any other Loan Document, or any action or proceeding to execute on or otherwise enforce any judgment arising out of an Event of Default or other default under this Mortgage or any other Loan Document can be brought by Mortgagee in the applicable federal district court or in the state circuit court having jurisdiction for Johnson County, State of Kansas or any county where the collateral for the Loan is located (collectively, the "Courts"). By executing and delivering this Mortgage, Borrower, and its successors and assigns, hereby irrevocably and unconditionally submit to the non-exclusive personal jurisdiction of the Courts for any suit, action or proceeding arising out of or relating to this Mortgage or any other Loan Document, and irrevocably and unconditionally agree not to assert in any such proceeding before the Courts or any other court or tribunal, by way of motion, as a defense or otherwise, any claim contesting or challenging the personal jurisdiction of the Courts. In addition, Borrower irrevocably waives, to the fullest extent permitted by law, (i) any objection that it may now or hereafter have to the laying of venue in the Courts for any suit, action or proceeding arising out of or relating to this Mortgage or any other Loan Document or (ii) any objection that such suit, action or proceeding brought in the Courts has been brought in an inconvenient forum.

(b) Nothing in this Section or in any other Loan Document shall be deemed to preclude Mortgagee from bringing suit, action or proceeding arising out of or relating to this Mortgage or any other Loan Document in any other jurisdiction.

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ARTICLE VIII General Covenants

Section 8.01 Prohibition On Transfer.

(a) Borrower shall not, by operation of law or otherwise, sell, convey, alienate, transfer, mortgage, encumber, lease or assign ownership or control of all or any part of the Mortgaged Estate or any interest therein, whether legal or equitable (including rents, issues or profits arising therefrom), or in Borrower (including any general or limited partnership interests, shares of stock or any other equity, beneficial or ownership interest in Borrower) without the prior written approval of Mortgagee, in its sole discretion. Mortgagee may withhold its approval for any reason or Mortgagee may condition its approval upon an increase in the interest rate under the Note or the payment of a fee. Notwithstanding the foregoing, such approval of Mortgagee shall not be required for the grant of a leasehold interest in the Mortgaged Estate of five (5) years or less upon then current market terms.

(b) Notwithstanding the provisions of Section 8.01(a) above, in the event that Borrower desires to transfer all or any portion of the Mortgaged Estate in concert with an assumption of all or a portion of the Loan, and provided that no Event of Default has occurred under the Loan Documents, Mortgagee's consent to such a transfer of all or any portion of the Mortgaged Estate shall be subject to Mortgagee's option to require, review and approve each of the following: (i) the creditworthiness of the proposed transferee; (ii) the management experience of the proposed transferee; (iii) the terms of the purchase; (iv) the agreement of the transferee to assume and pay the Loan; (v) payment of a fee equal to one percent (1%) of the then outstanding principal balance of the Loan, plus Mortgagee's costs (including reasonable attorney's fees) incurred in documenting such transfer; and (vi) other terms and conditions reasonably required by Mortgagee. Mortgagee shall not unreasonably withhold, condition, delay or deny its consent should Borrower seek to make a transfer in accordance with the terms and conditions set forth in this Section 8.01(b).

(c) Notwithstanding the provisions of Section 8.01(a) above, Mortgagee shall permit the following transfers of ownership interests in the Borrower entity without the application of any transfer fee or change in the Loan terms provided that: (i) no Event of Default shall have occurred and be continuing under the Loan Documents or any separate documents guaranteeing Borrower's payment and performance of the Loan; (ii) Mortgagee is promptly notified of such proposed transfer and provided with such documentation evidencing the transfer and the identity of the transferee as reasonably requested by Mortgagee; (iii) assumption documents, if deemed necessary by Mortgagee, in form acceptable to Mortgagee are executed by the transferee; and (iv) Borrower reimburses Mortgagee for all fees and expenses including reasonable attorney's fees associated with the Mortgagee's review and documentation of the transfer:

(1) Any interest in the Borrower entity may be transferred upon the death of the holder of said interest but only by will or intestacy.

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(2) Any interest in the Borrower entity may be voluntarily sold, transferred, conveyed or assigned to immediate family members or family trusts for estate planning purposes, or to other third parties, provided that at all times there exists a control of the Borrower entity by parties owning interests existing as of the date of Loan closing or assigns approved by Lender. "Immediate family members" shall mean the spouse, children, grandchildren, siblings, and the children's siblings of each existing holder of an interest in Borrower, as of the date the Loan is made, or a trust for the benefit of one or more or any such persons.

(3) Any interest in the Borrower entity may be voluntarily sold, transferred or conveyed or assigned to another person owning an interest in Borrower as of the date of Loan closing.

(d) Notwithstanding the provisions of Section 8.01(a) above, and provided that no Event of Default has occurred under the Loan Documents, then Borrower may obtain secondary financing with the prior written consent of Mortgagee and subject to the following terms and conditions: (i) Mortgagee shall have the right to approve the secondary financing Mortgagee; (ii) Mortgagee shall have the right to approve the terms and conditions of the secondary financing; (iii) the Loan to value ratio must not exceed, inclusive of the Secured Obligations, seventy-five percent (75%); and (iv) the net operating income of the Mortgage Estate, inclusive of the Secured Obligations, must equal 1.20 times the combined debt service of the Mortgaged Estate. Mortgagee shall not unreasonably withhold, condition or delay its consent should Borrower seek to obtain secondary financing in accordance with the terms and conditions set forth in this Section 8.01(d).

(e) Notwithstanding anything set forth in this Mortgage or in any other Loan Document, Borrower shall have the option to sell the Mortgaged Estate and obtain the release of the Mortgaged Estate from the lien of this Mortgage (the "Release") by paying to Lender a sum equal to \$131,488.00 (the "Original Loan Allocation") multiplied by one hundred ten percent (110%) (the "Release Price"), and upon such payment, Lender shall file a release of this Mortgage in the applicable records. Lender shall recalculate the payments of principal and interest under the Note based on the principal balance of the Note, as reduced by the Release Price. If the sale proceeds are less than the Release Price, the principal balance of the Note will be paid down by the greater of (i) the actual sales proceeds, or (ii) the Original Loan Allocation. Borrower shall pay all costs, fees and expenses associated with the Release, including without limitation, all recording fees, title charges and attorney's fees and expenses incurred by or on behalf of Mortgagee in connection therewith, and all such sums shall be due and payable on the date of closing and delivery of the release documentation by Mortgagee. Borrower shall provide Mortgagee with an endorsement to its loan title policy with respect to the remaining parcels in form and substance satisfactory to Lender, insuring the Loan through the date and time of recording of the release documentation with no new exceptions since the original Loan closing unless approved by Lender in writing.

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(f) Mortgagee acknowledges and agrees that Borrower has encumbered the Mortgaged Estate with a mortgage (the "First Mortgage") in favor of Mortgagee ("First Mortgagee") securing a loan from First Mortgagee to Borrower in the principal amount of \$2,416,622.00 (the "First Mortgage Loan"), pursuant to a promissory note in the amount thereof. This Mortgage shall be subordinate in all respects to the First Mortgage. If so requested by Mortgagee, Mortgagee shall enter into an Intercreditor Agreement with First Mortgagee on terms and conditions satisfactory to Mortgagee and First Mortgagee.

Section 8.02 Compliance With Laws. Borrower shall promptly comply with all present and future federal, state and local laws, statutes and ordinances, and all covenants and restrictions of record affecting the Mortgaged Estate, including (i) the Occupational Safety and Health Act (OSHA), 29 U.S.C. § 651, and (ii) the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101. Borrower shall not initiate or acquiesce in any zoning reclassification or material change in the zoning or initiate or acquiesce in any variation of zoning standards affecting the Mortgaged Estate without the prior written approval of Mortgagee.

Section 8.03 ERISA Representation and Warranty. Borrower hereby represents, warrants and agrees that as of the date hereof and the date of closing of the Loan, none of the investors in or owners of Borrower is (i) an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, (ii) a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended, nor (iii) an entity the assets of which are deemed to include plan assets pursuant to Department of Labor regulation Section 2510.3-101 (the "Plan Asset Regulation"). Borrower further represents, warrants and agrees that at all times during the term of the Loan, Borrower shall not be deemed to include plan assets. If at any time during the entire term of the Loan any of the investors in or owners of Borrower shall include a plan or entity described in the first sentence of this Section 8.03, Borrower shall as soon as reasonably possible following an investment by such plan or entity, provide Mortgagee with an opinion of counsel reasonably satisfactory to Mortgagee indicating that the assets of Borrower are not deemed to include plan assets pursuant to the Plan Asset Regulation. In lieu of such opinion, Mortgagee may, in its sole discretion, accept such other assurances from Borrower as are necessary to satisfy Mortgagee, in its sole discretion, that the assets of Borrower are not deemed to include plan assets pursuant to the Plan Asset Regulation. Borrower understands that the representations and warranties herein are and will be at closing a material inducement to Mortgagee in the making of the Loan, without which Mortgagee would be unwilling to proceed with closing of the Loan.

Section 8.04 Notices. All notices, approvals or communications required or permitted to be given under this Mortgage shall be in writing and shall be deemed to have been properly given and received (i) if sent by hand delivery, then upon delivery, (ii) if sent by overnight courier or U.S. Express Mail, then one (1) day after dispatch, and (iii) if mailed by registered or certified U.S. mail, postage prepaid and return receipt requested, then two (2) days after deposit in the mail. All such notices and communications shall be given to the parties at their respective addresses set forth in this Mortgage, or at such other addresses as either party may designate by notice in accordance with the terms of this Section.

Section 8.05 Legal Existence. If Borrower is a corporation, partnership, limited liability company or other entity, Borrower shall preserve and keep in full force and effect its

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legal existence and all franchises, rights and privileges under the laws of the state of its incorporation or formation and its standing and/or qualification to do business in the state in which the Mortgaged Estate is located.

Section 8.06 Special Purpose Entity. Borrower warrants, represents and covenants that it has not and shall not:

- (a) Engage in any business or activity other than the ownership, operation and maintenance of the Mortgaged Estate, and activities incidental thereto;
- (b) Acquire or own any material assets other than (i) the Mortgaged Estate, and (ii) such incidental personal property as may be necessary for the operation of the Mortgaged Estate;
- (c) Merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or, subject to Section 8.01(e), otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Agent's consent;
- (d) Fail to observe its organizational formalities or preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and qualification to do business in the state where the Mortgaged Estate is located, or without the prior written consent of Agent, amend, modify, terminate or fail to comply with the provisions of Borrower's Articles of Incorporation, By-Laws or similar organizational documents, as the case may be;
- (e) Own any subsidiary or make any investment in any person or entity without the consent of Agent;
- (f) Commingle its assets with the assets of any of its members, affiliates, or principals, or of any person or entity, participate in a cash management system with any other entity or person, or fail to use its own separate stationary, invoices and checks;
- (g) Incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Secured Obligations, except for trade payables in the ordinary course of its business of owning and operating the Mortgaged Estate, provided that such debt is not evidenced by a note and is paid when due;
- (h) Become insolvent and/or fail to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due;
- (i) Fail to maintain its records, books of account and bank accounts separate and apart from those of the members, principals and affiliates of Borrower, the affiliates of members or principals of Borrower, and any other person or entity;
- (j) Enter into any contract or agreement with any member, principal or affiliate of Borrower, except upon terms and conditions that are intrinsically fair and

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substantially similar to those that would be available on an arms-length basis with third parties other than any member, principal or affiliate of Borrower;

- (k) Seek the dissolution or winding up, in whole or in part, of Borrower;
- (l) Fail to correct any known misunderstandings regarding the separate identity of Borrower;
- (m) Guarantee or become obligated for the debts of any other entity or person or hold itself out to be responsible for the debts of another entity or person;
- (n) Except as may be permitted by the operating agreement of the Borrower in the form and substance in place at Loan closing, make any loans or advances to any third party, including any member, principal or affiliate of Borrower, or any member, principal or affiliate thereof, and shall not acquire obligations or securities of any member, principal or affiliate of Borrower, or any member, general partner, or affiliate thereof;
- (o) Fail to file its own tax returns, nor file a consolidated federal income tax return with any other entity;
- (p) Fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not to (i) mislead others as to the identity with which such other party is transacting business, or (ii) suggest that Borrower is responsible for the debts of any third party (including any member, principal or affiliate of Borrower, or any member, principal or affiliate thereof);
- (q) Fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (r) File or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors;
- (s) Share any common logo with or hold itself out as or be considered as a department or division of (i) any principal, member or affiliate of Borrower, (ii) any affiliate of a principal or member of Borrower, or (iii) any other person or entity;
- (t) Fail to maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person or entity;
- (u) Have its assets listed on the financial statement of any other entity;
- (v) Fail to observe all applicable organizational formalities;
- (w) Fail to pay the salaries of its own employees (if any) from its own funds;

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(x) Fail to allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;

(y) Fail to use separate invoices and checks bearing its own name; or

(z) Pledge its assets for the benefit of any other person or entity, other than with respect to the loan evidenced by the Note.

Section 8.07 Liens and Subrogation Rights of Mortgagee.

(a) Subject to Section 8.01, Borrower shall not create, permit to accrue or suffer to exist upon any of the Mortgaged Estate, any security interest, judgment lien, mechanic's or materialman's lien, or any other lien, encumbrance, charge, retention or reservation of title, or pledge, hypothecate or assign any of the Mortgaged Estate as security, and shall promptly pay, when the same shall become due, all claims and demands of contractors, subcontractors, mechanics, materialmen, laborers and others which claims, if unpaid, might result in or permit the creation of a lien upon the Mortgaged Estate, and Borrower shall cause any such lien to be promptly paid and discharged, whether by payment, bonding or otherwise, within thirty (30) days after the filing of same.

(b) Mortgagee, at its option, shall be subrogated, as further security for the Secured Obligations, to the lien of any lien, encumbrance or claim against the Mortgaged Estate paid out of the proceeds of the Loan, even though the same be released of record.

Section 8.08 Financial Statements and Rent Rolls. Borrower shall deliver to Agent, with reasonable promptness (and in any event within ninety (90) days after the close of Borrower's fiscal year): (i) an income and expense statement with respect to the operation of the Mortgaged Estate for the immediately preceding fiscal year of Borrower; (ii) a balance sheet and statement of profit and loss of Borrower for the immediately preceding fiscal year of Borrower; and (iii) a current rent roll. Each such operating and expense statement, financial statement and rent roll shall be certified by the general partner, member or manager, or chief financial officer of Borrower, and shall be prepared in accordance with generally accepted accounting principles. In the event Borrower fails to provide the items set forth above in this Section 8.08 within ninety (90) days after the close of Borrower's fiscal year, Borrower shall pay Agent a late penalty in the amount of \$1,000.00, payable within one hundred twenty (120) days after the close of Borrower's fiscal year. Borrower shall also provide Agent with such additional information or records relating to the Mortgaged Estate or Borrower's financial condition as Agent may from time to time request. Upon request of Agent, Borrower shall furnish financial statements from major tenants under any Leases to the extent Borrower is entitled under the Leases to receive such statements.

Section 8.09 Successors. The terms and provisions of this Mortgage, and the rights and obligations of Borrower and Mortgagee, shall inure to the benefit of and be binding upon Borrower and Mortgagee and their successors and assigns.

Section 8.10 Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the state of New York.

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Section 8.11 Release of Mortgage. Upon payment and performance in full of all of the Secured Obligations, Mortgagee shall, upon demand of Borrower but in no event later than the time prescribed by applicable law, release the Mortgaged Estate from the lien of this Mortgage and shall furnish Borrower with a properly executed and recordable instrument evidencing such release.

Section 8.12 Estoppel Certificate. Within twenty (20) days after request by Mortgagee, Borrower shall furnish Mortgagee a duly acknowledged written statement, in form satisfactory to Mortgagee, setting forth the amount of principal and interest then owing under the Note, any other charges payable under any Loan Documents, and stating whether any offsets or defenses exist to the indebtedness secured hereby.

Section 8.13 Mortgagee's Approval. In any instance under this Mortgage in which Mortgagee's approval shall be required, such approval may be given or withheld by Mortgagee in Mortgagee's sole discretion, and shall be final and conclusive. The granting of any approval by Mortgagee shall not be deemed a waiver of such right of approval to any future matter, and all approvals by Mortgagee must be in writing.

Section 8.14 Severability. If any term or provision of this Mortgage or the application thereof to any person or circumstance shall, to any extent, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or any other circumstance or situation with respect to this Mortgage, and each remaining term and provision of this Mortgage shall be valid and be enforced to the fullest extent by law.

Section 8.15 Limited Liability. (a) The liability of Borrower for the repayment of the indebtedness evidenced by the Note and the performance of the Secured Obligations shall be limited to the security given by Borrower and other parties to the Note and other Secured Obligations. Notwithstanding anything to the contrary contained herein, and notwithstanding any delay by Agent in exercising any right, remedy or privilege under any Loan Document, Borrower shall be personally liable beyond the aforesaid limitation and beyond their interest in the security granted to Agent for the benefit of Lenders to the extent of: (i) any funds received by Borrower or any other person or entity for or on account of Borrower as security deposits under any Leases; (ii) any Rents received or held by Borrower after the occurrence of an Event of Default or any Rents received by Borrower which are prepaid more than one month in advance, except for rents for February and March of 2022, which will be paid to Borrower at Loan closing; (iii) all condemnation awards and payments and insurance proceeds received by Borrower that have not been applied as required by the terms of the Loan Documents; (iv) the cost to repair the Mortgaged Estate as a result of a casualty not reimbursed by insurance; (v) any liability, damage, cost or expense (including reasonable attorneys' fees) incurred by Agent or Lenders as a result of any fraud, misrepresentation, or willful misconduct or bad faith by Borrower, its principals or any guarantor; (vi) Borrower's obligations under the Environmental Indemnity Agreement and any liability, damage, cost or expense (including reasonable attorneys' fees) incurred by Agent or Lenders under the terms of the Environmental Indemnity Agreement; (vii) any liability, damage, cost or expense (including reasonable attorneys' fees) incurred by Agent or Lenders due to any waste of the Mortgaged Estate by Borrower or Borrower's representatives or tenants; (viii) the cost to correct any violations of the Americans With

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Disabilities Act; (ix) any failure to pay delinquent Taxes, to the extent that funds are available in Borrower's account and not applied to payment of such Taxes; (x) failure to maintain insurance coverage in respect of the Mortgaged Estate as required by the Note or Mortgage, to the extent that funds are available in Borrower's account and not applied to payment of such insurance policies; or (xi) the removal, disposal, transfer, sale, assignment or other disposition of any Mortgaged Estate in contravention of the Loan Documents;

(b) Notwithstanding the foregoing, the agreement of Lender not to pursue recourse liability against Borrower as set forth in Section 8.15(a) above SHALL BECOME NULL AND VOID and shall be of no further force or effect, and the indebtedness of Borrower under the Note and all other sums due from Borrower to Lender under the Loan shall immediately become FULLY RECOURSE to Borrower and any other guarantor of the Loan, jointly and severally, in the event of: (i) any petition for bankruptcy, insolvency, dissolution or liquidation under the Bankruptcy Code or any similar federal or state law is filed by, consented to, or acquiesced in by, Borrower or Guarantor; (y) Borrower or Guarantor shall have colluded with other creditors to cause an involuntary bankruptcy filing with respect to Borrower, or (z) Borrower fails to be, and to at all times have been, a special purpose entity, which failure results in a substantive consolidation of Borrower with any affiliate in a bankruptcy or similar proceeding (or the filing by any party of a motion for substantive consolidation in bankruptcy citing any such failure); and (ii) the transfer of, or the grant of a mortgage or lien on, any Mortgaged Estate in violation of the Loan Documents by or through the efforts of Borrower or Guarantor.

(c) Nothing contained herein shall limit or affect Agent's or Lenders' rights under any guaranty or other collateral which may now or hereafter be given in connection with the Note.

ARTICLE IX Environmental Indemnity

Section 9.01 Hazardous Substances. Borrower shall not generate, store, use or dispose, or permit the generation, storage, use or disposal of, any "Hazardous Substance" (as defined in the Environmental Indemnity) on or about the Mortgaged Estate, unless: (i) the Hazardous Substance is used or disposed of by Borrower or used or sold by tenants of the Mortgaged Estate in the ordinary course of their respective businesses, (ii) the presence of which product is not prohibited by applicable Environmental Requirements (as defined in the Environmental Indemnity), and (iii) the use and disposal of which are in all respects in accordance with applicable Environmental Requirements.

Section 9.02 Indemnity. Borrower shall indemnify, defend and save and hold harmless Mortgagee and Lenders from and against any and all losses, liabilities, damages, costs and expenses (including costs of remediation or cleanup, loss of property value or defects in title to the Mortgaged Estate, and the reasonable fees and disbursements of Mortgagee's and Lenders' counsel) asserted against or suffered or incurred by Mortgagee or Lenders and in any way relating to or arising out of the generation, storage, manufacturing, refining, releasing, transportation, treatment, disposal or other presence of any Hazardous Substance on or about or removed from the Mortgaged Estate, which indemnity shall survive: (i) the foreclosure of this Mortgage; (ii) any conveyance of the Mortgaged Estate in lieu of such foreclosure; (iii) the

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payment and performance of the Secured Obligations, (iv) the release of the lien of this Mortgage; and (v) any other transfer of Borrower's title to or interest in the Mortgaged Estate. The terms and provisions of the Environmental Indemnity are specifically incorporated into this Article and made a part hereof.

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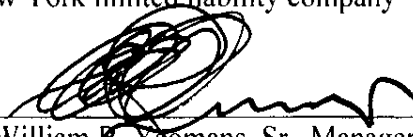
Property of Cook County Clerk's Office
COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387
COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387
Clerk's Office

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IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly executed on the day and year set forth in the acknowledgment attached hereto and to be effective as of the date first set forth above.

BORROWER:

BL BRANCH GROUP III, LLC,
a New York limited liability company

By: 
William B. Yeomans, Sr., Manager

Acknowledgment
Exhibit A: Legal Description

Signature Page -- Mortgage

Property of Cook County Clerk's Office

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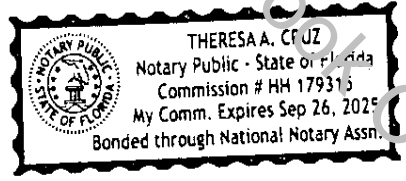
STATE OF FLORIDA)
) ss.
COUNTY OF Collier)

The foregoing instrument was acknowledged before me by means of 0 physical presence or
_____ online notarization, this Jan 27, 2022 by William B. Yeomans, Sr., a
Manager on behalf of BL Branch Group III, LLC, a New York limited liability company who is
~~personally known to~~ me or who has produced _____ as
identification.

Theresa A. Cruz

Notary Public
My Commission Expires: 09.26.25

(SEAL)



UNOFFICIAL COPY

EXHIBIT A

Legal Description

LOTS 1 TO 7 IN BLOCK 8 IN ARTHUR T. MCINTOSH'S CRAWFORD AVENUE ADDITION TO CHICAGO SUBDIVISION OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE PART LYING EAST OF A LINE 50 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SECTION 22) IN COOK COUNTY, ILLINOIS.

APN/Parcel ID(s): 19-22-215-042-0000
6400 W. Pulaski Rd., Chicago, IL