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\*2203919003\*

Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

Doc# 2203919003 Fee #88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/08/2022 09:26 AM PG: 1 OF 32

The property identified as: **PIN:** 17-16-321-003-0000

**Address:**

**Street:** 801 South Canal Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60607

**Lender:** NW 801 S CANAL LENDER LLC

**Borrower:** 601W SOUTH CANAL, LLC

**Loan / Mortgage Amount:** \$60,000,000.00

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

**Certificate number:** 443DE47E-FB53-458B-8DE6-438C1EEE1D77

**Execution date:** 2/3/2022

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PREPARED BY AND UPON RECORDATION RETURN TO:

Herrick, Feinstein LLP  
2 Park Avenue – 14<sup>th</sup> Floor  
New York, New York 10016  
Attention: Yariv Ben-Ari Esq.

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

by

**601W SOUTH CANAL LLC,**  
as Mortgager,

to

**NW 801 S CANAL LENDER LLC**  
as Mortgagee

**Dated as of February 3, 2022**

LOCATION OF PREMISES: 801 South Canal Street, Chicago, IL  
PIN 17-16-321-003-0000

00H12226049ZL1 Spener (20f3)

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

This **MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT** (as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, this "Mortgage") is dated as of February 3, 2022, and made by and between **601W SOUTH CANAL LLC**, a Delaware limited liability company, having an address at 601 West 26<sup>th</sup> Street, Suite 1275, New York, New York 10001 ("Mortgagor") and **NW 801 S CANAL LENDER LLC**, having an address located at c/o Northwind Group, 489 Fifth Avenue, 28<sup>th</sup> Floor, New York, New York 10017 (together with its successors and/or assigns, "Mortgagee").

### WITNESSETH:

**WHEREAS**, Mortgagor is the owner of fee title to the Land described on Exhibit A attached hereto and made a part hereof, and to the Improvements (as hereinafter defined);

**WHEREAS**, Mortgagor, as borrower, and Mortgagee, as lender, have entered into that certain Loan Agreement, dated as of the date hereof (as the same may be amended, modified, restated, or supplemented from time to time, the "Loan Agreement"), pursuant to which Mortgagee has agreed to make certain loans, including but not limited to, a secured loan to Mortgagor, in the maximum principal amount of SIXTY MILLION AND 00/100 DOLLARS (\$60,000,000.00) (the "Loan"), which Loan is evidenced by that certain Promissory Note dated the date hereof made by Mortgagor, as maker, to the order of Mortgagee, as payee, in the maximum amount of the Loan (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "Note"); and

**WHEREAS**, Mortgagee is unwilling to make the Loan to Mortgagor unless Mortgagor executes and delivers this Mortgage to Mortgagee;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor and Mortgagee, intending to be legally bound, hereby agree as follows:

### CERTAIN DEFINITIONS

Mortgagor and Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and to the plural forms of such terms.

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto.

"Chattels" shall mean, collectively, all fixtures, furniture, fittings, appliances, apparatus, equipment, machinery and articles of personal property, and all additions and accessions thereto and replacements thereof, and substitutions therefor other than those owned by parties other than Mortgagor, now or at any time hereafter affixed to, attached to, placed upon, or used in any way

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in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Mortgaged Property.

“Code” shall have the meaning assigned and ascribed to such term in the definition of “Intangibles” as set forth in this Mortgage.

“Debt” shall have the meaning assigned and ascribed to such term in the Granting Clause of this Mortgage.

“Default Rate” shall have the meaning assigned and ascribed to such term in the Note, but in no event to exceed the maximum rate allowed by law.

“Improvements” shall mean, collectively, all structures, and buildings and all replacements thereof, now or hereafter located or erected upon the Land including all personal property owned by Mortgagor of every kind and nature whatsoever affixed to or forming part of said structures and/or buildings on the Mortgaged Property.

“Intangibles” shall mean, collectively, all “general intangibles” (as such term is defined in the Uniform Commercial Code adopted in the State of Illinois, as the same may from time to time be in effect (the “Code”)) in any way relating to the Mortgaged Property and/or the Improvements and in which Mortgagor has any interest, including, without limitation, all licenses (including any liquor license(s)), trade names, goodwill and books and records and marketing materials relating to the Mortgaged Property or the business operated or to be operated on the Mortgaged Property or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by Mortgagor insuring the Mortgaged Property, and all rights and interests of Mortgagor thereunder.

“Land” shall mean the land described on Exhibit A attached hereto and made a part hereof.

“Leases” shall have the meaning assigned and ascribed to such term in the Granting Clause of this Mortgage.

“Loan” shall have the meaning assigned and ascribed to such term in the second recital to this Mortgage.

“Loan Agreement” shall have the meaning assigned and ascribed to such term in the second recital to this Mortgage.

“Mortgaged Property” shall have the meaning assigned and ascribed to such term in the Granting Clause of this Mortgage.

“Note” shall have the meaning assigned and ascribed to such term in the second recital to this Mortgage.

“Personal Property” shall have the meaning assigned and ascribed to such term in the Section 3.07 of this Mortgage.

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“Rents” shall have the meaning assigned and ascribed to such term in the Granting Clause of this Mortgage.

“UCC Collateral” shall have the meaning assigned and ascribed to such term in the Section 2.02(j) of this Mortgage.

Capitalized terms used herein without definition shall have the respective meanings assigned and ascribed to such terms in the Loan Agreement.

## GRANTING CLAUSE

Mortgagor, in consideration of the premises and in order to secure payment of principal indebtedness of SIXTY MILLION AND 00/100 DOLLARS (\$60,000,000.00), lawful money of the United States of America, to be paid with interest thereunder, the payment of any other sums payable under the Note, the Loan Agreement and/or under this Mortgage, and the payment of any sums advanced by Mortgagee pursuant to the terms, conditions and provisions of the Note, the Loan Agreement and/or this Mortgage (collectively, all of such obligations, the “Debt”), hereby gives, grants, bargains, sells, warrants, aliens, premises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over and confirms unto Mortgagee, all of Mortgagor’s estate, right, title and interest in, to and under any and all of the following described property (collectively, the “Mortgaged Property”), whether now owned or held or hereafter acquired:

- (a) the Land;
- (b) the Improvements;
- (c) all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Land and the other components of the Mortgaged Property (including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Land or now or hereafter transferred to the Land) 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 (collectively, with the matters described in clause (c) below, the “Appurtenances”);
- (d) all right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Land and the other components of the Mortgaged Property hereafter acquired by, or released to, Mortgagor, or constructed, assembled or placed by Mortgagor on the Land or any part thereof;
- (e) all of the estate, right, title, claim or demand of any nature whatsoever of Mortgagor, either in law or in equity, in possession or expectancy, in and to the Land and the other components of the Mortgaged Property or any part thereof;
- (f) the Chattels;

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(g) the Intangibles;

(h) all leases, subleases, lettings, licenses and other uses and occupancies of the Land or the Improvements now or hereafter entered into by Mortgagor or its predecessor and all right, title and interest of Mortgagor hereunder (collectively, the "Leases"), together with the rents, issues, income and profits thereof including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases (except that Mortgagor shall as licensee of Mortgagee have the right to collect such rents and other amounts, subject to provisions of this Mortgage, so long as no Event of Default shall be continuing), and all guaranties of the obligations of the tenants, subtenants, lessees, licensees, users or occupants thereunder (collectively, the "Rents");

(i) all agreements and/or contracts now or hereafter entered into for the sale, leasing, brokerage, development (to the extent permitted pursuant to the Loan Documents), management, maintenance and/or operation of the Land and the Improvements or any part thereof (including any management agreement or any construction, marketing, engineering, architectural or purchase contracts or agreements), including all moneys due and to become due thereunder, all cash or securities deposited thereunder, and all permits, licenses, bonds, insurance policies, plans and specifications relative to the construction and/or operation of the Improvements, and all tax certiorari claims and proceeds with respect to the Land and Improvements;

(j) all books and records relating to the operation of the Land and/or the construction of any Improvements and all options and agreements with respect to any additional real property for the use or development of the Land and/or the construction of any Improvements (to the extent permitted pursuant to the Loan Documents);

(k) all "Chattel Paper", "Accounts", "Deposit Accounts", "Letter of Credit Rights", "Documents", "Inventory" and "Instruments" (as each of such terms is defined in the Code), including, without limitation, all of Mortgagor's operating accounts and deposit accounts with respect to the Land and the Improvements;

(l) all consents, certificates, authorizations, variances, waivers, licenses (including any liquor license(s)), permits and approvals from any governmental authority relating to the Land and/or the construction of any Improvements (to the extent permitted pursuant to the Loan Documents); and

(m) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and condemnation awards, subject to the terms, conditions and provisions of this Mortgage and the Loan Documents.

**TO HAVE AND TO HOLD** unto Mortgagee, its successors and assigns forever.

## ARTICLE I

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## PARTICULAR REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE MORTGAGOR

Mortgagor represents, warrants, covenants and agrees as follows:

### Section 1.01. Warranty of Title.

(a) Mortgagor represents and warrants that it has and will continue to hold good, marketable and insurable fee simple title to the Land, Improvements, and Appurtenances, and good and sufficient legal title to all other portions of the Mortgaged Property subject to no lien, charge or encumbrance, except the Permitted Exceptions.

(b) Mortgagor represents, warrants and covenants: (i) that it is the owner of, and shall continue to own, the Mortgaged Property free and clear of any liens and claims, other than the Permitted Exceptions; (ii) that this Mortgage is and shall remain a valid and enforceable first lien on the Mortgaged Property subject only to the Permitted Exceptions; (iii) that the execution and delivery of this Mortgage, the Note and the Loan Agreement have been duly authorized on behalf of Mortgagor in accordance with its organizational documents and that there is no provision in any organizational document evidencing or establishing the existence of Mortgagor that requires the further consent for such action by any other entity or person, (iv) that it is duly organized, validly existing and is in good standing under the laws of the State of Delaware and is duly qualified as a foreign limited liability company and is in good standing as a foreign limited liability company in the State of Illinois; (v) that it has all necessary licenses, authorizations, registrations, permits and/or approvals, and full power and authority, to own the Mortgaged Property and carry on its business as currently conducted; and (vi) that the execution and delivery by it of, and performance of its obligations under, this Mortgage, the Note and the Loan Agreement shall not result in Mortgagor being in default under any provision of any document evidencing or establishing the existence of Mortgagor or of any mortgage, credit or other agreement to which Mortgagor is a party or that affects Mortgagor, the Improvements, the Land, the Mortgaged Property or any part thereof.

Section 1.02. Further Assurances. Mortgagor shall, at its sole cost and expense, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall from time to time reasonably require and in forms reasonably acceptable to Mortgagee, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the Mortgaged Property and the rights hereby conveyed or assigned 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, conditions and provisions of this Mortgage, or for filing, registering or recording this Mortgage and, on demand, (if applicable) shall execute and deliver, and hereby authorizes Mortgagee to execute (if applicable) and file in the name of Mortgagor to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments to evidence more effectively the lien hereof upon the Mortgaged Property or any part thereof.

### Section 1.03. Recording; Recording, Stamp and Other Taxes and Charges



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(a) Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, shall, at the sole cost of Mortgagor, cause this Mortgage and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance, to be filed, registered and/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 to fully protect the lien hereof upon, and the interest of Mortgagee in, the Mortgaged Property.

(b) Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, the Loan Agreement, this Mortgage or any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance.

Section 1.04. Covenant to Pay Debt. Mortgagor shall pay the principal and interest and all other sums to become due in respect of the Note, the Loan Agreement and/or this Mortgage at the time and place and in the manner specified in the Note, the Loan Agreement and/or this Mortgage, as applicable, all in any coin or currency of the United States of America that at the time of such payment shall be legal tender for the payment of public and private debts and all such principal and interest and all other sums to become due in respect of the Note, the Loan Agreement and/or this Mortgage are hereby deemed an obligation due under and secured by this Mortgage.

Section 1.05. Preservation of Mortgage. Mortgagor represents and warrants that Mortgagor shall, so long as it is owner of the Mortgaged Property or any part thereof, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a foreign limited liability company under the laws of the State of Illinois and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Mortgagor or to the Mortgaged Property or any part thereof.

Section 1.06. After Acquired Property. All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by or released to, Mortgagor, or constructed, assembled or placed by Mortgagor on the Mortgaged Property or any part thereof, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor or Mortgagee, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof, but at any and all times Mortgagor shall execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

Section 1.07. Taxes.



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(a) Subject to the terms, conditions and provisions of the Loan Agreement (including but not limited to Section 2.5 thereof), Mortgagor, from time to time when the same shall become due and payable, shall pay and discharge all Taxes, Property Taxes and Other Charges. In default thereof Mortgagee may, but shall be under no obligation to, pay the same, and Mortgagor shall repay the same to Mortgagee with interest at the Default Rate and the same shall be a lien on the Mortgaged Property secured on this Mortgage. Mortgagor shall deliver to Mortgagee receipts evidencing the payment of all such Taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against the Mortgaged Property, or any part thereof, or the revenues, rents, issues, income or profits thereof, promptly upon the payment thereof.

(b) Mortgagor shall not permit or suffer, and shall promptly discharge any lien or charge against the Mortgaged Property, which lien or charge is not a Permitted Exception, and shall promptly pay for all utility services provided to the Mortgaged Property.

Section 1.08. Payment of Liens. Mortgagor shall pay, bond, insure or otherwise discharge, within thirty (30) days of the date of receipt of filing of such lien, all lawful claims and demands of mechanics, materialmen, laborers and others, which claims and demands, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom and in general shall do or cause to be done everything necessary so that the lien of this Mortgage shall be fully preserved, at the cost of Mortgagor, without expense to Mortgagee, provided that to the extent permitted in accordance with the Loan Agreement, Mortgagor may elect to bond or escrow with the Title Insurer funds sufficient to satisfy such claim.

Section 1.09. Insurance, Casualty and Condemnation. The terms, covenants and conditions, and provisions of Section 6.8 and Article VII of the Loan Agreement are hereby incorporated herein by this reference, and made a part hereof, with the same force and effect as if the same were fully set forth in this Mortgage. Mortgagor shall maintain, at all times, insurance policies in accordance with the terms, covenants, conditions and provisions of Section 6.8 of the Loan Agreement.

Section 1.10. Financial Information. Mortgagor shall maintain a standard system of accounting in accordance with principles and methods permitted by Section 6.7 of the Loan Agreement, and will furnish to Mortgagee and its duly authorized representatives such information respecting the business and financial condition of the collateral in respect of the Loan, Mortgagor and Guarantor as Mortgagee may reasonably request; and without any request, Mortgagor shall furnish or cause to be furnished to Mortgagee such items as set forth in Section 6.7 of the Loan Agreement.

Section 1.11. Maintenance of the Property. Mortgagor shall not commit any intentional physical waste on the Mortgaged Property, or any part thereof, nor, except as contemplated in the Loan Agreement, make any change in the use of the Mortgaged Property, nor any part thereof, which shall materially increase any ordinary fire or other hazard arising out of alteration, construction (to the extent permitted pursuant to the Loan Documents) or operation of the Property. Mortgagor shall, at all times, maintain the Improvements in good operating order and condition and shall promptly make, at its sole expense, from time to time, all repairs, renewals, replacements, additions and improvements in connection therewith which are needful or desirable to such end.

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Section 1.12. Documentary, Transfer and other Taxes. Mortgagor shall pay any and all taxes, charges, fees and/or levies by reason of Mortgagee's ownership of the Note or this Mortgage and/or resulting from the exercise by Mortgagee of any of its rights and/or remedies provided for under this Mortgage, except for income taxes of Mortgagee or taxes imposed on the transfer by Mortgagee of an interest in any Loan Document. The obligations assumed by Mortgagor pursuant to this Section shall survive the exercise by Mortgagee of any of its rights and/or remedies under this Mortgage.

## Section 1.13. Compliance with Law.

(a) Except as has been disclosed to Mortgagee in writing as of the date hereof, Mortgagor represents and warrants that the Improvements currently are, and covenants to keep the Improvements, in compliance in all material respects with all applicable statutes, regulations, and other laws (including all applicable zoning, building, fire and health codes and ordinances and all permits, covenants and restrictions affecting the Mortgaged Property).

(b) Mortgagor agrees that it shall indemnify and hold Mortgagee harmless from and against any loss or liability, cost or expense, including, without limitation, any judgments, attorneys' fees, costs of appeal bonds and printing costs arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Mortgage, other than with respect to matters arising out of a Permitted Exception, and Mortgagor shall comply with all requirements of the Illinois Mechanic Lien Act (Chapter 770 ILCS Section 60/01 et. seq.).

Section 1.14. Costs. Mortgagor expressly covenants and agrees to pay in full the reasonable "costs and expenses" of Mortgagee (including, without limitation, the reasonable fees and expenses of Mortgagee's counsel), promptly upon receipt of a statement therefor, which are incurred prior to and after the date hereof and which costs and expenses arise in connection with any matter incidental to the preparation, negotiation, execution, delivery, filing and recording, amendment or modification, and enforcement of the Note, the Loan Agreement and/or this Mortgage including, without limitation, the costs and out-of-pocket expenses of every kind incurred by Mortgagee (including, without limitation, the reasonable fees and expenses of Mortgagee's counsel) in connection with the commencement of any action to foreclose this Mortgage or to collect the Debt, all which costs and out-of-pocket expenses shall, subject to the terms, conditions and provisions of Section 3.11 of this Mortgage, and to the extent not prohibited by law, be a lien on the Mortgaged Property prior to any interest in, or claim upon, the Mortgaged Property arising subsequent to the date hereof. "Costs and expenses" as used in the preceding sentence shall include, without limitation (and in addition to those costs and out-of-pocket expenses specified above), the reasonable attorneys' fees and expenses incurred by Mortgagee in retaining counsel for advice, suit, appeal or any insolvency or other proceedings under the Bankruptcy Code or otherwise.

## Section 1.15. Assignment of Leases.

(a) Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys all of the right, title and interest in and to all Leases and Rents to Mortgagee. This assignment is absolute in nature and not an assignment for additional security only. Mortgagee waives the right to enter the Mortgaged Property for the purpose of collecting the Rents, and grants

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Mortgagor the right to collect the Rents. Mortgagor shall hold the Rents, or an amount sufficient to discharge all current sums due on the Debt, in trust for use in payment of the Debt. The right of Mortgagor to collect the Rents may be revoked by Mortgagee without notice upon any Event of Default by Mortgagor under the terms, conditions or provisions of the Note, the Loan Agreement, this Mortgage and/or the other Loan Documents. Following such revocation, Mortgagee may retain and apply the Rents toward payment of the Debt in such order, priority and proportions as Mortgagee, in its discretion, shall deem proper, or to the operation, maintenance and repair of the Mortgaged Property, and irrespective of whether Mortgagee shall have commenced a foreclosure of this Mortgage or shall have applied or arranged for the appointment of a receiver. Mortgagor shall (i) fulfill or perform the provisions of the Leases on the part of Mortgagor to be fulfilled or performed in all material respects, (ii) promptly send copies of all notices of default which Mortgagor shall send or receive under the Leases to Mortgagee, and (iii) enforce, short of termination of the Leases, the performance or observance of the provisions thereof by the tenants thereunder in a commercially reasonable manner.

(b) In addition to the rights which Mortgagee may have herein, upon the occurrence and continuance of an Event of Default under this Mortgage, Mortgagee, at its option, may 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 in possession of Mortgagor. Upon the occurrence and continuance of an Event of Default in any such payment, Mortgagor will vacate and surrender possession of the Mortgaged Property to Mortgagee, or to such receiver, and, upon the occurrence and continuance of an Event of Default, Mortgagor may be evicted by summary proceedings or otherwise. To the fullest extent permitted by applicable Law, nothing contained in this paragraph shall be construed as imposing on Mortgagee any of the obligations of the lessor under the Leases or of a "mortgagee in possession".

(c) Mortgagor shall not enter into or permit any Leases with respect to any portion of the Mortgaged Property without the prior written consent of Mortgagee except to the extent expressly permitted by the Loan Agreement. All Leases shall be subordinate to the lien of this Mortgage. Mortgagor shall provide Mortgagee with certified copies of all Leases within ten (10) days of the execution thereof by all parties thereto..

(d) Mortgagor shall not (i) accept prepayments of any installments of rents to become due under any Lease of the Mortgaged Property or any part thereof, except prepayments for payments made not more than one month in advance and payments in the nature of security for the performance of the lessee thereunder, or (ii) in any manner intentionally and materially impair the value of the Mortgaged Property or (iii) in any manner intentionally and materially impair the security of this Mortgage.

(e) Mortgagor shall at all times promptly and faithfully perform, or cause to be performed in all material respects, all of the covenants, conditions and agreements contained in all leases of the Mortgaged Property, or any part thereof, now or hereafter existing, on the part of the lessor thereunder to be kept and performed and shall at all times act in a commercially reasonable manner to enforce performance by the lessees under each lease of all obligations, covenants and agreements by such lessee to be performed thereunder. If any of such leases (other than solely for residential use) provide for the giving by the lessee of certificates with respect to the status of such

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leases, Mortgagor shall exercise its right to request such certificates within ten (10) days of any written demand therefor by Mortgagee.

(f) Mortgagor shall furnish to Mortgagee, within fifteen (15) days after a request by Mortgagee to do so, a written statement containing the names of all lessees, sublessees, licensees and other occupants of the Mortgaged Property (to the extent known to Mortgagor), the terms of their respective leases, subleases, licenses and other occupancy agreements, the space occupied and the rentals payable thereunder.

(g) Each Lease covering the Mortgaged Property, or any part thereof, shall by its terms be subject and subordinate to the lien of this Mortgage.

(h) Mortgagor acknowledges and agrees that, upon recordation of this Mortgage, Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforceable as to Mortgagor and all third parties, including without limitation any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity (except as required by applicable law) of (i) commencing a foreclosure action with respect to this Mortgage, (ii) furnishing notice to Mortgagor or tenants under the Leases, (iii) making formal demand for the Rents, (iv) taking possession of the Mortgaged Property as a mortgagee-in-possession, (v) obtaining the appointment of a receiver of the rents and profits of the Mortgaged Property, (vi) sequestering or impounding the Rents, or (vii) taking any other affirmative action.

(i) For purposes of Section 552(b) of the Bankruptcy Code, Mortgagor and Mortgagee agree that this Mortgage shall constitute a "security agreement," that the security interest created by such security agreement extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and that such security interest shall extend to all Rents acquired by the estate after the commencement of a case in bankruptcy.

(j) Mortgagor acknowledges and agrees that all Rents shall be deemed to be "Cash Collateral" under Section 363 of the Bankruptcy Code in the event that Mortgagor files a voluntary petition in bankruptcy or is made subject to any involuntary bankruptcy proceeding. After the filing of such petition, Mortgagor may not use Cash Collateral without the prior express written consent of Mortgagee (which may be withheld in Mortgagee's sole and absolute discretion) and/or an order of any bankruptcy court pursuant to Section 363(b)(2) of the Bankruptcy Code.

## ARTICLE II

### EVENTS OF DEFAULT AND REMEDIES

Section 2.01. For all purposes hereof, an "Event of Default" hereunder shall mean the occurrence of an Event of Default under the Loan Agreement or any other Loan Document.

Section 2.02.

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(a) Upon the occurrence and during the continuance of an Event of Default of an Event of Default, Mortgagee may exercise all rights and remedies under the Loan Agreement, the Note and the other Loan Documents.

(b) Without limiting the foregoing, upon the occurrence and during the continuance of an Event of Default, Mortgagee may also immediately pursue any one or more of the following remedies:

(i) Acceleration of the Indebtedness. Subject to any applicable provision of the Note, the Loan Agreement, or the other Loan Documents, Mortgagee, by written notice given to Mortgagor, may declare the entire principal of the Loan then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, together with all other unpaid Obligations, to be immediately due and payable, notwithstanding anything to the contrary contained herein, in the Loan Agreement, the Note or any other Loan Documents;

(ii) Possession of the Mortgaged Property. With or , to the extent permitted by applicable law, without the appointment of a receiver, or an application therefor, Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Mortgaged Property, and each and every part thereof, and may exclude Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, Mortgagee, at the expense of Mortgagor, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, whereof it shall become possessed as aforesaid, may complete the construction of any of the Improvements and in the course of such completion may make such changes in the contemplated Improvements as it may deem desirable and may insure the same; and likewise, from time to time, at the expense of Mortgagor, Mortgagee may procure title reports, title insurance, surveys, appraisals and such other reports as Mortgagee, in its sole discretion, shall deem necessary, and make all necessary or proper repairs, renewals and such useful alterations, additions, betterments and improvements thereto and thereon as to it may deem advisable; and in every such case Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Mortgagor with respect thereto either in the name of Mortgagor or otherwise as it shall deem best; and Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof, all of which shall for all purposes constitute property of Mortgagor; and in furtherance of such right Mortgagee may collect the rents payable under all Leases of the Mortgaged Property directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists hereunder accompanied by a demand on such lessee for the payment to Mortgagee of all rents due and to become due under its Lease, and Mortgagor, for the benefit of Mortgagee and each such lessee hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of Mortgagee's statement of default and shall unequivocally be authorized to pay said rents to Mortgagee without regard to the truth of Mortgagee's statement of default and notwithstanding notices from Mortgagor disputing the existence of an Event of Default



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such that the payment of rent by the lessee to Mortgagee pursuant to such a demand shall constitute performance in full of the lessee's obligation under the Lease for the payment of rents by the lessee to Mortgagor; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property, or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly engaged and employed, Mortgagee may apply the moneys arising as aforesaid to the payment of any Obligations and sums required to be paid by Mortgagor under this Mortgage of the other Loan Documents, in any order whatsoever in Mortgagee's sole discretion.

(iii) Foreclosure, Etc. Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may:

(1) sell (and in the case of any default by any purchaser, resell) the Mortgaged Property, or any part thereof, to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entirety or in parcels, and at such time and place upon such terms and after such notice thereof as may be determined by Mortgagee or as required or permitted by law; or

(2) institute proceedings for the complete or partial foreclosure of this Mortgage; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, the Loan Agreement, this Mortgage or the other Loan Documents, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

(iv) Appointment of Receiver. After the occurrence of any Event of Default, or upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of Mortgagee, Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the Obligations, forthwith either before or after declaring the unpaid principal of the Loan to be due and payable, to the appointment of a receiver or receivers in respect of the Mortgaged Property or any part thereof, and Mortgagor hereby consents to the appointment of such receiver or receivers.

(v) Rights of a Secured Party. Mortgagee shall also have such other rights and/or remedies provided to a mortgagee and/or a secured party by the Code of the applicable jurisdiction.

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(c) Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any Debt without prejudice to the right of Mortgagee thereafter to bring an action of mortgage foreclosure, or any other action, for any Event of Default by Mortgagor existing at the time the earlier action was commenced.

(d) Any real estate sold pursuant to any writ of execution issued on a judgment obtained by virtue of this Mortgage, or pursuant to any other judicial proceedings under the Mortgage, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect.

(e) Mortgagee may, at its sole option, disaffirm and cancel any Leases which are subordinate to this Mortgage at any time before the expiration of sixty (60) days after Mortgagee acquires the legal title to the Mortgaged Property by sheriff's deed or any other transfer of legal title to the Mortgaged Property pursuant to the exercise of a remedy hereunder or otherwise, even though Mortgagee shall have enforced such Leases, collected rents thereunder or taken any action that might be deemed by law to constitute an affirmation of the Leases. Such disaffirmance shall be made by written notice addressed to the applicable tenants at the Mortgaged Property or, at Mortgagee's option, such other address of such tenants as may be provided in the Leases.

(f) Mortgagor, for itself and for all Persons hereafter claiming through or under it or who may at any time hereafter become holders of a Lien junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the Debt marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

(g) If Mortgagor is an occupant of part or all of the Mortgaged Property, Mortgagor shall immediately upon any acceleration after an Event of Default hereunder surrender the possession thereof to Mortgagee and if they remain in possession, such possession shall be as tenant at sufferance of Mortgagee, and Mortgagor shall pay monthly in advance to Mortgagee such rent for the premises so occupied as Mortgagee may reasonably demand, and in default of so doing Mortgagor or may be dispossessed by summary proceedings or otherwise with or without any action being brought to foreclose this Mortgage and without applying for a receiver to collect the rents. In case of the appointment of a receiver of rents and profits of the Mortgaged Property, the covenants of this Section may be enforced by such receiver.

(h) Upon any sale made under or by virtue of this Section 2.02, Mortgagee may bid for and then acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefore may make settlement for the purchase price by crediting upon the Debt of Mortgagor the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage or under any of the other Loan Documents.

(i) If Mortgagee shall have the right to foreclose this Mortgage, Mortgagor authorizes Mortgagee at its option to foreclose this mortgage subject to the rights of any tenants



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of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be asserted by Mortgagor as a defense to any proceeding instituted by Mortgagee to collect the Debt or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property, it being expressly understood and agreed, however, that nothing herein contained shall prevent Mortgagee from asserting in any proceeding disputing the amount of the deficiency or the sufficiency of any bid at such foreclosure sale, that any such tenancies adversely affect the value of the Mortgaged Property.

(j) Upon the occurrence and during the continuance of an Event of Default, Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell or dispose of the Mortgaged Property and such other property as may be subject to the Code (collectively, the "UCC Collateral") as commercially appropriate for the purpose of performing any or all of the Debt; (ii) enter into any agreement, compromise or settlement including insurance claims, which Mortgagee may deem desirable or proper with respect to any of the UCC Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the UCC Collateral. Mortgagor acknowledges and agrees that a disposition of the UCC Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) Business Days' prior notice of such disposition is commercially reasonable notice. Mortgagor further agrees that any sale or other disposition of all or any portion of the UCC Collateral may be applied by Mortgagee first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Debt in accordance with the Loan Agreement and the other Loan Documents.

## Section 2.03.

(a) Mortgagee may adjourn from time to time any sale to be made pursuant to or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made pursuant to or by virtue of this Mortgage, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the purchaser or purchasers a good and sufficient instrument or instruments conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold and shall execute and deliver to the appropriate governmental authority any affidavit, instrument, document and/or filing required pursuant to any applicable statute, ordinance, rule and/or regulation. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, including, without limitation, any required affidavit, instrument, document and/or filing and may substitute one or more persons with like power. Mortgagor hereby ratifies and confirms all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Mortgagor, if so requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to

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Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for that purpose. Any such sale or sales whether made under or by virtue of this Article II with respect to the Personal Property, or under or by virtue of judicial proceedings of sale herein granted or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Mortgagor.

(c) In the event of any sale or sales whether made under or by virtue of this Article II with respect to the Personal Property, or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the entire principal of, and interest on, the Note, if not previously due and payable, and all other sums required to be paid by Mortgagor pursuant to this Mortgage, immediately thereupon, shall, anything in the Note, the Loan Agreement and/or this Mortgage to the contrary notwithstanding, become due and payable.

(d) The proceeds of any sale made under or by virtue of this Article II, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Article II or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of such sale, including, but not limited to, the reasonable attorneys' fees, and any sums that may be due under and/or pursuant to any statute, rule, regulation and/or law that imposes any tax, charge, fee and/or levy in connection with and/or arising from the exercise of any right and/or remedy under this Mortgage or the recording or filing of any deed, instrument of transfer or other such document in connection with any such sale and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest at the Default Rate, on all advances made by Mortgagee pursuant to this Mortgage.

Second: To the payment of the whole amount then due, owing or unpaid under the Note for principal and interest, in such order as Mortgagee shall determine in its sole and absolute discretion with interest on the unpaid principal at the Default Rate from and after the due date (whether by acceleration or otherwise).

Third: To the payment of the surplus, if any, to Mortgagor or to any other Person who may lawfully be entitled to receive the same.

(e) Upon any sale whether made under or by virtue of this Article II with respect to the Personal Property or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by

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crediting upon the Debt of Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

## Section 2.04.

(a) If all of the principal shall be due and payable under the Note, whether by acceleration or otherwise, Mortgagor shall pay to Mortgagee (i) interest at the Default Rate on the then unpaid principal of the Note, and on the sums required to be paid by Mortgagor pursuant to any provision of this Mortgage from the due date thereof until the payment in full of the Debt, and (ii) such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to Mortgagee, its agents, and attorneys and any expenses incurred by Mortgagee pursuant to the exercise of any of the Mortgage rights hereunder.

(b) In the event of a sale of the Mortgaged Property, or any part thereof, and of the application of the proceeds of sale, as in this Mortgage provided, to the payment of the Debt hereby secured, Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon the Note, and to enforce payment of all other charges, payments, costs and amounts due under this Mortgage, and shall be entitled to recover judgment for any portion of the Debt remaining unpaid, with interest at the Default Rate. In case of the commencement of any case against Mortgagor under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect or any proceedings for its reorganization or involving the liquidation of its assets, then Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Note to the full amount thereof, and all other payments, charges, costs and amounts due under this Mortgage, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property; provided, however, that in no case shall Mortgagee receive a greater amount than such principal and interest and such other payments, charges, costs and amounts from the aggregate amount of the proceeds of the sale of the Mortgaged Property and the distribution from the estate of Mortgagor.

(c) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property, or any part thereof, or of any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(d) Any moneys collected by Mortgagee under this Section 2.04 shall be applied by Mortgagee in accordance with the provisions of subsection (d) of Section 2.03.

Section 2.05. Mortgagee, in any action to foreclose this Mortgage or upon the occurrence and during the continuance of any Event of Default hereunder, shall be at liberty, without notice, to apply for the appointment of a receiver of the Rents, and shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Mortgaged Property as security for the Debt, or the solvency or insolvency of any person then liable for the payment of the Debt.

Section 2.06. Notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, Mortgagee

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shall be entitled to retain possession and control of all property now or hereafter held by Mortgagee under this Mortgage.

Section 2.07. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. Nothing in this Mortgage, the Note, the Loan Agreement and/or the other Loan Documents shall affect the obligation of Mortgagor to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.

Section 2.08. Mortgagor shall not insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, that may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist upon any benefit or 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 or sales thereof that may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof and Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshalled upon any foreclosure hereof.

## ARTICLE III

### MISCELLANEOUS

Section 3.01. Severability. In the event any one or more of the provisions contained in this Mortgage, the Note, the Loan Agreement and/or the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such provision had never been contained herein or therein.

Section 3.02. Notices. All notices hereunder shall be in writing and shall be given in accordance with the Loan Agreement.

Section 3.03. Successors and Assigns. All of the grants, terms, conditions, provisions and covenants of this Mortgage shall run with the land, shall be binding upon Mortgagor and shall inure to the benefit of Mortgagee, subsequent holders of this Mortgage and their respective

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successors and assigns. For the purpose of this Mortgage, the term "Mortgagor" shall include and refer to each of the Mortgagors named herein, any subsequent owner of the Mortgaged Property, or any part thereof, and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, all their undertakings hereunder shall be joint and several, and each representation, warranty, covenant and agreement in this Mortgage shall apply to each and all of the Mortgagors named herein.

Section 3.04. Governing Law. This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois (without regard to conflicts of laws principles). Nothing herein shall be deemed to limit any rights, powers or privileges which Mortgagee may have pursuant to any law of the United States of America or any rule, regulation or order of any department or agency thereof and nothing herein shall be deemed to make unlawful any transaction or conduct by Mortgagee which is lawful pursuant to, or which is permitted by, any of the foregoing. Nothing in this Mortgage, the Note and/or the Loan Agreement or in any other agreement between Mortgagor and Mortgagee shall require Mortgagor to pay, or Mortgagee to accept, interest in an amount that would subject Mortgagee to any penalty or forfeiture under applicable law. If the payment of any charges, fees or other sums due hereunder or under the Note and/or the Loan Agreement or any such other agreement that are or could be held to be in the nature of interest and that would subject Mortgagee to any penalty or forfeiture under applicable law, then, ipso facto, the obligations of Mortgagor to make such payment shall be reduced so that interest under the Note shall be the highest rate authorized under applicable law. Should Mortgagee receive any payment that is or would be in excess of the highest rate authorized under applicable law, such payment shall be deemed to have been made in error, and shall automatically be applied to reduce the outstanding principal balance of the Debt.

Section 3.05. Mortgagee's Discretion. Except as expressly set forth herein to the contrary, whenever the consent or approval of Mortgagee is required, the decision whether to consent or approve shall be in the sole and absolute discretion of Mortgagee.

Section 3.06. Construction. This Mortgage, the Note, the Loan Agreement and all other documents executed and delivered in connection herewith shall be given a fair and reasonable construction in accordance with the intention of the parties as expressed herein and therein and without regard for any rule of law requiring construction against the party that prepared such instruments.

Section 3.07. Security Agreement. This Mortgage shall constitute a "security agreement," as such term is defined in the Code. By executing and delivering this Mortgage, Mortgagor has granted, in the same manner and with the same effect described in the Granting Clause hereof, to Mortgagee, a security interest in the Chattels, the Intangibles and those items listed as (f)-(n) in the Granting Clause of this Mortgage (collectively, the "Personal Property"). Mortgagor authorizes Mortgagee to file any financing statements or other documents or instruments, with or without Mortgagor's signature, that Mortgagee may require to protect, perfect or establish any lien or security interest granted to Mortgagee and further authorizes Mortgagee to authenticate or sign Mortgagor's name on same. If any Event of Default shall occur and then be continuing, Mortgagee shall have, in addition to any and all other rights and remedies set forth in this Mortgage, and may exercise without demand, any and all rights and remedies granted to a secured party under the Code, including, but not limited to, the right to take possession of the



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Chattels, the Intangibles and the other Personal Property, or any part thereof, and the right to advertise and sell the Chattels, the Intangibles and the other Personal Property, or any part thereof, pursuant to and in accordance with the provisions of this Mortgage. Mortgagor agrees that any notice of public or private sale with respect to the Chattels, the Intangibles or the other Personal Property, or any part thereof, shall constitute reasonable notice if it is sent to Mortgagor not less than ten (10) Business Days prior to the date of any such sale. The proceeds of any such sale of the Chattels, the Intangibles or the other Personal Property, or any part thereof, shall be applied in the manner set forth in Section 2.03(d) of this Mortgage.

As to all of the above described Personal Property which is or which hereafter becomes a "fixture" under applicable law, it is intended by Mortgagor and Mortgagee that this Mortgage constitutes a fixture filing filed in the Office of the Register of Cook County under the Code. For purposes of this fixture filing, the "Debtor" is Mortgagor, and the "Secured Party" is Mortgagee. A description of the Land which relates to the fixtures is set forth in Exhibit A attached hereto and made a part hereof. Mortgagor is the record owner of the Land. The filing of a financing statement covering the Personal Property shall not be construed to derogate from or impair the lien or provisions of this Mortgage with respect to any property described herein which is real property or which the parties have agreed to treat as real property. Similarly, nothing in any financing statement shall be construed to alter any of the rights of Mortgagee under this Mortgage or the priority of Mortgagee's lien created hereby, and such financing statement is declared to be for the protection of Mortgagee in the event any court shall at any time hold that notice of Mortgagee's priority interest in any property or interests described in this Mortgage must, in order to be effective against a particular class of persons, including but not limited to the Federal government and any subdivision, agency or entity of the Federal government, be filed in the Code records.

Section 3.08. Rights Are In Addition to Applicable Law. All covenants hereof shall be construed as affording to Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of any applicable law.

Section 3.09. Receipt of Copy. Mortgagor acknowledges that it has received a true copy of this Mortgage.

Section 3.10. Counterparts. This Mortgage may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Mortgage.

Section 3.11. Maximum Secured Amount. The maximum amount of indebtedness secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is ONE HUNDRED TWENTY MILLION AND 00/100 DOLLARS (\$120,000,000.00), plus interest thereon, plus all amounts expended by Mortgagee after default by Mortgagor that constitute payment of (a) taxes, charges or assessments that may be imposed by law upon the Mortgaged Property, (b) premiums on insurance policies covering the Mortgaged Property, (c) expenses incurred in protecting or upholding the lien of this Mortgage, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage, (d) expenses incurred in protecting the collateral encumbered by this Mortgage, or (e) any amount, cost or charge to which Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity, or under express statutory authority.

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Section 3.12. No Course of Dealing. No course of dealing between Mortgagor and Mortgagee and no act, delay or omission by Mortgagee in exercising any right or remedy hereunder, including, without limitation, acceptance of any partial payment on the Debt, shall operate as a waiver of any right, remedy or default hereunder, or of any other right or remedy, and no single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. All rights and remedies of Mortgagee hereunder are cumulative.

Section 3.13. No Release of Surety. Mortgagee may release any portion or portions of or interest or interests in the Mortgaged Property from the lien of this Mortgage, either with or without consideration, and may release or discharge in whole or in part any other property which it may at any time hold as security for payment of the Debt or any part thereof and may take any other bond, note or obligation as evidence of the Debt, payable at such time and on such terms as Mortgagee may approve in its sole discretion, and may change the rate of interest in accordance with the provisions of the Note, and until the Debt shall have been paid in full, every person who shall be or become personally liable for the Debt shall be bound and continue to be liable for the Debt as fully and effectively as if its consent had been previously obtained.

Section 3.14. Application of Partial Payments. If Mortgagee shall receive from or on behalf of Mortgagor any sum less than the full amount then due and payable, Mortgagee may, but shall not be obligated to, accept the same and if Mortgagee elects to accept any such payment, it may hold the same or any part thereof, without liability for interest, in a special account and may from time to time apply the same or any part thereof to the Debt or to the payment of any taxes, assessments, sewer or water charges or insurance premiums desirable to maintain the lien of this Mortgage or to any expenses; including costs and reasonable attorneys' fees and disbursements, incurred by Mortgagee in attempting to collect any amount owing on the Debt and in bringing any foreclosure proceedings with respect to this Mortgage.

Section 3.15. Set-off. Without limiting any other right of Mortgagee, upon the occurrence and during the continuance of an Event of Default, Mortgagee may elect to set off against the Debt any and all moneys then owed to Mortgagor by Mortgagee in any capacity, whether or not the Debt or the obligation to pay such moneys owed by Mortgagee is then due, and Mortgagee shall be deemed to have exercised such right of setoff immediately at the time of such election even though any charge therefor is made or entered on Mortgagee's records subsequent thereto.

Section 3.16. No Oral Agreements; Written Modifications. This Mortgage cannot be altered, amended, waived, modified or discharged orally, and no executory agreement shall be effective to modify, waive or discharge, in whole or in part, anything contained in this Mortgage unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment, waiver or discharge is sought.

Section 3.17. [Intentionally omitted].

Section 3.18. No Usury. This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the principal balance due under the Note at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted



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by law to contract or agree to pay. If by the terms of this Mortgage or the Note, Mortgagor is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of such maximum rate, the rate of interest under the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

Section 3.19. Limitation on Liability. Notwithstanding anything to the contrary set forth in any Loan Document but without limiting or otherwise impairing the obligations of Guarantor under the Guaranty, of Guarantor or Mortgagor under the Environmental Indemnity Agreement and/or of Pledgor under the Pledge Agreement, none of Mortgagor's direct or indirect constituent partners, members, shareholders, principals, trustees, beneficiaries, affiliates, or the directors, officers, agents or employees of Mortgagor or such constituent partners, members, shareholders, principals, trustees, beneficiaries, or affiliates, shall be personally liable for the payment or performance of any of the obligations of Mortgagor arising under any Loan Document.

Section 3.20. Release by Mortgagee. Upon the payment in full of the Debt, Mortgagee shall release the lien of this Mortgage, or upon the request of Mortgagor, and, provided that Mortgagor shall pay Mortgagee's reasonable expenses, assign, this Mortgage, without recourse, representation or warranty of any kind (other than any representations and warranties acceptable to Mortgagee and customarily made by Mortgagee with respect to similar mortgage loans), this Mortgage in accordance with the Loan Agreement to Mortgagor's designee, or to the person or persons legally entitled thereto, by an instrument duly acknowledged in form for recording.

Section 3.21. [Intentionally omitted].

Section 3.22. Waiver of Jury Trial. MORTGAGOR AND MORTGAGEE (BY ITS ACCEPTANCE OF THIS MORTGAGE) EACH WAIVE ALL RIGHTS TO TRIAL BY JURY OF ANY SUITS, CLAIMS, COUNTERCLAIMS, AND ACTIONS OF ANY KIND ARISING UNDER OR RELATING TO THIS MORTGAGE. MORTGAGOR AND MORTGAGEE EACH ACKNOWLEDGE THAT THIS IS A WAIVER OF A LEGAL RIGHT AND REPRESENTS TO THE OTHER THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY. MORTGAGOR AND MORTGAGEE EACH AGREE THAT ALL SUCH SUITS, CLAIMS, COUNTERCLAIMS, AND ACTIONS SHALL BE TRIED BEFORE A JUDGE OF A COURT OF COMPETENT JURISDICTION, WITHOUT A JURY.

## ARTICLE IV

### LOCAL LAW PROVISIONS

Section 4.01. Article IV Controls. Notwithstanding anything to the contrary contained herein, in the event of a conflict between the provisions set forth in this Article IV and the provisions set forth in the remainder of this Mortgage and/or the other Loan Documents, the provisions set forth in this Article IV shall control.

Section 4.02. Collateral Protection Act. Without limiting any of Mortgagee's rights under this Mortgage or any of the other Loan Documents, unless Mortgagor provides Mortgagee with evidence of the insurance required by this Mortgage or any other Loan Document with respect to

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the Mortgaged Property, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property or any other collateral for the Debt. 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 Debt. 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 with respect to the Mortgaged Property. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the Debt, Mortgagor shall be responsible for the costs of that insurance, including interest in 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 Debt. 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 Section 4.02 to obtain collateral protection insurance.

Section 4.03. Use of Proceeds. Mortgagor represents and warrants to Mortgagee (a) that the advance of the Loan allocated to the Mortgaged Property and secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(c) (or any substitute, amended or replacement statute), and that the advance of the Loan allocated to the Mortgaged Property and secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(c), and (b) 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 4.04. Other Amounts Secured; Maximum Indebtedness. Mortgagor acknowledges and agrees that this Mortgage secures the Debt, 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 commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed ONE HUNDRED TWENTY MILLION AND 00/100 DOLLARS (\$120,000,000.00). It is agreed that any future advances made within twenty (20) years from the date of this Mortgage 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, 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 Debt over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

Section 4.05. 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

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creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

Section 4.06. [Intentionally omitted].

Section 4.07. 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 Debt, 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 4.08. Waiver of Right of Redemption and Other Rights. To the full 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 full 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 full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement under the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.) the "IMFL"), 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 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 full extent permitted by applicable law. To the full 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 full 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 IMFL or residential real estate as defined in Section 5/15-1219 of the IMFL.

Section 4.09. Interest Laws. To the extent the State of Illinois governs any applicable interest provisions with respect to the Loan, 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

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require the payment or permit the collection of any amount (the "Excess Interest") in excess of 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 4.09 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 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 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 4.10. 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 IMFL, the provision of the IMFL 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 IMFL.

(b) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMFL, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMFL 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 IMFL in the absence of said provision, Mortgagee shall be vested with the rights granted in the IMFL to the full 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 IMFL (collectively, the "Protective Advances"), shall have the benefit of all applicable provisions of the IMFL, including, without limitation, those provisions of the IMFL herein below referred to:

(e) all advances by Mortgagee in accordance with the terms of this Mortgage or the other Loan Documents to: (1) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (2) preserve the lien of this Mortgage or the priority

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thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the IMFL;

(f) payments by Mortgagee of (i) principal, interest or other Debt 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); (ii) when due installments of 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; (iii) other Debt authorized by this Mortgage; or (iv) 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 IMFL;

(g) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien);

(h) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d) and 15-1510 of the IMFL; (ii) 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 (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Mortgaged Property;

(i) 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 IMFL;

(j) expenses deductible from proceeds of sales referred to in Subsections 15-1512(a) and (b) of the IMFL; and

(k) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) 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 IMFL; (ii) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (iii) 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 (iv) 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 so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon



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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 IMFL. 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 IMFL, apply to and be included in:

- (i) any determination of the amount of indebtedness secured by this Mortgage at any time;
- (ii) 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;
- (iii) 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 IMFL;
- (iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMFL;
- (v) application of income in the hands of any receiver or Mortgagee in possession; and
- (vi) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2), 15-1508(e) and Section 15-1511 of the IMFL.

Section 4.11. Receiver. 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 IMFL, 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 IMFL.

Section 4.12. Fixture Filing. THIS MORTGAGE IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE MORTGAGED PROPERTY AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH THE PREMISES IS LOCATED. THE ADDRESS OF MORTGAGEE AND THE MAILING ADDRESS OF MORTGAGOR ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS MORTGAGE OR ANY FINANCING STATEMENT RELATING TO THIS MORTGAGE SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

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Section 4.13. Variable Rate; Additional Interest. This Mortgage secures the full and timely payment of the Obligations, including, among other things, the obligation to pay interest on the unpaid principal balance at a variable rate of interest to the extent provided in the Loan Agreement.

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## EXHIBIT A

### Legal Description

#### PARCEL 1:

THAT PART OF LOT 22 IN RAILROAD COMPANIES' RESUBDIVISION OF BLOCKS 62 TO 76, BOTH INCLUSIVE, 78 AND PARTS OF BLOCKS 61 AND 77 IN CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 29, 1924 AS DOCUMENT 8339751, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF PREVIOUSLY MENTIONED LOT 22; THENCE ALONG THE WEST LINE OF LOT 22, NORTH 00 DEGREES, 24 MINUTES, 43 SECONDS EAST (ALL BEARINGS ARE ASSUMED) A DISTANCE OF 787.54 FEET TO THE NORTH WEST CORNER OF LOT 22; THENCE ALONG SAID NORTH LINE OF LOT 22, SOUTH 09 DEGREES, 06 MINUTES, 49 SECONDS EAST A DISTANCE OF 257.35 FEET; THENCE LEAVING MENTIONED LOT LINE, FOLLOWING AND PARALLEL TO AN EXISTING TRACK SOUTH 04 DEGREES, 42 MINUTES 15 SECONDS EAST A DISTANCE OF 95.36 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT HAVING A DELTA OF 6 DEGREES, 21 MINUTES, 35 SECONDS, A RADIUS OF 589.56 FEET A CHORD LENGTH OF 65.41 FEET AND AN ARC LENGTH OF 65.44 FEET; THENCE SOUTH 01 DEGREES, 39 MINUTES, 20 SECONDS WEST A DISTANCE OF 144.01 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT HAVING A DELTA OF 6 DEGREES, 21 MINUTES, 35 SECONDS, A RADIUS OF 618.06 FEET, A CHORD LENGTH OF 68.57 FEET AND AN ARC LENGTH OF 68.60 FEET; THENCE SOUTH 04 DEGREES, 42 MINUTES, 15 SECONDS EAST A DISTANCE OF 92.97 FEET; THENCE LEAVING RELATIONSHIP TO SAID EXISTING TRACK SOUTH 85 DEGREES, 17 MINUTES, 45 SECONDS WEST A DISTANCE OF 9.97 FEET; THENCE SOUTH 04 DEGREES, 42 MINUTES, 15 SECONDS EAST A DISTANCE OF 200.00 FEET; THENCE SOUTH 85 DEGREES, 17 MINUTES, 45 SECONDS WEST A DISTANCE OF 15.00 FEET; THENCE SOUTH 04 DEGREES, 42 MINUTES, 15 SECONDS EAST A DISTANCE OF 48.00 FEET; THENCE NORTH 85 DEGREES 17 MINUTES, 45 SECONDS EAST A DISTANCE OF 15.00 FEET; THENCE SOUTH 04 DEGREES, 42 MINUTES, 15 SECONDS EAST A DISTANCE OF 40.00 FEET; THENCE NORTH 85 DEGREES, 17 MINUTES, 45 SECONDS EAST A DISTANCE OF 9.94 FEET; THENCE SOUTH 04 DEGREES, 42 MINUTES, 15 SECONDS EAST A DISTANCE OF 35.35 FEET TO A POINT ON THE SOUTH LOT LINE OF PREVIOUSLY MENTIONED LOT 22; THENCE WITH SAID LOT LINE NORTH 89 DEGREES, 11 MINUTES, 23 SECONDS WEST A DISTANCE OF 304.37 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS (WHICH PARCEL INCLUDES WITHIN ITS NORTH 40 FEET POLK STREET AS WIDENED BY EASEMENT DEPICTED ON THE PLAT OF RAILROAD COMPANIES RESUBDIVISION AFORESAID).

#### PARCEL 2:

THE EAST 1/2 OF CANAL STREET (80 FEET WIDE LYING WEST OF AND ADJOINING THE WEST LINE OF SAID LOT 22 AND SAID LINE EXTENDED NORTH), LYING NORTH OF THE NORTH LINE OF TAYLOR STREET, AND SOUTH OF THE CENTER LINE OF ORIGINAL POLK STREET (40.0 FEET WIDE) IN THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THEREFROM THAT PORTION FALLING WITHIN PARCEL 1, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

THE SOUTH 1/2 OF ORIGINAL POLK STREET (40.0 FEET WIDE LYING NORTH OF AND ADJOINING THE NORTH LINE OF SAID LOT 22), LYING EAST OF THE WESTERLY LINE OF SAID LOT 22 EXTENDED NORTH, AND WEST OF A LINE BEGINNING AT A POINT IN THE NORTH LINE OF SAID LOT 22 DISTANT 257.35 FEET EAST OF THE NORTHWEST CORNER THEREOF AND RUNNING THENCE NORTH, PERPENDICULAR TO LAST DESCRIBED LINE,

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TO THE CENTER OF SAID ORIGINAL POLK STREET IN THE SOUTHWEST 1/4 OF SAID SECTION 16;

PARCEL 4:

NON-EXCLUSIVE PERMANENT ACCESS EASEMENT FOR THE BENEFIT OF PARCELS 1, 2 AND 3 FOR THE PURPOSE OF PEDESTRIAN AND VEHICULAR ACCESS AND INGRESS AS CREATED BY EASEMENT AGREEMENT DATED AS OF MARCH 16, 2005 AND RECORDED JUNE 21, 2007 AS DOCUMENT 0717239114, BY AND AMONG LASALLE BANK NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 12, 1986 AND KNOWN AS TRUST NUMBER 66603, CANAL/TAYLOR CENTRAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, CANAL/TAYLOR SOUTH, LLC, A DELAWARE LIMITED LIABILITY COMPANY, NORTRUST REALTY MANAGEMENT, INC., THE NORTHERN TRUST COMPANY, NORTHERN INVESTMENT CORPORATION, AND BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT FOR THE LENDERS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT DATED AS OF DECEMBER 23, 2004, AS AMENDED, OVER THAT PORTION OF LOT 23 OF THE SAID RAILROAD COMPANIES' RESUBDIVISION RECORDED MARCH 29, 1924 AS DOCUMENT 8339751, AND OVER LAND NORTH AND ADJOINING SAID LOT 23, IN COOK COUNTY, ILLINOIS, AS FOLLOWS:

OVER AND ACROSS THE NORTHERNMOST 14 FEET OF THE "SOUTH PARCEL" AS DESCRIBED THEREIN; AND

OVER AND ACROSS THAT PART OF THE "CENTRAL PARCEL," AS DESCRIBED THEREIN, AND RESTRICTED TO THAT PORTION WHICH IS PAVED FOR SUCH INGRESS AND EGRESS, PROCEEDING AT GRADE LEVEL UNDERNEATH THE RECONSTRUCTED TAYLOR STREET VIADUCT, LYING EAST OF A LINE 250 FEET EAST OF THE WESTERN BOUNDARY OF "CENTRAL PARCEL."