

UNOFFICIAL COPY

Doc#: 2210907195 Fee: \$98.00

Karen A. Yarbrough

Cook County Clerk

Date: 04/19/2022 01:26 PM Pg: 1 of 26

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud

844-768-1713

22NW7148289 84

The property identified as: *217* PIN: 13-20-328-012-0000

Address:

Street: 6336-6360 W Belmont Ave

Street line 2:

City: Chicago

State: IL

ZIP Code: 60641

Lender: READYCAP COMMERCIAL, LLC

Borrower: MB NARRAGANSETT, LLC

Loan / Mortgage Amount: \$14,755,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7.170 et seq. because it is commercial property.

Certificate number: A615202E-35E6-4711-BD12-69873A53C376

Execution date: 3/25/2022

UNOFFICIAL COPY

Execution Version

PREPARED BY:

Holland & Knight LLP
31 West 52nd Street
New York, New York 10019

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

ReadyCap Commercial LLC
Post Closing / Melissa Perez
1320 Greenway Drive, Suite 560
Irving, Texas 75038

Space Above This Line For Recorder's Use

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

by

MB NARRAGANSETT, LLC,
an Illinois limited liability company
(as Mortgagor)

in favor and for the benefit of

READYCAP COMMERCIAL, LLC,
a Delaware limited liability company

(as Mortgagee)

Dated: As of April 7, 2022

Location: 6336-6360 W. Belmont Avenue
Chicago, Illinois 60641

Permanent Index No.: 13-20-328-012-0000, 13-20-328-013-0000,
and 13-20-328-014-0000

UNOFFICIAL COPY

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of April 7, 2022, by MB NARRAGANSETT, LLC, an Illinois limited liability company, having an address at 3901 25th Avenue, Schiller Park, Illinois 60176 ("Mortgagor"), in favor and for the benefit of READYCAP COMMERCIAL, LLC, a Delaware limited liability company, whose address is 1320 Greenway Drive, Suite 560, Irving, Texas 75038 (together with its successors and assigns, "Mortgagee").

RECITALS

WHEREAS, Mortgagor and Mortgagee are parties to a Loan Agreement of even date herewith (said Loan Agreement, as modified and supplemented and in effect from time to time, the "Loan Agreement"), which Loan Agreement provides for a loan in the maximum principal amount of \$14,755,000.00 (the "Loan") to be made by Mortgagee to Mortgagor; and

WHEREAS, it is a condition to the obligation of Mortgagee to extend credit to Mortgagor pursuant to the Loan Agreement that Mortgagor execute and deliver this Mortgage.

GRANT

NOW, THEREFORE, in consideration of the making of the Loan by Mortgagee to Mortgagor and the covenants, agreements, representations and warranties set forth in the Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and for the purpose of securing the payment and performance of the following (collectively, the "Loan Obligations"): (a) all principal (including, without limitation, any advance to Mortgagor now or hereafter made), interest thereon and all other sums due and/or payable, and all obligations owing by Mortgagor, under any Loan Document and amendments, modifications, extensions, substitutions, exchanges and renewals thereof (each of which shall enjoy the same priority as the advance made on the Closing Date as evidenced by the Note); and (b) all covenants, agreements and other obligations of Mortgagor under the Loan Documents;

Mortgagor hereby irrevocably grants, bargains, sells, releases, conveys, warrants, assigns, transfers, mortgages, pledges, sets over and confirms unto Mortgagee, its successors and assigns, in trust, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, to have and to hold forever for the security and benefit of Mortgagee and its successors and assigns, all of Mortgagor's right, title and interest in and to the following property, rights, interests and estates, now existing or hereafter coming into existence (the property, rights, interests and estates hereinafter described are collectively referred to herein as the "Property"): (i) all the land located in the County and State identified on Exhibit A attached hereto, as more particularly described on such Exhibit A (the "Land"), (ii) the Accounts, (iii) the Account Collateral, (iv) the Appurtenant Rights, (v) the Contracts, (vi) the Equipment, (vii) the Improvements, (viii) the Instruments, (ix) the Inventory, (x) the General Intangibles, (xi) the Leases, (xii) the Permits (to the fullest extent assignable), (xiii) the Rents, (xiv) the Proceeds, (xv) the Chattel Paper (including Electronic Chattel Paper and Tangible Chattel Paper), Commercial Tort Claims,

UNOFFICIAL COPY

Deposit Accounts, Documents, Goods, Investment Property, Letter of Credit Rights, Payment Intangibles and Supporting Obligations (as all such terms in this clause (xv) are defined in the UCC), and (xvi) any and all other rights of Mortgagor in and to the items set forth in clauses (i) through (xv) above, all whether now owned or hereafter acquired, and all other property which is or hereafter may become subject to a Lien in favor of Mortgagee pursuant to any Loan Document.

TO HAVE AND TO HOLD the Property and all parts thereof unto Mortgagee, its successors and assigns, for the benefit of Mortgagee, their successors and assigns forever;

PROVIDED, HOWEVER, that these presents are upon the express condition that, if Mortgagor shall pay or cause to be paid to Mortgagee all sums due Mortgagee with respect to the Loan under the Loan Documents and keep, perform and observe all the covenants and promises in each of the Loan Documents, all without fraud and delay, then this Mortgage, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, terminate and be void and Mortgagee shall effect a full and proper termination, release and reconveyance; otherwise the same shall remain in full force and effect.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 1 DEFINITIONS

Section 1.1. Certain Defined Terms. For all purposes of this Mortgage, all capitalized terms shall have the meaning ascribed thereto in the Loan Agreement or the Note, as applicable, unless defined herein, and:

“Account Collateral” means the Reserve Accounts (as defined in the Loan Agreement), together with all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in the Reserve Accounts, all interest, dividends, cash, instruments, investment property and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing.

“Accounts” means all of Mortgagor’s “accounts,” as such term is defined in the UCC.

“Appurtenant Rights” means all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, air rights, development rights and powers, and, to the extent now or hereafter owned by Mortgagor, all minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter appurtenant to, or used in connection with, or located on, under or above the Land or any part or parcel thereof, and all “as extracted collateral” (as defined in the UCC), and all ground leases, subleases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Land or any part thereof.

UNOFFICIAL COPY

“Contracts” means, collectively, (a) all contracts between Mortgagor and third parties in connection with the management, construction (including, but not limited to, plans and specifications and architect agreement(s)), repair, renovation, use, operation or maintenance of the Property, in each case as the same may thereafter from time to time be amended or modified; and (b) all warranties, guarantees, and other rights of Mortgagor or Manager, direct and indirect, against manufacturers, dealers, suppliers, and others in connection with the above contracts and agreement or the work done or to be done and the materials supplied or to be supplied to or for the Property.

“Equipment” means all of Mortgagor’s “equipment,” as such term is defined in the UCC, and, to the extent not included in such definition, all fixtures, appliances, machinery, “software” (as defined in the UCC), furniture, furnishings, decorations, tools and supplies, now owned or hereafter acquired by Mortgagor, including without limitation, all beds, linens, radios, televisions, carpeting, telephones, cash registers, computers, electronic data-processing or other office equipment, lamps, glassware, restaurant and kitchen equipment, and building equipment, including, without limitation, all heating, lighting, incinerating, waste removal and power equipment, engines, pipes, tanks, motors, conduits, switchboards, security and alarm systems, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigeration, washing machines, dryers, stoves, refrigerators, ventilating, and communications apparatus, air cooling and air conditioning apparatus, escalators, elevators, ducts, and compressors, materials and supplies, and all other machinery, apparatus, equipment, fixtures and fittings now owned or hereafter acquired by Mortgagor wherever located, any portion thereof or any appurtenances thereto, together with all additions, replacements, parts, fittings, accessions, attachments, accessories, modifications and alterations of any of the foregoing, and all proceeds and products of and accessions to and substitutions and replacements for all such fixtures and other property owned by Mortgagor.

“General Intangibles” means all of Mortgagor’s “general intangibles,” as such term is defined in the UCC, and, to the extent not included in such definition, all intangible personal property of Mortgagor (other than Accounts, Rents, Instruments, Inventory, money and Permits), including, without limitation, choses in action, settlements, judgments, contract rights, rights to performance (including, without limitation, rights under warranties) refunds of real estate taxes and assessments and other rights to payment of money, copyrights, trademarks, trade names, service marks, trade secrets, and patents, the goodwill associated with any of the foregoing, and all applications for any of the foregoing, in each case whether now existing or hereafter in existence.

“Improvements” means all buildings, structures and improvements of every nature whatsoever situated on the Land on the Closing Date or thereafter, including, without limitation, to the extent of Mortgagor’s right, title or interest therein or thereto, all gas and electric fixtures, radiators, heaters, washing machines, dryers, refrigerators, ovens, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, antennas, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to the Land or said buildings, structures or improvements.

“Instruments” means all of Mortgagor’s “instruments,” as such term is defined in the UCC, and, to the extent not included in such definition, all instruments, chattel paper, documents

UNOFFICIAL COPY

or other writings obtained by Mortgagor from or in connection with the ownership or operation of the Property evidencing a right to the payment of money, including, without limitation, all notes, drafts, acceptances, documents of title, and policies and certificates of insurance, including but not limited to, liability, hazard, rental and credit insurance, guarantees and securities, now or hereafter received by Mortgagor or in which Mortgagor has or acquires an interest pertaining to the foregoing.

“Inventory” means all of Mortgagor’s “inventory,” as such term is defined in the UCC.

“Permits” means all licenses, registrations, permits, allocations, filings, authorizations, approvals and certificates used in connection with the ownership, operation, construction, renovation, use or occupancy of the Property, including, without limitation, building permits, business licenses, state health department licenses, food service licenses, liquor licenses, licenses to conduct business and all such other permits, licenses and rights, obtained from any Governmental Authority or private Person concerning the ownership, construction, operation, renovation, use or occupancy of the Property.

“Proceeds” means all of Mortgagor’s “proceeds” as such term is defined in the UCC and, to the extent not included in such definition, all proceeds, whether cash or non-cash, movable or immovable, tangible or intangible (including Insurance Proceeds, Condemnation Proceeds, and proceeds of proceeds), from the Property, including, without limitation, those from the sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of the Property (or any portion thereof) and all income, gain, credit, distributions and similar items from or with respect to the Property.

“Rents” means, with respect to the Property, all rents (whether denoted as advance rent, minimum rent, percentage rent, additional rent or otherwise), receipts, issues, income, royalties, profits, revenues, proceeds, bonuses, deposits (whether denoted as security deposits or otherwise), lease termination fees or payments, rejection damages, buy-out fees and any other fees made or to be made in lieu of rent, any award made hereafter to Mortgagor in any court proceeding involving any tenant, lessee, licensee or concessionaire under any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and all other payments, rights and benefits of whatever nature from time to time due under the Leases.

“UCC” means the Uniform Commercial Code in effect in the jurisdiction in which the Property is located, as applicable.

Section 1.2. Interpretation of Defined Terms.

Singular terms shall include the plural forms and vice versa, as applicable, of the terms defined.

All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, and all replacements and substitutions therefor.

UNOFFICIAL COPY

ARTICLE 2 COVENANTS AND AGREEMENTS OF MORTGAGOR

Section 2.1. Payment of Secured Loan Obligations; Incorporation by Reference. Mortgagor shall pay when due the principal, interest thereon and all other sums, charges, fees and other Loan Obligations due and/or payable under any Loan Document all as in accordance with the Loan Documents. All of the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

Section 2.2. Duty to Defend; Filing; Re-Filing; Etc.

(a) Mortgagor will forever defend the title to the Property and the validity and priority of the lien or estate hereof against the claims and demands of all Persons whomsoever.

(b) Mortgagor shall execute, acknowledge and deliver, from time to time, such further instruments as Mortgagee may reasonably require to accomplish the purposes of this Mortgage. Mortgagor hereby irrevocably authorizes and appoints Mortgagee as its attorney-in-fact, coupled with an interest, for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this Mortgage.

(c) Mortgagor shall pay all intangible taxes, recording taxes, filing, registration and recording fees, all re-filing, re-registration and re-recording fees, and all expenses incident to the execution, filing, recording and acknowledgment of this Mortgage, any security agreement, mortgage, modification or amendment supplemental hereto and any document, instrument and agreement of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of the execution, delivery, filing, registration and recording of the Note, this Mortgage or any of the other Loan Documents, any security agreement or mortgage or deed of trust modification or amendment supplemental hereto or any document instrument or agreement of further assurance.

(d) Mortgagor hereby indemnifies and holds Mortgagee harmless from any sales or use tax that may be imposed on Mortgagee by virtue of the Loan other than taxes imposed on the income, stock or assets of Mortgagee.

Section 2.3. No Transfer. Mortgagor shall not and shall not cause, allow, or permit, and shall prevent from occurring, a Transfer, except as expressly permitted pursuant to the Loan Agreement. In the event of any violation of this Section 2.3, Mortgagee may, at its option, accelerate and declare the outstanding Indebtedness immediately due and payable, without notice or demand, and whether or not Mortgagee shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any Loan Document with respect to any Property or all or any portion of the Property.

Section 2.4. Future Advances. In addition to securing the full, prompt and complete payment when due of the Indebtedness, this Mortgage shall also secure any and all other, further or future loans, advances and borrowings (if applicable under the Loan Agreement) made to or at the

UNOFFICIAL COPY

request of Mortgagor from or by Mortgagee and all other debts, obligations and liabilities of every kind and character of Mortgagor now or hereafter existing in favor of Mortgagee (including, without limitation, all indebtedness incurred or arising pursuant to any Loan Document) whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, and whether originally payable to any of such parties or to a third party, and subsequently acquired by any of such parties, and whether such debts, obligations and liabilities are evidenced by note, open account, overdraft, endorsement, surety agreement or otherwise, it being presently contemplated by Mortgagor and such other parties that Mortgagor may and will hereafter become indebted to Mortgagee in other, further and future sum or sums.

ARTICLE 3

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended that this Mortgage constitute a present, absolute assignment and not an assignment for additional security only. This Article 3 presently gives Mortgagee the right to collect Rents and to apply Rents in partial payment of the Loan Obligations and otherwise in accordance with the Loan Agreement. Mortgagor intends that the Rents and Leases be absolutely assigned and no longer be, during the term of this Mortgage, property of Mortgagor or Mortgagor's estate, as defined by 11 U.S.C. §541. If any law exists requiring Mortgagee to take actual possession of the Property (or some action equivalent to taking possession of the Property, such as securing the appointment of a receiver) for Mortgagee to "perfect" or "activate" the rights and remedies of Mortgagee as provided herein, Mortgagor waives the benefit of such law. Such assignment to Mortgagee shall not be construed to bind Mortgagee to perform any covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Mortgagee, and notwithstanding this Mortgage, Mortgagor shall remain liable for any obligations undertaken by Mortgagor pursuant to any Lease. Subject to the terms of this Article 3 and the Loan Agreement, Mortgagee grants to Mortgagor a license, revocable as hereinafter provided, to operate and manage the Property and to collect and use the Rents. If an Event of Default occurs (except for any Event of Default described in Section 8.1(h) of the Loan Agreement, for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license granted to Mortgagor herein may, at Mortgagee's election, be revoked by Mortgagee, and Mortgagee shall immediately be entitled to possession of all Rents then or thereafter payable (including Rents past due and unpaid) whether or not Mortgagee enters upon or takes control of the Property. Any Rents collected by Mortgagor from and after the date on which an Event of Default occurred and is continuing shall be held by Mortgagor in trust for Mortgagee. Mortgagor hereby grants and assigns to Mortgagee the right, at Mortgagee's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court appointed receiver to collect Rents with or without taking the actual possession of the Property or any equivalent action. Mortgagee may apply any Rents collected after the license granted herein is revoked in Mortgagee's sole and absolute discretion to pay the Loan Obligations in [Mortgagee].

UNOFFICIAL COPY

ARTICLE 4 ASSIGNMENT OF CONTRACTS

Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in and to the Contracts to the maximum extent allowable under all Legal Requirements and to the maximum extent allowable under the terms of each individual Contract, it being intended that this assignment be an absolute assignment from Mortgagor to Mortgagee and not merely the granting of a security interest. Until the occurrence of an Event of Default, Mortgagor may retain, use and enjoy the benefits of the Contracts. Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in Section 8.1(h) of the Loan Agreement for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license described in the preceding sentence shall, upon Mortgagee's election, be automatically revoked and Mortgagee may elect to exercise any and all of Mortgagee's rights and remedies hereunder.

ARTICLE 5 SECURITY AGREEMENT AND FIXTURE FILING

Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of the Note, this Mortgage or the other Loan Documents and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Property or may not constitute a "fixture" (within the meaning of Section 9-313 of the UCC) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property; and the following provisions of this Section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(i) Mortgagor (being the debtor as that term is used in the UCC) is and will be the true and lawful owner of the Collateral, except such incidental furnishings, fixtures and equipment which are leased by Mortgagor such as furniture in offices and club houses, and whose value, in the aggregate, is immaterial relative to the owned collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents;

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

UNOFFICIAL COPY

(iii) The Collateral will be kept at the Property (except for normal replacement of Personal Property) and will not be removed therefrom without the consent of Mortgagee (being the secured party as that term is used in the UCC). The Collateral may be affixed to the Property but will not be affixed to any other real estate;

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

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

(vi) Upon the occurrence and continuance of an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the UCC, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the UCC); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the UCC. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least twenty (20) days' notice of time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinabove set forth at least twenty (20) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If Mortgagee so elects, the Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the

UNOFFICIAL COPY

indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition;

(vii) The terms and provisions contained in this Article 5, unless the context otherwise requires, shall have the meanings and be construed as provided in the UCC;

(viii) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the UCC with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Property. The addresses of Mortgagor and Mortgagee are hereinabove set forth. This Mortgage is to be filed for recording with the recorder of deeds of the county or counties where the Property is located. Mortgagor is the record owner of the Property;

(ix) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder; and

(x) The address of Mortgagor, from which information concerning the security interests in the Collateral may be obtained, is set forth on page 1 of this Mortgage.

ARTICLE 6 REMEDIES

Section 6.1. Acceleration of Maturity. If an Event of Default shall have occurred and be continuing after any applicable notice and cure periods under the Loan Documents or applicable law, then the entire Indebtedness and all other Loan Obligations shall, at the option of Mortgagee, become due and payable without notice or demand, time being of the essence; and any omission on the part of Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right. Mortgagor hereby expressly waives presentment, demand for payment, notice of protest, notice of dishonor, notice of intent to accelerate the maturity of the Indebtedness and notice of acceleration of the maturity of the indebtedness secured hereby. Notwithstanding anything contained to the contrary herein, the Indebtedness shall be accelerated and immediately due and payable, without any election by Mortgagee, upon the occurrence of an Event of Default described in Section 8.1(h) of the Loan Agreement.

Section 6.2. Default Remedies.

(a) If an Event of Default shall have occurred and be continuing after any applicable notice and cure periods under the Loan Documents or applicable law, this Mortgage may, to the maximum extent permitted by law, be enforced, and Mortgagee may exercise any right, power or remedy permitted to it hereunder, under the Loan Agreement or under any of the other Loan Documents or at law or in equity, and, without limiting the generality of the foregoing, Mortgagee may, personally or by their agents, to the maximum extent permitted by law:

UNOFFICIAL COPY

(i) enter into and take possession of the Property or any part thereof, exclude Mortgagor and all Persons claiming under Mortgagor whose claims are junior to this Mortgage, wholly or partly therefrom, and use, operate, manage and control the Property or any part thereof either in the name of Mortgagor or otherwise as Mortgagee shall deem best, and upon such entry, from time to time at the expense of Mortgagor and the Property, make all such repairs, replacements, alterations, additions or improvements to the Property or any part thereof as Mortgagee may reasonably deem proper and, whether or not Mortgagee has so entered and taken possession of the Property or any part thereof, collect and receive all Rents and apply the same to the payment of all expenses that Mortgagee may be authorized to make under this Mortgage, the remainder to be applied to the payment of the Loan Obligations until the same shall have been repaid in full, and take possession of all security deposits held with respect to the Property, whether or not Mortgagee enters upon or takes control of the Property and regardless of where any such security deposits are deposited or located; if Mortgagee demands or attempts to take possession of the Property or any part thereof in the exercise of any rights hereunder, Mortgagor shall promptly turn over and deliver complete possession thereof to Mortgagee;

(ii) effect new Permits and Contracts; amend, alter, renew, cancel or surrender existing Permits and Contracts; and make concessions to the Governmental Authorities, the Contractors, warrantors and others; and

(iii) personally or by agents, with or without entry:

(x) invoke the power of sale and pursuant to the procedures prescribed by law as a result thereof, sell the Property or any part thereof, or cause the Property or any part thereof to be sold at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner and in such order as may be required by law, or, in the absence of any such requirements, as Mortgagee may deem appropriate and from time to time adjourn any such sale by announcement at the time and place specified for such sale or for such adjourned sale without further notice, except such as may be required by law;

(y) proceed to protect and enforce Mortgagee's rights under this Mortgage, by suit for specific performance of any covenant contained herein or in the Loan Documents or in aid of the execution of any power granted herein or in the Loan Documents, or for the foreclosure of this Mortgage (as a mortgage or otherwise) and the sale of the Property or any part thereof under the judgment or decree of a court of competent jurisdiction, or for the enforcement of any other right as Mortgagee shall elect, provided, that in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on, and

UNOFFICIAL COPY

security interest in, the remaining portion of the Property;
or

- (z) exercise any or all of the remedies available to a secured party under the UCC, including, without limitation:

(1) either personally or by means of a court appointed receiver, take possession of all or any of the Property and exclude therefrom Mortgagor and all Persons claiming under Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Mortgagor in respect of the Property, or any part thereof; if Mortgagee demands or attempts to take possession of the Property in the exercise of any rights hereunder, Mortgagor shall promptly turn over and deliver complete possession thereof to Mortgagee;

(2) without further notice to or demand upon Mortgagor (except those otherwise required hereby or by the Loan Agreement), make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance that is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority paying all expenses incurred in connection therewith, which expenses shall thereafter become part of the Loan Obligations secured by the lien of this Mortgage;

(3) require Mortgagor to assemble the Property or any portion thereof, at a place designated by Mortgagee and reasonably convenient to both parties, and promptly to deliver the Property to Mortgagee, or an agent or representative designated by Mortgagee, and its agents and representatives, shall have the right to enter upon the premises and property of Mortgagor to exercise Mortgagee's rights hereunder;

(4) sell, lease or otherwise dispose of the Property, with or without having the Property at the place of sale, and upon such terms and in such manner as Mortgagee may determine (and Mortgagee may be a purchaser at any such sale, provided, however, that Mortgagee, at the request and direction of Mortgagee, may dispose of the Property in accordance with Mortgagee's rights and remedies in respect of the Property pursuant to the provisions of this Mortgage and the UCC); and

(5) unless the Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give Mortgagor at least ten (10) days prior notice of the time and place of any sale of the Property or other intended disposition thereof, which notice Mortgagor agrees is commercially reasonable.

(b) If an Event of Default shall have occurred, Mortgagee, to the maximum extent permitted by law, shall be entitled, as a matter of right, to the appointment of a receiver of the Property, without notice or demand, and without regard to the adequacy of the security for the Loan Obligations or the solvency of Mortgagor. Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and

UNOFFICIAL COPY

duties of Mortgagee in case of entry and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property, unless such receivership is sooner terminated.

(c) In any sale under any provision of this Mortgage or pursuant to any judgment or decree of court, the Property, to the maximum extent permitted by law, may be sold in one or more parcels or as an entirety and in such order as Mortgagee may elect, without regard to the right of Mortgagor or any Person claiming under Mortgagor to the marshalling of assets. The purchaser at any such sale shall take title to the Property or the part thereof so sold free and discharged of the estate of Mortgagor therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Upon the completion of any such sale by virtue of this Section 6.2(c) Mortgagee shall execute and deliver to the purchaser an appropriate instrument that shall effectively transfer all of Mortgagor's estate, right, title, interest, property, claim and demand in and to the Property or portion thereof so sold, but without any covenant or warranty, express or implied. Mortgagor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the reasonable judgment of Mortgagee, for such purpose, and as may be designated in such request. Any sale or sales made under or by virtue of this Mortgage, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of Mortgagor in, to and under the Property, or any portions thereof 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, by, through or under Mortgagor. The powers and agency herein granted are coupled with an interest and are irrevocable.

(d) All rights of action under any Loan Document may be enforced by Mortgagee without the possession of the original Loan Documents and without the production thereof at any trial or other proceeding relative thereto.

Section 6.3. Application of Proceeds.

(a) All proceeds of any repayment of or recoveries on the Loan shall be applied to repay the Indebtedness in such order and in such manner as Mortgagee shall elect in Mortgagee's discretion.

(b) No sale or other disposition of all or any part of the Property pursuant to this Section 6.3 shall be deemed to relieve Mortgagor of its obligations under any Loan Document except to the extent the proceeds thereof are applied to the payment of such obligations. If the proceeds of sale, collection or other realization of or upon the Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Loan Obligations, Mortgagor shall remain liable for any deficiency subject to Section 7.11.

(c) Upon any sale made under the powers of sale herein granted and conferred, the receipt given by Mortgagee will be sufficient discharge to the purchaser or purchasers at any sale for the purchase money, and such purchaser or purchasers and their heirs, devisees, personal representatives, successors and assigns thereof will not, after paying such purchase money and

UNOFFICIAL COPY

receiving such receipt of Mortgagee, be obligated to see to the application thereof or be in any way answerable for any loss, misapplication or non-application thereof.

Section 6.4. Right to Sue. Mortgagee shall have the right from time to time to sue for any sums required to be paid by Mortgagor under the terms of this Mortgage as the same become due, without regard to whether or not the entire Loan Obligations shall be, or have become, due and without prejudice to the right of Mortgagee thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence of any Event of Default existing at the time such earlier action was commenced.

Section 6.5. Powers of Mortgagee. Mortgagee may at any time or from time to time renew or extend this Mortgage or (with the agreement of Mortgagor) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release or reconvey, any portion of the Property or any other security, and grant such extensions and indulgences in relation to the Loan Obligations, or release any Person liable therefor as Mortgagee may determine without the consent of any junior lienor or encumbrancer, without any obligation to give notice of any kind thereto, without in any manner affecting the priority of the lien and estate of this Mortgage on or in any part of the Property, and without affecting the liability of any other Person liable for any of the Loan Obligations.

Section 6.6. Remedies Cumulative.

(a) No right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Mortgage, or under applicable law, whether now or hereafter existing; the failure of Mortgagee to insist at any time upon the strict observance or performance of any of the provisions of this Mortgage or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

(b) To the maximum extent permitted by law, Mortgagee shall be entitled to enforce payment and performance of any of the obligations of Mortgagor and to exercise all rights and powers under this Mortgage or under any Loan Document or any laws now or hereafter in force, notwithstanding that some or all of the Loan Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise; neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the right of Mortgagee to realize upon or enforce any other security now or hereafter held by Mortgagee, it being stipulated that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee, in its discretion, may determine; every power or remedy given by any Loan Documents to Mortgagee, or to which Mortgagee is otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies.

Section 6.7. Waiver of Stay, Extension, Moratorium Laws; Equity of Redemption. To the maximum extent permitted by law, Mortgagor shall not at any time insist upon, or plead, or in

UNOFFICIAL COPY

any manner whatsoever claim or take any benefit or advantage of any applicable present or future stay, extension or moratorium law, that may affect observance or performance of the provisions of this Mortgage; nor claim, take or insist upon any benefit or advantage of any present or future law providing for the valuation or appraisal of the Property or any portion thereof prior to any sale or sales thereof that may be made under or by virtue of Section 6.2; and Mortgagor, to the maximum extent permitted by law, hereby waives all benefit or advantage of any such law or laws. Mortgagor, for itself and all who may claim under it, hereby waives, to the maximum extent permitted by law, any and all rights and equities of redemption from sale under the power of sale created hereunder or from sale under any foreclosure of this Mortgage and (if an Event of Default shall have occurred) all notice or notices of seizure, and all right to have the Property marshalled upon any foreclosure hereof. Mortgagee shall not be obligated to pursue or exhaust its rights or remedies as against any other part of the Property, and Mortgagor hereby waives any right or claim of right to have Mortgagee proceed in any particular order.

Section 6.8. No Assumption by Mortgagee. Except as otherwise expressly set forth in any Loan Document, Mortgagee will not be deemed in any manner to have assumed any liabilities or obligations relating to the Property or any portion thereof. Mortgagor agrees that the exercise by Mortgagee of one or more of its rights and remedies under this Mortgage shall in no way be deemed or construed to make Mortgagee a mortgagee-in-possession.

Section 6.9. Waiver of Homestead. To the extent waivable, Mortgagor hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Loan Obligations, or any part thereof.

Section 6.10. Discontinuance of Proceedings. If Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, power of sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred.

ARTICLE 7 MISCELLANEOUS

Section 7.1. Reconveyance by Mortgagee. Upon payment in full of the Loan Obligations or a complete defeasance with respect to the Property which complies with the Loan Agreement (if the Loan Agreement provides for defeasance), Mortgagee, to the extent required by law to effect a full and proper termination, release and reconveyance, shall release the lien of this Mortgage, or upon the request of Mortgagor, and at Mortgagor's expense, assign this Mortgage without recourse to Mortgagor's designee, or to the Person or Persons legally entitled thereto, by an instrument duly acknowledged in proper form for recording.

Section 7.2. Notices. All notices, demands, consents, requests or other communications that are permitted or required to be given by any party to the other hereunder shall be in writing and given in the manner specified in Section 11.6 of the Loan Agreement.

UNOFFICIAL COPY

Section 7.3. Amendments; Waivers; Etc. This Mortgage cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in proper form for recording, signed by Mortgagor and Mortgagee.

Section 7.4. Successors and Assigns. This Mortgage applies to, inures to the benefit of and binds Mortgagor and Mortgagee and each of their respective successors and assigns, and shall run with the Land.

Section 7.5. Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties hereto and are not a part of this Mortgage.

Section 7.6. Severability. If any term or provision of this Mortgage or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and enforceable to the maximum extent permitted by law. If any portion of the Loan Obligations shall for any reason not be secured by a valid and enforceable lien upon any part of the Property, then any payments made in respect of the Loan Obligations (whether voluntary or under foreclosure or other enforcement action or procedure or otherwise) shall, for purposes of this Mortgage (except to the extent otherwise required by applicable law) be deemed to be made (a) first, in respect of the portion of the Loan Obligations not secured by the lien of this Mortgage, (b) second, in respect of the portion of the Loan Obligations secured by the lien of this Mortgage, but which lien is on less than all of the Property, and (c) last, to the portion of the Loan Obligations secured by the lien of this Mortgage, and which lien is on all of the Property.

Section 7.7. Applicable Law; Submission to Jurisdiction.

(a) This Mortgage shall be governed by and construed in accordance with the laws of the State in which the Property is located.

(b) Mortgagor hereby consents and submits to the exclusive jurisdiction and venue of any state or federal court sitting in the county and State in which the Property is located with respect to any legal action or proceeding arising with respect to this Mortgage and waives all objections which it may have to such jurisdiction and venue.

Section 7.8. Limitation of Interest. This Mortgage is subject to the limitations on the payment of interest set forth in Section 8 of the Note.

Section 7.9. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under all Loan Documents.

Section 7.10. WAIVER OF JURY TRIAL. MORTGAGOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR

UNOFFICIAL COPY

OMISSIONS OF MORTGAGEE, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Section 7.11. Exculpation. This Mortgage and the obligations of Mortgagor hereunder are and shall be subject to and limited by the exculpation provisions of Section 16 of the Note.

Section 7.12. Exhibits. The information set forth on the cover, heading and recitals hereof, and the Exhibits attached hereto, are hereby incorporated herein as a part of this Mortgage with the same effect as if set forth in the body hereof.

ARTICLE 8 STATE-SPECIFIC PROVISIONS

Section 8.1. Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 8 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 8 shall control and be binding.

Section 8.2. Maturity Date. In no event shall the initial maturity date of the Loan be later than December 10, 2022, as the same may be extended pursuant to the terms and conditions of the Note.

Section 8.3. Interest Rate. The interest rate payable with respect to the Loan for any Interest Accrual Period (as defined in the Note) shall be equal to the Interest Rate (as defined in the Note), provided, that while an Event of Default exists, the Interest Rate shall be the Default Rate (as defined in the Note).

Section 8.4. Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq., herein called the "Foreclosure Act"), the provisions of the Foreclosure Act 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 Foreclosure Act or that are not expressly prohibited from being waived by the Mortgagor.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon the occurrence and during the continuation of an Event of Default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Foreclosure Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee upon the occurrence and during the continuation of an Event of Default to the extent reimbursable under Sections 15-1510 and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage and included in the judgment of foreclosure.

UNOFFICIAL COPY

(d) Mortgagor shall be responsible for and shall indemnify Mortgagee for, without limitation, all expenses (including reasonable attorneys' fees and expenses) incurred by Mortgagee, to the extent reimbursable under 735 ILCS 5/15-1510, 5/15-1512, or any other provision of the Foreclosure Act, whether incurred before or after any judgment of foreclosure.

(e) Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Foreclosure Act) or residential real estate (as defined in Section 15-1219 of the Foreclosure Act), and upon the occurrence and during the continuation of an Event of Default to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601(b) of the Foreclosure Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, noninterest, exemption, stay, redemption and moratorium laws under any state or federal law.

(f) Any references to "power of sale" and related provisions in this Mortgage are permitted only to the extent allowed by law.

Section 8.5. Collection of Rents; Receiver.

(a) To the extent permitted by law and subject to Mortgagor's rights under this Mortgage, pursuant to the provisions of 765 ILCS 5/31.5, this Mortgage entitles Mortgagee immediately to collect and receive Rents upon the occurrence of an Event of Default, without first taking any acts of enforcement under applicable law, including providing notice to Mortgagee, filing foreclosure proceedings, or seeking the appointment of a receiver. Further, Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property as permitted under this Mortgage or the Assignment of Leases and Rents. In Mortgagee's sole discretion, Mortgagee may choose to collect Rents either with or without taking possession of the Property.

(b) The powers of a receiver listed in 735 ILCS 5/15-1704 shall be added to all the powers of a receiver listed in this Mortgage and any other Loan Document.

Section 8.6. Mortgagor Waivers.

(a) Mortgagor agrees, to the fullest extent that Mortgagor may lawfully so agree, that upon the occurrence and during the continuation of an Event of Default, Mortgagor will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Mortgagor, for Mortgagor and all who may claim through or under Mortgagor, so far as Mortgagor or those claiming through or under Mortgagor now or hereafter lawfully may, hereby waives upon the occurrence and during the continuation of an Event of Default the benefit of all such laws. Mortgagor, to the extent Mortgagor may lawfully do so, hereby waives upon the occurrence and during the continuation

UNOFFICIAL COPY

of an Event of Default any and all right to have the Property marshaled upon any foreclosure of this Mortgage, or sold in inverse order of alienation, and agrees that Mortgagee or any court having jurisdiction to foreclose this Mortgage may sell the Property as an entirety. If any law now or hereafter in force referred to in this paragraph of which Mortgagor or Mortgagor's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph.

(b) In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of Mortgagor, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Mortgage: (i) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; and (ii) to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefore, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefore.

Section 8.7. Maximum Amount Secured. The maximum principal indebtedness secured by this Mortgage shall not exceed \$14,755,000.00.

Section 8.8. Business Loan. Mortgagor hereby represents and agrees that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in the Illinois Interest Act, 815 ILCS 205/4(I), and the indebtedness secured hereby constitutes a business loan which comes within the purview of Section 205/4(1)€ and a loan secured by a mortgage on real estate within the purview of Section 204/4(1)(I).

Section 8.9. Copy of Mortgage. Mortgagor hereby declares and acknowledges that Mortgagor has received, without charge, a true copy of this Mortgage.

Section 8.10. Certain Insurance Disclosures. Pursuant to the Illinois Collateral Protection Act and the Illinois Financial Institution Insurance Sales Law, Mortgagee hereby notifies Mortgagor as follows:

You may obtain insurance required in connection with your loan or extension of credit from any insurance agent, broker, or firm that sells such insurance, provided the insurance requirements in connection with your loan are otherwise complied with. Your choice of insurance provider will not affect our credit decision or your credit terms. Unless you provide us with evidence of the insurance coverage required by your agreements with us, we may purchase insurance at your expense to protect our interest in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by

UNOFFICIAL COPY

us, but only after providing us with evidence that you have obtained insurance as required by our agreements. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may 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 your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

Section 8.11. Advances.

(a) To the extent Mortgagee is obligated to make advances, Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 5/15-1302(b)(1) of the Foreclosure Act. That portion of the obligations which comprises the principal amount then outstanding constitutes revolving credit indebtedness secured by a mortgage on real property, pursuant to the terms and conditions of the Foreclosure Act. Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made by Mortgagee, whether such loans and advances are made as of the date hereof, or at any time in the future, and whether such future advances are obligatory, or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than twenty (20) years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and, although there may be no other indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to the Indebtedness and all other obligations of Mortgagor under the Loan Documents (collectively, the "Obligations"), including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Property is located. The total amount of the Obligations may increase or decrease from time to time, but the total unpaid principal balance of the Obligations (including disbursements which Mortgagee may make under this Mortgage, or any other document or instrument evidencing or securing Obligations), at any time outstanding, shall not exceed three hundred percent (300%) of the face amount of the Note.

(b) (i) All advances, disbursements and expenditures made 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 or by the Foreclosure Act (collectively "Protective Advances") shall have the benefit of all applicable provisions of the Foreclosure Act, including those provisions of the Foreclosure Act hereinbelow referred to:

(A) all advances by Mortgagee in accordance with the terms of this Mortgage to: (1) preserve or maintain, repair, restore or rebuild the improvements upon the Land; (2) preserve the lien of this Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Foreclosure Act;

(B) payments by Mortgagee of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any prior lien

UNOFFICIAL COPY

or encumbrance; (2) 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 Property or any party thereof; (3) other obligations authorized by Mortgagee; or (4) 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 Foreclosure Act;

€ advances by Mortgagee in settlement or compromise of any claims asserted by claimants under any prior liens;

(D) reasonable attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Foreclosure Act; (2) 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 (3) in the preparation for the commencement or defense of any such foreclosure or other action related to this Mortgage or the Property;

€ Mortgagee's actual out-of-pocket fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Foreclosure Act;

(F) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Foreclosure Act;

(G) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (2) if Mortgagee's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (3) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or 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 Property imposed by Subsection €(1) of Section 15-1704 of the Foreclosure Act; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Mortgagee acting reasonably to be for the benefit of the Property or required to be made by the owner of the mortgaged real estate under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments

UNOFFICIAL COPY

creating covenants or restrictions for the benefit of or affecting the Property; (6) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (7) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (8) pursuant to any lease or other agreement for occupancy of the Improvements for amounts required to be paid by Mortgagor; and (9) if this Mortgage is insured, payments of FHA or private mortgage insurance required to keep insurance in force

(ii) 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 from the date of the advance until paid at the rate due and payable after a default under the terms of the Note.

(iii) 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)(1) of Section 15-1302 of the Foreclosure Act.

(iv) 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 Foreclosure Act, apply to and be included in:

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

(B) the indebtedness found due and owing pursuant to this Mortgage 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;

€ if right of redemption has not been waived by Mortgagor in this Mortgage, computation of the amount required to redeem, pursuant to Subsections (d) and € of Section 15-1603 of the Foreclosure Act;

(D) determination of the amount deductible from sale proceeds pursuant to Section 15-1512 of the Foreclosure Act;

€ application of income in the hands of any receiver or Mortgagee in possession; and

UNOFFICIAL COPY

(F) computation of any deficiency judgment pursuant to Subsections (b)(2) and € of Sections 15-1508 and 15-1511 of the Foreclosure Act.

Section 8.12. Possession; Receivership. In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Foreclosure Act, to be placed in possession of the 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 powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the Foreclosure Act. Without limitation of the foregoing, a receiver appointed hereunder shall have the powers of a receiver under Section 15-1704 of the Foreclosure Act.

Section 8.13. Fixture Filing. THIS INSTRUMENT 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 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 INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THIS INSTRUMENT SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

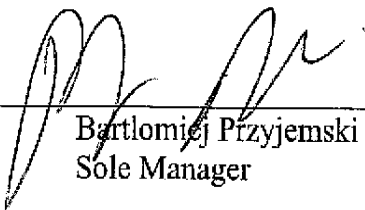
UNOFFICIAL COPY

IN WITNESS WHEREOF, this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing has been duly executed by Mortgagor as of the day and year first above written.

MORTGAGOR:

MB NARRAGANSETT, LLC,
an Illinois limited liability company

By: **BARTEK HOLDINGS, LLC,**
an Illinois limited liability company
its Manager

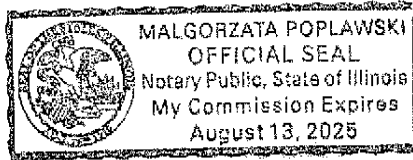
By: 
Name: Bartłomiej Przyjemski
Title: Sole Manager

Property of Cook County Clerk's Office

ACKNOWLEDGMENT

State of IL }
County of Cook } ss.

On March 25th, 2022, before me, Malgorzata Poplawska, a Notary Public in and for said County and State, personally appeared Bartłomiej Przyjemski, personally known to me or proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Malgorzata Poplawska
Notary Public

UNOFFICIAL COPY

Exhibit A

DESCRIPTION OF PROPERTY

LOTS 99 AND 100 IN CHARLES BOOTH'S BELMONT AVENUE ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE SOUTH 10 ACRES OF THE NORTH 1/2 OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 AND THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office