

Illinois Anti-Predatory
Lending Database
Program

Doc#: 2335413062 Fee: \$107.00
Karen A. Yarbrough
Cook County Clerk
Date: 12/20/2023 09:52 AM Pg: 1 of 26

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN: 17-03-225-029-0000**

Address:

Street: 830 North Michigan Ave.

Street line 2:

City: Chicago

State: IL

ZIP Code: 60611

Lender: AFF V NORTH MICHIGAN AVE LP

Borrower: 830 NMA OWNER LLC

Loan / Mortgage Amount: \$44,937,000.00

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: A4C91874-117B-44B3-8237-14E2D2D16574

Execution date: 12/15/2023

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This Instrument Prepared By:

Jordan S. Lewis
Greenberg Traurig, LLP
3333 Piedmont Road NE, Suite 2500
Atlanta, Georgia 30305

After recording, please return to:

Jordan S. Lewis
Greenberg Traurig, LLP
3333 Piedmont Road NE, Suite 2500
Atlanta, Georgia 30305

(Space Above Reserved for Recording Information)

830 NMA OWNER LLC,
a Delaware limited liability company,
as Mortgagor

(Mortgagor)

to

AFF V NORTH MICHIGAN AVE, LP,
a Delaware limited partnership
as Mortgagee
(Mortgagee)

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

Dated: December 15, 2023
830 North Michigan Ave., Chicago, Illinois 60611

County: Cook County, Illinois

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

ATTENTION COUNTY CLERK: THIS SECURITY INSTRUMENT COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES AND DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY. THE MAILING ADDRESSES OF THE SECURED PARTY/MORTGAGEE AND THE DEBTOR/MORTGAGOR ARE WITHIN.

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument" or "Mortgage") is executed as of December 15, 2023, by **830 NMA OWNER LLC**, a Delaware limited liability company ("Mortgagor"), whose address is c/o Farpoint Development, LLC, 120 N. Racine, Suite 200 Chicago, IL 60607, in favor of and for the benefit of **AFF V NORTH MICHIGAN AVE, LP**, a Delaware limited partnership ("Mortgagee"), whose address is c/o The Ardent Companies, 3565 Piedmont Road NE, Building 1, Suite 200, Atlanta, Georgia 30305.

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

"Indebtedness" means the sum of all (a) principal, interest and all other amounts due from Mortgagor under or secured by the Loan Documents, including, without limitation, the indebtedness evidenced by the Note, (b) principal, interest, and other amounts which may hereafter be loaned by Mortgagee, its successors or assigns, to or for the benefit of the owner of the Mortgaged Property, when evidenced by a promissory note or other instrument which, by its terms, is secured hereby, (c) any and all additional advances made by Mortgagee to protect or preserve the Mortgaged Property or the lien hereof on the Mortgaged Property, or to pay taxes, to pay premiums or insurance on the Mortgaged Property or to repair or maintain the Mortgaged Property, or to complete improvements on the Mortgaged Property, (d) the Exit Fee and the Minimum Interest Amount, if any, (e) any and all out-of-pocket amounts actually expended, advanced or incurred by Mortgagee incident to the collection of the Indebtedness secured hereby and the foreclosure hereof by action in any court or by exercise of the power of sale herein contained and (f) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Mortgagor to Mortgagee under documents which recite that they are intended to be secured by this Security Instrument.

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“Loan Documents” means (1) the Loan and Security Agreement of even date herewith between Mortgagor and Mortgagee (the **“Loan Agreement”**), (2) the Promissory Note of even date herewith, executed by Mortgagor, payable to the order of the Mortgagee or any one or more of them (collectively, together with all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, severed, split, modified, amended or extended from time to time, the **“Note”**), in the aggregate stated principal amount of up to \$44,937,000.00, which matures on June 15, 2025, the maturity of which may be extended for one (1) additional six (6) month period, as provided in the Loan Agreement, (3) this Security Instrument, (4) the Guaranty, (5) the Hazardous Materials Indemnity Agreement, (6) all other documents now or hereafter executed by Mortgagor, Guarantor or any other person or entity to evidence, guarantee or secure the payment and performance of the Obligations, and (7) all amendments, modifications, restatements, extensions, renewals and replacements of the foregoing.

“Mortgaged Property” means all estate, right, title, interest, claim and demand whatsoever which Mortgagor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to the following:

(1) the real property described in Exhibit A attached hereto and made a part hereof (the **“Land”**),

(2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the **“Improvements”**),

(3) all materials, supplies, fixtures, appliances, equipment (as each such term is defined in the UCC), apparatus and other items of personal property now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **“Fixtures”**),

(4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the UCC, and all other personal property of any kind or character, now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and

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development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Personalty**"), notwithstanding the foregoing, **Personalty** shall not include any property belonging to tenants under leases, any property managers, guests or invitees of the Land and the Improvements, except to the extent that Mortgagor shall have any right or interest therein,

(5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including accounts holding security deposits) maintained by Mortgagor with respect to the Mortgaged Property,

(6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "**Plans**"),

(7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "**Leases**"),

(8) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, lease termination or cancellation payments and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the "**Rents**"),

(9) all other agreements (to the extent assignable), such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Property Agreements**"),

(10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof,

(11) all present and future accessories, additions, attachments, replacements and substitutions of, for or to any of the foregoing and all proceeds and products thereof,

(12) subject to the terms of the Loan Agreement, all insurance policies (regardless of whether required by Mortgagee), unearned premiums therefor and proceeds

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from such policies covering any of the above property now or hereafter acquired by Mortgagor,

(13) all mineral, water, oil and gas rights relating to all or any part of the Mortgaged Property, and

(14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Security Instrument, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever located.

"**Obligations**" means, collectively, all (1) Indebtedness due under or secured by the Loan Documents, and (2) covenants, agreements, conditions, warranties, representations and other obligations made or undertaken by Mortgagor to Mortgagee under the Loan Documents provided, however, that the Obligations shall not include amounts owing under the Hazardous Materials Indemnity executed this date by the Mortgagor and Guarantor in favor of the Mortgagee.

"**UCC**" means the Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

All other capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Loan Agreement.

ARTICLE 2

GRANT

To secure the full and timely payment and performance of the Obligations, Mortgagor has granted, conveyed, bargained, warranted, sold, aliened, enfeoffed, released, confirmed, assigned to, granted a security interest in and mortgaged, and by these presents does hereby grant, convey, bargain, warrant, defend, sell, alien, enfeoff, release, confirm, assign to, grant a security interest in and mortgage unto Mortgagee all of the Mortgaged Property, TO HAVE AND TO HOLD, HEREBY RELEASING AND WAIVING ALL RIGHTS UNDER AND BY VIRTUE OF THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ILLINOIS, the Mortgaged Property unto Mortgagee to and for the use of Mortgagee forever; provided always, nevertheless, that if

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Mortgagor shall well and truly pay or cause to be paid unto Mortgagee the Obligations, and has performed all Obligations under, and an Event of Default is not continuing under the Loan Documents, then and from henceforth, this Security Instrument and the estate hereby granted, shall cease, determine and become void and of no effect, anything hereinbefore contained to the contrary notwithstanding.

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.1 **Warranty of Title.** Mortgagor has good and marketable fee simple absolute title to the Mortgaged Property, subject only to the Permitted Encumbrances, and Mortgagor shall defend the validity, priority and enforceability of the lien of this Security Instrument against the claims of all persons excepting only those claiming under Permitted Encumbrances.

Section 3.2 **Cooperation.** Where any of the Mortgaged Property is in the possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Mortgagee. Mortgagor will cooperate with Mortgagee in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter-of-credit rights or electronic chattel paper.

Section 3.3 **Payment and Performance.** Mortgagor shall pay and perform, or cause to be paid or performed, the Obligations when due under the Loan Documents

Section 3.4 **Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference, and together with covenants in this **Article 3**, shall be covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (a) the prohibition against the further sale, transfer or encumbering of any of the Mortgaged Property and against certain Transfers of interests in Mortgagor or in entities owning interests in Mortgagor, (b) the obligation to pay when due all taxes on the Mortgaged Property or assessed against Mortgagee with respect to the Loan, (c) the right of Mortgagee to inspect the Mortgaged Property, (d) the obligation to keep the Mortgaged Property insured as Mortgagee may require, (e) the obligation to comply with all legal requirements (including environmental laws), maintain the Mortgaged Property in good condition, and promptly repair any damage or casualty, and (f) except as otherwise permitted under the Loan Agreement, the obligation of Mortgagor to obtain Mortgagee's consent prior to entering into, modifying or taking other actions with respect to Leases.

Section 3.5 **Condemnation Awards and Insurance Proceeds.** Mortgagor assigns to Mortgagee all awards and compensation for any condemnation or other taking, or any

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purchase in lieu thereof, and all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. All such awards, compensation and proceeds shall be governed by and subject to the provisions of the Loan Agreement governing the same.

ARTICLE 4

DEFAULT AND FORECLOSURE

Section 4.1 **Remedies.** At any time after the occurrence and during the continuance of an Event of Default, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses as permitted by applicable legal requirements:

(a) **Acceleration.** Declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor to the extent permitted by applicable law), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after the occurrence and during the continuance of an Event of Default without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee reasonably deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure and Sale.** Institute proceedings for the foreclosure of this Security Instrument, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notice required or permitted under the UCC, Mortgagor agrees that ten (10) Business Days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor, including any and all right or equity of redemption. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of

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the purchase price that would be distributed to Mortgagor against the Indebtedness in lieu of paying cash. In connection with any foreclosure sale: (i) Mortgagee shall have no obligation to clean up, repair or otherwise prepare the Mortgaged Property for sale; (ii) Mortgagor waives any right it may have to require Mortgagee to pursue any third party for any of the Obligations; (iii) Mortgagee may comply with any applicable state or federal law requirements in connection with a disposition of the Mortgaged Property; (iv) Mortgagee may specifically disclaim any warranties of title or the like; (v) if Mortgagee sells any of the Mortgaged Property on credit, Mortgagor will be credited only with payments actually made by purchaser, received by Mortgagee and applied to the indebtedness of the purchaser; and (vi) Mortgagee may apply any noncash proceeds of a disposition of the Mortgaged Property in any commercially reasonable manner selected by Mortgagee. Compliance by Mortgagee with the standards set forth in the foregoing sentence shall not be deemed to adversely affect the commercial reasonableness of any sale of the Mortgaged Property or portion thereof.

(e) **Receiver**. Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the Obligations secured thereby, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to lease, collect Rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of **Section 4.7**.

(f) **Other**. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Security Instrument).

Section 4.2 **Separate Sales**. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee, in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3 **Remedies Cumulative, Concurrent and Nonexclusive**. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any

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rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4 Release of and Resort to Collateral. Subject to the terms and conditions of the Loan Agreement, Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment and performance of the Obligations, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 4.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Mortgagee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, except with respect to matters for which this Security Instrument or the other Loan Documents specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 4.7 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of, the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

- (a) to the payment of the actual out-of-pocket costs and expenses of taking possession of the Mortgaged Property and performing Mortgagor's obligations under the Loan Documents during the period of Mortgagor's ownership of the Mortgaged Property, including (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses, (4) costs of advertisement,

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(5) utility costs and charges incurred during the Mortgagor's ownership of the Mortgaged Property, (6) insurance premiums incurred during Mortgagor's ownership of the Mortgaged Property, (7) costs and expenses with respect to any litigation affecting the Mortgaged Property as a result of any occurrence or non-occurrence occurring during Mortgagor's ownership of the Mortgaged Property, (8) commissions of agents, (9) all ground rent, real estate taxes and assessments incurred during Mortgagor's ownership of the Mortgaged Property, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold, and (10) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the foregoing that are incurred during Mortgagor's ownership of the Mortgaged Property;

(b) to the payment of all amounts (including interest thereon), other than the unpaid principal balance of the Note and accrued but unpaid interest thereon, which may be due to Mortgagee under the Loan Documents;

(c) to the payment and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

Section 4.8 Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to **Section 4.1(d)** shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 4.9 Additional Advances and Disbursements; Costs of Enforcement.

(a) Upon the occurrence and during the continuance of Event of Default, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and out-pocket expenses incurred at any time by Mortgagee under this **Section 4.9**, or otherwise under this Security Instrument or any of the other Loan Documents or applicable law, shall bear interest from the date that is ten (10) Business Days after written demand therefor until the same is paid, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Security Instrument.

(b) Mortgagor shall pay all out-pocket expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Security Instrument and the other Loan Documents, or the enforcement, compromise or

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settlement of the Obligations or any claim under this Security Instrument and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise. "Reasonable attorney fees" shall mean an amount actually charged by the attorneys (such to be based on time actually spent, at its usual hourly rates) retained by the Mortgagee in exercising its rights under this Security Instrument.

Section 4.10 **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this **Article 4**, the assignment of the Rents and Leases under **Article 5**, the security interests under **Article 6**, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property in the absence of the actual taking of possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 5

ASSIGNMENT OF RENTS AND LEASES

Section 5.1 **Assignment.** Mortgagor unconditionally, presently and absolutely assigns to Mortgagee all of Mortgagor's right, title and interest in and to the Leases and Rents. This assignment is an absolute assignment to Mortgagee and not an assignment as security for the payment and performance of the Obligations.

Section 5.2 **Rights of Mortgagee.** Subject to the provisions of **Section 5.5** below, Mortgagee shall have the right, power and authority to: (a) notify any Person that the Leases have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee, whether or not Mortgagee has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Mortgaged Property; (e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Mortgagee's request, Mortgagor shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Mortgaged Property. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Mortgaged Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Agreement and to turn over to Mortgagee on demand all Rents which it receives.

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Section 5.3 **No Obligation**. Notwithstanding Mortgagee's rights hereunder, Mortgagee shall not be obligated to perform, and Mortgagee does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Mortgaged Property on account of this Security Instrument. Mortgagee shall have no responsibility on account of this Security Instrument for the control, care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

Section 5.4 **Right to Apply Rents**. Mortgagee shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with **Section 4.7** hereof.

Section 5.5 **Revocable License**. Notwithstanding that the assignment of the Rents and Leases under this **Article 5** is an absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, Mortgagee grants to Mortgagor a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Upon the occurrence and during the continuance of any Event of Default, such license may be revoked by Mortgagee, without notice or demand (in accordance with applicable law) upon Mortgagor, and Mortgagee immediately shall be entitled to receive and apply all Rents, whether or not Mortgagee enters upon and takes control of the Mortgaged Property. Prior to such revocation, Mortgagor shall apply any Rents which it receives in accordance with the Loan Agreement.

Section 5.6 **Liability of Mortgagee**. Mortgagee shall not in any way be liable to Mortgagor for any action or inaction of Mortgagee, its employees or agents under this **Article 5**.

Section 5.7 **No Merger of Estates**. So long as any part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

ARTICLE 6

SECURITY AGREEMENT

Section 6.1 **Security Interest**. This Security Instrument constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least ten

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(10) Business Days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2 Financing Statements. Mortgagor hereby irrevocably authorizes Mortgagee, at any time and from time to time, to file in any filing office in any UCC jurisdiction one or more financing or continuation statements, including financing statements describing the collateral as “all assets of Debtor, whether now existing or hereafter acquired”, and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Mortgagor where permitted by law. Mortgagor agrees to furnish Mortgagee, promptly upon request, with any information required by Mortgagee to complete such financing or continuation statements. If Mortgagee has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Mortgagor ratifies and confirms its authorization of all such filings. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Mortgagee, and agrees that it will not do so without Mortgagee’s prior written consent, subject to Mortgagor’s rights under Section 9-509(d)(2) of the UCC. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such additional financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee’s security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

Section 6.3 Fixture Filing. This Security Instrument shall also constitute a “fixture filing” under applicable law against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as indicated at the beginning of this Security Instrument. The name and address of the Debtor (Mortgagor) and Secured Party (Mortgagee) are as indicated at the beginning of this Security Instrument, the description of the collateral is included in the definition of Mortgaged Property set forth in **Article 1** of this Security Instrument and the description of real estate to which the collateral is attached or upon which it is or will be located is described in **Exhibit A** attached hereto. **This Financing Statement covers the following types or items of property:** the Mortgaged Property. This Security Instrument covers goods or items of personal property which are or are to become fixtures upon the Land. The Mortgagor is the record owner of the Land.

ARTICLE 7

MISCELLANEOUS

Section 7.1 Notices. All Notices required or permitted to be given hereunder shall be in accordance with **Section 13.1** of the Loan Agreement.

Section 7.2 Covenants Running with the Land. All of the covenants in the Loan Agreement and in **Article 3** of this Security Instrument, and all other Obligations contained in this Security Instrument, are intended by Mortgagor and Mortgagee to be, and shall be construed

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as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Security Instrument and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) while any Event of Default exists, to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) Business Days after written request by Mortgagee, (b) to execute any or all of the rights or powers described in **Article 5** with the same force and effect as if executed by Mortgagor, and Mortgagor ratifies and confirms any and all acts done or omitted to be done by Mortgagee, its agents, servants, employees or attorneys in, to or about the Mortgaged Property, (c) upon the issuance of a deed pursuant to the foreclosure of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the Mortgagee of any such deed and as may be necessary or desirable for such purpose, (d) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, and (e) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate from and after the date of advancement; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other Person for any failure to take any action which it is empowered to take under this Section.

Section 7.4 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.5 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 Loan Agreement. If any conflict or inconsistency exists between this Security Instrument and the Loan Agreement, the Loan Agreement shall govern; provided,

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however, the terms and conditions of this Security Instrument shall continue to control and govern with respect to matters relating to the creation, perfection, priority and enforcement of the lien of and security interests granted in this Security Instrument.

Section 7.7 **Release or Reconveyance**. Upon full payment and performance of the Obligations, Mortgagee, at Mortgagor's expense, shall cancel and surrender of record this Security Instrument, and release the liens and security interests created by this Security Instrument or reconvey the Mortgaged Property.

Section 7.8 **Waiver of Stay, Moratorium and Similar Rights**. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Security Instrument or the Indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee, or any one or more of them.

Section 7.9 **Obligations of Mortgagor, Joint and Several**. If more than one Person or entity has executed this Security Instrument as "Mortgagor," the obligations of all such Persons hereunder shall be joint and several.

Section 7.10 **Governing Law**. **THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY MORTGAGEE AND ACCEPTED BY MORTGAGOR IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT TO THE LOAN AGREEMENT WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES IRREVOCABLY AND UNCONDITIONALLY AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, EACH AND ALL OF THIS SECURITY INSTRUMENT, THE NOTE, THE OTHER LOAN DOCUMENTS, AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES (I) THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE MORTGAGED PROPERTY (OTHER THAN THAT DESCRIBED IN SUBPARAGRAPHS II AND III BELOW) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF ILLINOIS, (II) WITH RESPECT TO THE PERFECTION AND PRIORITY OF THE LIENS AND SECURITY**

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INTERESTS CREATED BY THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND PROPERTY WHOSE PERFECTION AND PRIORITY IS COVERED BY ARTICLE 9 OF THE UCC (BUT EXCLUDING THE FIXTURES), THE LAW OF THE JURISDICTION APPLICABLE IN ACCORDANCE WITH SECTIONS 9-301 THROUGH 9-307 OF THE UCC AS IN EFFECT IN THE STATE OF NEW YORK SHALL GOVERN, AND (III) WITH RESPECT TO THE CREATION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED BY THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND PERSONAL PROPERTY WITHIN THE SCOPE OF ARTICLE 9 OF THE UCC (BUT EXCLUDING THE FIXTURES), IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF THIS SECURITY INSTRUMENT, THE NOTE AND THE LOAN AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. THIS SECURITY INSTRUMENT, THE NOTE AND THE LOAN SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

Section 7.11 **Interpretation.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections. When used in this Security Instrument, "include(s)" shall mean "include(s), without limitation," and "including" shall mean "including, but not limited to."

Section 7.12 **Counterparts.** This Security Instrument may be executed in any number of identical counterparts, any of which may contain the signatures of fewer than all of the parties, but all of which together shall constitute a single instrument. Copies of originals, including copies delivered by facsimile, PDF or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Security Instrument. For purposes of recordation, original, executed counterpart signature pages shall be attached to one copy of this Security Instrument to form one document.

Section 7.13 **Future Advances.** This Security Instrument is given to secure not only existing Indebtedness (including, without limitation, any existing obligations incurred or any advances made at or prior to the recording of this Security Instrument), but also future advances and/or future obligations made pursuant to or as provided in the Loan Documents and any other documents from time to time evidencing any of the advances or obligations secured hereby, to the same extent as if such future advances and/or future obligations were made on the date of recording hereof, and although there may be no Indebtedness outstanding at the time any advance is made or obligation incurred. To the fullest extent permitted by law, the lien of this Security Instrument shall be valid as to all such Indebtedness, including, without limitation, all revolving credit and future advances and other future obligations, from the time this Security Instrument is recorded.

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Section 7.14 **Mechanics Lien Law.** Mortgagor hereby authorizes and empowers the Mortgagee, at its option, to do all things authorized or required to be done by the Mortgagee, as a mortgagee, under any amendments or supplements thereto or under any other present or future law of the State of Illinois relating to the creation or attachment of mechanics, materialmen or other similar liens.

Section 7.15 **Receiver.** Upon, or at any time prior or after, the filing of any complaint to foreclose the lien of this Security Instrument or instituting any other foreclosure of the liens and security interests provided for in this Security Instrument or any other legal proceedings under this Security Instrument, Mortgagee may, at Mortgagee's sole option, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Mortgaged Property as a matter of strict right and without notice to Mortgagor, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Mortgagee, but nothing herein is construed to deprive Mortgagee of any other right, remedy or privilege Mortgagee may now have under the law to have a receiver appointed; provided that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of all of the Rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Security Instrument. Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Indebtedness; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by applicable law, including the power to take possession, control and care of the Mortgaged Property and to collect all Rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Indebtedness, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such Rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period.

Section 7.16 **Intentionally Omitted.**

Section 7.17 **Foreclosure; Judicial Foreclosure.** In the event that any provision in this Security Instrument shall be inconsistent with any provision of Illinois law, the provisions of Illinois law shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with applicable law. If any provision of this Security Instrument shall grant to Mortgagee any rights or remedies upon an Event of Default which are more limited

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than the rights that would otherwise be vested in Mortgagee under Illinois law in the absence of said provision, Mortgagee shall be vested with the rights granted by Illinois law. Without limiting the generality of the foregoing, all out-of-pocket expenses incurred by Mortgagee in connection with this Security Instrument, to the extent reimbursable under applicable law, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Indebtedness.

Section 7.18 **Other Amounts Secured; Maximum Indebtedness.** Mortgagor acknowledges and agrees that this Security Instrument secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the Loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Mortgagee in connection with the Loan, all in accordance with the Loan Documents. This Security Instrument is given to, and the parties intend that it shall secure, among other items, indebtedness in a maximum amount of \$89,874,000.00, exclusive of interest thereon and of advances for taxes, assessments, insurance premiums and costs incurred for protection of the Mortgaged Property, which indebtedness may include advances made by Mortgagee, after this Security Instrument is filed of record. The making of such advances is obligatory on the part of Mortgagee subject to the terms and conditions provided for in the Loan Documents. The maximum amount of the unpaid balance of such indebtedness, in the aggregate and exclusive of interest thereon, which is or will be outstanding at any time, is that set forth above, provided that this Security Instrument shall also secure unpaid balances of advances made by Mortgagee for the payment of taxes, assessments, insurance premiums, and other costs incurred for the protection of the Mortgaged Property.

Section 7.19 **Entire Agreement.** This Security Instrument and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

ARTICLE 8

ILLINOIS 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 **Type of Real Estate.** Mortgagor acknowledges that the transaction of which this Security Instrument is a part is a transaction that does not include either agricultural

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real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.; "**Foreclosure Act**") or residential real estate (as defined in Section 15-1219 of the Foreclosure Act).

Section 8.3 Interest Rate. To the extent the provisions of the Illinois Interest Act (815 ILCS §205/4(1)) apply, the Obligations constitute business loans to a business association which come within the purview of 815 ILCS 205/4(1)(c), as well as loans secured by a mortgage on real estate which comes within the purview of 815 ILCS 205/4(1)(l).

Section 8.4 Illinois Mortgage Foreclosure Law.

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

(b) If any provision of this Security Instrument 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 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 reasonable expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510(b) and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Security Instrument, shall be added to the indebtedness secured by this Security Instrument or by the judgment of foreclosure.

(d) In addition to any provision of this Security Instrument 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 5/15-1701, 5/15-1702 and 5/15-1704 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 Security Instrument, all rights, powers, immunities and duties, as provided for in Sections 5/15-1701, 5/15-1702, 5/15-1703 and 5/15-1704 of the Foreclosure Act.

(e) MORTGAGOR SHALL NOT AND WILL NOT APPLY FOR OR AVAIL ITSELF OF ANY APPRAISEMENT, VALUATION, STAY, EXTENSION OR EXEMPTION LAWS, OR ANY SO-CALLED "MORATORIUM LAWS," NOW EXISTING OR HEREAFTER ENACTED IN ORDER TO PREVENT OR HINDER THE ENFORCEMENT OR FORECLOSURE OF THIS SECURITY INSTRUMENT, BUT HEREBY WAIVES THE BENEFIT OF SUCH LAWS. MORTGAGOR FOR ITSELF

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AND ALL WHO MAY CLAIM THROUGH OR UNDER IT WAIVES ANY AND ALL RIGHT TO HAVE THE PROPERTY AND ESTATES COMPRISING THE PROPERTY MARSHALLED UPON ANY FORECLOSURE OF THE LIEN HEREOF AND AGREES THAT ANY COURT HAVING JURISDICTION TO FORECLOSE SUCH LIEN MAY ORDER THE PROPERTY SOLD AS AN ENTIRETY. IN THE EVENT OF ANY SALE MADE UNDER OR BY VIRTUE OF THIS SECURITY INSTRUMENT, THE WHOLE OF THE MORTGAGED PROPERTY MAY BE SOLD IN ONE PARCEL AS AN ENTIRETY OR IN SEPARATE LOTS OR PARCELS AT THE SAME OR DIFFERENT TIMES, ALL AS MORTGAGEE MAY DETERMINE. MORTGAGEE SHALL HAVE THE RIGHT TO BECOME THE PURCHASER AT ANY SALE MADE UNDER OR BY VIRTUE OF THIS SECURITY INSTRUMENT AND MORTGAGEE SHALL BE ENTITLED TO CREDIT BID THE INDEBTEDNESS OR ANY PORTION THEREOF IN MORTGAGEE'S SOLE DISCRETION.

(f) THE MORTGAGOR, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS SECURITY INSTRUMENT, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE FORECLOSURE ACT ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15-1602) AND REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS SECURITY INSTRUMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15-1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT.

(g) **Future Advances; Maximum Indebtedness.** This Security Instrument is granted to secure not only existing indebtedness, but also future advances made pursuant to or as provided in the Loan Documents, whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise, to the same extent as if such future advances were made on the date of execution of this Security Instrument, although there may be no advance made at the time of execution hereof, and although there may be no indebtedness outstanding at the time any advance is made. Notwithstanding anything in this Security Instrument to the contrary, the maximum principal amount of the indebtedness secured by this Mortgage shall not exceed \$89,874,000.00, plus all costs of enforcement and collection of this Security Instrument and the other Loan Documents, including reasonable attorney's fees, plus the total amount of any advances made pursuant to the Loan Documents to protect the collateral and the security interest and lien created hereby, or the priority thereof, together with interest on all of the foregoing as provided in the Loan Documents. This Security Instrument shall be a lien for all protective advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

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(h) **Insurance Disclosure**. The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless the Mortgagor provides evidence of the insurance coverage required by the Loan Documents, the Mortgagee may purchase such insurance at the Mortgagor's expense to protect the Mortgagee's interests in the Mortgagor's collateral. This insurance may, but need not, protect the Mortgagor's interests. The coverage that the Mortgagee purchases may not pay any claim that the Mortgagor may make or any claim that is made against the Mortgagor in connection with the collateral. The Mortgagor may later cancel any insurance purchased by the Mortgagee, but only after providing evidence that the Mortgagor has obtained insurance as required by the Loan Documents. If the Mortgagee purchases insurance for the collateral, the Mortgagor will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges that the 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 Obligations of the Mortgagor. The costs of the insurance may be more than the cost of insurance that the Mortgagor may be able to obtain on the Mortgagor's own.

[SIGNATURE PAGE FOLLOWS]

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EXECUTED under seal as of the date first above written.

830 NMA OWNER LLC,
a Delaware limited liability company

By: [Signature]
Name: Scott Goodman
Title: Authorized Signatory

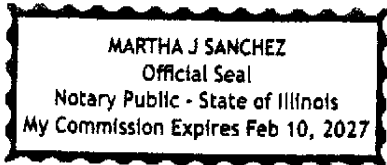
ACKNOWLEDGMENT

STATE OF Illinois)
COUNTY OF Cook)

SS:

I, Martha J. Sanchez, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Scott Goodman personally known to me to be the Authorized Signatory of 830 NMA OWNER LLC, a Delaware limited liability company, and personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Authorized Signatory he signed and delivered the said instrument pursuant to authority of said Authorized Signatory as his free and voluntary act, and as the free and voluntary act and deed of said Authorized Signatory for the uses and purposes therein set forth.

WITNESS MY HAND and Notary seal this 12th day of December 2023.



[Signature]
Notary Public

My commission expires: 02/10/2027

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EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

PARCEL 1:

THAT PART OF LOTS 1 AND 2, TAKEN AS A TRACT, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 1; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST, ALONG THE SOUTH LINE OF LOTS 1 AND 2, A DISTANCE OF 186.19 FEET; THENCE NORTH 90 DEGREES, 02 MINUTES, 05 SECONDS WEST 107.26 FEET TO THE NORTH LINE OF LOT 2; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, ALONG THE NORTH LINE OF LOTS 1 AND 2, A DISTANCE OF 186.65 FEET TO THE NORTHEAST CORNER OF LOT 1; THENCE SOUTH 90 DEGREES, 12 MINUTES, 49 SECONDS WEST, ALONG THE EAST LINE OF LOT 1, A DISTANCE OF 107.26 FEET TO THE SOUTHEAST CORNER OF SAID LOT BEING THE POINT OF BEGINNING OF THE HEREINABOVE DESCRIBED TRACT, ALL IN FERRY'S SUBDIVISION OF PART OF BLOCK 20 IN CANAL TRUSTEE'S SUBDIVISION OF THE SOUTH FRACTIONAL 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN EASEMENT AGREEMENT DATED NOVEMBER 19, 1993 AND RECORDED NOVEMBER 26, 1993 AS DOCUMENT 93965528, MADE BY AND BETWEEN LASALLE NATIONAL TRUST, N.A., AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1993 AND KNOWN AS TRUST NUMBERS 118065 AND 118066 (COLLECTIVELY, THE "CHESTNUT TRUSTEE") AND AMERICAN FREEHOLDS, A NEVADA GENERAL PARTNERSHIP ("AMERICAN FREEHOLDS") GRANTING A NON-EXCLUSIVE EASEMENT IN FAVOR OF AMERICAN FREEHOLDS AND TO THE OWNERS AND TENANTS FROM TIME TO TIME OF THE AMERICAN PROPERTY AND THEIR RESPECTIVE TENANTS, SUBTENANTS, LICENSEES, CONCESSIONAIRES, SUPPLIERS, AGENTS, EMPLOYEES AND INVITEES THE EASEMENT AREA LOCATED UPON THE CHESTNUT PROPERTY FOR THE PURPOSE OF INGRESS AND EGRESS, DELIVERIES, LOADING AND UNLOADING, TRASH REMOVAL, TEMPORARY PARKING OF DELIVERY AND SERVICE TRUCKS AND VEHICLES, AND PROVIDING ACCESS TO AND FROM THE SERVICeways, CORRIDORS AND FREIGHT ELEVATORS LOCATED ON THE AMERICAN PROPERTY, AS AMENDED BY AMENDMENT TO EASEMENT AGREEMENT MADE BY AND BETWEEN 111 EAST CHESTNUT CONDOMINIUM ASSOCIATION AND GROSVENOR INTERNATIONAL (AMERICAN FREEHOLDS) LIMITED, AND BBCAF-VRC, LLC, DATED SEPTEMBER 25, 2013, AND RECORDED OCTOBER 2, 2013, AS DOCUMENT 1327516040, WHICH INCLUDES EXHIBIT C-1 WHICH SUPPLEMENTS BUT DOES NOT REPLACE ORIGINAL DEPICTION IN AGREEMENT.

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PARCEL 3:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN EASEMENT AGREEMENT DATED NOVEMBER 19, 1993 AND RECORDED NOVEMBER 26, 1993 AS DOCUMENT 93965531, MADE BY AND BETWEEN LASALLE NATIONAL TRUST, N.A., AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1993 AND KNOWN AS TRUST NUMBERS 118065 AND 118066 (COLLECTIVELY, THE "CHESTNUT TRUSTEE") AND AMERICAN FREEHOLDS, A NEVADA GENERAL PARTNERSHIP ("AMERICAN FREEHOLDS") GRANTING A NON-EXCLUSIVE EASEMENT IN FAVOR OF AMERICAN FREEHOLDS AND TO THE OWNERS FROM TIME TO TIME OF THE AMERICAN PROPERTY, THEIR RESPECTIVE TENANTS, SUBTENANTS, LICENSEES, CONCESSIONAIRES, SUPPLIERS, AGENTS, EMPLOYEES AND INVITEES, AN EASEMENT AND THE RIGHT AND PRIVILEGE TO USE THE EASEMENT AREA FOR: (I) PEDESTRIAN INGRESS AND EGRESS TO AND FROM THE FIFTH FLOOR OF THE RETAIL BUILDING, AND (II) THE CONSTRUCTION, MAINTENANCE, REPAIR AND REPLACEMENT OF THE ABOVE DESCRIBED ENTRANCE AND DOORS (SUCH ENTRANCE IMPROVEMENTS AND DOORS, AND ALL REPLACEMENTS THEREOF, BEING HEREAFTER COLLECTIVELY CALLED THE "PEDESTRIAN ENTRANCE IMPROVEMENTS").

PARCEL 4:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN EASEMENT AGREEMENT DATED NOVEMBER 19, 1993 AND RECORDED NOVEMBER 26, 1993 AS DOCUMENT 93965530, MADE BY AND BETWEEN LASALLE NATIONAL TRUST, N.A., AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1993 AND KNOWN AS TRUST NUMBERS 118065 AND 118066 (COLLECTIVELY, THE "CHESTNUT TRUSTEE") AND AMERICAN FREEHOLDS, A NEVADA GENERAL PARTNERSHIP ("AMERICAN FREEHOLDS") IN FAVOR OF AMERICAN FREEHOLDS AND TO THE OWNERS FROM TIME TO TIME OF THE AMERICAN PROPERTY, A NON-EXCLUSIVE EASEMENT AND THE RIGHT AND PRIVILEGE TO USE THE EASEMENT AREA, IN COMMON WITH THE OWNERS, OCCUPANTS, TENANTS, AND INVITEES OF THE CHESTNUT PROPERTY AND THEIR SUCCESSORS AND ASSIGNS, FOR: (I) THE USE OF THE EASEMENT AS A MEANS OF EMERGENCY EGRESS FROM THE AMERICAN PROPERTY AND THE CHESTNUT PROPERTY, TO PEARSON STREET, AND (II) FOR THE CONSTRUCTION, MAINTENANCE, REPAIR AND REPLACEMENT OF THE FIRE WALL AND ALARM EQUIPMENT AND SYSTEMS AS MAY BE REASONABLY LOCATED WITHIN THE EASEMENT AREA (SUCH WALL, DOORS, AND LIGHTING AND ALARM EQUIPMENT AND SYSTEMS, AND ALL REPLACEMENT THEREOF, BEING HEREAFTER COLLECTIVELY CALLED THE "EMERGENCY CORRIDOR IMPROVEMENTS").

PARCEL 5:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN EASEMENT AGREEMENT DATED NOVEMBER 19, 1993 AND RECORDED NOVEMBER 26, 1993

UNOFFICIAL COPY

AS DOCUMENT 93965529, MADE BY AND BETWEEN LASALLE NATIONAL TRUST, N.A., AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1993 AND KNOWN AS TRUST NUMBERS 118065 AND 118066 (COLLECTIVELY, THE "CHESTNUT TRUSTEE") AND AMERICAN FREEHOLDS, A NEVADA GENERAL PARTNERSHIP ("AMERICAN FREEHOLDS") IN FAVOR OF AMERICAN FREEHOLDS AND TO THE OWNERS FROM TIME TO TIME OF THE AMERICAN PROPERTY, AN EXCLUSIVE EASEMENT AND THE RIGHT AND PRIVILEGE TO USE THE EASEMENT AREA FOR THE OPERATION, MAINTENANCE, REPAIR, SERVICING, AND REPLACEMENT OF THE FIRE PROTECTION EQUIPMENT AND SYSTEMS, A STAIRWAY AND WATER MAIN SERVING PARCEL 1 LOCATED IN THE EASEMENT AREA WHICH SERVICE THE AMERICAN PROPERTY.

Common Address: 836 North Michigan Ave., Chicago, Illinois 60611

PIN: 17-03-225-029-0000

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