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Eugene "Gene" Moore Fee: \$182.50  
Cook County Recorder of Deeds  
Date: 05/09/2003 09:54 AM Pg: 1 of 36

**Pasco Juices, Inc.** (formerly known as McCain Citrus, Inc.)

**(Mortgagor)**

to

**Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.**,  
"Rabobank Nederland", New York Branch,  
as Issuing Bank, Collateral Agent and Administrative Agent

**(Mortgagee)**

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

**(Revolving Loans)**

Dated effective as of May 22, 2001

Address: 1821 Kilbourn Avenue  
Chicago, Illinois 60623

Tax Identification No. 16-22-313-022-0000

THIS DOCUMENT PREPARED BY  
AND UPON RECORDATION RETURN TO:

King & Spalding  
1185 Avenue of the Americas  
New York, New York 10036  
Attention: David Call, Esq.

36P  
*[Handwritten signature]*

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**THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT** (Revolving Loans) (hereinafter referred to as the "**Mortgage**") made effective as of the 22 day of May, 2001 between Pasco Juices, Inc. (formerly known as McCain Citrus Inc.), a Delaware corporation ("**Pasco**") (hereinafter "**Mortgagor**"), to and for the benefit of Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch ("**Rabobank**"), having offices at 245 Park Avenue, New York, New York 10067 as Issuing Bank, Administrative Agent and Collateral Agent for the lenders of the Revolving Loans (defined below) (hereinafter, the "**Mortgagee**").

## WITNESSETH:

**WHEREAS**, Land Trustee is the trustee of the trust which holds fee title to the real property described in SCHEDULE A attached hereto (hereinafter, collectively, the "**Premises**"); and

**WHEREAS**, Mortgagee and the Revolving Lenders have made a "**Revolving Commitment**" in the original principal amount of Sixty-five Million Dollars (\$65,000,000), as Issuing Bank, and is the Collateral Agent and Administrative Agent under that certain Credit Agreement ("**Credit Agreement**") of April 20, 2000 between Pasco Beverage Group, LLC, a Delaware limited liability company, McCain Citrus Inc., a Delaware Corporation, Pasco Beverage Company, a Florida corporation, Pasco Transport, Inc., a Florida corporation, Pasco Brands, Inc., a Florida corporation, Pasco Processing, L.L.C., a Florida limited liability company, Pasco Processing Holdings, LLC, a Florida limited liability company, Fruitpack International, Inc., a Florida corporation, Multi-Line Cans, Inc., a Florida corporation, Suncoast Transportation Brokers, Inc., a Florida corporation, Old South Juice Corp., a Florida corporation, Belle Harbour Gift Fruit Company, a Florida corporation, SFE Citrus Holdings, LLC, a Delaware limited liability company, SFE Citrus GP, LLC, a Delaware limited liability company, and SFE Citrus Processors, L.P., a Delaware limited partnership (collectively, "**Borrower**") (and capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Credit Agreement); and

**WHEREAS**, Pasco and the other entities constituting Borrower have executed a Revolving Notes evidencing the **Revolving Loans** (said note, together with all extensions, replacements (including any replacements made in connection with any syndication of the Revolving Loans) renewals or modifications thereof, being herein, collectively, referred to as the "**Note**") in the principal sum of Sixty-Five Million Dollars (\$65,000,000), together with interest (said principal sum, interest and all other sums which may or shall become due under the Note, this Mortgage and/or any of the other documents now or hereafter executed by Mortgagor or others in favor of Mortgagee, which wholly or partially evidence the obligation of Mortgagor as herein set forth, or secure or guaranty the payment or performance thereof (collectively, the "**Other Security Documents**"), being hereinafter, collectively, referred to as the "**Debt**"); and

**WHEREAS**, the Mortgagee and the Revolving Lenders have agreed to enter into that certain Forbearance Letter dated March 22, 2001 (the "**Forbearance Letter**") by and between the Mortgagee, the Revolving Lenders and the Borrowers provided that, the Borrower and Mortgagor enter into this Mortgage.

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**WHEREAS**, Pasco is the beneficiary under the Trust Agreement.

**NOW, THEREFORE**, in consideration of said Debt, and to secure to Mortgagee (a) repayment of the Debt and all renewals, modifications and extensions thereof; (b) payment of all other sums advanced in accordance with the terms of the Note, this Mortgage or the Other Security Documents in order to protect the security hereof, together with interest thereon, and (c) performance of the agreements of Mortgagor contained herein, in the Credit Agreement, the Forbearance Letter, the Other Security Documents and the other Loan Documents, it is agreed as follows:

The Mortgagor does hereby warrant, grant, bargain, sell, convey, transfer, assign and mortgage unto Mortgagee all of the right, title, interest and estate of Mortgagor, now owned, or hereafter acquired, in and to the following property, rights, interests and estates (such property, rights and interests being herein, collectively, referred to as the "**Mortgaged Property**"):

- (a) the Premises;
- (b) all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located on the Premises (collectively, the "**Improvements**");
- (c) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;
- (d) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises or the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Premises or the Improvements (hereinafter, collectively, the "**Equipment**"), and the right, title and interest of Mortgagor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Mortgaged Property is located (the "**UCC**"), superior in lien to the lien of this Mortgage;

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(e) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said right), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

(f) all leases and other agreements affecting the use, enjoyment or occupancy of the Premises and/or the Improvements heretofore or hereafter entered into (collectively, the "*Leases*") and all rents, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Premises and/or the Improvements (collectively, the "*Rents*") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

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

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

**TO HAVE AND TO HOLD** the Mortgaged Property hereby mortgaged, conveyed, or mentioned and intended so to be, unto Mortgagee, its successors and assigns, to its and their use forever.

**PROVIDED, HOWEVER**, that if Borrower shall pay to Mortgagee the aforesaid Debt, including, but not limited to the principal sum, advances, and all other sums payable by Borrower hereunder and under the terms of any of the other Loan Documents and the Forbearance Letter, together with interest thereon at the stated or Default Rate, and shall keep and perform each of the covenants and conditions and agreements hereinafter set forth, then this Mortgage, and the estate hereby granted and conveyed shall become void.

**Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:**

**SECTION 1. DEBT AND INCORPORATION OF COVENANTS, CONDITIONS AND AGREEMENTS.**

Borrower will pay the Debt at the time and in the manner provided in the Note, the Forbearance Letter, and in this Mortgage. All the covenants, conditions and agreements contained in the Note, the Credit Agreement (to the extent pertaining to the Revolving Loans) and the Other Security Documents are hereby made a part of this Mortgage to the same extent and with the same force and effect as if fully set forth herein.

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## SECTION 2. FUTURE ADVANCES AND REVOLVING CREDIT ADVANCES.

This Mortgage secures not only present indebtedness but also future advances, whether such advances are obligatory or to be made at the option of Mortgagee, which are made within twenty (20) years from the date hereof, which future advances shall have the same priority as if all such future advances were made or issued on the date of execution hereof. Nothing in this Section 2 or in any other provision of this Mortgage shall be deemed an obligation on the part of Mortgagee to make any future advances other than in accordance with the terms and provisions of the Note. The amount of indebtedness secured hereby may increase or decrease from time to time, however, the principal amount of such indebtedness shall not at any time exceed the amount of Sixty Million Dollars (\$60,000,000) plus interest thereon, and other costs, amounts and disbursements as provided herein and in the Other Loan Documents.

## SECTION 3. APPLICATION OF PAYMENTS.

Unless applicable law provides otherwise, all payments received by Mortgagee from Borrower under the Note or this Mortgage shall be applied by Mortgagee in such order and priority as Mortgagee, in its sole discretion, may elect and not necessarily in the following order: (i) amounts payable to Mortgagee by Borrower under Section 8 hereof; (ii) late charges payable under the Note; (iii) principal advances made pursuant to Section 26 hereof; (iv) interest payable on advances made pursuant to Section 26 hereof; (v) interest payable on the Note; (vi) principal of the Note; and (vii) any other sums secured by this Mortgage in such order as Mortgagee may determine.

## SECTION 4. WARRANTY OF TITLE.

Mortgagor warrants that Mortgagor has good title to the Mortgaged Property and has the right to mortgage, give, grant, bargain, sell, alienate, encumber, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for the existing mortgage on the Mortgaged Property dated 4/20/00 and those exceptions shown in the title insurance policy insuring the lien of this Mortgage ("*Permitted Encumbrances*"). Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

## SECTION 5. MISCELLANEOUS REPRESENTATIONS AND WARRANTIES.

(a) The proceeds of the loan evidenced by the Note shall be used solely for business purposes and in furtherance of the regular business affairs of Borrower, and the entire loan evidenced by the Note constitutes (i) a "business loan" within the purview of 815 ILCS 205/4(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(l).

(b) The Premises do not fall within the categories of real property covered by the Illinois Responsible Property Transfer Act, 765 ILCS 90/3 *et. seq.*, as amended.

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(c) The Mortgaged Property does not constitute “agricultural real estate”, as said term is defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law, 735 ILCS 15 - 1101, *et. seq.*, as such law may have heretofore or hereafter been amended (the “*Act*”), or “residential real estate” as said term is defined in Section 15-1219 of the Act.

## SECTION 6. INSURANCE.

(a) Mortgagor shall keep the Mortgaged Property insured in accordance with the requirements of the Credit Agreement and shall pay the premiums for such insurance (collectively, the “*Insurance Premiums*”) as the same shall become due and payable. All policies of insurance (collectively, the “*Policies*”) shall be issued by insurers acceptable to Mortgagee and all casualty policies shall contain the standard Illinois mortgagee non-contribution clause naming Mortgagee as the person to which all payments made by such insurance company shall be paid. Mortgagor shall assign and deliver the Policies to Mortgagee. Not later than thirty (30) days prior to the expiration date of each of the Policies, Mortgagor shall deliver evidence satisfactory to Mortgagee of the renewal of each of the Policies.

(b) In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Mortgagor hereby authorizes and empowers Mortgagee as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Mortgagee’s expenses incurred in the collection of such proceeds (said insurance proceeds, after such deduction of expenses, being herein referred to as the “*Net Proceeds*”); provided, however, that nothing contained in this subsection (b) shall require Mortgagee to incur any expense or take any action hereunder. Mortgagor further authorizes Mortgagee, at Mortgagee’s option, to apply the Net Proceeds to the payment of the sums secured by this Mortgage, whether or not then due, in such priority and proportions as Mortgagee in its discretion shall deem proper.

(c) If the Net Proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall neither extend or postpone the due dates of the monthly installments to be made pursuant to the Note, nor shall such application change the amounts of such installments. If the Mortgaged Property is sold pursuant to Section 25 hereof or if Mortgagee acquires title to the Mortgaged Property, Mortgagee shall have all of the right, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

(d) The excess, if any, of the Net Proceeds remaining after payment of the entire Debt as provided herein shall be paid to Mortgagor.

## SECTION 7. PAYMENT OF TAXES, ETC.

Mortgagor shall pay all taxes, assessments, water rates, frontage charges and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (collectively, the “*Taxes*”) and all ground rents, maintenance charges, other governmental impositions and other charges, including, without limitation, any vault charges and

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license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (collectively, the "*Other Charges*") as same become due and payable. Mortgagor will deliver to Mortgagee, promptly upon Mortgagee's request, evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee receipts for the payment of the Taxes, Other Charges and said utility services prior to the date the same shall become delinquent.

## SECTION 8. ESCROW FUND.

[Intentionally Omitted]

## SECTION 9. CONDEMNATION.

(a) Mortgagor shall give Mortgagee prompt notice of the actual or threatened commencement of any action or proceeding relating to any condemnation, eminent domain or other taking, whether direct or indirect, of the Mortgaged Property or any part thereof, and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Mortgaged Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Mortgaged Property or any part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Mortgagee.

(b) Mortgagor authorizes Mortgagee to apply such awards, payments, proceeds or damages, after the deduction of Mortgagee's expenses incurred in the collection of such amounts, at Mortgagee's option, either (i) to restoration or repair of the Mortgaged Property, or (ii) to payment or discharge of the Debt, whether or not then due, in such order as Mortgagee may determine, with the balance, if any, to Mortgagor. Mortgagor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Mortgagee shall require.

(c) Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Mortgage, and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Mortgagee, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided

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herein and in the Note. Any reduction of the Debt pursuant to the terms of this Section 9 shall not be deemed a prepayment of the Debt and no prepayment consideration, if any, shall be due. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt.

## **SECTION 10. LEASES AND RENTS.**

(a) Mortgagor hereby assigns to Mortgagee all Leases now existing or hereafter made of all or any part of the Mortgaged Property, all Rents payable under such Leases, and all security deposits made by tenants in connection with such Leases. Mortgagor hereby grants Mortgagee all of the rights and powers possessed by Mortgagor prior to such assignment, and Mortgagee is hereby granted the right to modify, extend or terminate the Leases and to execute new Leases, in Mortgagee's sole discretion. Mortgagee is hereby granted the right to enter the Mortgaged Property for the purpose of enforcing its interest in the Leases and the Rents, this Mortgage constituting a present, absolute assignment of the Leases and the Rents. Nevertheless, subject to the terms of this Section 10, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums. Upon or at any time after an Event of Default, the license hereby granted to Mortgagor may be revoked by Mortgagee, and Mortgagee may enter upon the Mortgaged Property, and collect, retain and apply the Rents toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

(b) Upon request, Mortgagor shall furnish Mortgagee with executed copies of all Leases. All renewals of Leases and all proposed leases shall provide for rental rates comparable to existing local market rates, and shall be arms-length transactions. All proposed leases shall be subject to the prior approval of Mortgagee. All Leases shall provide that they are subordinate to this Mortgage and that the lessee agrees to attorn to Mortgagee. Mortgagor (i) shall observe and perform all of the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall enforce all of the terms, covenants and conditions contained in the Leases on the part of the lessee thereunder to be observed or performed, short of termination thereof, (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (vi) shall not alter, modify or change the terms of the Leases without the prior written consent of Mortgagee, or cancel or terminate the Leases or accept a surrender thereof, or convey or transfer or suffer or permit a conveyance or transfer of the Premises or of any interest therein so as to effect a merger of the estates and rights, or a termination or diminution of the obligations, of lessees thereunder; shall not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Mortgagee; (viii) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Mortgagee; and (ix) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require.



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(c) The security pledged in this section constitutes primary collateral for the secured indebtedness on a par with all other collateral and security provided for in this Mortgage and other agreements executed in connection with this Mortgage. Without limiting any other provision of this Mortgage, or other documents regarding the exercise of remedies, Mortgagee may exercise the rights granted to it in this section separate from or in conjunction with any other remedies provided for in this Mortgage and other documents in any order and at such time or times as Mortgagee, in its sole and absolute discretion, may elect.

## **SECTION 11. MAINTENANCE OF MORTGAGED PROPERTY.**

Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. Mortgagor shall promptly comply in all material respects with all laws, orders and ordinances now or hereafter affecting the Mortgaged Property or the use thereof, including, without limitation, the Americans with Disabilities Act, as same may be amended from time to time (the "*ADA Act*") and will ensure material compliance by all tenants of the Mortgaged Property with all such laws, orders and ordinances. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be destroyed by any casualty, or become damaged, worn or dilapidated, or which may be affected by any proceeding of the character referred to in Section 6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee.

## **SECTION 12. TRANSFER OR ENCUMBRANCE OF THE MORTGAGED PROPERTY.**

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness of Mortgagor and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the loan secured hereby, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer ("*Transfer*") the Mortgaged Property, any part thereof or any interest therein, or permit the Mortgaged Property, any part thereof or any interest therein, to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred.

(b) A Transfer within the meaning of this Section 12 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant

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thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor or any general partner or manager or managing member (or if no managing member, any member) of Mortgagor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or an interest in any entity directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which any of such corporation's stock shall be vested in a party or parties who are not now stockholders; (iv) if Mortgagor or any general partner or manager or managing member (or if no managing member, any member) of Mortgagor is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or managing partner or the transfer of the partnership interest of any general partner or managing partner; and (v) if Mortgagor, any general partner of Mortgagor, any manager or managing member (or if no managing member, any member) of Mortgagor or of any general partner of, a manager or a managing member (or if no managing member, any member) of Mortgagor.

(c) Mortgagee reserves the right to condition the consent required hereunder upon a modification of the terms hereof and on assumption of this Mortgage as so modified by the proposed transferee, payment of a transfer fee, or such other conditions as Mortgagee shall determine in its sole discretion to be in the interest of Mortgagee. Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property, any part thereof or interest therein without Mortgagee's consent. This provision shall apply to every such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether, voluntary or not, whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

## **SECTION 13. ESTOPPEL CERTIFICATES.**

(a) After request by Mortgagee, Mortgagor, within ten (10) days, shall furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note; (ii) the unpaid principal amount of the Note; (iii) the rate of interest of the Note; (iv) the date installments of interest and/or principal were last paid; (v) any offsets or defenses to the payment of the Debt, if any; and (vi) that the Note and this Mortgage are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Mortgagee, Mortgagor, within ten (10) days, will furnish Mortgagee with estoppel certificates from any lessees under the Leases as required by their respective Leases.

## **SECTION 14. CHANGES IN THE LAWS REGARDING TAXATION.**

If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged

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Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

## **SECTION 15. NO CREDITS ON ACCOUNT OF THE DEBT.**

Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

## **SECTION 16. DOCUMENTARY STAMPS.**

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

## **SECTION 17. USURY LAWS.**

This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by applicable law to contract or agree to pay. If by the terms of either this Mortgage or the Note, Mortgagor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

## **SECTION 18. BOOKS AND RECORDS.**

[Intentionally Omitted]

## **SECTION 19. PERFORMANCE OF OTHER AGREEMENTS.**

Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of the Credit Agreement and any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

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## **SECTION 20. FURTHER ACTS AND ASSURANCES.**

Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to this Section 20.

## **SECTION 21. RECORDING OF MORTGAGE, ETC.**

Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges, if any, arising out of or in connection with the execution, delivery and recording of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

## **SECTION 22. PREPAYMENT.**

[Intentionally Omitted]

## **SECTION 23. EVENTS OF DEFAULT.**

Except as otherwise provided in the Forbearance Agreement, the Debt shall become immediately due and payable at the option of Mortgagee upon the occurrence of any one or more

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of the following events (each being an “*Event of Default*”, and, collectively, “*Events of Default*”):

(a) the occurrence of any Event of Default under the Credit Agreement or any other Loan Document;

(b) if the Policies are not kept in full force and effect, or if the Policies are not assigned and delivered to Mortgagee upon request;

(c) if Mortgagor violates or does not comply with any of the provisions of Sections 4, 10, 12, 13 or 38;

(d) if any representation or warranty of Mortgagor made herein shall have been false or misleading in any material respect when made;

(e) Mortgagor effects a transfer of the Mortgaged Property, or any portion thereof, in violation of this Mortgage;

(f) if Mortgagor shall be in default under any other mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage;

(g) if the Mortgaged Property becomes subject to any mechanic’s, materialman’s or other lien other than a lien for local real estate taxes and assessments not then due and payable and such lien shall remain undischarged of record (by payment, bonding or otherwise) within ten (10) days;

(h) if Mortgagor fails to cure promptly any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property within thirty (30) days after Mortgagor first receives notice of any such violations; *provided, however*, if such violation of laws or ordinances is reasonably susceptible of cure, but not within such thirty (30) day period, then Mortgagor may be permitted up to an additional sixty (60) days to cure such default provided that Mortgagor diligently and continuously pursues such cure; or

(i) if for more than thirty (30) days after notice from Mortgagee, Mortgagor shall continue to be in default under any other term, covenant or condition of this Mortgage.

## **SECTION 24. DEFAULT RATE.**

Except as otherwise provided in the Forbearance Agreement, upon the occurrence of any Event of Default, (a) Mortgagor shall pay, from the date of that Event of Default and until the entire Debt is paid in full, whether prior to or subsequent to the entry of a judgment of foreclosure and sale or the sale of the Mortgaged Property pursuant to the provisions of the Act and the satisfaction of any deficiency judgment, interest on the unpaid principal balance of the Note at the Default Rate; and (b) Mortgagee shall have the right to exercise any and all rights and remedies available hereunder and at law and in equity, including, but not limited to:

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(i) the right to enter upon and take possession of the Mortgaged Property and to operate, repair, maintain, control, complete Improvements and otherwise preserve and protect the Mortgaged Property, personally or by its agents or attorneys, or through the appointment of a receiver for the Mortgaged Property as set forth in Section 31 hereof. All costs and expenses incurred in connection with the foregoing, including reasonable compensation to the Mortgagee, shall be secured by this Mortgage and shall bear interest at the Default Rate; or

(ii) the right to foreclose this Mortgage for any portion of the Debt subject to the continuing lien of the Mortgage for the balance of such Debt.

## SECTION 25. REMEDIES.

**Section 25.1.** Except as otherwise provided in the Forbearance Agreement, if a default shall occur, Mortgagee may (but shall have no obligation to, exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) **Debt Acceleration.** Mortgagee may at any time and from time to time declare any or all of the immediately due and payable and such Debt shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Mortgagor. Without limitation of the foregoing, upon the occurrence of an Event of Default, all of the Debt shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Mortgagor.

(b) **Enforcement of Assignment of Rents.** Prior or subsequent to taking possession of any portion of the Mortgaged Property or taking any action with respect to such possession, Mortgagee may: (1) collect and/or sue for the Rents in Mortgagee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the Debt in such manner and order as Mortgagee may elect and/or to the operation and management of the Mortgaged Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Mortgagor to transfer all security deposits and records thereof to Mortgagee together with original counterparts of the Leases.

(c) **Foreclosure.** Mortgagee shall have the right to foreclose the lien hereof for the Debt or any part thereof and pursue all remedies afforded to a mortgagee under and pursuant to the Act. In case of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. If the Debt secured by this Mortgage is also secured by one or more other mortgages on property consisting of more than one functionally separate and distinct property and an Event of Default occurs under this Mortgage or under any such other mortgage which is cross-defaulted with this Mortgage, upon a foreclosure of this Mortgage and such other mortgages, whether pursuant to a power of sale or otherwise, the Mortgaged Property, or any interest therein, and the property encumbered by such other mortgages may, at the discretion of Mortgagee, be sold in the order designated by Mortgagee in the notice of sale.

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It is further agreed that if a default shall occur concerning the payment of any part of the Debt, as an alternative to the right of foreclosure for the full Debt after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said Debt so in default, as if under a full foreclosure, and without declaring the entire Debt due (such proceeding being hereinafter referred to as a "*partial foreclosure*"), and provided that if foreclosure judgment is entered pursuant to a partial foreclosure proceeding because of default of a part of the Debt, such judgment and sale pursuant thereto may be made subject to the continuing lien of this Mortgage for the unmatured part of the Debt; and it is agreed that such judgment or sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the Debt, but as to such unmatured part this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure judgment or sale had been entered or made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a judgment of foreclosure therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such judgment to discontinue such partial foreclosure and to accelerate the Debt by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosure sale for any unmatured part of the Debt, it being the purpose to provide for a partial foreclosure sale of the Debt for any matured portion of the Debt without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any such partial foreclosure for any other part of the Debt whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

(i) In any case in which under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after judgment thereunder, and at all times until confirmation of sale, Mortgagor shall forthwith, upon demand of Mortgagee, surrender to Mortgagee and Mortgagee shall be entitled to take, and upon Mortgagee's request to the court to be placed in actual possession of the Mortgaged Property, Mortgagee shall be placed in possession of the Mortgaged Property or any part thereof, personally, or by its agent or attorneys as provided in Subsection (b)(2) and (c) of Section 15-1701 of the Act. In such event Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of said Mortgaged Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Mortgaged Property relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Mortgaged Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to

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cancel same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Debt secured hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Debt, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to enter into any management, leasing or brokerage agreements covering the Mortgaged Property; (e) to make all necessary, or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property as to it may seem judicious; (f) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (g) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor. Without limiting the generality of the foregoing provisions of this Section, Mortgagee shall also have all power, authority and duties as provided in Section 15-1703 of the Act.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur by reason of its performance of any action authorized under this Subsection 25. 1 (c) and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor. Should Mortgagee incur any such liability, loss or damage by its performance or nonperformance of actions authorized by this Section, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest on any such amount at the Default Rate shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

(ii) In any case in which under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due, or whether before or after the institution of foreclosure proceedings or before or after judgment thereunder, and at all times until confirmation of sale, the court shall appoint a receiver of the premises whenever Mortgagee when entitled to possession so requests either pursuant to Section 15-1701(a) of the Act or when such appointment is otherwise authorized by operation of law. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act, including the power to make leases to be binding upon all parties, including the Mortgagor after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Mortgaged Property after entry of a judgment of foreclosure, all as provided in Subsection (g) of Section 15-1701 of the Act. In



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addition, such receiver shall also have the following powers: (a) to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Debt hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the Debt, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Debt, or by or included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a protective advance under this Mortgage, and (b) the deficiency in case of a sale and deficiency.

(d) **Uniform Commercial Code.** Without limitation of Mortgagee's rights of enforcement with respect to the Equipment or any part thereof in accordance with the procedures for foreclosure of real estate, Mortgagee may exercise its rights of enforcement with respect to the Equipment or any part thereof under the Uniform Commercial Code and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Mortgagee may enter upon Mortgagor's premises to take possession of, assemble and collect the Equipment or, to the extent and for those items of the Equipment permitted under applicable law, to render it unusable; (2) Mortgagee may require Mortgagor to assemble the Equipment and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Equipment; (3) written notice mailed to Mortgagor as provided herein at least five (5) days prior to the date of public sale of the Equipment or prior to the date after which private sale of the Equipment will be made shall constitute reasonable notice; (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Mortgaged Property as provided in paragraph (c) above in this Section 25.1; (5) in the event of a foreclosure sale, the Equipment and the other Mortgaged Property may, at the option of Mortgagee, be sold as a whole; (6) it shall not be necessary that Mortgagee take possession of the Equipment or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Equipment or any part thereof be present at the location of such sale; (7) with respect to application of proceeds of disposition of the Equipment under Subsection 25.2 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Debt or as to the occurrence of any default, or as to Mortgagee having declared all of such Debt to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having

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been duly done by Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (9) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, title in the name and on behalf of Mortgagee.

(e) **Lawsuits.** Mortgagee may proceed by a suit or suits in equity or at law, whether for collection of the Debt secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction.

(f) **Entry on Mortgaged Property.** Mortgagee is authorized, prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon the Mortgaged Property, or any part thereof, and to take possession of the Mortgaged Property and all books and records relating thereto, and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection or preservation of the Mortgaged Property. Mortgagee shall not be deemed to have taken possession of the Mortgaged Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. All costs, expenses and liabilities of every character incurred by Mortgagee in managing, operating, maintaining, protecting or preserving the Mortgaged Property shall constitute a demand obligation of Mortgagor (which obligation Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor. In connection with any action taken by Mortgagee pursuant to this Subsection 25.1(f) Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Mortgaged Property or any part thereof, or from any act or omission of Mortgagee in managing the Mortgaged Property unless such loss is caused by the willful misconduct and bad faith of Mortgagee, nor shall Mortgagee be obligated to perform or discharge any obligation, duty or liability of Mortgagor arising under any lease or other agreement relating to the Mortgaged Property or arising under any Permitted Encumbrance or otherwise arising. Mortgagor hereby assents to, ratifies and confirms any and all actions of Mortgagee with respect to the Mortgaged Property taken under this Section.

(g) **Receiver.** Mortgagee shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Mortgaged Property, whether such receivership be incident to a proposed sale (or sales) of such property or otherwise, and without regard to the value of the Mortgaged Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Mortgagor does hereby irrevocably consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment, agrees not to oppose any application therefor by Mortgagee, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Mortgagee to application of Rents as provided in this Mortgage. Nothing herein is to be construed to deprive Mortgagee of any other right, remedy or privilege it may have under the law to have a receiver appointed. Any money advanced by Mortgagee in connection with any such receivership shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee pursuant to this Mortgage.

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(h) **Termination of Commitment to Lend.** Mortgagee may terminate any commitment or obligation to lend or disburse funds under the Credit Agreement and other Loan Documents.

(i) **Other Rights and Remedies.** Mortgagee may exercise any and all other rights and remedies which Mortgagee may have under the other Loan Documents, or at law or in equity or otherwise. Without limiting the foregoing, (1) in the event that any provision of this Mortgage is inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provision of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage, and (2) if any provision of this Mortgage provides rights or remedies which are narrower or more limited than the rights provided under the Act in the absence of said provision, Mortgagee shall be vested in the rights granted in the Act to the full extent permitted by law.

**Section 25.2. Proceeds of Foreclosure.** The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in accordance with the provisions of Subsection (c) of Section 15-1512 of the Act. The judgment of foreclosure or order confirming the sale shall provide (after application pursuant to Subsections (a) and (b) of said Section 15-1512) for application of sale proceeds in the following order of priority: first, all items not covered by the provisions of said Subsections (a) and (b), which under the terms hereof constitute Debt additional to that evidenced by the Note, with interest thereon as herein provided; and second, all principal and interest remaining unpaid on the Note.

**Section 25.3. Mortgagee as Purchaser.** Mortgagee shall have the right to become the purchaser at any foreclosure sale and Mortgagee shall have the right to credit upon the amount of Mortgagee's successful bid, to the extent necessary to satisfy such bid, all or any part of the Debt in such manner and order as Mortgagee may elect. If Mortgagee is the purchaser of the Mortgaged Property, or any part thereof, at any sale thereof (including any sale of the Equipment as contemplated in Subsection 25.1(d) hereof), Mortgagee shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the assignments, liens, and security interests of these presents.

**Section 25.4. Remedies Cumulative.** All rights and remedies provided for herein and in any Other Security Documents are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Mortgagee shall, in addition to the rights and remedies provided herein or in any other Loan Documents, be entitled to avail itself of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the Debt and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Documents or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

**Section 25.5. Mortgagee's Discretion as to Security.** Mortgagee may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the Debt, in whole or in part, and in such portions and in such order as may seem best to Mortgagee in its sole and uncontrolled discretion, and any such action shall not in anyway be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Mortgage.

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**Section 25.6. *Mortgagor's Waiver of Certain Rights.*** To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the Debt, notice of election to mature or declare due the whole of the Debt and all rights to a marshaling of assets of Mortgagor, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Mortgaged Property for the collection of the Debt without any prior or different resort for collection, or the right of Mortgagee under the terms of this Mortgage to the payment of the Debt out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever. Mortgagor waives any right or remedy which Mortgagor may have or be able to assert pursuant to any provision of any law pertaining to the rights and remedies of sureties. If any law referred to in this Subsection and now in force, of which Mortgagor or Mortgagor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Mortgaged Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

**Section 25.7. *Delivery of Possession After Foreclosure.*** In the event there is a foreclosure sale hereunder and at the time of such sale, Mortgagor or Mortgagor's heirs, devisees, representatives, successors or assigns are occupying or using the Mortgaged Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale shall, notwithstanding any language herein apparently to the contrary, have the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants at will. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain a summary action possession of the property (such as an action for forcible detainer) in any court having jurisdiction.

**Section 25.8. *Waiver of Rights.*** To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, 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 Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety.

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Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property of any nature whatsoever subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of Section 15-1601(b) of the Act.

**Section 25.9. Performance of Mortgagor's Agreements.** In case Mortgagor fails to perform any of its covenants and agreements herein or in the Note or any other Loan Documents, Mortgagee may, but need not, make any payment or perform any act herein or therein required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on any prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Property or contest any tax or assessment.

In the event Mortgagee shall elect, pursuant to this Subsection 25.9, to undertake to perform any obligations of Mortgagor for restoration or rebuilding, Mortgagee shall not be required to restore or rebuild the improvements to any greater extent than will be covered by available proceeds or estimated proceeds of insurance or condemnation award. An estimate of available proceeds may be made at such time as Mortgagee is prepared to arrange for plans, solicit bids, let a contract, or otherwise proceed with restoration, the loss may not have been adjusted with insurers or the court may not have finally determined the amount of a condemnation award. If Mortgagee shall have expended any amount for restoration or rebuilding in excess of the actual or estimated proceeds of insurance or condemnation award for the purpose of such repair or replacement, the amount of such excess ("**Excess Restoration Costs**") so expended by Mortgagee shall constitute additional indebtedness secured hereunder and shall be secured by the lien hereof.

All advances, disbursements and expenditures (collectively, "**advances**") made by Mortgagee before and during foreclosure, prior to sale, and where applicable, after sale, for the following purposes, including interest thereon at the Default Rate (as such term is defined in Section 24 hereto, are hereinafter referred to as "**Protective Advances**");

- (a) advances pursuant to this Section 25;
- (b) Excess Restoration Costs;
- (c) advances in accordance with the terms of this Mortgage to: (i) protect, preserve or restore the Mortgaged Property; (ii) preserve the lien of this Mortgage or the priority thereof, or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;
- (d) payments of (i) installments of principal, interest or other obligations in accordance with the terms of any prior encumbrance; (ii) installments of real estate taxes and other impositions; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, all as referred to in Section 15-1505 of the Act;

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(e) attorneys' fees and other costs incurred in connection with the foreclosure of this Mortgage as referred to in Subsections 1504(d)(2) and 15-1510 of the Act and in connection with any other litigation or administrative proceeding to which the Mortgagee may be or become or be threatened or contemplated to be a party, including probate and bankruptcy proceedings, or in the preparation for the commencement or defenses of any such suit or proceeding; including filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and cost (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, Torrens certificates, appraisals, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Mortgaged Property;

(f) Mortgagee's fees and costs 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 Act;

(g) expenses deductible from proceeds of sale referred to in Subsections (a) and (b) of Section 15-1512 of the Act; and

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the owner thereof, (ii) if any of the Mortgaged Property consists of an interest in 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; (iii) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, without regard to the limitation to maintaining of insurance in effect at the time any receiver or Mortgagee takes possession of the Mortgaged Property imposed by Subsection (c)(1) of Section 15-1704 of the Act; (iv) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, reciprocal easement agreement, agreement with any adjoining land owners or other instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (v) shared or common expense assessments payable to any association or corporation in which the owner of the premises is a member in any way affecting the Mortgaged Property; (vi) operating deficits incurred by Mortgagee to any receiver; and (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for completion of construction as may be authorized by the Mortgagee.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded, pursuant to Subsection (b)(1) of Section 15-1302 for the Act.

The 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 Act, be included in:

(a) determination of the amount of the Debt secured by this Mortgage at any time;

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(b) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent amendment of such judgment, supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after entry of such judgment, the court may reserve jurisdiction for such purpose;

(c) if right of redemption has not been validly waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 15-1603 of the Act;

(d) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(e) determination of the application of income in the hands of any receiver or Mortgagee in possession, and

(f) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of the Act.

All moneys paid for Protective Advances or any of the other purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Mortgagee to protect the Mortgaged Property and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate (as such term is defined in Section 24 hereof). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

**Section 25.10. Subrogation.** Should the proceeds of the Note or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any senior mortgage (as described in Subsection (a) of Section 15-1505 of the Act) or any other lien or encumbrance upon the Mortgaged Property or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, the Mortgagee shall be subrogated to any and all rights, equities or superior titles, liens and equities, owned or claimed by any owner or Mortgagee of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the Mortgagee thereof upon payment.

**Section 25.11. Benefits of Act.** Mortgagor shall have the benefits of all the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the 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 Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by

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Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

## **SECTION 26. MORTGAGEE'S RIGHT TO CURE DEFAULTS.**

Upon the occurrence of any Event of Default, or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation so to do and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as hereinafter set forth, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period from the date that such cost or expense was incurred by Mortgagee to the date of payment to Mortgagee as provided in Section 24 hereof. All such costs and expenses incurred by Mortgagee, together with interest thereon calculated at the Default Rate, shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the Other Security Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

## **SECTION 27. LATE PAYMENT CHARGE.**

[Intentionally Omitted]

## **SECTION 28. PREPAYMENT AFTER EVENT OF DEFAULT.**

If following the occurrence of any Event of Default, Mortgagor shall tender payment of an amount sufficient to satisfy the Debt in whole or in part at any time prior to a judicial foreclosure sale of the Mortgaged Property, and if at the time of such tender prepayment of the principal balance of the Note is not permitted by the Note, Mortgagor shall, in addition to the entire Debt, also pay to Mortgagee a sum equal to interest which would have accrued on the principal balance of the Note at the interest rate set forth in the Note from the date of such tender to the earlier of (i) the Maturity Date as defined in the Note, and (ii) the first day of the period during which prepayment of the principal balance of the Note would have been permitted together with a prepayment consideration equal to the prepayment consideration which would have been payable as of the first day of the period during which prepayment would have been permitted. If at the time of such tender prepayment of the principal balance of the Note is permitted, such tender by Mortgagor shall be deemed to be a voluntary prepayment of the principal balance of the Note, and Mortgagor shall, in addition to the entire Debt, also pay to Mortgagee the applicable prepayment consideration specified in the Note and this Mortgage.



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## SECTION 29. REASONABLE USE AND OCCUPANCY.

In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Mortgagor or may require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise.

## SECTION 30. RIGHT OF ENTRY.

Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all times.

## SECTION 31. APPOINTMENT OF RECEIVER.

Except as otherwise provided in the Forbearance Agreement, Mortgagee, upon the occurrence of an Event of Default or in any action to foreclose this Mortgage, or upon the actual or threatened waste to any part of the Mortgaged Property, shall be entitled to the appointment of a receiver for the Mortgaged Property, without notice and without regard to the value of the Mortgaged Property as security for the Debt, or the solvency or insolvency of any person liable for the payment of the Debt.

## SECTION 32. SECURITY AGREEMENT.

(a) This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the UCC. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor, by executing and delivering this Mortgage, has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the UCC (said portion of the Mortgaged Property so subject to the UCC being called in this Section 32 the "*Collateral*"). Except as otherwise provided in the Forbearance Agreement, if an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition

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of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

(b) Mortgagor hereby gives to Mortgagee a continuing lien on, security interest in and right of set-off against all moneys, securities and other property of Mortgagor and the proceeds thereof, now on deposit or now or hereafter delivered, remaining with or in transit in any manner to Mortgagee, its correspondents, participants or its agents from or for Mortgagor, whether for safekeeping, custody, pledge, transmission, collection or otherwise or coming into possession of Mortgagee in any way, and also, any balance of any individual deposit account and credits of Mortgagor with, and any and all claims of Mortgagor against Mortgagee, at any time existing, as collateral security for the payment of the Debt and all of the other obligations of the Mortgagor under this Mortgage, including fees, contracted with or acquired by Mortgagee, whether joint, several, absolute, contingent, secured, matured or unmatured (for the purposes of this Section 32, collectively, the "*Liabilities*"), hereby authorizing Mortgagee at any time or times, without prior notice, to apply such balances, credits or claims, or any part thereto to the Liabilities in such amounts as it may select, whether contingent, unmatured or otherwise, and whether any collateral security therefore is deemed adequate or not. The collateral security described herein shall be in addition to any collateral security described in any separate agreement executed in connection with this Mortgage.

## **SECTION 33. ACTIONS AND PROCEEDINGS.**

Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

## **SECTION 34. WAIVER OF COUNTERCLAIM, WAIVER OF JURY.**

Mortgagor hereby waives the right to assert a counterclaim in any action or proceeding brought against it by Mortgagee, and Mortgagor and Mortgagee waive trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Mortgagee against Mortgagor, or in any matters whatsoever arising out of or in any way connected with this Mortgage, the Note, any of the Other Security Documents or the Debt.

## **SECTION 35. MARSHALING AND OTHER MATTERS.**

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

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## **SECTION 36. RECOVERY OF SUMS REQUIRED TO BE PAID.**

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

## **SECTION 37. HAZARDOUS MATERIALS.**

Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, after due inquiry and investigation, (a) there are no "Hazardous Materials" (on the Mortgaged Property, and (b) no owner or occupant nor any prior owner or occupant of the Mortgaged Property has received any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Mortgaged Property. Mortgagor covenants that the Mortgaged Property shall be kept free of Hazardous Materials, and neither Mortgagor nor any occupant of the Mortgaged Property shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Mortgaged Property. Mortgagor shall comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. Mortgagor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial actions necessary to clean up and remove all Hazardous Materials from the Mortgaged Property in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The obligations and liabilities of Mortgagor under this Section 37 shall survive without any period of time limitation, including, but not limited to, any period of time following any entry of a judgment of foreclosure, or the delivery of a deed in lieu of foreclosure of this Mortgage.

## **SECTION 38. INDEMNIFICATION.**

Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange

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Transactions, which may be required in connection with this Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made; (g) any claim for brokerage fees or other consideration from any broker in connection with the loan secured by this Mortgage; (h) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials, from, or affecting the Mortgaged Property or any other property; (i) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (j) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; (k) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or in any way related to such Hazardous Materials including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses; (l) any failure on the part of Mortgagor to perform or comply with, or to cause performance or compliance with, any laws, orders and ordinances affecting the Mortgaged Property, including, without limitation, the ADA Act and the costs and expenses, court costs and attorneys fees related thereto. Any amounts payable to Mortgagee by reason of the application of this Section 38 shall become immediately due and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations of Mortgagor under this Section 38 shall survive without any period of time limitation, including, but not limited to, any period of time following any termination, satisfaction, assignment, entry of judgment of foreclosure, a sale of the Mortgaged Property pursuant to a judicial foreclosure, or delivery of a deed in lieu of foreclosure of this Mortgage.

## SECTION 39. NOTICES.

Except for any notice required under applicable law to be given or served in another manner, any notice to either Mortgagor or Mortgagee under this Mortgage shall be given in the manner, and shall be deemed received, as set forth in the Credit Agreement. Notices to Mortgagee shall be sent to the address set forth in the Credit Agreement, or such other address as Mortgagee may from time to time designate to Mortgagor, and notices to Mortgagor shall be addressed as follows:

McCain Citrus Inc.  
c/o Pasco Beverage Group, LLC  
400 North Tampa Street  
Tampa, Florida 33602  
Attention: Ms. Kim Johnson

Mortgagor may change its address for notices under this Mortgage by delivery of written notice to Mortgagee in accordance with this Section.

## SECTION 40. AUTHORITY.

(a) Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and legal right to execute this Mortgage, and to mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, hypothecate and assign the Mortgaged Property

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pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed.

(b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

## **SECTION 41. CONSENT TO JURISDICTION.**

Mortgagor, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, (a) submits to personal jurisdiction in the State of Illinois over any suit, action or proceeding by any person arising from or relating to the Note or this Mortgage, (b) agrees that any such action, suit or proceeding may be brought in any State or Federal Court of competent jurisdiction sitting in Cook County, Illinois, (c) submits to the jurisdiction of such courts, and (d) to the fullest extent permitted by law, agrees that Mortgagor will not bring any action, suit or proceeding in any other forum (but nothing herein shall affect the right of the holder of the Note to bring any action, suit or proceeding in any other forum). Mortgagor further consents and agrees to service of any summons, complaint or other legal process in any such suit, action or proceeding by registered or certified U.S. Mail, postage prepaid, to Mortgagor at the address set forth on page 1 hereof, or to such other address as Mortgagor may have designated to Mortgagee in the manner prescribed in Section 39 hereof, and consents and agrees that such service shall constitute in every respect valid and effective service (but nothing herein shall affect the validity or effectiveness of process served in any other manner permitted by law).

## **SECTION 42. SYNDICATION AND PARTICIPATION.**

Mortgagor acknowledges that Mortgagee may sell and assign syndication or participation interests in this Mortgage to one or more domestic or foreign banks, insurance companies, pension funds, trusts or other institutional lenders or other persons, parties or investors (including, but not limited to, grantor trusts, owner trusts, special purpose corporations, REMICS, real estate investment trusts or other similar or comparable investment vehicles as may be selected by Mortgagee in its sole and absolute discretion) on terms and conditions satisfactory to Mortgagee in its sole and absolute discretion. Mortgagor grants to Mortgagee and shall cause each Guarantor and other person or party associated or connected with this Mortgage or the Collateral therefor to grant to Mortgagee the right to distribute on a confidential basis financial and other information concerning Mortgagor, each such Guarantor and other person or party and the property encumbered by this Mortgage and any other pertinent information with respect to this Mortgage to any party who has purchased a syndicated or participation interest in this Mortgage or who has expressed an interest in purchasing a participation interest in this Mortgage.

## **SECTION 43. WAIVER OF NOTICE.**

Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which

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Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

## **SECTION 44. REMEDIES OF MORTGAGOR.**

In the event that a claim or adjudication is made that Mortgagee has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Mortgage or the Other Security Documents, it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Mortgagor's remedies shall be limited to injunctive relief or declaratory judgment.

## **SECTION 45. SOLE DISCRETION OF MORTGAGEE.**

Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

## **SECTION 46. NON-WAIVER.**

The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage, or the Other Security Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

## **SECTION 47. SECURITY DEPOSITS.**

Mortgagor shall establish with Mortgagee a rent security account to which shall be transferred and maintained all security deposits in connection with the Leases affecting the Mortgaged Property.

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## SECTION 48. NO ORAL CHANGE.

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

## SECTION 49. LIABILITY.

If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and permitted assigns forever.

## SECTION 50. INAPPLICABLE PROVISIONS.

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

## SECTION 51. HEADINGS, ETC.

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

## SECTION 52. DUPLICATE ORIGINALS.

This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

## SECTION 53. DEFINITIONS.

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form. The word "**Mortgagor**" shall mean "**each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein**"; the word "**Mortgagee**" shall mean "**Mortgagee and any subsequent holder of the Note**"; the word "**person**" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity; and the words "**Mortgaged Property**" shall include any portion of the Mortgaged Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

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## SECTION 54. CONSTRUCTION.

This Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois and the applicable laws of the United States of America.

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

PASCO JUICES, INC. (formerly known as McCain Citrus, Inc.), a Delaware corporation

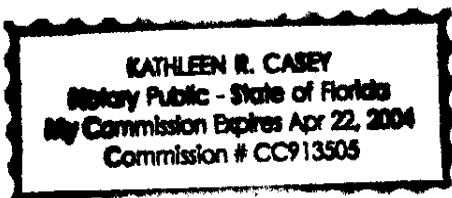
By: [Signature]  
Name: GARY M. VILJOEN  
Title: CFO

STATE OF FLORIDA

COUNTY OF Pasco

On this 16<sup>th</sup> day of May, 2002, before me, appeared GARY M. VILJOEN to me personally known, who being by me duly sworn, did say that she is the CFO of Pasco Juices, Inc. (formerly known as McCain Citrus Inc.) a corporation and that the said instrument was signed on behalf of said corporation, by authority of its board of directors, and said GARY M. VILJOEN acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.



(SEAL)

[Signature]  
Signature of Notary Public  
Kathleen R. Casey  
Printed Name of Notary Public  
NOTARY PUBLIC STATE OF FLORIDA  
CC913505  
Commission Number  
April 22, 2004  
Commission Expiration Date



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## EXHIBIT A

### Legal Description

#### PARCEL I:

A PARCEL OF LAND IN LOT 2 IN SEYMOUR'S ESTATE OR FREER'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 13 EAST, OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: ALL THAT PART OF SAID LOT 2, LYING SOUTH OF THE SOUTH LINE OF THE RIGHT OF WAY GRANTED TO THE CHICAGO AND WESTERN INDIANA RAILROAD COMPANY AND THE BELT RAILWAY COMPANY OF CHICAGO BY INSTRUMENT DATED AUGUST 17, 1917 AND RECORDED DECEMBER 17, 1917 IN THE OFFICE OF THE RECORDER OF DEEDS, IN COOK COUNTY, ILLINOIS, IN BOOK 14696, PAGE 212 AS DOCUMENT 6248952, AMENDED BY DOCUMENT 6690394, (EXCEPTING THERE FROM THE FOLLOWING TRACT OF LAND TO WIT: BEGINNING AT A POINT IN THE EAST LINE OF SOUTH KILBOURN AVENUE, 16.76 FEET NORTH OF THE SOUTH LINE OF SAID LOT 2; THENCE EASTERLY 65.92 FEET ALONG A CURVED LINE CONVEX TO THE SOUTH HAVING A RADIUS OF 269.98 FEET TO A POINT 11.5 FEET NORTH AND MEASURED AT RIGHT ANGLES TO THE SOUTH LINE OF LOT 2; THENCE CONTINUING EASTERLY A DISTANCE OF 94.09 FEET TO A POINT 15.5 FEET NORTH OF AND MEASURED AT RIGHT ANGLES TO SAID SOUTH LINE OF LOT 2; THENCE CONTINUING EASTERLY 109.96 FEET ALONG A CURVED LINE CONVEX TO THE NORTH HAVING A RADIUS OF 297.55 FEET TO A POINT IN THE SAID SOUTH LINE OF LOT 2, 300.73 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 2; THENCE EAST ALONG SAID SOUTH LINE OF LOT 2, A DISTANCE OF 79.50 FEET; THENCE NORTHWESTERLY A DISTANCE OF 62.93 FEET ALONG A CURVED LINE CONVEX TO THE NORTHEAST HAVING A RADIUS OF 340 FEET TO A POINT IN THE SOUTH LINE OF THE EXISTING RIGHT OF WAY OF THE BELT RAILWAY COMPANY OF CHICAGO ACROSS SAID LOT 2, SAID POINT BEING 33.45 FEET NORTH OF SAID SOUTH LINE OF LOT 2, 293.50 FEET EAST OF SAID EAST LINE OF SOUTH KILBOURN AVENUE, MEASURED AT RIGHT ANGLES THERETO, THENCE WESTERLY ALONG THE SAID SOUTH LINE OF EXISTING RIGHT OF

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WAY TO SAID EAST LINE OF SOUTH KILBOURN AVENUE; THENCE SOUTH 23 FEET TO THE PLACE OF BEGINNING).

PARCEL 2:

LOT 3 IN SEYMOUR'S ESTATE OR FREER'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 13 EAST, OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THERE FROM THE FOLLOWING TRACT OF LAND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE NORTH LINE OF SAID LOT 3, 300.73 FEET EAST OF THE NORTHWEST CORNER THEREOF; THENCE SOUTHEASTERLY 212.94 FEET ALONG A CURVED LINE CONVEX TO THE NORTHEAST HAVING A RADIUS OF 297.55 FEET TO A POINT 131.84 FEET SOUTH OF SAID NORTH LINE OF LOT 3 AND 170.84 FEET WEST OF THE WEST LINE OF SOUTH KOSTNER AVENUE; THENCE CONTINUING SOUTHEASTERLY 151.83 FEET ALONG A CURVED LINE CONVEX TO THE NORTHEAST, HAVING A RADIUS OF 309.62 FEET TO A POINT 55.18 FEET NORTH OF THE SOUTH LINE OF SAID LOT 3 AND 125 FEET WEST OF THE SAID WEST LINE OF SOUTH KOSTNER AVENUE; THENCE CONTINUING SOUTHERLY 55.19 FEET TO A POINT IN THE SAID SOUTH LINE OF LOT 3, 167 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 3; THENCE EAST 18 FEET ALONG THE SAID SOUTH LINE OF LOT 3, THENCE NORTHERLY 55.19 FEET TO A POINT 55.18 FEET NORTH OF SAID SOUTH LINE OF LOT 3 AND 115 FEET WEST OF SAID WEST LINE OF SOUTH KOSTNER AVENUE; THENCE CONTINUING NORTHWESTERLY 161.63 FEET ALONG A CURVED LINE CONVEX TO THE NORTHEAST HAVING A RADIUS OF 329.62 FEET TO A POINT 122.42 FEET SOUTH OF THE SAID NORTH LINE OF LOT 3, AND 153.16 FEET WEST OF SAID WEST LINE OF SOUTH KOSTNER AVENUE; THENCE CONTINUING NORTHWESTERLY 159.25 FEET ALONG A CURVED LINE CONVEX TO THE NORTHEAST, HAVING A RADIUS OF 340 FEET TO A POINT IN THE SAID NORTH LINE OF LOT 3, 380.23 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 3; THENCE 79.5 FEET WEST ALONG THE SAID NORTH LINE OF LOT 3 TO THE PLACE OF BEGINNING), EXCEPTING FROM SAID PARCELS 1 AND 2 ALL THAT PART OF LOTS 2 AND 3 IN SEYMOUR'S ESTATE OR FREER'S SUBDIVISION OF THE EAST

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1/2 OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 13 EAST, OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE WEST LINE OF SOUTH KOSTNER AVENUE AND THE SOUTH LINE OF SAID LOT 3; THENCE WEST ALONG THE SOUTH LINE OF LOT 3, 116.0 FEET TO THE EAST LINE OF THE RIGHT OF WAY OF THE BELT RAILWAY COMPANY OF CHICAGO; THENCE NORTHERLY 55.19 FEET TO A POINT 55.18 FEET NORTH OF SAID SOUTH LINE OF LOT 3 AND 115.0 FEET WEST OF SAID WEST LINE OF SOUTH KOSTNER AVENUE; THENCE CONTINUING NORTHWESTERLY 161.63 FEET ALONG A CURVED LINE CONVEX TO THE NORTHEAST HAVING A RADIUS OF 329.67 FEET TO A POINT 122.42 FEET SOUTH OF THE SAID NORTH LINE OF LOT 3 AND 153.16 FEET WEST OF SAID WEST LINE OF SOUTH KOSTNER AVENUE; THENCE CONTINUING NORTHWESTERLY 159.25 FEET ALONG A CURVED LINE CONVEX TO THE NORTHEAST HAVING A RADIUS OF 340.0 FEET TO A POINT IN THE LINE BETWEEN SAID LOTS 2 AND 3 WHICH IS 380.23 FEET EAST OF THE WEST LINE OF SAID LOTS; THENCE NORTHWESTERLY ALONG THE CONTINUATION OF THE LAST MENTIONED CURVED LINE 62.93 FEET TO A POINT IN THE SOUTH LINE OF THE EXISTING RIGHT OF WAY OF THE BELT RAILWAY COMPANY OF CHICAGO ACROSS SAID LOT 2, SAID POINT BEING 33.45 FEET NORTH OF SAID SOUTH LINE OF LOT 2 AND 293.50 FEET EAST OF THE EAST LINE OF SOUTH KILBOURN AVENUE MEASURED AT RIGHT ANGLES THERETO; THENCE EAST 305.93 FEET TO THE WEST LINE OF SOUTH KOSTNER AVENUE AT A POINT 33.38 FEET NORTH OF THE SOUTH LINE OF SAID LOT 2; THENCE SOUTH ALONG THE WEST LINE OF SOUTH KOSTNER AVENUE 366.21 FEET TO THE PLACE OF BEGINNING.

PARCEL 3:

LOT 4 IN SEYMOUR'S ESTATE OR FREER'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 13 EAST, OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING FROM SAID LOT 4 THE FOLLOWING 4 TRACTS OF LAND DESIGNATED (A), (B), (C) AND (D) TO WIT:

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- (a) THE SOUTH 104 FEET OF LOT 4 LYING WEST OF THE CENTER LINE OF AN EASEMENT CONVEYED TO ETHEL M. MILLS BY THE ILLINOIS MERCHANTS TRUST COMPANY, AS TRUSTEE, BY INSTRUMENT DATED MARCH 1, 1927 AND RECORDED APRIL 23, 1927 AS DOCUMENT 9626051 IN BOOK 24335, PAGE 330, LYING EAST OF THE EAST LINE OF KILBOURN AVENUE.
- (b) A TRAPEZOIDAL SHAPED STRIP OF LAND BEGINNING AT A POINT IN THE CENTER LINE OF AN EASEMENT CONVEYED TO ETHEL M. MILLS BY THE ILLINOIS MERCHANTS TRUST COMPANY, AS TRUSTEE, BY INSTRUMENT DATED MARCH 1, 1927 AND RECORDED APRIL 23, 1927 AS DOCUMENT 9626051 IN BOOK 24335, PAGE 330, WHICH POINT IS LOCATED 104 FEET NORTH OF THE SOUTH LINE OF LOT 4, THENCE NORTH FROM SAID POINT ALONG THE CENTERLINE OF SAID EASEMENT, A DISTANCE OF 161 FEET; THENCE WEST IN A STRAIGHT LINE PARALLEL TO THE SOUTH LINE OF LOT 4 A DISTANCE OF 9 FEET, THENCE IN A SOUTHWESTERLY DIRECTION ALONG A STRAIGHT LINE A DISTANCE OF 163.37 FEET MORE OR LESS TO A POINT IN A LINE LOCATED 104 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF LOT 4 AND 30 FEET WEST OF THE PLACE OF BEGINNING THENCE EAST IN A STRAIGHT LINE TO THE PLACE OF BEGINNING.
- (c) THE EAST 125 FEET OF THAT PART OF LOT 4 LYING WEST OF WEST LINE OF SOUTH KOSTNER AVENUE.
- (d) THE WEST 9 FEET OF THE EAST 167 FEET OF THAT PART OF LOT 4 AFORESAID LYING NORTH OF THE SOUTH 265 FEET THEREOF.

ALSO

EXCEPTING FROM ALL OF SAID PARCELS 1, 2 AND 3 THOSE PORTIONS THEREOF FALLING IN SOUTH KILBOURN AVENUE AND SOUTH KOSTNER AVENUE, ALL IN COOK COUNTY, ILLINOIS.