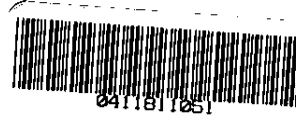




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THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN
TO:

David M. Neville, Esq.
Jenner & Block LLP
One IBM Plaza
Chicago, Illinois 60611



Doc#: 0411811051
Eugene "Gene" Moore Fee: \$84.00
Cook County Recorder of Deeds
Date: 04/27/2004 10:04 AM Pg: 1 of 31

REAL PROPERTY MORTGAGE

THIS REAL PROPERTY MORTGAGE ("**Mortgage**"), made as of April 20, 2004, is made and executed by JAYS FOODS ACQUISITION, INC., a Delaware corporation, having its principal offices at 825 East 99th Street, Chicago, Illinois 60628 ("**Mortgagor**"), in favor of LASALLE BUSINESS CREDIT, LLC, a Delaware limited liability company, as Agent, having an office at 135 South LaSalle Street, Chicago, Illinois 60603 ("**Agent**").

RECITALS

I. Agent and Lenders (as defined below) have agreed to make loans to Mortgagor and extend other financial accommodations to Mortgagor (collectively, the "**Loans**"). The Loans consist of (i) a revolving loan (the "**Revolving Loan**"), the outstanding principal balance of which may increase or decrease from time to time, but at no time shall the outstanding principal balance of such Revolving Loan exceed \$21,250,000.00 and (ii) one or more term loans (the "**Term Loans**"). Certain repayment obligations of Mortgagor with respect to the Revolving Loan are evidenced by one or more revolving notes dated April 20, 2004, in the aggregate principal amount of \$21,250,000.00 (said notes, with all allonges, amendments, supplements, modifications and replacements thereof, being sometimes referred to in this Mortgage collectively as the "**Revolving Note**"). Certain repayment obligations of Mortgagor with respect to the Term Loans are evidenced by one or more term notes dated April 20, 2004 (said notes, with all allonges, amendments, supplements, modifications and replacements thereof, being sometimes referred to in this Mortgage collectively as "**Term Notes**"). The Revolving Note and the Term Notes are sometimes referred to herein collectively as the "**Notes**." The terms of the Loans are governed by a certain Loan and Security Agreement, dated of even date herewith (said Loan and Security Agreement, together with all amendments, supplements, modifications and replacements thereof, being referred to in this Mortgage as the "**Loan Agreement**"), by and among Mortgagor, Agent and the financial institutions from time to time party thereto (the "**Lenders**"). The Loans are payable as set forth in the Loan Agreement, with the outstanding balance finally due and payable on April 20, 2009, except as may be accelerated pursuant to the terms hereof or of the Loan Agreement or any other Loan Instrument (hereinafter defined). The terms and provisions of the Notes and the Loan Agreement are hereby incorporated by reference in this Mortgage. Capitalized terms not otherwise defined in this Mortgage shall have the meaning ascribed to them in the Loan Agreement.

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REAL PROPERTY MORTGAGE

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II. This Mortgage is given to secure the Revolving Loan and the Term Loans and secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of Agent, or otherwise as are to be made within twenty (20) years of the date hereof. The amount of indebtedness secured hereby may increase or decrease from time to time; however the principal amount of the Revolving Loan and the Term Loans shall not at one time exceed the amount of \$21,250,000.00 plus interest thereon, and other costs, amounts and disbursements as provided herein and in the other Loan Instruments.

GRANTING CLAUSES

To secure (i) the payment of the indebtedness evidenced by the Notes, (ii) the payment and satisfaction of the Liabilities (defined in the Loan Agreement) and (iii) the payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Mortgage, the Notes, the Loan Agreement, any and all other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit and any other documents and instruments now or hereafter executed by Mortgagor or any party related thereto or affiliated therewith to evidence, secure or guarantee the payment of all or any portion of the indebtedness under the Notes and any and all renewals, extensions, amendments and replacements of this Mortgage, the Notes, the Loan Agreement and any such other documents and instruments (the Notes, the Loan Agreement, this Mortgage, such other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit, and any other documents and instruments now or hereafter executed and delivered in connection with the Loans, and any and all amendments, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the "**Loan Instruments**" and individually as a "**Loan Instrument**") (all indebtedness and liabilities secured hereby, subject to the limitation hereinafter set forth, being hereinafter sometimes referred to as "**Borrower's Liabilities**"), Mortgagor does hereby convey, mortgage, warrant, assign, transfer, pledge and deliver to Agent, for the benefit of Agent, Lenders and each issuer of a Letter of Credit, the following described property subject to the terms and conditions herein:

(A) The land located in Cook County, Illinois, legally described in attached **Exhibit A ("Land")**;

(B) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land and all machinery, appliances, equipment, furniture and all other personal property of every kind or nature which constitute fixtures with respect to the Land, together with all extensions, additions, improvements, substitutions and replacements of the foregoing now or hereafter owned by Mortgagor ("**Improvements**");

(C) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor ("**Appurtenances**");

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(D) (i) All of Mortgagor's right to all judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(ii) All of Mortgagor's right to all compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage or taking, pursuant to the power of eminent domain, of the Land, Improvements or Appurtenances or any part thereof, (b) damage to all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances or of other property, or (c) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances or any part thereof; and, except as otherwise provided herein or in the Loan Agreement, Agent is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as otherwise provided herein or in the Loan Agreement, to apply the same toward the payment of the indebtedness and other sums secured hereby; and

(iii) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, improvements or Appurtenances;

(E) All rents, issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the "**Rents**"); it being intended that this Granting Clause shall constitute an absolute and present assignment of the Rents, subject, however, to the conditional permission given to Mortgagor to collect and use the Rents as provided in this Mortgage;

(F) All of Mortgagor's interest in any and all leases, licenses and other occupancy agreements now or hereafter affecting the Land, Improvements or Appurtenances, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor which contain evidence of payments made under the leases and all security given therefor (collectively, the "**Leases**"), subject, however, to the conditional permission given in this Mortgage to Mortgagor to collect the Rents arising under the Leases as provided in this Mortgage;

(G) Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding Granting Clauses; and

(H) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses;

All of the mortgaged property described in the Granting Clauses, together with all real and personal, tangible and intangible property pledged in, or to which a security interest attaches pursuant to, any of the Loan Instruments is sometimes referred to collectively as the

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"**Mortgaged Property.**" The Rents and Leases are pledged on a parity with the Land and Improvements and not secondarily.

ARTICLE ONE COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Agent as follows:

1.1. **Performance under Notes, Mortgage and Other Loan Instruments.**

Mortgagor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner all provisions hereof, of the Loan Agreement and of the Notes, every other Loan Instrument and every instrument evidencing or securing Borrower's Liabilities.

1.2. **General Covenants and Representations.**

Mortgagor covenants, represents and warrants that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is seized of an indefeasible estate in fee simple in that portion of the Mortgaged Property which is real property, and has good and absolute title to it and the balance of the Mortgaged Property free and clear of all liens, security interests, charges and encumbrances whatsoever except for Permitted Liens (defined in the Loan Agreement) and those exceptions described in the attached Exhibit B (the "**Permitted Exceptions**"); (b) Mortgagor has good right, full power and lawful authority to mortgage and pledge the Mortgaged Property as provided herein; (c) upon the occurrence and continuance of an Event of Default (hereinafter defined), Agent may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof; and (d) Mortgagor will maintain and preserve the lien of this Mortgage as a first and paramount lien on the Mortgaged Property subject only to the Permitted Liens and Permitted Exceptions until Borrower's Liabilities have been paid in full in cash (other than contingent indemnification obligations not yet due and payable).

1.3. **Compliance with Laws and Other Restrictions.**

Mortgagor covenants and represents that the Land and the Improvements and the use thereof presently comply in all material respects with, and will during the full term of this Mortgage continue to comply in all material respects with, all applicable restrictive covenants, zoning and subdivision ordinances and building codes, licenses, health and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations.

1.4. **Taxes and Other Charges.**

1.4.1. **Taxes and Assessments.**

Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or Borrower's Liabilities or upon or against the interest of Lenders in the Mortgaged Property, as well as all taxes, assessments and other governmental charges levied and imposed by the United States of America or any state,

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county, municipality or other taxing authority upon or in respect of the Mortgaged Property or any part thereof; provided, however, that Mortgagor may in good faith contest the validity, applicability or amount of any asserted tax, assessment or other charge in accordance with the provisions set forth in the Loan Agreement regarding the contest of taxes. Upon Agent's request, Mortgagor will promptly file, if it has not theretofore filed, such petition, application or other instrument as is necessary to cause the Land and Improvements to be taxed as a separate parcel or parcels which include no property not a part of the Mortgaged Property.

1.4.2. Taxes Affecting Lenders' Interest. If any state, federal, municipal or other governmental law, order, rule or regulation, which becomes effective subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes, so as to impose on Agent or a Lender a tax by reason of its ownership of any or all of the Loan Instruments or measured by the principal amount of the Notes, requires or has the practical effect of requiring Agent or a Lender to pay any portion of the real estate taxes levied in respect of the Mortgaged Property or any tax levied in whole or in part in substitution for real estate taxes or otherwise affects materially and adversely the rights of Agent or a Lender in respect of the Notes, this Mortgage or the other Loan Instruments, Borrower's Liabilities and all interest accrued thereon shall, upon thirty (30) days' prior written notice, become due and payable forthwith at the option of Agent, whether or not there shall have occurred an Event of Default; provided, however, that, if Mortgagor may, without violating or causing a violation of such law, order, rule or regulation, pay such taxes or other sums as are necessary to eliminate such adverse effect upon the rights of Agent or such Lender and does pay such taxes or other sums when due, Agent may not elect to declare due Borrower's Liabilities by reason of the provisions of this Section 1.4.2.

1.4.3. Tax Escrow. Upon the occurrence and during the continuance of an Event of Default, if directed by Agent in writing, Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Section 1.4, but not in lieu of such obligations, deposit with Agent on the first day of each calendar month throughout the term of the Loan, deposits, in amounts reasonably set by Agent from time to time by written notice to Mortgagor, in order to accumulate funds sufficient to permit Agent to pay all annual ad valorem taxes, assessments and charges of the nature described in Section 1.4.1 at least thirty (30) days prior to the date or dates on which they shall become delinquent. The taxes, assessments and charges for purposes of this Section 1.4.3 shall, if Agent so elects, include, without limitation, water and sewer rents. Mortgagor shall procure and deliver to Agent when issued all statements or bills for such obligations. Upon demand by Agent, Mortgagor shall deliver to Agent such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Agent to pay such taxes, assessments and similar charges thirty (30) days prior to the date they become delinquent. Agent shall pay such taxes, assessments and other charges as they become due to the extent of the funds on deposit with Agent from time to time and provided Mortgagor has delivered to Agent the statements or bills therefor. In making any such payments,

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Agent shall be entitled to rely on any bill issued in respect of any such taxes, assessments or charges without inquiry into the validity, propriety or amount thereof and whether delivered to Agent by Mortgagor or otherwise obtained by Agent. Any deposits received pursuant to this Section 1.4.3 shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Agent and Agent shall have no obligation to pay interest on amounts deposited with Agent pursuant to this Section 1.4.3. If any Event of Default occurs and is continuing, any part or all of the amounts then on deposit or thereafter deposited with Agent under this Section 1.4.3 may at Agent's option be applied to payment of Borrower's Liabilities in such order as Agent may determine.

1.4.4. No Credit Against the Indebtedness Secured Hereby. Mortgagor shall not claim, demand or be entitled to receive any credit against the principal or interest payable under the terms of the Notes or the Loan Agreement or on any of Borrower's Liabilities for any of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof or that are applicable to Borrower's Liabilities or to Lenders' interest in the Mortgaged Property.

1.5. Mechanic's and Other Liens. Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien or encumbrance, other than Permitted Liens, to be created upon or against the Mortgaged Property, provided, however, that Mortgagor may in good faith, by appropriate proceeding, contest the validity, applicability or amount of any asserted lien in accordance with the applicable provisions of the Loan Agreement, if any. Mortgagor shall pay the disputed amount and all interest and penalties due in respect thereof on or before the date any adjudication of the validity or amount thereof becomes final and, in any event, no less than thirty (30) days prior to any foreclosure sale of the Mortgaged Property or the exercise of any other remedy by such claimant against the Mortgaged Property.

1.6. Insurance and Condemnation.

1.6.1. Hazard Insurance. Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain for the benefit of Agent, until Borrower's Liabilities are paid in full in cash (other than contingent indemnification obligations not yet due and payable), policies of hazard insurance in an amount which shall be not less than 100% of the full insurable replacement cost of the Mortgaged Property (other than the Land) insuring, on a replacement cost basis, the Mortgaged Property against loss or damage on a "special cause of loss" form, such insurable hazards, casualties and contingencies as are included therein and otherwise as Agent may reasonably require, including without limitation fire, windstorm, rainstorm, vandalism, earthquake and, if all or any part of the Mortgaged Property shall at any time be located within an area identified by the government of the United States or any agency thereof as having special flood hazards and for which flood insurance is available, flood. Mortgagor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. The form of such policies and the companies issuing them shall be reasonably acceptable to Agent. If any such policy shall contain a co-insurance clause it shall also contain an agreed amount or

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stipulated value endorsement. All such policies and renewals thereof shall be held by Agent and shall contain a "Lender's loss payable" clause making losses payable to Agent. Subject to the terms hereof and the Loan Agreement, losses shall not be payable to any other party without Agent's prior written consent. In the event of loss, Mortgagor will give prompt written notice to Agent and Agent may make proof of loss if not made promptly by Mortgagor (for which purpose Mortgagor hereby irrevocably appoints Agent as its attorney-in-fact). In the event of the foreclosure of the Mortgage or any other transfer of title to the Mortgaged Property in full or partial satisfaction of Borrower's Liabilities, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee. All such policies shall provide that they shall not be modified, cancelled or terminated without at least thirty (30) days' prior written notice to Agent from the insurer.

1.6.2. Other Insurance. Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain for the benefit of, Agent, until Borrower's Liabilities are paid in full in cash (other than contingent indemnification obligations not yet due and payable), such other policies of insurance as may be required by the terms of the Loan Agreement.

1.6.3. Condemnation Awards. If all or any part of the Mortgaged Property is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Borrower's Liabilities, shall be paid to Agent in accordance with Section 2(e)(v)(A)(3) of the Loan Agreement and applied in accordance therewith.

1.6.4. Repair; Proceeds of Casualty Insurance.

(a) In the event of loss by fire or other casualty, Mortgagor shall give prompt notice thereof to Agent, who, if such loss exceeds Two Hundred Fifty Thousand Dollars (\$250,000) ("**Threshold**"), shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i), (ii) and (iii) of the immediately succeeding sentence are not satisfied, then Agent, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or less than the Threshold, (ii) no Event of Default then exists, and (iii) Agent in its reasonable discretion determines that the work required to complete the repair or restoration of the Mortgaged Property necessitated by such loss can be completed no later than six (6) months prior to the Maturity Date, then Agent shall endorse to Mortgagor any such payment and Mortgagor may collect such payment directly. Agent shall have the right, at its option and in its sole reasonable discretion, to apply any insurance proceeds received by Agent pursuant to the terms of this paragraph, after the payment of all of Agent's expenses, either (i) on account of the Borrower's Liabilities in accordance with

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Section 2(e)(v) of the Loan Agreement, irrespective of whether such principal balance is then due and payable, or (ii) to the restoration or repair of the property damaged as provided in subsection 1.6.4(b) below; provided, however, that Agent hereby agrees to permit the application of such proceeds to the restoration or repair of the damaged property; subject to the provisions of subsection 1.6.4(b) below, if (i) Agent has received reasonably satisfactory evidence that such restoration or repair shall be completed no later than the date that is six (6) months prior to the Maturity Date, and (ii) no Event of Default then exists. If insurance proceeds are made available to Mortgagor by Agent as hereinafter provided, Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Mortgaged Property so that the condition and value of the Mortgaged Property are substantially the same as the condition and value of the Mortgaged Property prior to being damaged or destroyed. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

(b) If insurance proceeds are made available by Agent to Mortgagor, Mortgagor shall comply with the following conditions:

(i) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Mortgaged Property, whether by fire or other casualty, Mortgagor shall obtain from Agent its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, which approval shall not be unreasonably withheld, conditioned or delayed.

(ii) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Mortgaged Property to the extent permitted in subsection 1.6.4(a) above (which payment or application may be made, at Agent's option, through an escrow, the terms and conditions of which are satisfactory to Agent and the cost of which is to be borne by Mortgagor), Agent shall be satisfied as to the following:

(a) either such Mortgaged Property has been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuild the Mortgaged Property, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage, the Permitted Exceptions and the Permitted Liens, or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Mortgaged Property, Mortgagor has deposited with Agent such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Mortgaged Property; and

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(b) prior to each disbursement of any such proceeds, Agent shall be furnished with a statement of Agent's architect, construction manager or other party reasonably acceptable to Agent (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Agent and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Mortgaged Property; and Agent shall be furnished with appropriate evidence of payment for labor or materials furnished to the Mortgaged Property, and total or partial lien waivers substantiating such payments.

(ii) If Mortgagor shall fail to restore, repair or rebuild the Mortgaged Property within a time deemed satisfactory by Agent in its reasonable discretion, then Agent, at its option, may (a) commence and perform all necessary acts to restore, repair or rebuild the said Mortgaged Property for or on behalf of Mortgagor, or (b) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Mortgaged Property, such excess shall be applied on account of the Borrower's Liabilities irrespective of whether such Borrower's Liabilities is then due and payable without payment of any premium or penalty and in accordance with Section 2(e)(v) of the Loan Agreement.

1.6.5. Renewal of Policies. At least thirty (30) days prior to the expiration date of any policy evidencing insurance required under this Section 1.6, a renewal thereof satisfactory to Agent shall be delivered to Agent or substitution therefor, together with receipts or other evidence of the payment of any premiums then due on such renewal policy or substitute policy.

1.6.6. Insurance Escrow. Upon the occurrence and during the continuance of an Event of Default, if directed by Agent in writing, Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Section 1.6, but not in lieu of such obligations, deposit with Agent on the first day of each calendar month throughout the term of the Loan, a sum in an amount determined by Agent from time to time by written notice to Mortgagor, in order to accumulate funds sufficient to permit Agent to pay all premiums payable in connection with the insurance required hereunder at least thirty (30) days prior to the date or dates on which they shall become due. Upon demand by Agent, Mortgagor shall deliver to Agent such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Agent to pay such premiums thirty (30) days prior to the date they shall become due.

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1.7. **Non-Impairment of Agent's Rights.** Nothing contained in this Mortgage shall be deemed to limit or otherwise affect any right or remedy of Agent under any provision of this Mortgage or of any statute or rule of law to pay and, upon Mortgagor's failure to pay the same, Agent may pay any amount required to be paid by Mortgagor under Sections 1.4, 1.5 and 1.6. Mortgagor shall pay to Agent on demand the amount so paid by Agent together with interest at the rate payable under the Loan Agreement after an "Event of Default" as such term is defined in the Loan Agreement (the "**Default Rate**") and the amount so paid by Agent together with interest, shall be added to Borrower's Liabilities.

1.8. **Care of the Mortgaged Property.**

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good operating condition and repair (ordinary wear and tear and casualty and condemnation losses excepted). Mortgagor shall not, without the prior written consent of Agent (which consent shall not be unreasonably conditioned, withheld or delayed), permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof.

(b) Except as otherwise provided in the Loan Agreement or this Mortgage, no new improvements shall be constructed on the Mortgaged Property and no part of the Mortgaged Property shall be removed, demolished or altered in any material manner without the prior written consent of Agent, which consent shall not be unreasonably conditioned, withheld or delayed.

1.9. **Security Agreement.** Mortgagor and Agent agree that this Mortgage shall constitute a security agreement within the meaning of the Uniform Commercial Code in effect from time to time (the "**Code**") with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by Agent (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Instruments, and (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Mortgaged Property or may not constitute a "fixture" (within the meaning of Section 9-102(a)(41) of the Code) (which property is hereinafter referred to as "**Personal Property**"), and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "**Collateral**"), and that a security interest in and to the Collateral is hereby granted to Agent, for the benefit of Agent, Lenders and each issuer of a Letter of Credit, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Agent, for the benefit of Agent, Lenders and each issuer of a Letter of Credit, all to secure payment of the Borrower's Liabilities. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

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(a) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Agent, for the benefit of itself and the other Lenders, and no other party, and liens and encumbrances, if any, expressly permitted herein or by the other Loan Instruments.

(b) The Collateral is to be used by Mortgagor solely for business purposes.

(c) Subject to the terms of the Loan Agreement, the Collateral will be kept at the Land and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Agent (being the Secured Party as that term is used in the Code), which consent shall not be unreasonably conditioned, withheld or delayed. The Collateral may be affixed to the Land but will not be affixed to any other real estate.

(d) The only persons having any interest in the Mortgaged Property are Mortgagor, Agent and holders of interests, if any, expressly permitted hereby.

(e) No Financing Statement (other than Financing Statements showing Agent as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Agent such further information and will execute and deliver to Agent such financing statements and other documents in form reasonably satisfactory to Agent and will do all such acts as Agent may reasonably request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Borrower's Liabilities, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Agent and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is reasonably deemed by Agent to be desirable.

(f) Upon the occurrence and continuance of an Event of Default hereunder, Agent shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Agent shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of

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Mortgagor's obligations, as provided in the Code. Agent may render the Collateral unusable without removal and may dispose of the Collateral on the Mortgaged Property. Agent may require Mortgagor to assemble the Collateral and make it available to Agent for its possession at a place to be designated by Agent which is reasonably convenient to both parties. Agent will give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Agent may buy at any public sale. Agent may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Mortgaged Property. If Agent so elects, the Mortgaged Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Agent, shall be applied against the Borrower's Liabilities in accordance with subsection 16(b) of the Loan Agreement. Agent will account to Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Section 1.9, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

(h) This Mortgage is intended to be a financing statement within the purview of Section 9-502 of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Agent (Secured Party) are set forth in Section 4.2 hereof. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Mortgaged Property is located. Mortgagor is the record owner of the Mortgaged Property.

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

1.10. Restrictions on Transfer.

(a) Mortgagor, without the prior written consent of Agent (which consent shall not be unreasonably conditioned, withheld or delayed), shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Except as permitted under the Loan

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Agreement, any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "**Prohibited Transfer**":

(i) The Mortgaged Property or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Mortgaged Property, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section 1.10 shall not apply (i) to liens securing the Borrower's Liabilities, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Mortgaged Property, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, (iv) to leases permitted by the terms of the Loan Instruments, if any, or (v) to any Permitted Liens or Permitted Exceptions.

(b) In determining whether or not to make the Loans, Agent and Lenders evaluated the background and experience of Mortgagor and its partners/members/officers in owning and operating property such as the Mortgaged Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Mortgaged Property which is a portion of Agent's security for the Borrower's Liabilities. Mortgagor and its partners/members/officers are well experienced in borrowing money and owning and operating property such as the Mortgaged Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loans and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loans, including this provision. Mortgagor recognizes that Agent is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary junior financing placed upon the Mortgaged Property (a) may divert funds which would otherwise be used to pay the Loans; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Agent to take measures and incur expenses to protect its security; (c) would detract from the value of the Mortgaged Property should Agent come into possession thereof with the intention of selling same; and (d) would impair Agent's right to accept a deed in lieu of foreclosure, as a foreclosure by Agent would be necessary to clear

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the title to the Mortgaged Property. In accordance with the foregoing and for the purposes of (i) protecting Agent's security, both of repayment and of value of the Mortgaged Property; (ii) giving Agent the full benefit of its bargain and contract with Mortgagor; (iii) allowing Agent to raise the interest rate and collect assumption fees; and (iv) keeping the Mortgaged Property free of subordinate financing liens, Mortgagor agrees that if this Section 1.10 is deemed a restraint on alienation, that it is a reasonable one.

1.11. Further Assurances. At any time and from time to time, upon Agent's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Agent, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and places as shall be deemed desirable by Agent, any and all such further mortgages, security agreements, financing statements, instruments of further assurance, certificates and other documents as Agent may reasonably consider necessary or desirable in order to effectuate or perfect, or to continue and preserve the obligations under, this Mortgage.

1.12. Assignment of Rents.

The assignment of rents, income and other benefits contained in Section (E) of the Granting Clauses of this Mortgage shall be fully operative without any further action on the part of either party, and, specifically, Agent shall be entitled, at its option, upon the occurrence and during the continuance of an Event of Default hereunder, to all rents, income and other benefits from the Mortgaged Property, whether or not Agent takes possession of such property. Such assignment and grant shall continue in effect until Borrower's Liabilities are paid in full in cash (other than contingent indemnification obligations not yet due and payable), the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Agent pursuant to such grant, whether or not foreclosure proceedings have been instituted. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Mortgagor shall have the right and authority to continue to collect the rents, income and other benefits from the Mortgaged Property as they become due and payable but not more than thirty (30) days prior to the due date thereof.

1.13. After-Acquired Property. To the extent permitted by, and subject to, applicable law, the lien of this Mortgage shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof, provided such property would have been deemed Mortgaged Property pursuant to the granting clauses provided herein, if such property had been located in or on, or had been attached to, or was in use or intended to be used in connection with, or with the operation of, the Mortgaged Property on the date of this Mortgage.

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1.14. Leases Affecting Mortgaged Property.

Mortgagor shall in all material respects comply with and perform in a complete and timely manner all of its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. The assignment contained in Section (E) of the Granting Clauses shall not be deemed to impose upon Agent any of the obligations or duties of the landlord or Mortgagor provided in any lease.

1.15. **Management of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be managed at all times in accordance with sound business practice.

1.16. **Execution of Leases.** Except as otherwise permitted under the Loan Agreement, Mortgagor shall not permit any leases to be made of the Mortgaged Property, or to be modified, terminated, extended or renewed in any material respects, without the prior written consent of Agent, which consent shall not be unreasonably conditioned, withheld or delayed.

1.17. **Expenses.** In accordance with subsection 4(c)(v) of the Loan Agreement, Mortgagor shall reimburse all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title insurance fees, escrow fees, reasonable attorneys' fees, court costs, documentary and expert evidence, fees of inspecting architects and engineers, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Agent in connection with this Mortgage or the administration and enforcement of any term or provision of this Mortgage. If Mortgagor fails to reimburse Agent for said costs and expenses as above provided, Agent shall have the right to pursue such reimbursement pursuant to the terms and conditions of Section 2(a) of the Loan Agreement. The amounts paid by Agent shall bear interest at the Default Rate and such amounts, together with interest, shall be added to Borrower's Liabilities, shall be immediately due and payable and shall be secured by the lien of this Mortgage and the other Loan Instruments. In the event of foreclosure hereof, Agent shall be entitled to add to the indebtedness found to be due by the court a reasonable estimate of such expenses to be incurred after entry of the decree of foreclosure.

To the extent permitted by law, Mortgagor agrees to hold harmless Agent and Lenders against and from, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including without limitation reasonable attorneys' fees, which may be imposed upon, asserted against, or incurred or paid by it by reason of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever, or asserted against it on account of any act performed or omitted to be performed hereunder, or on account of any transaction arising out of or in any way connected with the Mortgaged Property, this Mortgage, the other Loan Instruments, any of the indebtedness evidenced by the Notes or any of Borrower's Liabilities, except and to the extent any such claims, demands, liabilities, losses, damages, judgments, penalties, costs and/or expenses result or resulted from the grossly negligent or willful acts and/or omissions of Agent and/or Lenders.

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1.18. **Agent's Performance of Mortgagor's Obligations.** If Mortgagor fails to pay any tax, assessment, encumbrance or other imposition, or to furnish insurance hereunder, or to perform any other covenant, condition or term in this Mortgage, the Notes, the Loan Agreement or any other Loan Instrument, Agent may, but shall not be obligated to, pay, obtain or perform the same. All payments made, whether such payments are regular or accelerated payments, and costs and expenses incurred or paid by Agent in connection therewith shall be due and payable immediately. The amounts so incurred or paid by Agent shall bear interest at the Default Rate and such amounts, together with interest, shall be added to Borrower's Liabilities and secured by the lien of this Mortgage and the other Loan Instruments. Agent is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any covenant, condition or term that Mortgagor has failed to perform or observe, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Performance or payment by Agent of any obligation of Mortgagor shall not relieve Mortgagor of such obligation or of the consequences of having failed to perform or pay the same and shall not effect the cure of any Event of Default.

1.19. **Payment of Superior Liens.** To the extent that Agent, after the date hereof, pays any sum due under any provision of law or instrument or document creating any lien superior or equal in priority in whole or in part to the lien of this Mortgage, Agent shall have and be entitled to a lien on the premises equal in parity with that discharged, and Agent shall be subrogated to and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Agent to secure the Notes, the Loan Agreement and all obligations and liabilities secured hereby. Agent shall be subrogated, notwithstanding their release of record, to mortgages, trust deeds, superior titles, vendors' liens, mechanics' and materialmen's liens, charges, encumbrances, rights and equities on the Mortgaged Property to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances under the Notes or other indebtedness secured hereby.

1.20. **Use of the Mortgaged Property.** Mortgagor shall not suffer or permit the Mortgaged Property, or any portion thereof, to be used for any purpose other than for the purposes for which it is currently being used or as otherwise permitted under the Loan Agreement and, without limitation of the foregoing, Mortgagor shall not use or permit the use of the Mortgaged Property or any portion thereof for any unlawful purpose.

ARTICLE TWO DEFAULTS

2.1. **Event of Default.** The term "Event of Default," wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Mortgagor fails to pay (i) any installment of principal or interest payable pursuant to the Notes on the date when due, or (ii) any other amount payable to Lender under this Mortgage or any of the other Loan Instruments within five (5) Business

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Days after the date when any such payment is due and payable in accordance with the terms hereof or thereof.

(b) Mortgagor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under this Mortgage and such failure shall continue unremedied for a period of 30 days.

(c) The occurrence of an "Event of Default" under and as defined in the Loan Agreement or any of the other Loan Instruments.

ARTICLE THREE REMEDIES

3.1. **Acceleration of Maturity.** If an Event of Default shall have occurred and is continuing, Agent may declare Borrower's Liabilities to be immediately due and payable, and upon such declaration Borrower's Liabilities shall immediately become and be due and payable without further demand or notice. The foregoing shall not be in limitation of any provision contained in any other Loan Instrument, including without limitation any such provision pursuant to which Borrower's Liabilities become immediately due and payable without action or election by Agent.

3.2. **Agent's Power of Enforcement.** If an Event of Default shall have occurred and is continuing, Agent may, either with or without entry or taking possession as provided in this Mortgage or otherwise, and without regard to whether or not Borrower's Liabilities shall have been accelerated, and without prejudice to the right of Agent thereafter to bring an action of foreclosure or any other action for any default existing at the time such earlier action was commenced or arising thereafter, proceed by any appropriate action or proceeding: (a) to enforce payment of the Notes and/or any other of Borrower's Liabilities or the performance of any term hereof or any of the other Loan Instruments; (b) to foreclose this Mortgage and to have sold, as an entirety or in separate lots or parcels, the Mortgaged Property; and (c) to pursue any other remedy available to it. Agent may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Agent may determine. Without limitation of the foregoing, if an Event of Default shall have occurred, as an alternative to the right of foreclosure for the full indebtedness evidenced by the Notes and the interest accrued thereon and any other Borrower's Liabilities, after acceleration thereof, Agent shall have the right to institute partial foreclosure proceedings with respect to the portion of Borrower's Liabilities so in default, as if under a full foreclosure, and without declaring all of Borrower's Liabilities to be immediately due and payable (such proceedings being referred to herein as "**partial foreclosure**"), and provided that, if Agent has not elected to accelerate all of Borrower's Liabilities and a foreclosure sale is made because of default in payment of only a part of Borrower's Liabilities, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of Borrower's Liabilities. Any sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured portion of Borrower's Liabilities, but as to such unmatured portion,

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this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Agent may elect, at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate Borrower's Liabilities by reason of any Event of Default upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. Agent may proceed with one or more partial foreclosures without exhausting its right to proceed with a full or partial foreclosure sale for any unmatured portion of Borrower's Liabilities, it being the purpose to permit, from time to time a partial foreclosure sale for any matured portion of Borrower's Liabilities without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any partial foreclosure in respect of any other portion of Borrower's Liabilities, whether matured at the time or subsequently maturing, and without exhausting at any time the right of acceleration and the right to proceed with a full foreclosure.

3.3. **Agent's Right to Enter and Take Possession, Operate and Apply Income.**

(a) If an Event of Default shall have occurred and is continuing, (i) Mortgagor, upon demand of Agent, shall forthwith surrender to Agent the actual possession of the Mortgaged Property and to the extent permitted by law, Agent itself, or by such officers or agents as it may appoint, is hereby expressly authorized to enter and take possession of all or any portion of the Mortgaged Property and may exclude Mortgagor and its agents and employees wholly therefrom.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Agent's demand, Agent may obtain a judgment or decree conferring on Agent the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Agent, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Agent, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Agent, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Agent, to the extent permitted by law, may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof.

3.4. Application of Income Received by Agent. Agent, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Mortgaged Property to the payment of or on account of the following, in such order as Agent may determine in its sole discretion:

(a) to the payment of any Borrower's Liabilities, including any deficiency which may result from any foreclosure sale;

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(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Mortgaged Property; and

(c) to the payment of the operating expenses of the Mortgaged Property, including cost of management and leasing thereof (which shall include compensation to Agent and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized.

3.5. **Leases.** Agent is authorized to foreclose this Mortgage subject to the rights, if any, of any or all tenants of the Mortgaged Property, even if the rights of any such tenants are or would be subordinate to the lien of this Mortgage. Agent may elect to foreclose the rights of some subordinate tenants while foreclosing subject to the rights of other subordinate tenants.

3.6. **Purchase by Agent.** Upon any foreclosure sale, Agent may bid for and purchase all or any portion of the Mortgaged Property and, upon compliance with the terms of the sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

3.7. **Application of Foreclosure Sale Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property or any part thereof received by Agent shall be applied by Agent to the indebtedness secured hereby in accordance with subsection 16(b) of the Loan Agreement.

3.8. **Application of Borrower's Liabilities Toward Purchase Price.** Upon any foreclosure sale, Agent may apply any or all of the Borrower's Liabilities and other sums due to Agent and Lenders under the Notes, this Mortgage or any other Loan Instrument to the price paid by Agent at the foreclosure sale.

3.9. **Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.**

3.9.1. Mortgagor hereby waives any and all rights of redemption. Mortgagor further agrees, to the full extent permitted by law, that upon the occurrence and continuance of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any reinstatement, appraisal, valuation, stay or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and agrees that Agent or any court having jurisdiction to foreclose such lien may sell the Mortgaged

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Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq., Illinois Revised Statutes) (herein called the "Act")) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601 of the Act.

3.9.2. Without limiting the foregoing, Mortgagor hereby agrees that, in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in the event Mortgagor shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under the Bankruptcy Code, (ii) be the subject of any order for relief issued under the Bankruptcy Code, (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, or (v) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, then, subject to court approval, Agent shall thereupon be entitled and Mortgagor irrevocably consents to relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Agent as provided in the Loan Agreement, the Notes, this Mortgage and the other Loan Instruments and as otherwise provided by law, and Mortgagor hereby irrevocably waives its right to object to such relief.

3.10. **Receiver - Agent in Possession.** Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Agent, appoint a receiver for the Mortgaged Property to the extent permitted by applicable law. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not and Agent hereunder or any other holder of the Notes may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Property (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Mortgaged Property for a term that

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extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Borrower's Liabilities, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

3.11. Mortgagor to Pay Borrower's Liabilities in Event of Default; Application of Monies by Agent.

(a) Upon the occurrence and continuance of an Event of Default, Agent shall be entitled to sue for and to recover judgment against Mortgagor for Borrower's Liabilities due and unpaid together with costs and expenses, including, without limitation, the reasonable compensation, expenses and disbursements of Agent's agents, attorneys and other representatives, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage; and the right of Agent to recover such judgment shall not be affected by any taking of possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of Borrower's Liabilities, Agent shall be entitled to enforce all other rights and remedies under the Loan Instruments.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any judgment by Agent under any of the Loan Instruments, and no attachment or levy of execution upon any of the Mortgaged Property or any other property of Mortgagor, shall (except as otherwise provided by law) in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Agent hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before until Borrower's Liabilities are paid in full.

(d) Any monies collected or received by Agent under this Section 3.10 shall be applied to the payment of reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Agent, and the balance remaining shall be applied to the payment of Borrower's Liabilities, in such order and manner as provided in subsection 16(b) of the Loan Agreement, and any surplus, after payment of all Borrower's Liabilities, shall be paid to Mortgagor.

3.12. Remedies Cumulative. No right, power or remedy conferred upon or reserved to Agent by the Notes, the Loan Agreement, this Mortgage or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under

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the Notes or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities, or now or hereafter existing at law, in equity or by statute.

ARTICLE FOUR MISCELLANEOUS PROVISIONS

4.1. **Successors and Assigns Included in Parties.** Whenever Mortgagor or Agent is named or referred to herein, successors and assigns of such person or entity shall be included, and all covenants and agreements contained in this Mortgage shall bind the successors and assigns of Mortgagor, including any subsequent owner of all or any part of the Mortgaged Property and inure to the benefit of the successors and assigns of Agent. This Section 4.1 shall not be construed to permit an assignment, transfer, conveyance, encumbrance or other disposition otherwise prohibited by this Mortgage.

4.2. **Notices.** All notices, requests, reports demands or other instruments required or contemplated to be given or furnished under this Mortgage to Mortgagor or Agent shall be directed to Mortgagor or Agent, as the case may be, in the manner set forth in the Loan Agreement at the following addresses:

If to Agent:	LaSalle Business Credit, LLC 135 South LaSalle Street Chicago, Illinois 60603 Attention: John Mostofi
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If to Mortgagor:	Jays Foods Acquisition, Inc. 825 East 99th Street Chicago, Illinois 60628 Attention: Timothy Healy
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4.3. **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

4.4. **Invalid Provisions.** In the event that any of the covenants, agreements, terms or provisions contained in this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

4.5. **Changes.** Neither this Mortgage nor any term hereof may be released, changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by Mortgagor and Agent relating to this Mortgage shall be superior to the rights of the holder of

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any intervening lien or encumbrance. Any holder of a lien or encumbrance junior to the lien of this Mortgage shall take its lien subject to the right of Agent to amend, modify or supplement this Mortgage, the Notes, the Loan Agreement or any of the other Loan Instruments, to extend the maturity of Borrower's Liabilities or any portion thereof, to vary the rate of interest chargeable under the Notes and/or the Loan Agreement and to increase the amount of the indebtedness secured hereby, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

4.6. **Governing Law.** This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Illinois.

4.7. **Required Notices.** Mortgagor shall notify Agent promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to the violation of any rule, regulation, law or ordinance, the enforcement of which would materially and adversely affect the Mortgaged Property; (ii) material default by any tenant in the performance of its obligations under any lease of all or any portion of the Mortgaged Property or receipt of any notice from any such tenant claiming that a material default by landlord in the performance of its obligations under any such lease has occurred; or (iii) commencement of any judicial or administrative proceedings by or against or otherwise adversely affecting Mortgagor or the Mortgaged Property.

4.8. **Revolving Loan.** This Mortgage is given to secure a revolving credit loan and shall secure not only presently existing indebtedness under the Notes, the Loan Agreement or any other Loan Instruments but also future advances, whether such advances are obligatory or to be made at the option of Agent, or otherwise, as are made within 20 years from the date hereof to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no Borrower's Liabilities outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Borrower's Liabilities including future advances, from the time of its filing for record in the recorder's or registrar's office of the county in which the real estate is located. This Mortgage secures, among other Borrower's Liabilities, a "revolving credit" arrangement within the meaning of 815 ILCS 205/4.1 and 205 ILCS 5/5d. The total amount of Borrower's Liabilities may increase or decrease from time to time, as provided in the Loan Agreement, and any disbursements which Agent may make under this Mortgage, the Notes or the Loan Agreement or any other document with respect hereto (e.g., for payment of taxes, insurance premiums or other advances to protect Agent's liens and security interests, as permitted hereby) shall be additional Borrower's Liabilities secured hereby. This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.

4.9. **Maximum Borrower's Liabilities.** Notwithstanding anything contained herein to the contrary, in no event shall the Borrower's Liabilities exceed an amount

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equal to \$42,500,000; provided, however, in no event shall Agent or Lenders be obligated to advance funds in excess of the face amount of the Notes.

4.10. Release. Upon full payment in cash and satisfaction of Borrower's Liabilities (other than contingent indemnification obligations not yet due and payable), Agent shall issue to Mortgagor an appropriate release deed in recordable form releasing the lien of this Mortgage.

4.11. Attorneys' Fees. Whenever reference is made herein to the payment or reimbursement of attorneys' fees, such fees shall be paid in accordance with subsection 4(c)(v) of the Loan Agreement.

4.12. Compliance with Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of applicable statutory provisions governing the creation, perfection or enforcement of mortgages, such provisions 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 applicable law. If any provision of this Mortgage shall grant to Agent any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Agent under applicable law, Agent shall be vested with such rights to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Agent 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.

4.13. Remedies Against Other Collateral. Mortgagor hereby acknowledges that certain Loan Instruments other than this Mortgage create liens on collateral located in counties or states other than the counties and state in which the Mortgaged Property is located. Mortgagor further acknowledges that this Mortgage and the other Loan Instruments are cross-defaulted and the Loan secured hereby is also secured by the other Loan Instruments. Mortgagor agrees that Agent may proceed, at the same or at different times, to foreclose any or all liens against such collateral (or sell such collateral under power of sale) by any proceedings appropriate in the county and state where such collateral lies, and that no event of enforcement taking place in any county or state pursuant to any of the Loan Instruments shall preclude or bar enforcement in any other county or state. Any foreclosure or other appropriate remedy brought in any county or state in which collateral is located may be brought and prosecuted as to any part of such collateral without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other part of the collateral for the Loans.

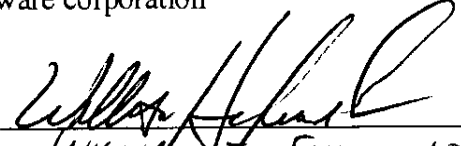
4.14. Loan Agreement. The Loan is governed by terms and provisions set forth in the Loan Agreement and in the event of any conflict between the terms of this Mortgage and the terms of the Loan Agreement, the terms of the Loan Agreement shall control.

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IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officer as of the day and year first above written.

JAYS FOODS ACQUISITION, INC., a
Delaware corporation

By: 
Name: William J. Schwaner
Its: Chief Financial Officer

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EXHIBIT A

Legal Description

Permanent Real Estate Index Numbers: 25-10-410-009; 25-11-300-015; 25-11-300-026

Address of Premises: 825 East 99th Street, Chicago, Illinois 60628

PARCEL 1:

A PARCEL OF LAND IN PARTS OF THE SOUTHEAST 1/4 OF SECTION 10 AND THE SOUTHWEST 1/4 OF SECTION 11, ALL IN TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: :

BEGINNING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF SOUTH COTTAGE GROVE AVENUE (80 FEET WIDE) WITH A LINE DRAWN 60 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTHEAST 1/4 OF SECTION 10, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; RUNNING THENCE EAST ALONG THE SAID PARALLEL LINE AND A LINE DRAWN PARALLEL WITH THE NORTH LINE OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, A DISTANCE OF 800 FEET; THENCE SOUTH ALONG A LINE DRAWN PERPENDICULAR TO SAID PARALLEL LINE A DISTANCE OF 290 FEET; THENCE WEST ALONG A LINE DRAWN PARALLEL WITH SAID NORTH LINE OF THE SOUTHWEST 1/4 OF SECTION 11 AND THE SOUTHEAST 1/4 OF SECTION 10, A DISTANCE OF 855.76 FEET TO THE INTERSECTION WITH THE EASTERLY LINE OF SOUTH COTTAGE GROVE AVENUE; THENCE NORTHEASTERLY ALONG THE EASTERLY LINE OF SOUTH COTTAGE GROVE AVENUE, A DISTANCE OF 295.32 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DEED FROM CHICAGO ROCK ISLAND AND PACIFIC RAILROAD COMPANY, A CORPORATION OF DELAWARE, TO ANDREW J. SUSKI, DATED APRIL 27, 1954 AND RECORDED MAY 24, 1954 AS DOCUMENT 15914334 FOR INGRESS AND EGRESS OVER AND ACROSS A STRIP OF LAND 50 FEET IN WIDTH LYING IMMEDIATELY NORTH OF AND ADJOINING PARCEL 1 AFORESAID AND LYING BETWEEN THE EAST AND WESTERLY LINES EXTENDED OF SAID PARCEL 1, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE NORTH 324.83 FEET OF THE WEST 180.00 FEET OF THAT PART OF THE SOUTH 1/2 OF SECTION 11, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF A LINE DRAWING PERPENDICULARLY TO THE NORTH LINE OF SAID SOUTH 1/2 THROUGH A POINT WHICH IS 800.00 FEET EAST OF THE EASTERLY LINE OF SOUTH COTTAGE GROVE AVENUE, (80.00 FEET WIDE) AS MEASURED ALONG A LINE 60.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTH EAST 1/4 OF SECTION 10 AND ALONG A LINE 60.00 FEET SOUTH AND PARALLEL WITH THE NORTH LINE OF THE SOUTH 1/2 OF SECTION 11, ALL IN TOWNSHIP AND RANGE AFORESAID, IN COOK COUNTY, ILLINOIS.

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EXHIBIT A

Legal Description (Continued)

Permanent Real Estate Index Number: 10-32-203-029

Address of Premises: 6969 North Austin Avenue, Niles, Illinois 60714

THE SOUTH 240.0 FEET OF LOT 3 (AS MEASURED ALONG THE EAST LINE THEREOF) IN EDGEBROOK COMMERCIAL PARK, BEING A SUBDIVISION OF PART OF THE EAST 1/2 OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY**EXHIBIT A****Legal Description
(Continued)**

Permanent Real Estate Index Number: 20-05-300-032

Address of Premises: 1540 West 44th Street, Chicago, Illinois 60609

A TRACT OF LAND DESCRIBED AS FOLLOWS: THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE LINE 126.50 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF SOUTH ASHLAND AVENUE AS WIDENED (SAID EAST STREET LINE BEING A LINE 50 FEET EAST FROM AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5); WITH THE NORTH LINE OF WEST 44TH STREET AS SHOWN ON THE PLAT OF DEDICATION FOR PUBLIC STREET OF CERTAIN PARCELS IN THE WEST 1/2 OF SAID SECTION 5, RECORDED DECEMBER 31, 1969, IN THE COOK COUNTY RECORDER'S OFFICE, AS DOCUMENT NUMBER 2104001, WHICH POINT OF BEGINNING IS 625.40 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHWEST 1/4 AND RUNNING THENCE NORTH ALONG THE LINE 126.50 FEET 7 FROM AND PARALLEL WITH THE SAID EAST LINE OF SOUTH ASHLAND AVENUE AS WIDENED, A DISTANCE OF 311.27 FEET; THENCE EAST ALONG THE SOUTH LINE OF THE NORTH 314.13 FEET OF SAID NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5, A DISTANCE OF 240.00 FEET; THENCE SOUTH ALONG THE LINE 366.50 FEET EAST FROM AND PARALLEL WITH THE SAID EAST LINE OF SOUTH ASHLAND AVENUE AS WIDENED, A DISTANCE OF 310.35 FEET TO THE INTERSECTION WITH THE AFORESAID NORTH LINE OF WEST 44TH STREET AS SHOWN ON SAID PLAT OF DEDICATION; THENCE WESTWARDLY ALONG A STRAIGHT LINE, A DISTANCE OF 225.85 FEET TO A POINT WHICH IS 140.65 FEET EAST FROM SAID EAST LINE OF SOUTH ASHLAND AVENUE AS WIDENED, AND 625.40 FEET, (MEASURED PARALLEL WITH SAID EAST LINE OF SOUTH ASHLAND AVENUE), SOUTH FROM THE NORTH LINE OF SAID SOUTHWEST 1/4 OF SECTION 5, SAID STRAIGHT LINE BEING THE AFORESAID NORTH LINE OF WEST 44TH ATR AS SHOWN ON SAID PLAT OF DEDICATION; THENCE WEST ALONG A LINE WHICH IS 625.40 FEET (MEASURED ALONG SAID EAST LINE OF SOUTH ASHLAND AVENUE AS WIDENED), SOUTH FROM AND PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST 1/4 OF SECTION 5 (SAID LINE BEING THE AFORESAID NORTH LINE OF WEST 44TH STREET AS SHOWN ON SAID PLAT OF DEDICATION), A DISTANCE OF 14.15 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

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EXHIBIT A

Legal Description (Continued)

Permanent Real Estate Index Number: 29-21-320-001

Address of Premises: 425 West 169th Street
South Holland, Illinois 60473

LOT 25 IN SOUTH HOLLAND INDUSTRIAL PARK FIRST ADDITION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 AND PART OF THE SOUTHEAST 1/4 OF SECTION 21, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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EXHIBIT B

Permitted Exceptions

1. Exception Nos. 1-8, inclusive, contained on Schedule B of Chicago Title Insurance Company Pro Forma No. 008198598.
2. Exception Nos. 1-3, inclusive, contained on Schedule B of Chicago Title Insurance Company Pro Forma No. 008198599.
3. Exception Nos. 1-5, inclusive, contained on Schedule B of Chicago Title Insurance Company Pro Forma No. 008198600.
4. Exception Nos. 1-3, inclusive, contained on Schedule B of Chicago Title Insurance Company Pro Forma No. 008198601.

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