



Doc#: 0707939076 Fee: \$122.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 03/20/2007 10:37 AM Pg: 1 of 21

ERIE CANAL, LLC, as Borrower  
(Borrower)

to

ASPEN THORN LLC, as Lender  
(Lender)

**MORTGAGE AND  
SECURITY AGREEMENT**

Dated: March 19, 2007

Location: 5-9 West Erie Street

County: Cook

Tax ID#: 17-09-227-007-0000

17-09-227-008-0000

17-09-227-017-0000

17-09-227-018-0000

17-09-227-019-0000

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Josselson & Potter  
425 NW 10<sup>th</sup> Suite 306  
Portland, Oregon 97209  
Attention: Irving Potter, Esq.

Order No.: 008231376

Property of Cook County Clerk's Office

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## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of the 19<sup>th</sup> day of March, 2007 by Erie Canal, LLC, an Illinois limited liability company, whose mailing address is c/o Aspen Chicago Management LLC, 425 NW 10<sup>th</sup> Suite 307, Portland, Oregon 97209, as Borrower ("Borrower") for the benefit of Aspen Thorn LLC, an Oregon limited liability company, having an address at 425 NW 10<sup>th</sup> Avenue, Suite 307, Portland, Oregon 97209, as Lender ("Lender").

### WITNESSETH:

WHEREAS, this Mortgage is given to secure a loan (the "Loan") made by ASPEN THORN LLC., an Oregon limited liability company, having an address at 425 NW 10<sup>th</sup> Avenue, Suite 307, Portland, Oregon 97209 ("Lender") in the principal sum of THREE MILLION TWO HUNDRED THIRTEEN THOUSAND AND 00/100 DOLLARS (\$3,213,000.00) to Borrower and certain other parties advanced pursuant to that certain First Amendment to Loan Agreement, dated as of the date hereof, between Borrower, and certain other parties and Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "First Amendment"), and the original Loan Agreement that is amended by the First Amendment (the "Loan Agreement") and evidenced by that certain Additional Line of Credit Promissory Note, dated the date hereof, made by Borrower and certain other parties in favor of Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Note");

WHEREAS, Borrower desires to secure the payment of the Note and the performance of all of its obligations under the Note, the Loan Agreement, the First Amendment and the other Loan Documents (as herein defined); and

WHEREAS, this Mortgage is given pursuant to the First Amendment and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that Assignment for Security Purposes of even date herewith made by Borrower in favor of Lender (as the same may be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Assignment"), including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage (the Loan Agreement, the Note, this Mortgage, the Assignment and all other documents evidencing or securing the obligations of Borrower (including all additional mortgages, deeds to secure debt and assignments of leases and rents) or executed or delivered in connection therewith, are hereinafter referred to collectively as the "Loan Documents").

THE BORROWER DOES HEREBY grant, bargain, sell, mortgage, assign and convey unto the Lender, its successors and assigns, all of that certain property described in Exhibit "A" attached hereto and made a part hereof;

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TOGETHER WITH all buildings and improvements now located on the real property described above and any and all buildings, improvements and building materials that may be hereafter placed thereon during the existence of this Mortgage and all rents, royalties, profits, revenues, income and other benefits arising from the use or enjoyment of all or any portion of the above-described property or any contract pertaining to the use or enjoyment thereof;

ALSO TOGETHER with all furniture, furnishings, machinery, appliances, apparatus, equipment, inventory, fittings, fixtures and articles of personal property of every kind and nature whatsoever, other than consumable goods, now or hereafter located in or upon such real property or any part thereof or wherever located (hereinafter called "Equipment") and now owned or hereafter acquired by the Borrower, including all of the right, title and interest of the Borrower in and to any Equipment which may be subject to any retail installment contract, conditional sale contract or security agreement superior in lien to the lien of this Mortgage, it being understood and agreed that all of the Equipment is part and parcel of the improvements on such real property and appropriated to the use thereof, and whether affixed or annexed or not, shall for the purpose of this Mortgage be deemed conclusively to be conveyed hereby, the Borrower agreeing to execute and deliver, from time to time, such further instruments as may be requested by the Lender to confirm the lien of this Mortgage on the Equipment;

ALSO TOGETHER with any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to such real property and improvements as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to or decrease in the value of such real property and improvements to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Lender, and of the reasonable counsel fees, costs and disbursements incurred by the Lender in connection with the collection of such award or payment, the Borrower agreeing to execute and deliver, from time to time, such further instruments as may be required by the Lender to confirm such assignment to the Lender of any such award or payment;

ALSO TOGETHER with all right, title and interest of the Borrower in and to (a) all leases, partial assignments, subleases and other contracts of conveyance covering all or any portion of such real property or the Equipment, and any and all modifications and extensions thereof; (b) all binders or policies of insurance of any kind covering all or any portion of such real property or the Equipment, and any riders, amendments, extensions, renewals, supplements or revisions thereof; (c) any and all accounts which may in any way pertain to the business of the Borrower; and (d) any and all general intangibles including contracts, plans, permits, licenses, certificates, authorizations, refunds, rebates, security deposits, trademarks and tradenames, which may in any way pertain to the business of the Borrower (the items of collateral described in this Paragraph being hereinafter called the "Collateral");

TO HAVE AND TO HOLD the above-described real property, Equipment, Collateral, awards, payments and other property together with all rights, privileges and appurtenances thereto belonging (all of such property being hereinafter referred to as the "Mortgaged Property") unto the Lender, absolutely and forever;

UPON CONDITION that if the Borrower shall well and truly pay to the Lender the principal amount of the Note, with interest, fees, charges and premium, if any, according to its provisions and effect, and if the Borrower shall discharge any and all obligations that now or hereafter may be or become owing, directly or contingently, by the Borrower to the Lender on any and every account, whether or not the same are mature, of which obligations the books of the Lender shall be prima facie evidence, and if the Borrower shall observe and perform all of the covenants, conditions and agreements to be observed and performed by the Borrower in this Mortgage and the other Loan Documents, and if the Borrower shall pay the costs of release, then these presents shall be void, and that, subject to the terms hereof, until the happening of an Event of Default, as hereinafter defined, the Borrower shall be permitted to use and possess the Mortgaged Property and to use and receive the rents, issues, profits, revenues and other income thereof;

BUT, if any one or more of the following events ("Events of Default") shall occur:

- (a) Default shall be made by the Borrower in the payment of principal, interest, fees or charges when due on the Note or any other obligation secured hereby; or

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- (b) Default shall be made by the Borrower in the due and punctual observance or performance of any other covenant, agreement, obligation or condition required to be observed or performed by the Borrower under this Mortgage or the Note or any of the other Loan Documents; or
- (c) The Borrower shall become insolvent or shall be voluntarily or involuntarily dissolved or shall admit in writing the Borrower's inability to meet the Borrower's debts as they become due, shall file a voluntary petition in bankruptcy, or make an assignment for the benefit of creditors, or consent to the appointment of a receiver or trustee for all or a substantial part of the Borrower's properties, or file a petition, answer or other instrument seeking or acquiescing to the arrangement of the Borrower's debts, or other relief under the federal bankruptcy laws or any other applicable law for the relief of debtors of the United States of America or any state or territory thereof; or
- (d) A decree or order of a court having jurisdiction in the premises shall be entered (i) adjudging the Borrower or the Borrower to be bankrupt or insolvent, or (ii) appointing a receiver or trustee or assignee in bankruptcy or insolvency of the Borrower or the Borrower's or the Borrower's properties, or (iii) directing the winding up or liquidation of the Borrower's or the Borrower's affairs; or
- (e) Any representation or warranty made by the Borrower herein or otherwise in connection with the Loan shall be untrue in any material respect; or
- (f) Any default shall occur under the terms of any instrument creating or evidencing a lien having priority over the this Mortgage or any action should be commenced for the foreclosure of said priority lien; or

### THEN, AND IN ANY SUCH EVENT:

- (A) The Lender may, without notice, presentment or demand, declare the unpaid principal amount of the Note and any interest thereon accrued and unpaid to be immediately due and payable, and such principal amount and interest shall thereupon become and be immediately due and payable, and shall thereafter bear interest until fully paid at the rate specified in the Note to be paid in the event of a default;
- (B) The Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession of the Mortgaged Property and, to the extent permitted by law, the Lender itself or such officers or agents as it may appoint: (i) may enter and take possession of the Mortgaged Property, together with the books, papers and accounts of the Borrower relating thereto; (ii) may exclude the Borrower, and the Borrower's agents and servants therefrom; (iii) may hold, operate and manage the same and from time to time make all needful repairs and such alterations, additions, advances and improvements as the Lender shall deem appropriate, and (iv) may receive tolls, rents, revenues, issues, income, product and profits thereof and out of the same may pay all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to the Lender's agents, attorneys and counsel, and any taxes and assessments and other charges (including the First and Second Priority Mortgages) prior to the lien and security interest of this Mortgage, which the Lender shall deem necessary or desirable to pay, and all expenses of such repairs, alterations, additions and improvements, and other disbursements made by the Lender pursuant to the terms hereof, and may apply the remainder of the monies so received by the Lender to the payment of any sums secured hereby, including but not limited to, the unpaid principal of, and interest on, the Note;
- (C) The Lender may, to the extent permitted by law, with or without first taking possession, sell the Mortgaged Property, in whole or, to the extent permitted by law, in part, at public auction in the State of Illinois, or at such place as may be required by law, having first given notice of such sale by publication as may be required by law, and may adjourn such sale from time to time by announcement at the time and place appointed for such sale or adjourned sale, and upon such sale, the Lender may make and deliver to any purchaser a good and sufficient deed, conveyance, or bill of sale, and good and sufficient receipts for the purchase money, and do and perform all other acts as may be necessary fully to carry into effect this power of sale;
- (D) The Lender may, either with or without first taking possession, proceed by action or actions at law or in equity, or by any other appropriate remedy, to enforce payment of the Note or performance of any other obligation secured hereby, and to foreclose this Mortgage, and to sell, in whole, or to the extent permitted by law, in part, the Mortgaged Property under the judgment or decree of a court or courts of competent jurisdiction;



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(E) Upon the institution of judicial proceedings to enforce its rights hereunder, the Lender, to the extent permitted by law, shall be entitled as a matter of right to the ex parte appointment (without bond) of a receiver or receivers of the Mortgaged Property, and of the tolls, rents, revenues, issues, income, product and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer; and

(F) The Lender shall have the right to enforce one or more remedies hereunder, or any other remedy the Lender may have under the other Loan Documents, successively or concurrently, including, but not limited to, the right to foreclose this Mortgage with respect to any portion of the Mortgaged Property, if the operation of the remaining portion thereof is not thereby rendered unlawful under the then applicable laws, rules and regulations of the governmental authorities having jurisdiction in the premises, without thereby impairing the lien of this Mortgage on the remainder of the Mortgaged Property or affecting the remedies of the Lender available with respect thereto.

Upon any sale, either under the power of sale hereby given or under judgment or decree in any judicial proceedings for foreclosure, or otherwise for enforcement of this Mortgage, the unpaid principal amount of the Note, the unpaid interest thereon, and all other obligations hereby secured, if not previously due, shall at once become and be immediately due and payable.

Upon any such sale, the Lender may bid for and purchase the Mortgaged Property or any part thereof, and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its absolute right without further accountability, and the Lender, at any such sale may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash for the costs and expenses of the sale, commissioner's compensation and other charges, in paying purchase money, turn in the Note, including interest thereon, in lieu of cash, up to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon. The Lender shall be permitted to bid at any public auction held to sell the Mortgaged Property without payment of a deposit or down payment of any kind. The Lender shall not be required at confirmation of any public auction sale to extend credit or financing of any kind to the Borrower or any other party that may acquire the Mortgaged Property.

The Lender may apply the proceeds of any such sale, first, to the costs and expenses of such sale and all proceedings in connection therewith, including, but not limited to, counsel fees; next, to the payment of any unreimbursed disbursements made by the Lender for taxes or assessments or other charges prior to the lien of this Mortgage and the First and Second Priority Mortgages; next, to the payment of amounts due and owing under the First Priority Mortgage; next, to the payment of amounts due and owing under the Second Priority Mortgage; next, to the payment of all other unreimbursed disbursements and expenses and unpaid charges and fees due and owing to the Lender under the provisions of this Mortgage or any of the other Loan Documents; and next, to the payment of the unpaid principal sum of and interest on the Note and all other obligations of the Borrower to the Lender, in such order as the Lender shall determine; and the remainder, if any, shall be paid over to the Borrower. If such proceeds shall be insufficient to discharge the entire indebtedness under the Loan Documents, the Lender may have any other legal recourse against the Borrower for the deficiency.

Subject to the rights of the Lenders under the First and Second Priority Mortgages, any such sale shall, to the extent permitted by law, be a perpetual bar, both at law and in equity, against the Borrower and all persons and corporations lawfully claiming by or through or under the Borrower; and the Lender is hereby irrevocably appointed the true and lawful attorney of the Borrower, in the Borrower's name and stead, for the purpose of effectuating any such sale, to execute and deliver all necessary deeds, conveyances, assignments, bills of sale and other instruments with power to substitute one or more persons or corporations with like power;

PROVIDED, HOWEVER, that the Borrower shall ratify and confirm any such sale or transfer if required by the Lender by delivering all proper conveyances or other instruments to such persons or corporations as may be designated in any such request.

In case of any Event of Default, neither the Borrower nor anyone claiming by, through or under the Borrower, to the extent the Borrower may lawfully so agree, shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property is situated, in order to 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 purchasers thereat; and the Borrower, for the Borrower and all who may claim under the Borrower, hereby waives, to the full extent that the Borrower may lawfully so do, the benefit of all such laws, and

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any and all right to have the estate comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof and agrees that the Lender or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property as an entirety.

In case the Lender shall have proceeded to enforce any right hereunder and such proceedings shall have been discontinued or abandoned for any reason, then in every such case, the Borrower and the Lender shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property, and all rights, remedies and powers of the Lender shall continue as if no such proceedings had been taken. No remedy herein reserved to the Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity, or by statute.

Nothing in this Mortgage, the Note or any of the other Loan Documents shall affect or impair the right, which is unconditional and absolute, of the holder of the Note to enforce payment of the principal of, and interest and other charges on, the Note at or after the date therein expressed as the date when the same shall become due, or the obligation of the Borrower, which is likewise unconditional and absolute, to pay such amounts at the respective times and places therein expressed.

**BORROWER'S WARRANTIES.** The Borrower hereby warrants and represents that: (1) the Borrower is the owner in fee simple of the Mortgaged Property and has good right to grant, mortgage and convey the same as aforesaid; (2) such property is free from all encumbrances and liens; (3) the Borrower will **WARRANT AND DEFEND** the same unto the Lender forever against the lawful claims and demands of all persons, except for the Encumbrances, if any; (4) the Mortgaged Property is free of any flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" (collectively, "Hazardous Materials") under any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the Mortgaged Property, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, the Clean Air Act, 42 U.S.C. Section 7401, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any similar state and local laws and ordinances and the regulations now or hereafter adopted, published and/or promulgated pursuant thereto (collectively, the "Hazardous Materials Laws"), which Hazardous Materials are in violation of the Hazardous Materials Laws; and (5) to the best knowledge of the Borrower, no portion of the Mortgaged Property and no other assets of the Borrower or the Borrower are now or may with the passage of time become subject to forfeiture under any federal, state or other law for which forfeiture of assets is a potential penalty or liability. The Mortgaged Property is not currently used in a manner, and no prior use (by Borrower, prior owners or any tenant) has occurred, which violates any Hazardous Materials Laws. Neither the Borrower nor any tenant has received any notice from a governmental agency for violation of Hazardous Materials Laws.

**BORROWER'S COVENANTS.** The Borrower hereby covenants and agrees with the Lender as follows:

1. **Payment of Secured Obligations.** The Borrower will pay or cause the Borrower to pay to the holder of the Note the principal and interest due thereunder, and all fees, charges and other sums payable under the Loan Documents, all according to the provisions thereof, and will pay and discharge or cause the Borrower to pay and discharge any and all obligations that are now or hereafter may be or become owing to the Lender under the Loan Documents and on any and every other account, together with interest, fees, charges and other sums payable thereon as may be specified with respect thereto.

2. **Payment of Real Property Taxes, Assessments, etc.** The Borrower will punctually pay and discharge, or cause to be paid and discharged, from time to time as the same shall become due, all real property taxes, rates, assessments, impositions, duties, water rates, sewer rates and other charges of every description to which the Mortgaged Property, or any part thereof, or any improvements thereon, may during the term of this

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Mortgage become liable by authority of law, the payment of which shall be secured by this Mortgage; PROVIDED, HOWEVER, that real property taxes may be paid in semiannual installments and improvement or betterment assessments may be paid in annual installments, upon condition that, in each case, the same are not allowed to become delinquent, and that the Borrower will, upon request, deposit a copy of the receipts therefor with the Lender not later than twenty (20) calendar days prior to the final date such taxes, assessments and charges may be paid without penalty.

3. Observance of Laws. The Borrower will duly observe and conform to all laws, rules and regulations made by any governmental authority, and all valid requirements of any regulatory body which may acquire jurisdiction, which apply or relate to any of the Mortgaged Property.

4. Maintenance and Inspection. The Borrower will keep and maintain all buildings, structures and improvements now located or hereafter constructed on the Mortgaged Property in good repair, working order and condition, and will permit the Lender and any persons authorized by the Lender to enter and inspect the Mortgaged Property at all reasonable times.

5. Waste, Unlawful Use, etc. The Borrower will not commit or suffer any strip or waste, or unlawful, improper or offensive use of the Mortgaged Property, or any act or negligence whereby such property or any interest therein shall become liable to seizure or attachment or mesne or final process of law, or whereby the lien provided hereby shall be impaired.

6. Sale, Transfer, Lease, etc. The Borrower will not sell (including by agreement of sale), convey, assign, transfer or lease the Mortgaged Property or any interest therein, without first obtaining the prior written consent of the Lender, except as otherwise expressly permitted in the Loan Documents. If requested by the Lender, the Borrower will furnish to the Lender promptly upon execution thereof copies of all leases executed by the Borrower as lessor covering any portion or portions of the Mortgaged Property. If the Borrower is a limited liability company, any transfer of membership interests in the company whereby the present members of the company shall fail to own or control at least fifty-one percent (51%) of the membership interests in the company, in the respective proportions now held by them, shall be deemed to be a conveyance or assignment of the Borrower's interest in the Mortgaged Property for purposes of this Paragraph.

7. Restoration of Improvements. The Borrower will promptly restore, replace, rebuild or reinstall any part of the buildings, structures, improvements, and Equipment now or hereafter constructed, placed or installed on the Mortgaged Property, which may be damaged or destroyed by any casualty whatsoever.

8. Liens; Junior Mortgages. Except as otherwise provided in the Loan Documents, the Borrower will not, without the Lender's prior written consent (such consent to be given in the Lender's sole discretion) create, suffer to be created or permit to remain upon the Mortgaged Property or any part thereof, or the income therefrom, any junior or subordinate mortgage or any mechanics', materialmen's, laborers', tax, statutory or other lien or charge, except the Encumbrances, and liens of taxes and assessments not yet payable or payable without penalty so long as payable; PROVIDED, HOWEVER, that nothing contained in this Paragraph shall be deemed to require the Borrower to pay or cause to be paid, any tax, assessment or charge, or to satisfy any involuntary lien, so long as the Borrower in good faith by appropriate action diligently pursued shall contest, or cause to be contested, the validity thereof (provided the security afforded by the Mortgage shall not thereby be subjected to any sale, forfeiture or loss, or reasonable probability thereof).

9. No Impairment of Value of Mortgaged Property. No building, improvements, Equipment, or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or altered in such manner as to diminish materially the value of the Mortgaged Property, without the prior written consent of the Lender. The Borrower shall not initiate, join in, or consent to any change in any private restrictive covenant, land use classification, zoning ordinance or other public or private restrictions limiting or defining the use which may be made of the Mortgaged Property or any part thereof.

10. Insurance. (a) The Borrower shall, during the term of this Mortgage, at its sole cost and expense and for the mutual benefit of the Borrower and the Lender:



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(i) keep any structures, buildings and other improvements now located or hereafter constructed on the Mortgaged Property and all Equipment and the interests and liabilities incident to the ownership thereof, insured against loss, destruction and damage by fire and all causes of loss by a property insurance policy or policies with an amount of coverage equal to one hundred percent (100%) of the replacement cost of such structures, buildings and improvements, and including the following endorsements: (1) replacement cost coverage, (2) agreed amount, and (3) building ordinance coverage insuring against contingent liability from the operation of federal, state or county laws, statutes, ordinances or regulations concerning the buildings, structures or improvements on or about the Mortgaged Property, demolition of such buildings, structures or improvements and increased cost of construction of such buildings, structures or improvements. Additionally, the Borrower shall procure a difference-in-conditions policy to include flood, earthquake, backup of sewers, broad collapse coverage, and building ordinance coverage with a limit of liability determined to be prudent by the Lender. If the Mortgaged Property is located in an identified flood hazard area as now or hereafter designated by the United States Department of Housing and Urban Development, the Borrower shall also procure flood insurance required under the provisions of the Flood Disaster Protection Act;

(ii) if the Loan proceeds will be used to pay all or a portion of the cost of constructing improvements on the Land, the Borrower shall also effect and maintain a builder's risk policy, completed value form, with an amount of coverage equal to one hundred percent (100%) of the estimated replacement cost of the improvements upon completion of construction. Such policy shall be written on (or provide coverage equal to the coverage provided by) an ALS 1972 policy (including earthquake and flood coverage), or its equivalent. If the Lender so requires, the Borrower shall also effect and maintain, during the course of construction of the improvements, business income coverage in such amount and with such endorsements as the Lender may require; and

(iii) effect and maintain, to the extent reasonably available, commercial general liability insurance (occurrence form), including coverage for premises/operations, independent contractors, contractual liability, personal injury, employees as additional insureds, broad form property damage, with combined single limits of liability for bodily injury and property damage of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate or such higher limits as the Lender may from time to time require.

(b) All insurance required under the preceding subparagraphs shall be kept in such manner, form and amount as shall be approved by and found to be reasonably acceptable the Lender, and the Borrower shall deposit the original of the policy or policies therefor or the certificates of such insurance with the Lender. In the event of foreclosure or sale of the Mortgaged Property, all interest of the Borrower in such insurance and the policies therefor and the monies payable thereunder shall pass to the purchaser or assignee of such property. All insurance required under the preceding subparagraphs (a)(i), (a)(ii) and (a)(iii) shall be effected under valid and enforceable policies issued by insurance companies authorized to do business in the State of Hawaii and having a rating by Best's Insurance Reports of Class VI or better. All such policies or other contracts for such insurance issued by the respective insurers shall, to the extent obtainable, be without contribution and contain an endorsement that the policy or other contract shall not be cancelled or materially changed without at least thirty (30) calendar days prior written notice to the Lender.

all losses and monies payable under the insurance required under the preceding subparagraphs (a)(i) and (a)(ii) shall be payable to the Lender pursuant to a standard mortgage clause and lender's loss payable clause and shall be applied by the Lender, at its option, either to rebuilding or repair of the loss, destruction or damage, or in the



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reduction of any indebtedness hereby secured. Any other insurance procured on such structures or improvements shall be payable as directed by and shall be claimable by the Lender.

(c) The Lender shall not be responsible for such insurance or for the collection of any insurance proceeds, or for the insolvency of any insurer or insurance underwriter.

(d) All such policies or other contracts for such insurance shall provide that the insurance shall not be invalidated as to the interest of the Lender by any act or neglect of any person owning the property insured, or by any foreclosure or other proceedings, or notice of sale, or by any change in the title or ownership of the insured properties, or by occupation of any insured structures for purposes more hazardous than permitted by such policy or contract.

(e) Upon the execution of this Mortgage and thereafter not less than thirty (30) calendar days prior to the expiration date of the expiring policies or contracts, the originals or certified copies of all policies or contracts for insurance (or certificates therefor) of the character described in subparagraph (a) above shall be deposited with the Lender.

(f) In the event of loss or physical damage to the Mortgaged Property, the Borrower shall give immediate notice thereof to the Lender, and the Lender may make proof of loss if the same is not made promptly by the Borrower.

(g) All insurance coverage required under this Mortgage shall be subject to availability with responsible insurance companies authorized to do business in the State of Hawaii. Where such coverage is not (or is no longer) available, the Borrower shall purchase and maintain such other insurance coverage as is acceptable to the Lender.

(h) If the Borrower fails to maintain insurance coverage as described above, the Lender may, at the Lender's option, obtain insurance coverage to protect the Lender's rights in the Mortgaged Property as described in this Mortgage.

11. Condemnation. If the Mortgaged Property or any part thereof shall be condemned, the Lender may appear and defend any such suit and is hereby irrevocably authorized to collect all of the proceeds and apply the same upon any obligation secured hereby. All costs, expenses and attorneys' fees paid or incurred by the Lender in the course of such proceedings shall constitute an advance hereunder.

Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, the Borrower will continue or cause the Borrower to continue to pay interest on the entire principal sums hereby secured until an award or payment from such authority or corporation shall have been actually received by the Lender, and any reduction in the principal sum resulting from the application by the Lender of such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such receipt. Subject to the rights of the Lenders under the First and Second Priority Mortgages, any such award or payment shall be applied in such proportions and priority as the Lender, in the Lender's sole discretion, may elect, to the payment of principal and interest on the Note, whether or not then due and payable, or any sums secured by this Mortgage, or to the payment to the Borrower, on such terms as the Lender may specify, to be used for the sole purpose of altering, restoring or rebuilding any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade or other injury to the Mortgaged Property. If, prior to the receipt by the Lender of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, the Lender shall have the right to receive such award or payment to the extent of the mortgage debt remaining unsatisfied after such sale of the Mortgaged Property, with legal interest thereon and reasonable attorneys' fees, costs and disbursements incurred by the Lender in connection with the collection of such award or payment. Should all or any part of the Mortgaged Property be taken by eminent domain, the Borrower hereby assigns to the Lender, and forthwith upon payment thereof will cause to be deposited with the Lender, the award for any Mortgaged Property so taken, excluding, however, any portion of any award to which the Lenders under the First and Second Priority Mortgages may be entitled.

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12. Notice of Deposit of Insurance or Condemnation Proceeds. The Borrower will, in case any proceeds of insurance upon the Mortgaged Property or any part thereof, or the proceeds of any award for the taking in eminent domain of the Mortgaged Property or any part thereof, are deposited with any person other than the Lender, promptly notify the Lender in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited.

13. Assignment of Rentals. The Borrower hereby absolutely assigns to the Lender all rents, revenues, rights and benefits accruing to the Borrower under all present and future leases and subleases of the Mortgaged Property or any part thereof, with the right and authority to receive the same and apply them to the Note or other indebtedness secured hereby, after default in the conditions thereof, anything to the contrary herein notwithstanding. The Lender is further authorized, at its option, to notify particular lessees or sublessees of such assignment, to execute and deliver binding receipts for any payments made under the terms of any such leases or subleases, and to demand, sue for and recover any such payments when due. The Borrower shall perform every obligation of the lessor or sublessor and shall enforce every material obligation of the lessee or sublessee in every such lease or sublease, and shall not modify, alter, waive or cancel any lease or sublease or any part thereof, nor anticipate for more than one month any rents that may be collectible under such lease or sublease, and shall not further assign any such lease or sublease or any such rents. This assignment shall terminate and become null and void upon release of this Mortgage. Immediately upon the Lender's delivering to the Borrower, or serving upon the Borrower, written notice of any alleged default, the Lender may at any time, either in person, by agent, or by a receiver to be appointed by a court and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of the Mortgaged Property or any part thereof in its own name, sue for or otherwise collect such rents, revenues, rights and benefits, including those past due and unpaid, and apply the same (less costs and expenses of operation and collection, including brokers' fees and attorneys' fees) upon any indebtedness secured hereby, and in such order as the Lender may determine. Upon the delivery or service of such notice of default, the Lender shall have the absolute right to receive and collect all such rents, revenues, rights and benefits whether or not it takes physical possession as hereinabove provided; and the act of delivery or service of such notice of default shall be deemed to constitute the taking of possession by the Lender; PROVIDED, HOWEVER, that such possession by the Lender shall not impose upon the Lender any duties or obligations as lessor or sublessor under such leases and subleases, or otherwise impose upon the Lender any duties or obligations associated with the possession of property. The Borrower agrees to surrender physical possession of the Mortgaged Property upon written demand when the Lender becomes entitled in rem by reason of the default of the Borrower as hereinabove provided. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, revenues, rights and benefits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice, and shall be without prejudice to any other rights of the Lender herein contained. So long as no Event of Default shall have occurred, the Borrower shall have the privilege, under a license hereby granted by the Lender to the Borrower, to collect when due, but not more than one (1) month in advance, all rents, issues and profits from the Mortgaged Property and to retain, use and enjoy the same. Upon request of the Lender, the Borrower will duly execute, acknowledge and deliver to the Lender any instrument or instruments, in form satisfactory to the Lender, confirming the assignment to the Lender of any specific leases or subleases.

14. Application of Payments. The Lender shall have the right and is hereby expressly authorized to apply any payments received and, subject to the rights of the Lenders under the First and Second Priority Mortgages, any rents, issues and profits collected, to the payment of any indebtedness of the Borrower or the Borrower to the Lender hereby secured in any order which the Lender may determine, and any such application shall in all respects be binding upon the Borrower.

15. Lender's Right of Set-Off. Upon the happening of any event entitling the Lender to foreclose this Mortgage, or if the Lender shall be served with garnishee process in which the Borrower or the Borrower shall be named as defendant, whether or not the Borrower or the Borrower shall be in default hereunder at the time, the Lender may, but shall not be required to, set off any indebtedness owing by the Lender to the Borrower or to the Borrower against any indebtedness secured hereby, without first resorting to the Mortgaged Property and without prejudice to any other rights or remedies of the Lender or the lien of the Lender on the Mortgaged Property.

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16. Possession by Borrower After Sale. In the event of a sale of the Mortgaged Property, or any part or parts thereof, under and by virtue of the provisions of this Mortgage, the purchaser or purchasers thereof shall have immediate and peaceable possession of the same, and if the Borrower shall remain in possession after the effective date of such sale, such possession shall be construed as a tenancy at sufferance only, giving unto the purchaser all remedies, by way of summary possession or otherwise, conferred by law in such case.

17. Acknowledgment of Mortgage Debt. Within ten (10) calendar days after request by the Lender in writing, the Borrower will furnish to the Lender or cause the Borrower to furnish to the Lender or to any proposed assignee of this Mortgage a written statement, duly acknowledged, of the amount due on this Mortgage and whether any offsets, counterclaims or defenses exist against the mortgaged debt.

18. Further Instruments. The Borrower, upon reasonable request of the Lender, will execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Mortgage and to subject the Mortgaged Property to the lien hereof, and any renewals, additions, substitutions, replacements or betterments thereto.

19. Right of Lender to Prevent or Remedy Default. If the Borrower or the Borrower shall fail to observe or perform any of the terms, covenants and conditions required to be observed and performed by the Borrower or the Borrower under this Mortgage, unless the Borrower or the Borrower shall be engaged in good faith by appropriate action diligently pursued in contesting or causing to be contested the existence of such default and the security afforded by this Mortgage shall not thereby be subjected to any sale, forfeiture or loss, or reasonable probability thereof, the Lender may (but shall not be obligated to): (a) take any action the Lender deems necessary or desirable to prevent or remedy any such default by the Borrower or by the Borrower, or to otherwise protect the security of this Mortgage; and (b) enter in and upon the Mortgaged Property or any part thereof to such extent and as often as the Lender, in its sole discretion, deems necessary or desirable in order to prevent or to remedy any such default by the Borrower or the Borrower or otherwise to protect the security of this Mortgage, and the Lender may pay and advance for the account of the Borrower or the Borrower such sums of money as the Lender, in its sole discretion, deems necessary for any such purpose.

20. Right of Lender to Participate in Action Affecting Security. The Lender may appear in and participate in any action or proceeding at law or in equity purporting to affect the security of this Mortgage, and in such event (except where the purported defect affecting the security hereof arises or results from any act or omission of the Lender), the Lender shall be allowed and paid, and the Borrower hereby agrees to pay, or cause the Borrower to pay, all of the Lender's costs, charges and expenses, including cost of evidence of title and reasonable attorneys' fees, incurred in such action or proceeding in which the Lender may appear.

21. Right of Lender to Extend Time of Payment, Substitute, Release Security, etc. Without affecting the liability of any person, including the Borrower or the Borrower, for the payment of any indebtedness secured hereby, or the lien or security interest of this Mortgage on the Mortgaged Property (or the remainder thereof), for the full amount of any indebtedness unpaid, the Lender may from time to time, without notice and without affecting or impairing any of its rights under this Mortgage: (a) release any person liable for the payment of any of the indebtedness; (b) extend the time or otherwise alter the terms of payment of any of the indebtedness or accept a renewal note or notes to evidence such an extension or alteration; (c) accept additional security therefor of any kind, including (but not limited to) deeds of trust, mortgages and security agreements; (d) alter, substitute or release any property securing the indebtedness; (e) resort for the payment of the indebtedness secured hereby to any securities therefor in such order and manner as it may see fit; (f) join in granting any easement or creating any restriction thereon; and (g) join in any extension or subordination or other agreement affecting this Mortgage or the lien or charge thereof.

22. Lender's Expenses for Protection of Security. All advances, costs, expenses and attorneys' fees which the Lender may make, pay or incur under any provision of this Mortgage for the protection of the security of the Lender, or any of the rights of the Lender in connection with the Mortgaged Property, or in foreclosure proceedings commenced and subsequently abandoned, or in any dispute or litigation in which the Lender or the holder of the Note may become involved by reason of or arising out of this Mortgage or the other Loan Documents, shall be paid by the Borrower or the Borrower to the Lender, upon demand, and shall bear interest



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until paid at the rate specified in the Note to be paid in the event of default, all of which obligations shall be additional charges upon the Mortgaged Property and be equally secured hereby and shall be a lien on the Mortgaged Property prior to any rights or claims upon the Mortgaged Property subordinate to the lien of this Mortgage.

23. Partial Releases. [intentionally omitted]

24. Reserve Fund. Upon an Event of Default, if requested by the Lender, the Borrower or the Borrower shall pay to the Lender, unless the same are being paid by the Borrower or the Borrower to the Lender under the First or Second Priority Mortgages, together with and in addition to the monthly payments payable under the terms of the Note, until all obligations secured hereby are fully paid, a sum equal to the real property taxes, assessments and insurance premiums applicable to the Mortgaged Property (all as estimated by the Lender), less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due and payable. Such sums shall be held by the Lender, without interest, to pay such taxes, assessments and premiums as and when the same shall become due and payable. If the total of such payments shall exceed the amount necessary to pay such taxes, assessments and premiums, such excess may, at the Lender's option, be released to the Borrower or the Borrower or applied on any indebtedness secured hereby or be credited by the Lender on subsequent payments to be made by the Borrower or the Borrower. If, however, the total of such payments shall not be sufficient to pay such taxes, assessments and premiums when the same shall become due and payable, then the Borrower or the Borrower shall pay to the Lender any amount necessary to make up the deficiency on or before the date when payment of such taxes, assessments and premiums shall be due. If at any time the Borrower or the Borrower shall tender to the Lender, in accordance with the provisions hereof, full payment of the entire indebtedness secured hereby, the Lender shall, in computing the amount of indebtedness, credit to the account of the Borrower any balance remaining in the funds accumulated under the provisions of this Paragraph. If there be a default under the provisions of this Mortgage or any of the other Loan Documents, and thereafter a sale of the premises in accordance with the provisions hereof, or if the Lender acquires the property otherwise after default, the Lender, at the Lender's option, and at the time of the commencement of such proceeding, or at the time the property is otherwise acquired, may apply the balance then remaining in the funds accumulated under the provisions of this Paragraph as a credit against any sums or charges secured hereby, including, but not limited to, the amount of principal, interest, fees and charges then remaining unpaid under the Loan Documents.

25. Loss, Destruction, etc. of the Note. The Borrower will, in the event the Note shall be mutilated, destroyed, lost or stolen, deliver or cause the Borrower to deliver to the Lender, in substitution therefor, a new Note containing the same terms and conditions as the old Note with a notation thereon of the unpaid principal and accrued unpaid interest. The Borrower or the Borrower shall be furnished with satisfactory evidence of the mutilation, destruction, loss or theft of the Note and also such security or indemnity as may be reasonably requested by the Borrower or the Borrower; PROVIDED, HOWEVER, that if the original Lender named herein is then the Lender under this Mortgage, an unqualified indemnity from the original Lender named herein shall be deemed to be satisfactory security for indemnification.

26. Governmental Approvals. The Borrower shall at all times during the continuance of the Mortgage maintain in full force and effect all governmental and municipal approvals and permits which are required to comply with all environmental, ecological and other governmental requirements relating to the Mortgaged Property or to the occupancy thereof.

27. Mortgage Fees; Documentary Stamps. If at any time the State of Hawaii or the United States of America shall impose any fee on this Mortgage or any amendments hereto or the indebtedness secured hereby, including, without limitation, any fee on the making or recordation of this Mortgage or any amendments hereto, or require internal revenue stamps to be affixed to the Note or this Mortgage, the Borrower or the Borrower will pay for the same with any interest or penalties imposed in connection therewith.

28. Tax on Mortgage or Debt. In the event of the adoption or amendment of any law of the State of Illinois after the date of this instrument, other than a law providing for the imposition of a tax on, according to, or measured by income, which shall in any way change the manner of taxation or of the collection of taxes on mortgages or debts secured by mortgages, to the end that, directly or indirectly, the Lender shall be required to pay



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on account of this Mortgage or the indebtedness secured hereby, any tax other than taxes of the kind or character now imposed thereon by the laws of the State of Illinois, and other than a tax on, according to or measured by income, the holder of this Mortgage, at any time after such adoption or amendment of such law, may give written notice to the Borrower that such holder elects to have the indebtedness secured by this Mortgage become due and payable. If such notice be given, the said indebtedness shall become due, payable and collectible at the expiration of thirty (30) calendar days; PROVIDED, HOWEVER, that such requirement of payment shall be ineffective if the Borrower is permitted by law to pay the whole of such tax in addition to all other payments required hereunder, without any penalty accruing to the holder of the Note, and if the Borrower in fact pays such tax prior to the date upon which payment is required by such notice.

29. Hazardous Materials. The Borrower shall keep and maintain the Mortgaged Property, including, without limitation, the groundwater on or under the Mortgaged Property, in compliance with, and shall not cause or permit the Mortgaged Property to be in violation of, any Hazardous Materials Laws. The Borrower shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or above the Mortgaged Property, any Hazardous Materials in violation of any Hazardous Materials Laws. The Borrower shall immediately advise the Lender in writing of (a) any and all enforcement, clean up, removal, mitigation, or other governmental or regulatory action instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Mortgaged Property, (b) all claims made or threatened by any third party against Borrower or the Mortgaged Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (a) and (b) above are hereinafter referred to as "Hazardous Materials Claims") and (c) the Borrower's discovery of any occurrence or condition on the Mortgaged Property or any real property adjoining or in the vicinity of the Mortgaged Property which could subject the Borrower or the Mortgaged Property to any restrictions on ownership, occupancy, transferability or use of the Mortgaged Property under any Hazardous Materials Laws. The Borrower shall indemnify the Lender, its members, managers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Mortgaged Property, including, without limitation: (i) all foreseeable and unforeseeable consequential damages; (ii) the costs of any required or necessary repair, clean up or detoxification of the Mortgaged Property, and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by the Lender in connection with clauses (i) and (ii), including, without limitation, reasonable attorneys' fees. The indemnification provision of this Paragraph shall survive (a) the repayment of the Note secured by this Mortgage, (b) any foreclosure of this Mortgage, and (c) any deed or assignment of the Mortgaged Property in lieu of foreclosure.

30. Special Covenants Regarding Forfeiture Laws. The Borrower hereby covenants that neither the Borrower nor the Borrower will do or allow to be done any act or thing or in any way relating to the Mortgaged Property which violates or may result in the violation of any federal, state or other law for which forfeiture of assets is a potential penalty or liability (hereinafter called "Forfeiture Laws"). In the event that the Lender has reasonable cause to believe that any portion of the Mortgaged Property or any other collateral securing the Loan might be or become subject to forfeiture under any Forfeiture Laws, the Lender may, in its sole discretion, and in addition to its other remedies under this Mortgage and at law or in equity, refuse to make any further disbursements of Loan proceeds, of any kind whatsoever, until the Lender no longer has any reasonable belief that any portion of the Mortgaged Property or any other collateral securing the Loan is subject to or may become subject to forfeiture under any Forfeiture Laws.

31. Consideration. The Borrower hereby agrees and confirms that (a) the Borrower expects to derive a substantial benefit from the Loan by the Lender to the Borrower, (b) the Borrower deems it to be to the Borrower's own financial benefit that the Lender make the Loan to the Borrower, (c) the Borrower has received good, valuable and sufficient consideration for making this Mortgage, and (d) the receipt of this Mortgage by the Lender is an essential inducement to the Lender in making the Loan to the Borrower.

32. Business Loan Transaction. The advances made under the Loan evidenced by the Note are made for commercial purposes and the Loan is neither a consumer credit transaction nor a home business loan.

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33. Special Covenants Regarding ADA. The Borrower hereby agrees, at its own costs and expense, to comply, if applicable, with all requirements of the American With Disabilities Act (“ADA”) and the rules and regulations promulgated thereunder (the “Rules”) with respect to the Borrower and the Mortgaged Property. All notices received by the Borrower with respect to noncompliance with the ADA and Rules shall be promptly furnished to the Lender. If requested by the Lender, the Borrower shall furnish to the Lender, at the Borrower’s expense, an ADA Compliance Assessment, in form and substance acceptable to the Lender, made by a licensed architect or engineer acceptable to the Lender.

## B. MISCELLANEOUS PROVISIONS.

1. No Waiver. Any failure by the Lender to insist upon the strict performance by the Borrower or the Borrower of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and the Lender, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Borrower or the Borrower of any and all of the terms and provisions of this Mortgage to be performed by the Borrower or the Borrower.

2. Security Agreement, Fixture Filing and Financing Statement Under Uniform Commercial Code. [intentionally omitted]

3. Definitions. The terms “advances,” “costs” and “expenses” shall include, but shall not be limited to, reasonable attorneys’ fees whenever incurred. The terms “indebtedness” and “obligations” shall mean and include, but shall not be limited to, all claims, demands, obligations and liabilities whatsoever, however arising, whether owing by the Borrower or the Borrower individually or as a partner, or jointly or in common with any others, and whether absolute or contingent, and whether owing by the Borrower or the Borrower as principal debtor or as accommodation maker or as indorser, liquidated or unliquidated, and whenever contracted, accrued or payable.

4. Paragraph Headings. The headings of Paragraphs herein are inserted only for convenience and shall in no way define, describe or limit the scope or intent of any provisions of this Mortgage.

5. Parties in Interest. As and when used herein, the terms “Borrower” and “Borrower” shall mean and include the Borrower and the Borrower above-named and each Borrower’s and Borrower’s heirs, personal representatives, successors, successors in trust and assigns; the term “Lender” shall mean and include the Lender above-named and its successors and assigns; the use of the singular shall mean and include the plural, and vice versa; and the use of any gender shall include all genders. If the Borrower or the Borrower consists of more than one person or entity, then all obligations and liability of the Borrower and the Borrower hereunder shall constitute the joint and several obligations and liability of each such person or entity.

6. Applicable Laws; Severability. This Mortgage shall be governed by and shall be construed and interpreted under and pursuant to the laws of the State of Hawaii and all applicable federal laws. If any provision of this Mortgage is held to be invalid or unenforceable, such will not affect the validity or enforceability of the other provisions of this Mortgage.

7. Notices. All notices, demands or documents to be delivered under this Mortgage shall be given in writing and either be (a) personally delivered; (b) sent by registered or certified mail, postage prepaid; or (c) sent by electronic transmission (fax or email) with hard copy to follow as confirmation of receipt, addressed to the parties at the addresses set forth on the first page of this Mortgage. Each party’s respective address may be changed by the addressee by serving notice as provided above. Service of such notice shall be deemed complete on the earlier to occur of the actual date of delivery or two (2) business days after mailing.

8. Counterparts. This Mortgage may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatories to the original or the same counterparts. In making proof of this Mortgage, it shall not be necessary to produce or account for more than one such counterpart. For all purposes, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

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## SPECIAL ILLINOIS PROVISIONS

1. Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article 16 and the other provisions of this Mortgage, the terms and conditions of this Article 16 shall control and be binding.

2. Security Agreement.

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

Borrower (being the Debtor as that term is used in the Illinois UCC) 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 benefitting Lender and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents;

- (a) The Collateral is to be used by Borrower solely for business purposes;
- (b) The Collateral will be kept at the Property (except for normal replacement of Personal Property) and will not be removed therefrom without the consent of Lender (being the Secured Party as that term is used in the Illinois UCC). The Collateral may be affixed to the Property but will not be affixed to any other real estate;
- (c) The only persons having any interest in the Property are Borrower, Lender and holders of interests, if any, expressly permitted hereby;
- (d) No financing statement (other than financing statements showing Lender 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 Borrower at its own cost and expense, upon demand, will furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender and will do all such acts as Lender may 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 Debt, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Lender and no other party and liens and encumbrances, if any, expressly permitted hereby; and Borrower will pay the cost of filing or recording such financing statements or other documents, and this Mortgage in all public offices wherever filing or recording is deemed by Lender to be desirable;
- (e) Upon an Event of Default, Lender shall have the remedies of a secured party under the Illinois UCC, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Borrower 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 Illinois UCC); and Lender shall be entitled to hold, maintain, preserve

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and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Borrower's right of redemption in satisfaction of Borrower's obligations, as provided in the Illinois UCC. Lender may render the Collateral unusable without removal and may dispose of the Collateral on the Property. Lender may require Borrower to assemble the Collateral and make it available to Lender for its possession at a place to be designated by Lender which is reasonably convenient to both parties. Lender will give Borrower at least twenty (20) days' 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 Borrower hereinabove set forth at least twenty (20) days before the time of the sale or disposition. Lender may buy at any public sale. Lender may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If Lender so elects, the Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Lender, shall be applied against the Debt in such order or manner as Lender shall select. Lender will account to Borrower for any surplus realized on such disposition;

(f) The terms and provisions contained in this Section 1.3, unless the context otherwise requires, shall have the meanings and be construed as provided in the Illinois UCC;

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

(h) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Borrower 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 Borrower, as lessor thereunder; and

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

3. Mortgaged Property. None of the Mortgaged Property falls within the definition of "real property" set forth in the Illinois Responsible Property Transfer Act of 1988, 765 ILCS §90-1 et seq. §90-3(e), as amended.

#### 4. Waivers:

(a)

BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE LOAN AGREEMENT, THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

(b) Borrower agrees, to the full extent permitted by law, that at all times following an Event of Default, neither Borrower nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, or extension laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat; and Borrower, for itself and all who may at



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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 Property marshalled upon any foreclosure of the lien hereof and agrees that Lender or any court having jurisdiction to foreclosure such lien may sell the Property in part or as an entirety. To the full extent permitted by law, Borrower hereby waives any and all statutory or other rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date

(c) Borrower acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Foreclosure Act (as defined below) or residential real estate as defined in Section 5/15-1219 of the Foreclosure Act. BORROWER HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE, IF ANY, UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, IT BEING THE INTENT HEREOF THAT ANY AND ALL SUCH RIGHTS OF REDEMPTION OF THE BORROWER AND OF ALL OTHER PERSONS ARE AND SHALL BE DEEMED TO BE HEREBY WAIVED TO THE FULL EXTENT PERMITTED BY THE PROVISIONS OF 735 ILCS 5/15-1601(B) OR OTHER APPLICABLE LAW OR REPLACEMENT STATUTES.

(d) Borrower hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(e) Borrower will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

5. Illinois Collateral Protection Act. As required pursuant to the Collateral Protection Act, 815 ILCS 180/10(3), Borrower is hereby notified that in the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Mortgage or evidence of their renewal as required herein, Lender may, but shall not be obligated to, procure such insurance at Borrower's expense to protect Borrower's interests in the Property. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by the terms of this Mortgage. If Lender purchases insurance for the Property as set forth herein, Borrower shall pay all amounts advanced by Lender, together with interest thereon at the Default Rate (as defined in the Loan Agreement) from and after the date advanced by Lender until actually repaid by Borrower, promptly upon demand by Lender. Any amounts so advanced by Lender, together with interest thereon, shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own..

6. Use of Proceeds. Borrower hereby represents and agrees that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in the Illinois Interest Act, 815 ILCS §205/4(1), and the indebtedness secured hereby constitutes a business loan which comes within the purview of said Section 205/4(c).

7. Illinois Mortgage Foreclosure Law.

(a) In the event any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS Sections 5/15-1101 et. seq., Illinois Compiled Statutes) (the "Foreclosure Act"), the provisions of the Foreclosure Act shall take precedence over the provisions of this

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Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Act.

(b) If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Foreclosure Act in the absence of said provision, Lender shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Article 9 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

(c) Wherever provision is made in the Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of the Lender shall continue in the Lender as judgment creditor or Lender until confirmation of sale.

(d) Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the secured indebtedness, all of Borrower's right, title and interest in and to the insurance policies referred to in this Mortgage (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the fullest extent permissible under such policies.

(e) All advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Foreclosure Act. All Protective Advances shall be so much additional indebtedness secured by the Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Note. The 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 5/15-1302 of the Foreclosure Act.

(f) In addition to any provision of the Mortgage authorizing the Lender to take or be placed in possession of the Premises, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Premises or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act. The Lender hereunder, or any holder of the Note, or any of its/their respective affiliates, may be appointed as such receiver. In addition to the powers expressly enumerated herein or conferred by law, the receiver shall have all such powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the period of receivership. The court may, from time to time, authorize the receiver to apply the net income from the Property in his hands in payment in whole or in part of:

(i) The indebtedness secured hereby or the indebtedness secured 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 such decree, provided such application is made prior to the foreclosure sale, or (ii) the deficiency in case of a sale and deficiency.

9. Maximum Principal Indebtedness. Notwithstanding any provision contained herein to the contrary, the maximum principal indebtedness, loan commissions, liquidated damages, expenses and advances secured by this Mortgage shall not exceed \$5,000,000.

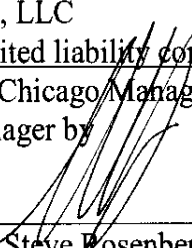
10. Power of Sale. Any references to "power of sale" in this Mortgage are permitted only to the extent allowed by law.

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11. Miscellaneous. Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 15-1201 of the Foreclosure Act or residential real estate as defined in Section 15-1219 of the Foreclosure Act.

12. Future Advances. This Mortgage is given for the purpose of securing loan advances which Lender may make to or for Borrower pursuant and subject to the terms and provisions of the Loan Agreement. The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of loan advances made after this Mortgage is delivered to the Office of the Recorder of the County in which the Property is located, whether made pursuant to an obligation of Lender or otherwise, provided that such advances are within twenty (20) years from the date hereof and in such event, such advances shall be secured to the same extent as if such future advances were made on the date hereof, although there may be no advance made at the time of execution hereof and although there may be no indebtedness outstanding at the time any advance is made. Such loan advances may or may not be evidenced by notes executed pursuant to the Loan Agreement. Section 16.15 Borrower is duly qualified to do business in the State of Illinois.

IN WITNESS WHEREOF, THIS MORTGAGE has been executed by Borrower the day and year first above written.

BORROWER  
 ERIE CANAL, LLC  
 An Illinois limited liability company  
 By: Aspen Chicago Management LLC  
 Its manager by   
 \_\_\_\_\_  
 Name: Steve Rosenberg  
 Title: its authorized agent

Property of Cook County Clerk's Office

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STATE OF OREGON                    )  
COUNTY OF MULTNOMAH        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Steve Rosenberg, personally known to me to be the authorized agent of Aspen Chicago Management LLC, the manager of Erie Canal, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he/she, being thereunto duly authorized, signed and delivered said instrument as the free and voluntary act of said company as his/her own free and voluntary act, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal, this 16<sup>th</sup> day of March, 2007.

*TERRI SEARING*

Notary Public

My commission expires: 5-24-10





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## EXHIBIT "A"

PARCEL 1: A PART OF LOTS 1 AND 2 OF ASSESSORS DIVISION OF LOT 16 IN BLOCK 24 IN WOLCOTT'S ADDITION TO CHICAGO AND THE NORTH 1/2 OF BLOCK 37 IN KINZIE'S ADDITION TO CHICAGO DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE NORTH LINE OF SAID LOT 1, 20 FEET 2 INCHES WEST OF THE NORTH EAST CORNER OF SAID LOT 1; RUNNING THENCE SOUTH ON A LINE PARALLE WITH THE EAST LINE OF SAID LOTS 1 AND 2, 51 FEET TO THE SOUTH LINE OF SAID LOT 2; THENCE WEST ON THE SOUTH LINE OF SAID LOT 2, 19 FEET AND 4 INCHES; THENCE NORTH ON LINE PARALLEL WITH THE EAST LINE OF SAID LOTS 1 AND 2, 51 FEET TO THE NORTH LINE OF SAID LOT 1; THENCE EAST 19 FEET 4 INCHES TO THE PLACE OF BEGINNING IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: A TRACT OF LAND DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE NORTH LINE OF LOT 1 OF ASSESSORS DIVISION OF LOT 16 IN BLOCK 24 OF WOLCOTT'S ADDITION TO CHICAGO AND THE NORTH 1/2 OF BLOCK 37 OF KINZIE'S ADDITION TO CHICAGO, 39 FEET 6 INCHES WEST OF THE NORTH EAST CORNER OF SAID LOT 1; THENCE RUNNING SOUTH ON A LINE PARALLEL WITH THE EAST LINE OF SAID LOT 1 AND LOT 2 IN SAID ASSESSOR'S DIVISION, 51 FEET TO THE SOUTH LINE OF THE SAID LOT 2; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 2, 19 FEET 4 INCHES; THENCE NORTH ON A LINE PARALLEL WITH THE EAST LINE OF SAID LOTS 1 AND 2, 51 FEET TO THE NORTH LINE OF SAID LOT 1; THENCE EAST 19 FEET 4 INCHES TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3: THE WEST 20.66 FEET OF LOTS 1 AND 2 IN ASSESSOR'S DIVISION OF LOT 16 IN BLOCK 24 IN WOLCOTT'S ADDITION TO CHICAGO WITH THE NORTH 1/2 OF BLOCK 37 IN KINZIE'S ADDITION TO CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4: LOT 14 IN BLOCK 24 IN WOLCOTT'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE NORTH EAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5: LOT 15 IN BLOCK 24 IN WOLCOTT'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE NORTH EAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.