

This Instrument Was Prepared By  
And When Recorded Please Return To:

Stacey L. Kraftchick  
Riley Investment, LLC  
1039 Anna Knapp Blvd, Suit C  
Mt. Pleasant, SC 29464



Doc#: 0726344064 Fee: \$80.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/20/2007 03:43 PM Pg: 1 of 29

**MORTGAGE AND ASSIGNMENT OF RENTS**

**THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT** (this "Mortgage"), is made as of September 7, 2007, by Riley Investment, LLC, formerly known as Riley Development, LLC a South Carolina Limited Liability Company (the "Mortgagor"), with and granted to SunTrust Bank, successors and/or assigns (the "Mortgagee").

**WITNESSETH:**

**WHEREAS**, the Mortgagor is justly indebted to the Mortgagee in the principal sum of Two Hundred Thirty Thousand and No/100 (\$230,000.00), as evidenced by a certain Term Note of even date herewith executed by the Mortgagor and made payable to the order of and delivered to the Mortgagee which is due and payable on September 12, 2012, whereby the Mortgagor promises to pay the said principal sum, together with interest thereon, as set forth therein (together with any and all extensions, renewals, modifications, refinancings or substitutions from time to time the "Note").

**WHEREAS**, the Mortgagee requires the execution and delivery of certain documents and instruments by the Mortgagor as a part of this loan transaction, each of which may be individually referred to as a "Loan Document" or collectively referred to as the "Loan Documents".

**WHEREAS**, the Mortgagee requires that the Mortgagor execute and deliver this Mortgage to secure the payment and performance of the obligations and duties of the Mortgagor under the Note and all other Loan Documents executed by or on behalf of the Mortgagor.

**WHEREAS**, all of the Loan Documents, including each of their provisions, are incorporated herein by this reference and made a part hereof as though fully set out in this Mortgage.

**NOW, THEREFORE**, to secure (i) the payment when and as due and payable of the principal sum of and interest on the Note and other Loan Documents, (ii) the payment of all other indebtedness which this Mortgage secures pursuant to its terms or which is payable under the terms of the Note and other Loan Documents, (iii) the performance and observance of the covenants and agreements contained in and the payment of all obligations and liabilities of the Mortgagor under this Mortgage and the Loan Documents, and (iv) any extensions, renewals, modifications, refinancings or substitutions, from time to time, for any of the foregoing matters in (i), (ii), and (iii) (all of such indebtedness, obligations, agreements and liabilities identified in the foregoing clauses (i), (ii), and (iii) being hereinafter referred to as the "Indebtedness Secured Hereby" or the "Secured Indebtedness"), the Mortgagor does by these presents grant, transfer, bargain, set over, remise, release, assign, alien, warrant, pledge, sell, convey,

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and mortgage unto the Mortgagee, its successors and assigns forever, the real estate described in Exhibit A attached hereto and made a part hereof (the "Real Estate") and all of the Mortgagor's estate, right, title, and interest therein;

**TOGETHER WITH:**

- a. all estate, right, title, and interest of the Mortgagor, if any, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, vaults, roadways, strips and gores, and alleys adjoining or within the boundaries of the Real Estate;
- b. all and singular the tenements, hereditaments, easements, licenses, minerals, appurtenances, passages, waters, water courses, riparian, irrigation and drainage rights, and other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversion and reversions and remainder and remainders thereof;
- c. all property and rights, if any, which by the express provisions of this Mortgage are required to be subjected to the lien thereof and any additional property and rights that from time to time hereafter, by installation or writing of any kind, may be subjected to the lien hereof by the Mortgagor or by anyone on the Mortgagor's behalf;
- d. all rights in and to common areas and access roads on adjacent land heretofore or hereafter granted to the Mortgagor and any after-acquired title or reversion with respect thereto;
- e. all of the Mortgagor's interest and rights as lessor in and to all leases now or hereafter affecting the Premises or any part thereof, whether written or verbal, and all rents, amounts, issues, proceeds and profits accruing and to accrue from the Premises, whether payable pursuant to any present or future lease(s) or otherwise growing out of any letting of or any agreement for the sale, occupancy or use of the Premises or any portion thereof which may have been heretofore or hereafter made or agreed to by the Mortgagor;
- f. all proceeds or sums payable in lieu of or as compensation for the loss of or damage to the Premises, all rights in and to all present and future fire and other insurance policies pertaining to the Premises, any and all sums at any time on deposit for the benefit of the Mortgagee or the Mortgagor or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage and all awards paid or to be paid in connection with or in lieu of any condemnation, eminent domain, change of grade or similar proceeding for the taking or for the degradation in the value of all or any part of the Premises;

**TO HAVE AND TO HOLD** the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth;

**PROVIDED, HOWEVER**, that if the Mortgagor shall pay the principal sum of and all interest on the Note, and shall pay all other sums provided for herein, in the Note and the Loan Documents, and shall well and truly keep and perform all of the covenants contained in this Mortgage, the Note and the other Loan Documents, then this Mortgage shall, so long as no Event of Default has occurred and upon payment by the Mortgagor to the Mortgagee of a reasonable release fee then charged by Mortgagee, if any, be released, otherwise to remain in full force and effect.

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IN CONSIDERATION OF THE MORTGAGEE MAKING THE LOAN EVIDENCED BY THE NOTE, THE MORTGAGOR ON ITS OWN BEHALF REPRESENTS, WARRANTS, COVENANTS AND AGREES WITH THE MORTGAGEE AS FOLLOWS:

1. **Payment of Principal and Interest.** The Mortgagor is pledging the Premises to secure the prompt payment, when and as due and payable, of the Indebtedness Secured Hereby.
2. **Taxes and Other Charges.** The Mortgagor shall pay, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, association charges, and all other charges of whatever kind, ordinary or extraordinary, whether public or private, which may be levied or imposed against the Premises, and shall furnish to the Mortgagee original, official receipts therefor within ten (10) days after payment thereof. The Mortgagor shall also pay when due all charges incurred for the benefit of the Premises for utilities, including energy, fuel, gas, electricity, water, sewer, and garbage removal, whether or not such charges are liens against the Premises.
3. **Title Policy, Survey and Appraisal.** Unless otherwise agreed by the Mortgagee in writing, the Mortgagor shall furnish to the Mortgagee a Loan Title Policy issued by a title insurance company satisfactory to the Mortgagee and effective prior to any disbursement by and insuring the Mortgagee in the full amount of the Note, insuring the Mortgage to be a valid, prior and paramount lien upon the fee title to the Real Estate subject only to exceptions acceptable to the Mortgagee. The title insurance policy must specifically insure the Mortgagee for such matters as the Mortgagee may require.
4. **Insurance.** The Mortgagor shall comply with the following insurance provisions:
  - a. **Casualty.** The Mortgagor shall keep the Improvements now existing or hereafter erected on the Real Estate, all property (whether real, personal or mixed) incorporated therein and all materials and supplies delivered to the Premises for use in connection with the construction of any Improvements, together with all equipment used for that purpose, constantly insured against loss or damage under such types and forms of insurance policies and in such amounts and for such periods as the Mortgagee may from time to time require, and the Mortgagor shall pay promptly, when due, any premiums on such insurance. Unless the Mortgagee otherwise agrees, all such insurance shall provide "all risk" coverage and shall be carried with companies acceptable to the Mortgagee and shall have attached thereto standard noncontributing mortgage clauses in favor of the Mortgagee, as well as standard waiver of subrogation endorsements. The Improvements and all such property, materials, supplies and equipment shall be insured to an amount equal to one hundred percent (100%) of the full insurable value thereof (but in no event less than actual replacement value without deduction for depreciation) at all times against loss or damage by fire, lightning, wind storm, explosion, riot and civil commotion, vandalism and malicious mischief, theft and such other risks as are usually included under what is now known as broad form extended coverage. The Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of a change of ownership or of occupancy of the Premises (without implying or creating any waiver of the right of approval thereof by the Mortgagee), immediate notice thereof by mail shall be delivered to all insurers. In the event of any loss covered by such insurance, the Mortgagor shall immediately notify the Mortgagee in writing, and the Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to the Mortgagee (which may, but need not, make proof of loss) and the Mortgagee is hereby authorized to adjust, collect, and compromise in its discretion all claims under all policies and the Mortgagor shall sign, upon demand by the Mortgagee, all receipts, vouchers, and releases required by such insurance companies.

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After deducting any costs of collection, the Mortgagee may use or apply the proceeds, at its sole option, (i) as a credit upon any portion of the Indebtedness Secured Hereby, or (ii) to repairing and restoring the Improvements, in which event the Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the Indebtedness Secured Hereby, or (iii) to deliver same to the Mortgagor. In the event such proceeds are applied to restoring the Improvements, such proceeds shall be made available, from time to time, upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of such restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as the Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the Indebtedness Secured Hereby, the Mortgagor shall furnish the Mortgagee with all plans and specifications for such rebuilding or restoration as the Mortgagee may require and approve. No payment made prior to the final completion of such work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of the Mortgagee shall be at least sufficient to pay for the cost of completion of such work, free and clear of any liens. No interest shall be allowed to the Mortgagor on any proceeds of insurance paid to and held by the Mortgagee. In the event of foreclosure of this Mortgage, or other transfer of title to the Premises in extinguishment of the Indebtedness Secured Hereby, all right, title, and interest of the Mortgagor, in and to any insurance policies then in force, and any claims or proceeds thereunder shall pass to the Mortgagee or any purchaser or grantee. In the event the Mortgagee, in its sole discretion, determines that any insurance provided by the Mortgagor does not comply with the insurance requirements set forth herein, then the Mortgagee may, at any time and at its sole discretion, procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in such amount and carried by such company as it may determine, the cost of which shall be repaid to the Mortgagee by the Mortgagor upon demand. The Mortgagor shall furnish to the Mortgagee, upon its request, and without cost to the Mortgagee, estimates or appraisals of insurable value, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the Improvements and all other property, materials, supplies and equipment described in the first sentence of this subparagraph.

b. **Liability.** The Mortgagor shall carry and maintain in full force at all times comprehensive public liability insurance as may be required from time to time by the Mortgagee in forms, amounts, and with companies satisfactory to the Mortgagee, and the Mortgagor will apply all insurance proceeds under such policies to the payment and discharge of the liabilities in respect of which such proceeds are collected. It is understood and agreed that the amounts of coverage shall be in amounts as appropriate or required by the Mortgagee and that the policy or policies shall name the Mortgagee as an additional insured party thereunder.

c. **Rental or Business Interruption Insurance.** If and so long as the Premises, or any portion thereof, are leased, the Mortgagor shall carry and maintain in full force at all times rental value insurance with respect to that portion of the Premises, if any, which is leased. If and so long as the Premises, or any portion thereof, are not leased, the Mortgagor shall carry and maintain in full force at all times business interruption insurance with respect to that portion of the Premises not leased. All such insurance required pursuant to this subparagraph shall be in such amounts, in form and with companies satisfactory to the Mortgagee.

d. **Flood Insurance.** The Mortgagor shall carry and maintain in full force at all times flood insurance in accordance with the provisions of the Flood Disaster Protection Act of 1973, as amended, if the area in which the Premises are situated is designated as "flood prone" or a "flood risk area," as defined in said act, in an amount satisfactory to the Mortgagee, and the Mortgagor shall comply with such other requirements of said act as are appropriate. Nothing herein to the contrary, unless previously disclosed in

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writing to the contrary by the Mortgagor to the Mortgagee, the Mortgagor covenants and warrants and acknowledges that the Mortgagee is relying upon the representation that no portion of the Premises is located in either a "flood prone" or a "flood risk area", as defined in said act.

e. **Other Insurance.** The Mortgagor shall procure and maintain insurance against such other perils and risks (exclusive of the perils and risks insured against under the above subparagraphs) as the Mortgagee shall request and, without any such request, shall procure and maintain statutory worker's compensation and occupational disease insurance, insurance against statutory structural work act liability, war risk coverage and boiler and machinery insurance. All such insurance shall be maintained under policies containing such provisions and coverages and being in such amounts as are approved by the Mortgagee, which policies shall name the Mortgagee as insured thereunder. The Mortgagor shall cause any architects and general contractors providing services to the Premises to procure professional liability insurance in such amounts and with such coverages as shall be satisfactory to the Mortgagee.

f. **Policies.** Unless the Mortgagee has otherwise agreed in writing, all original policies of insurance required hereunder to be maintained by the Mortgagor, together with evidence that the premium therefor covering a period of not less than one (1) year has been prepaid, shall be deposited with the Mortgagee and shall provide for, among other things, the Mortgagee being named as loss payee thereunder, payment of losses notwithstanding any acts or omissions of the Mortgagor and giving written notice to the Mortgagee of their expiration or cancellation at least thirty (30) days prior to such event occurring, and ten (10) days written notice to the Mortgagee prior to issuing any payment for any loss. Not less than thirty (30) days prior to the expiration of any such policy, the Mortgagor shall deposit an appropriate renewal or replacement policy and evidence of the premium payment therefor, as aforesaid. All policies of insurance required hereunder shall contain lender's loss payable endorsements in favor of the Mortgagee.

5. **Preservation, Restoration and Use of Premises.** The Mortgagor shall complete, within a reasonable time, any Improvements now or any time in the process of being constructed upon the Real Estate. No Improvement shall (except as required by applicable law) be altered, removed, or demolished nor shall any fixtures, appliances or other personal property subject to the lien hereof, on, in or about the Improvements be severed, removed, sold or mortgaged, without the prior written consent of the Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels, or articles of personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto. The Mortgagor shall promptly repair, restore, or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed; provided, however, that if the Mortgagee has elected to apply insurance loss proceeds toward payment of the Secured Indebtedness as provided for herein, the provisions of this sentence shall not apply. The Improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. The Mortgagor shall not permit, commit, or suffer any waste, impairment, or deterioration of the Premises or any part or improvement thereof, and shall keep and maintain the Premises and every part thereof in good repair and condition and effect such repairs as the Mortgagee may require, and, from time to time, make all needful and proper replacements and additions thereto so that the Improvements will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. The Mortgagor shall not suffer or permit the Premises to be abandoned or to be used for a purpose other than that for which the Premises are presently used, or represented to the Mortgagee to be used. The Mortgagor shall not subject the Premises to any use covenants or restrictions and shall not initiate, join in or consent to any change in any existing private restrictive covenant, zoning ordinance, or other public or private restriction limiting or defining the uses which may be made of or the kind of improvements which can be constructed or placed on the Premises or any

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part thereof, and shall promptly notify the Mortgagee of, and appear in and defend, at its sole cost and expense, any such proceedings seeking to effect any of the foregoing. Unless otherwise agreed by the Mortgagee in writing, the Mortgagor shall not subdivide the Real Estate and shall not subject the Premises to the provisions of the condominium laws of the state in which the Premises are situated. No improvement on the Real Estate or on land adjoining the Real Estate which is owned or controlled by the Mortgagor shall be constructed unless plans and specifications therefor have been first submitted to the Mortgagee and approved by it as entailing no prejudice to the Secured Indebtedness or the security therefor. The Mortgagor shall not cause or permit the person, firm or other entity responsible for the management of the Premises to be changed without the Mortgagee's prior written consent.

6. **Compliance with Governmental, Insurance and Other Requirements.** The Mortgagor shall comply with all statutes, ordinances, laws, orders, requirements, or decrees relating to the Premises or the use thereof of any federal, state, or municipal authority, and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance as required in this Mortgage and to preserve and extend any and all rights, consents, licenses, permits, privileges, franchises, and concessions (including, but not limited to, land and use development, landmark preservation, construction, access, water rights, use, noise, pollution, zoning variances, special exceptions and nonconforming uses), which are applicable to the Premises or which have been granted to or contracted for by the Mortgagor in connection with any existing or presently contemplated use of the Premises. In the event that any Improvements must be altered or removed to enable the Mortgagor to comply with the foregoing provisions of this paragraph, the Mortgagor shall, except in case of emergency, not commence any such alterations or removals without the Mortgagee's prior approval of the need therefor and the plans and specifications pertaining thereto. After such approval, the Mortgagor, at its sole cost and expense, shall immediately effect the alterations or removal so required and approved by the Mortgagee. The Mortgagor shall not by act or omission permit any building or other improvement on land not subject to the lien of this Mortgage to encroach onto or otherwise rely upon the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Mortgagor hereby assigns to the Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no Improvement shall encroach onto or otherwise rely upon any land not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by the Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void. The Mortgagor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the Premises.

7. **Stamp Tax.** If at any time the United States of America or any state, local or municipal government shall require Internal Revenue or other documentary stamps, hereon or on the Note, or shall otherwise impose a tax or impose an assessment on this Mortgage or on the Note or shall require payment of an interest equalization tax upon the Indebtedness Secured Hereby, then the principal of the Secured Indebtedness and the accrued interest thereon shall be and become due and payable at the election of the Mortgagee thirty (30) days after the mailing of notice of such election to the Mortgagor; provided, however, said election shall be unavailing and this Mortgage and the Note shall be and remain in effect if the Mortgagor lawfully may pay for such stamps or such tax, including interest and penalties thereon, to or on behalf of the Mortgagee and the Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

8. **Effect of Change in Laws Regarding Taxation.** In the event of the enactment, after the date of this Mortgage, of any law of the United States of America or of the state in which the Premises are located which deducts from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the

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Indebtedness Secured Hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if, in the opinion of counsel for the Mortgagee, (i) it might be unlawful to require the Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then, and in any such event, the Mortgagee may elect, by notice in writing given to the Mortgagor to declare all of the Indebtedness Secured Hereby to be and become due and payable within thirty (30) days from the giving of such notice. Notwithstanding the foregoing, the Mortgagor shall not be obligated to pay any portion of the Mortgagee's federal or state income tax.

9. **Statements of Mortgagor.** To induce the Mortgagee to consummate the transactions contemplated hereby, and in addition to any and all other representations and warranties set forth elsewhere in this Mortgage and in the other Loan Documents (whether or not specifically stated as a representation or warranty), all of which are incorporated in this paragraph by reference, the Mortgagor represents and warrants to the Mortgagee as follows:

a. The Mortgagor is empowered to perform all acts and things undertaken and done pursuant to the Loan Documents and have taken all action necessary to authorize the execution, delivery and performance of the Loan Documents, including the Note and this Mortgage. The Loan Documents, including the Note and this Mortgage, when executed and delivered, will be the legal, valid and binding obligations of the Mortgagor, enforceable against it in accordance with their respective terms.

b. There are no actions, suits or proceedings pending, or, to the best of the knowledge of the Mortgagor, threatened against or affecting the Mortgagor or the Premises at law or in equity or before or by any governmental authority or any foreign equivalent thereof, which have not been disclosed to the Mortgagee.

c. The Mortgagor is not in violation of and the execution and delivery of the Loan Documents and the performance by the Mortgagor of its obligations under the Loan Documents, does not and will not result in the Mortgagor being in violation of or in conflict with, or constitute a default under any term or provision of any note, mortgage, indenture, contract, agreement, instrument, judgment or law applicable to the Mortgagor, or result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever (other than those in favor of the Mortgagee) upon any of the assets of the Mortgagor pursuant to any such term or provision. The Mortgagor is not in default in any respect in the performance or fulfillment of any of their obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which any of its properties may be bound, and the Mortgagor does not know of any dispute regarding any such agreement or instrument.

d. Unless otherwise disclosed to Mortgagee in writing, all tax returns and reports of the Mortgagor required by law to be filed, have been duly filed, and all taxes, assessments, fees and other governmental charges (other than those presently payable without penalty or interest) upon each or upon any of its properties or assets, which are due and payable, have been paid. The charges, accruals and reserves on the books of the Mortgagor in respect of taxes are considered adequate by the Mortgagor, and the Mortgagor does not know of any assessment of a material nature against it.

e. The Mortgagor has complied with all applicable laws with respect to: (i) any restrictions, specifications or other requirements pertaining to products that the Mortgagor manufactures and sells or the services it performs, including without limitation all Environmental Laws, (ii) the conduct of their business and (iii) the use, maintenance, and operation of the real and personal properties owned or leased by them in the conduct of their business.

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f. No authorization, consent, license or approval of, or filing or registration with, or notification to, any governmental authority is required in connection with the execution, delivery or performance of the Loan Documents by the Mortgagor.

g. The Mortgagor has good and marketable title to the Premises, and the Mortgagor has good and marketable title to all of their respective assets, all subject to no security interest, encumbrance, lien or claim of any third party excepting only liens specifically itemized in writing and acknowledged by the Mortgagee, and there are no mortgages, trust deeds, financing statements or other evidence of any such security interest, encumbrance or lien or any claim of any third party on file in any public office.

h. The Mortgagor is solvent; no transaction under or contemplated by the Loan Documents renders or will render the Mortgagor insolvent; the Mortgagor retains sufficient capital for the business and transactions in which it engages or intends to engage; no obligation incurred hereby is beyond the ability of the Mortgagor to pay as such obligation matures; the Mortgagor is not contemplating either the filing of a petition under any state or federal bankruptcy or insolvency laws or the liquidating of all or a major portion of any of its property; and, the Mortgagor has no knowledge of any person contemplating the filing of any such petition against it.

i. There exists no actual or threatened termination, cancellation or limitation of, or any modification or change in, the proposed business relationship of the Mortgagor with any customer or group of customers whose purchases individually or in the aggregate are material to the current business of the Mortgagor, or in the proposed business relationship of the Mortgagor with any material supplier, and the Mortgagor reasonably anticipates that all such customers and suppliers will continue a business relationship with the Mortgagor on a basis no less favorable to the Mortgagor than that heretofore conducted; and there exists no other condition or state of facts or circumstances which would materially adversely affect the current operation of the business of the Mortgagor after the consummation of the transactions contemplated by the Loan Documents on a basis no less favorable to the Mortgagor than that in which it has heretofore been conducted by the Mortgagor.

j. No representation or warranty by or on behalf of the Mortgagor contained herein or in any Loan Document or certificate or other document furnished by or on behalf of the Mortgagor in connection with the transactions hereunder contains any untrue statement of material fact or omits to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made.

k. All of the representations and warranties set forth in the Loan Documents, including this Mortgage shall survive and continue to be true, complete and correct until all Indebtedness Secured Hereby is paid and satisfied in full.

10. **Negative Covenants.** The Mortgagor covenants that until the Indebtedness Secured Hereby is paid and satisfied in full, the Mortgagor will not, directly or indirectly, without the prior consent in writing of the Mortgagee:

a. Create, assume, incur or suffer or permit to exist any mortgage, pledge, encumbrance, security interest, assignment, lien or charge of any kind or character upon the Premises other than the lien created hereby.



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b. Make any loans, or advances, whether secured or unsecured, to, or make any guaranty of, or otherwise become obligated on behalf of any other person for, any such loans or advances to any person (except for guaranties in favor of the Mortgagee).

c. Except in the ordinary course of business, dispose by sale, assignment, lease, sale and leaseback or otherwise any of its properties or assets (other than obsolete or worn out property or equipment not used or useful in its business), whether now owned or hereafter acquired, except that, so long as no Event of Default shall have occurred and be continuing, the Mortgagor may sell its inventory in the ordinary course of business as conducted by it on the date of the Loan Documents, for a reasonably equivalent value.

d. Transfer, directly or indirectly, any of its assets or pay out, directly or indirectly, money or property or provide services or do any other act, or fail to do any act, which would have the effect of materially and adversely affecting its ability to perform its obligations hereunder.

e. Make any material change in or transfer of its ownership or financial structure or financial condition; make any material change in its management; change its name; enter into any merger, consolidation, dissolution, liquidation, reorganization or recapitalization, or reclassification of its stock, or issue, redeem, sell, transfer, purchase or refund any of its stock or membership interests or issue any warrant, right or option pertaining thereto or other security convertible into any of the foregoing; transfer or assign any beneficial interest; or, transfer any partnership interest.

f. Engage in business activities or operations substantially different from and unrelated to its business activities on the date of the Loan Documents.

g. Create, incur or assume any debt other than (i) the loan evidenced by the Note, (ii) debt disclosed in financial statements provided to the Mortgagee on or before the date hereof, and (iii) debt (other than debt for money borrowed) incurred in the ordinary course of business and which is not prohibited by the other provisions of the Loan Documents.

h. Furnish the Mortgagee any certificate or other document that will contain any untrue statement of material fact or that will omit to state a material fact necessary to make it not misleading in light of the circumstances under which it was furnished.

i. Transfer the Premises, or any interest therein, in whole or in part.

11. **Affirmative Covenants.** The Mortgagor covenants that until the Indebtedness Secured Hereby is paid and satisfied in full, and unless otherwise agreed in writing signed by the Mortgagor, or unless otherwise specifically provided elsewhere in the Loan Documents, the Mortgagor shall:

a. Furnish and deliver to the Mortgagee:

i. such information regarding its assets and financial condition as Mortgagee may request, including, but not limited to: (a) on or before thirty (30) days after the end of its fiscal quarter (or calendar year, if applicable), then current and accurate financial statements for the preceding quarter in a format acceptable to the Mortgagee; and (b) within thirty (30) days after they shall be due, photocopies of all federal income tax returns required to be filed, with all schedules attached, and certified by Mortgagor to be complete and accurate photocopies of all documents actually filed.

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- ii. immediately upon receipt thereof, copies of any management letters, interim and supplemental reports submitted to the Mortgagor by independent accountants in connection with any review of the books of the Premises made by such accountants;
- iii. upon request by the Mortgagee, evidence satisfactory to the Mortgagee of the insurance coverages required under the Loan Documents and the Mortgage;
- iv. with reasonable promptness, such other information materially concerning the business, properties, conditions or operations, financial or otherwise, of the Mortgagor, and the Premises, or compliance by the Mortgagor with any of the covenants in the Loan Documents, as the Mortgagee may from time to time reasonably request;
- v. immediately after the occurrence thereof, notice of any Event of Default or of any fact, condition or event that with the giving of notice or passage of time or both, could become an Event of Default, or of the failure by the Mortgagor to observe any of its respective undertakings hereunder;
- vi. immediately after the occurrence thereof, notice of any default under any debt or obligation owed to any third party, or under any indenture, mortgage or other agreement relating thereto under which the Mortgagor is obligated;
- vii. immediately after knowledge thereof, notice of any litigation or proceeding in which the Mortgagor is a party if an adverse decision therein would require the Mortgagor to pay over more than \$5,000.00 or deliver assets the value of which exceeds such sum (whether or not the claim is considered to be covered by insurance);
- viii. immediately after receipt of notice thereof, notice of the institution of any other suit or similar adversarial proceeding involving the Mortgagor;
- ix. immediately after the occurrence thereof, notice of any other matter which has resulted in, or might result in, a materially adverse change in the business, properties, or the conditions or operations, financial or otherwise, of the Mortgagor, and
- b. Promptly pay and discharge when due all taxes, assessments and other governmental charges imposed upon it, or upon its income, profits or property, and all claims for labor, material or supplies which, if unpaid, might by law become a lien or charge upon its property; provided, however, that it shall not be required to pay any tax, assessment, charge or claim if so permitted by law, so long as the validity thereof shall be contested in good faith by appropriate proceedings and adequate reserves therefor in accordance with GAAP (or other accounting method acceptable to Mortgagee) shall be maintained on its books.
- c. Maintain its equipment, real estate and other properties, including the Premises, in good condition and repair (normal wear and tear excepted), pay and discharge or cause to be paid and discharged when due, the costs of repairs to or maintenance of the same, and pay or cause to be paid all rental or mortgage payments due on the same.
- d. Maintain its existence, maintain all rights, privileges, franchises, permits and approvals necessary or desirable for the continuation of its business, and comply with the requirements of all material

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agreements to which it is a party or by which any of its assets is bound, and all applicable laws, including Environmental Laws, and orders of any governmental authority, noncompliance with which would materially adversely affect its business, properties, condition, financial or otherwise, or ability to repay the Indebtedness Secured Hereby.

e. Keep adequate records and books of account, in which complete entries will be made in accordance with its past practices and consistent with sound business practice, reflecting all of its financial transactions, and collect its accounts only in the ordinary course of business.

f. Permit any of the Mortgagee's representatives to examine and inspect the Premises, all other of its properties and operations, and all books of account, records, reports and other papers and to make copies and extracts therefrom, and to discuss its affairs, finances and accounts with its employees or its independent public accountants (and by this provision the Mortgagor authorizes said accountants to discuss the finances and affairs of the Mortgagor), all at such reasonable times and as often as may be reasonably requested. The Mortgagor shall pay all of the Mortgagee's reasonable expenses incurred in connection with such examinations and inspections.

g. Pay when due all of its debt except if (with respect to debt other than the Indebtedness Secured Hereby) it is in good faith contesting by appropriate proceedings such amounts due and has maintained adequate reserves for such liability in accordance with GAAP (or other accounting method acceptable to Mortgagee).

h. At the Mortgagee's request execute and/or deliver to the Mortgagee, at any time or times hereafter, all supplemental documentation that the Mortgagee may reasonably request, in form and substance acceptable to the Mortgagee, and pay the costs of any recording or filing of the same.

i. Mortgagor shall maintain Mortgagee as its sole collection, disbursement, savings, escrow and borrowing financial institution.

12. **Eminent Domain.** The Mortgagee is hereby authorized to collect and receive from any governmental or other local authority any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Premises by any such governmental or other lawful authority for the taking, by condemnation or eminent domain (or by threat of condemnation or by settlement of said threat of condemnation), hereby assigned from the Mortgagor to the Mortgagee, as aforesaid, and the Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. The Mortgagor shall give the Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of the Premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to the Mortgagee copies of any and all papers served in connection with any such proceedings. The Mortgagor shall make, execute and deliver to the Mortgagee at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and instruments deemed necessary by the Mortgagee for the purpose of validly and sufficiently assigning to the Mortgagee all awards and other compensation heretofore and hereafter to be made to the Mortgagor for any taking, either permanent or temporary, under any such proceeding. The proceeds of all such awards shall be paid to the Mortgagee and may be applied by the Mortgagee, at its option, after the payment of all of its expenses in connection with such proceedings, including costs and attorneys' fees, to the reduction of the Indebtedness Secured Hereby or to restoring the Improvements, in which event the same shall be paid out in the same manner as is

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provided, with respect to insurance proceeds, in the appropriate subparagraph above. No interest shall be allowed to the Mortgagor on any condemnation award paid to or held by the Mortgagee.

13. **Assignment of Rents and Leases.** All rights, powers, entitlements and remedies conferred upon Mortgagee by Mortgagor in this paragraph shall apply regardless and independent of whether Mortgagee has commercial proceedings to foreclose this Mortgage. Pursuant to the assignment made by the Mortgagor in the granting clauses of this Mortgage, the Mortgagee is entitled to receive all rents, issues, proceeds, deposits and profits accruing and to accrue from the Premises pursuant to any leases with respect thereto, whether heretofore or hereafter entered into (hereinafter referred to as a "lease" or the "leases"). The Mortgagor hereby grants and confers upon the Mortgagee the right, power and authority to collect all such rents, issues, proceeds, deposits and profits and the Mortgagor appoints the Mortgagee its true and lawful agent and attorney-in-fact, at the option of the Mortgagee, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue in the name of the Mortgagor, for all such rents, issues, profits, deposits and proceeds accrued but unpaid and in arrears at the date of an event of default hereunder as well as all such rents, issues, profits, deposits and proceeds thereafter accruing and becoming payable during the continuance of any such event of default, and to apply the same to the Indebtedness Secured Hereby; provided, however, that the Mortgagor shall have the right to collect all such rents, issues, profits, deposits and proceeds (but not in advance unless the written approval of the Mortgagee has first been obtained), and to retain and enjoy the same, so long as an Event of Default shall not have occurred or been declared hereunder. Upon request of the Mortgagee, the Mortgagor shall execute and deliver to the Mortgagee the following: (i) a specific assignment, in recordable form, of any lease, sublease, license, concession or other agreement now or hereafter affecting all or any portion of the Premises to furnish evidence of the assignment made by this Mortgage; and (ii) such other instrument(s) as the Mortgagee may deem necessary, convenient or appropriate in connection with the payment and delivery directly to the Mortgagee of all of the rents, issues, profits, deposits and proceeds accruing and to accrue under any of the leases of all or any portion of the Premises. The Mortgagor acknowledges that to facilitate the performance of its obligations hereunder and under the Note and the Loan Documents, the assignment of the rents, issues, profits, deposits and proceeds and of the Mortgagor's right, title and interest in and to such leases, is intended to be an absolute assignment from the Mortgagor to the Mortgagee and not merely the granting of a security interest. The Mortgagee may require the Mortgagor to execute and deliver a separate document, in recordable form, to evidence this absolute assignment on the terms contained herein, which document shall set forth such other terms and conditions as the Mortgagee may deem necessary or appropriate.

Upon issuance of a deed or deeds pursuant to a foreclosure of this Mortgage, all right, title and interest of the Mortgagor in and to the Leases shall, by virtue of this Assignment, thereupon vest and then become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by the Mortgagor. The Mortgagor hereby irrevocably appoints the Mortgagee and its successors and assigns as its agent and attorney in fact to execute all instruments of assignment for further assurance in favor of such grantee or grantees and such deed or deeds, as may be necessary or desirable for that purpose.

In the event any tenant under any of the leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of such tenant's lease, the Mortgagor covenants and agrees that if any of the leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of the Mortgagee and any check in payment of damages for termination or rejection of any such lease will be made payable both to the Mortgagor and the Mortgagee. The Mortgagor hereby assigns any such payment to the Mortgagee and further covenants and agrees that upon the request of the Mortgagee, it will duly endorse to the order of the Mortgagee any such check, the proceeds of which will be applied to whatever portion of the Indebtedness Secured Hereby the Mortgagee may elect.

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The Mortgagor represents and warrants that: (i) the Mortgagor is the sole owner of the entire landlord interest in each of the leases, (ii) each of the leases is legal, valid and enforceable, is in full force and effect and has not been altered, modified or amended in any manner whatsoever, (iii) each of the tenants respectively named in each of the leases is not in default under any of the terms, covenants or conditions thereof, and, with respect to each of the leases, no state of facts exist which, with the giving of notice or lapse of time or both, would constitute a default thereunder, (iv) no rent reserved in any of the leases has been assigned or anticipated and the Mortgagor has not made any prior assignment, pledge or hypothecation of its interest in any of the leases and (v) no such rent for any period subsequent to the date of this Assignment has been paid or collected more than thirty (30) days in advance of the time when the same became due under the terms of each of the leases.

The Mortgagor covenants and agrees with the Mortgagee that Mortgagor shall, without cost, liability or expense to the Mortgagee: (i) at all times promptly and faithfully abide by, discharge and perform each and every covenant, condition and agreement in each of the leases, on the part of the landlord thereunder to be kept and performed, (ii) enforce or secure the performance of all of the covenants, conditions and agreements of each of the leases on the part of each of the tenants thereunder to be kept and performed, (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any of the leases or the obligations, duties or liabilities of landlord or of any of the tenants thereunder, and pay all costs and expenses of the Mortgagee, including attorneys' fees in any such action or proceeding in which the Mortgagee may appear, (iv) transfer and assign to the Mortgagee upon request of the Mortgagee, any leases of all or any part of the Premises heretofore or hereafter entered into, and make, execute and deliver to the Mortgagee upon demand, any instruments required to effect such assignment, (v) furnish to the Mortgagee, upon request, a written statement containing the name of each and every tenant under each and every Lease and the terms of each and every Lease, including the spaces occupied, the rental payable and the security deposits, if any, paid thereunder, (vi) exercise within five (5) days of any demand thereof by the Mortgagee any right to request from a tenant under any of the leases a certificate with respect to the status thereof, (vii) furnish the Mortgagee immediately with copies of any notices of default which the Mortgagor may at any time forward to any tenant of the Premises, or any portion thereof, (viii) pay immediately upon demand all sums expended by the Mortgagee under authority hereof, together with interest thereon at the Default Interest Rate provided in the Note and (ix) furnish insurance in accordance with the provisions of the Mortgage.

The Mortgagor covenants and agrees with the Mortgagee that Mortgagor shall not: (i) modify, extend, terminate or otherwise alter the terms of any of the leases or any of the guarantees of the leases, (ii) from and after the date hereof execute any lease of all or any portion of the Premises, without first obtaining the Mortgagee's written consent, which consent may be withheld in the Mortgagee's sole discretion, (iii) in any manner impair the value of the Premises, (iv) permit any of the leases to become subordinate to any lien other than a lien created by this Assignment, the Mortgage and the Loan Documents, (v) execute an assignment, hypothecation or pledge of any rents of the Premises or of any of the leases of all or any part of the Premises, except as security for the Indebtedness Secured Hereby, and (vi) accept any prepayment or forgive or refuse to collect any payment of any installment of rent under any of the leases or permit or consent to any assignment, subletting or other transfer, whether absolutely or for collateral purposes, of any of the leases or all or any portion of the Premises demised thereunder by any tenant under any of the leases.

So long as there shall exist no Event of Default (as hereinafter defined), the Mortgagor shall have the right to collect at any time, but not more than thirty (30) days prior to the date provided for the payment thereof, all rents, security deposits, income and profits arising under each and every Lease and to retain, use and enjoy the same.

Upon the occurrence of an Event of Default, and without regard to the adequacy of any other security therefor or whether or not the entire amount of the Indebtedness Secured Hereby is declared to be immediately due, forthwith, upon demand of the Mortgagee, the Mortgagor shall surrender to the Mortgagee and the Mortgagee shall be entitled to take actual possession of the Premises, or any part thereof, personally or by its agents or attorneys, and

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the Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts of the Premises, and together with all documents, books, records, papers and accounts of the Mortgagor or the then manager of the Premises relating thereto, and may exclude the Mortgagor, its agents or servants, wholly therefrom and may, as attorney in fact or agent of the Mortgagor, or in its own name as the Mortgagee and under the powers herein granted: (i) operate the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in the Mortgagee's sole discretion or in the sole discretion of its successors or assigns may deem proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every right, privilege and power herein granted at any and all times hereafter, without notice to the Mortgagor, (ii) cancel or terminate any of the leases or subleases permitted pursuant thereto and approved by the Mortgagee, for any cause or on any ground which would entitle the Mortgagor to cancel the same, (iii) elect to disaffirm any other leases or any sublease made subsequent to the Mortgage or subordinated to the lien thereof, (iv) extend or modify any of the then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to tenants to extend or renew terms to expire, beyond the maturity date of the Indebtedness Secured Hereby and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and shall also be binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding, any redemption from sale, discharge of the Secured Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the Premises as to the Mortgagee may seem judicious, (vi) insure and reinsure the Premises and all risks incidental to the Mortgagee's possession, operation and management thereof and (vii) receive all avails, rents, issues and profits.

Any avails, rents, issues and profits of the Premises received by the Mortgagee pursuant hereto shall be applied in payment of or on account of the following, in such order as the Mortgagee may determine: (i) to the payment of the operating expenses of the Premises, including reasonable compensation to the Mortgagee or its agent or agents, attorneys' fees and lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases and the payment of premiums on insurance hereinabove authorized, (ii) to the payment of taxes, special assessments, water taxes and utility charges now due or which may hereafter become due on the Premises, or which may become a lien prior to the lien of the Mortgage, (iii) to the payment of all repairs, decorating, renewals, replacements, alternations, additions, betterments, and improvements of the Premises, including the cost from time to time of installing or replacing personal property in such condition as will, in the judgment of the Mortgagee, make the Premises readily rentable, (iv) to the payment of any Indebtedness Secured Hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any surplus of remaining funds, to the Mortgagor, the Mortgagor's successors and assigns, as their rights may appear.

The Mortgagee shall not be liable for any loss sustained by the Mortgagor resulting from the Mortgagee's failure to let the Premises after the occurrence of an Event of Default or from any other act or omission of the Mortgagee in managing the Premises after the occurrence of an Event of Default. The Mortgagee shall not be obligated to perform or discharge, nor does the Mortgagee hereby undertake to perform or discharge, any obligation, duty or liability under any of the leases or under or by reason of this Assignment, and the Mortgagor shall and does hereby agree to indemnify the Mortgagee for, and to hold the Mortgagee harmless from, any and all liability, loss or damage which may or might be incurred under any of the leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against the Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any of the leases. Should the Mortgagee incur any such liability under any of the leases, or under or by reason of this assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and

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attorneys' fees, shall be secured hereby and the Mortgagor shall reimburse the Mortgagee therefor with interest at the Default Interest Rate provided in the Note immediately upon demand. This assignment shall not operate to place responsibility for the control, care, management or repair of the Premises upon the Mortgagee, nor for the carrying out of any of the terms and conditions of any of the leases, nor shall it operate to make the Mortgagee responsible or liable for any waste committed on the property by any of the tenants or any other person or for any dangerous or defective conditions of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any lessee, licensee, employee or stranger. Nothing herein contained shall be construed as constituting the Mortgagee a trustee or a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by the Mortgagee pursuant to proceedings instituted to foreclose this Mortgage.

A demand on any tenant by the Mortgagee for the payment of the rent on the occurrence of an Event of Default shall be sufficient warrant to such tenant to make future payment of rent to the Mortgagee without the necessity of further consent by the Mortgagor. The Mortgagor, on its own behalf, hereby authorizes and directs each tenant named in each of the leases, and any other or future tenant or occupant of the Premises, upon receipt from the Mortgagee of written notice to the effect that the Mortgagee is then the holder of the Note and the Mortgage and that an Event of Default exists thereunder or under this assignment, to pay over to the Mortgagee all rents, security deposits, and other sums, if any, arising or accruing under such Lease and to continue to do so until otherwise notified by the Mortgagee.

14. **Inspection of Premises.** The Mortgagor shall permit the Mortgagee and its agents to inspect the Premises at all times on written notice, and access thereto shall be permitted for such purpose. The Mortgagor shall at all times deliver to the Mortgagee duplicate originals or certified copies of all leases, agreements and documents relating to the Premises. The Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and upon written demand therefor shall allow the Mortgagee (at the Mortgagor's cost) to examine and copy such books and records and all supporting vouchers any time and from time to time, on request, at its offices, or at such other location as may be mutually agreed upon.

15. **Future Advances.** The Mortgagee may, at its option upon request of the Mortgagor, at any time before full payment of the Secured Indebtedness, make further advances to the Mortgagor, and the same, with interest, shall be on a parity with, and not subordinate to, the Indebtedness Secured Hereby and such advances shall be secured hereby in accordance with all covenants and agreements herein contained, provided, that the amount of principal secured hereby and remaining unpaid shall not, including the amount of such advances, exceed ten times the original principal sum of the Indebtedness Secured Hereby, and provided, that if the Mortgagee shall make further advances as aforesaid, the Mortgagor shall repay all such advances in accordance with the note or notes, or agreement and agreements, evidencing the same, which the Mortgagor shall execute and deliver to the Mortgagee and which shall be payable no later than the maturity of this Mortgage and shall include such other terms as the Mortgagee shall require.

16. **Partial Invalidity.** The Mortgagor and the Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal statute, law, ordinance, rule, regulation or decree, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage or the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Mortgagor and the Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, or therein, as the case may be, and that the rights, obligations and interest of the

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Mortgagor and the Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. If under the circumstances, interest in excess of the limit allowable by law shall have been paid by the Mortgagor in connection with the Indebtedness Secured Hereby, such excess shall be applied by the Mortgagee to the unpaid principal balance of the Note in such manner as the Mortgagee may in its sole discretion determine, or refunded to the Mortgagor in the manner to be determined by the Mortgagee and if any such excess interest has accrued, the Mortgagee shall eliminate such excess interest so that under no circumstances shall interest on the Indebtedness Secured Hereby exceed the maximum rate allowed by the law.

17. **Subrogation.** In the event the proceeds of the Indebtedness Secured Hereby, or any part thereof, or any other amount paid out or advanced by the Mortgagee shall be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then the Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

18. **The Mortgagee's Right to Deal with Transferee.** In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, the Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the Indebtedness Secured Hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with the Mortgagor, without in any way releasing, or discharging the Mortgagor from its covenants and undertakings hereunder, and without the Mortgagee waiving its rights to accelerate the Note.

19. **Security Agreement.**

a. **Mortgage Deemed Security Agreement.** Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of the Mortgage or the Agreement and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning 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 the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions, covenants and warranties shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto: (i) Mortgagor (being the Debtor as that term is used in the 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 benefitting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the Agreement; (ii) the Collateral is to be used by Mortgagor solely for business purposes; (iii) the Collateral will be kept at the Premises, and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code) (The Collateral may be affixed to the Land but will not be affixed to any other real estate); (iv) the only persons having any interest in the Premises are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted by the Agreement; and, no Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any,



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

b. **Remedies Upon Default.** Upon Default hereunder, Mortgagee 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 may, so far as Mortgagor can give authority therefor, with or without judicial process, 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 Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least twenty (20) days notice of 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 twenty (20) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Mortgagee so elects, the Premises 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 attorney's fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

c. **Code Applies.** The terms and provisions contained in this Article shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

d. **Leases.** 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.

e. **Execution of Documents.** The Mortgagor, within ten (10) days after request, shall execute, acknowledge and deliver to the Mortgagee any security agreement, financing statement, or other similar security instrument, in form satisfactory to the Mortgagee, covering all property of any kind whatsoever

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owned by the Mortgagor which, in the sole opinion of the Mortgagee, is essential to the operation of the Premises and concerning which there may be any doubt as to whether the title to same has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the State of Illinois and shall further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement, or certificate or other documents as the Mortgagee may request in order to perfect, preserve, maintain, continue, and extend such security interest. The Mortgagor further agrees to pay to the Mortgagee, on demand, all costs and expenses (including attorney's fees) incurred by the Mortgagee in connection with the preparation, execution, recording, filing, and refileing of any such document.

20. **Certain Acts of the Mortgagee.** The Mortgagee, at its sole option, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, (i) may release any part of the Premises or any person liable for any Indebtedness Secured Hereby, without in any way affecting the liability under the Note, this Mortgage, the other Loan Documents given as additional security for the Indebtedness Secured Hereby, and without in any way affecting the priority of the lien of this Mortgage, (ii) may agree with any person obligated on the Secured Indebtedness to extend the time for payment of any part or all of the Indebtedness Secured Hereby, (iii) may accept a renewal note or notes therefor, (iv) may take or release other or additional security for the Secured Indebtedness, (v) may consent to any plat, map or plan of the Premises, (vi) may consent to the granting of any easement, (vii) may join in any extension or subordination agreement, (viii) may agree in writing with the Mortgagor to modify the rate of interest or period of amortization of the Note or change the time of payment or the amount of the monthly installments payable thereunder, or (ix) may waive or fail to exercise any right, power or remedy granted by law, this Mortgage, the Note, or other Loan Documents given as security for the Secured Indebtedness. Any such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person personally obligated for the Indebtedness Secured Hereby, but shall, as applicable, extend the lien hereof as against the title of all persons having any interest in the Premises which interest is subject to this Mortgage. Nothing herein to the contrary, the Indebtedness Secured hereby may not be assumed by any person or entity.

21. **Expenses Incurred by the Mortgagee.** Any costs, damages, expenses or fees, including attorneys' fees, incurred by the Mortgagee in connection with (i) this Mortgage, the other Loan Documents or the Premises, (ii) sustaining the lien of this Mortgage or its priority, (iii) obtaining any abstract, title opinion, title report, title searches, commitment for title insurance or title insurance policy, (iv) protecting the Premises, (v) protecting or enforcing any of the Mortgagee's rights hereunder, (vi) recovering any Indebtedness Secured Hereby, (vii) any litigation or proceedings (including, but not limited to, bankruptcy, probate and administrative law proceedings) affecting this Mortgage, the Note, or the Premises, or (viii) preparing for the commencement, defense or participation in any threatened litigation or proceedings as aforesaid, or as otherwise enumerated in this Mortgage, shall be so much additional Indebtedness Secured Hereby and shall be immediately due and payable by the Mortgagor, without notice, with interest thereon at the Default Interest Rate specified in the Note.

22. **Default and Remedies.**

a. **Events of Default.** It shall constitute an Event of Default under this Mortgage when and (i) if any event of default occurs under the Note, under any of the Loan Documents or if a default occurs in the payment of any of the Indebtedness Secured Hereby, or (ii) if any default occurs in the due and punctual performance of or compliance with any term, requirement, covenant or condition in this Mortgage, or in any of the Loan Documents, or (iii) if any of the representations or warranties of the Mortgagor made herein or in any of the Loan Documents shall prove to be false in any material respect when made, or (iv) if the Mortgagor is voluntarily adjudicated a bankrupt or insolvent, seeks or consents to the appointment of a receiver or trustee or custodian for itself or for all or any part of its property, files a petition seeking relief

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under or files an answer admitting the material allegations of a petition filed against it under any bankruptcy or similar laws of the United States or any state, makes a general assignment for the benefit of creditors, takes any action for the purpose of effecting any of the foregoing, is generally not paying its debts as such debts become due, or suffers to exist any Event of Default under any lease of all or a portion of the Premises, or (v) if any order, judgment or decree is entered upon an application of a creditor of the Mortgagor, a court of competent jurisdiction appointing a receiver or trustee or custodian of all or a substantial part of the assets of the Mortgagor, or approving any petition filed against the Mortgagor seeking relief under any bankruptcy or other similar laws of the United States or any state and remains in force, undischarged or unstayed for a period of thirty (30) days, or (vi) a default occurs under the terms, covenants and conditions of any document(s) evidencing any other loans heretofore, now or hereafter made or existing by the Mortgagee to the Mortgagor.

b. **Remedies.** In addition to any other remedy herein specified, if any Event of Default under this Mortgage shall occur, the Mortgagee may, at its option, (i) declare the entire Indebtedness Secured Hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by the Mortgagor) whereupon the same shall become immediately due and payable, (ii) institute proceedings for the complete foreclosure of this Mortgage, (iii) institute proceedings to collect any delinquent installment or installments of the Indebtedness Secured Hereby without accelerating the due date of the entire Secured Indebtedness by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of such indebtedness only and any sale of the Premises under such a foreclosure proceedings shall be subject to and shall not affect the unmatured part of the Secured Indebtedness and this Mortgage shall be and continue as a lien on the Premises securing the unmatured Secured Indebtedness, (iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, this Mortgage, in any other Loan Document, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect, (v) with respect to any part of the Premises constituting property of the type in respect of which a security interest granted thereon is governed by the Uniform Commercial Code, exercise all rights, options and remedies of secured parties under the Uniform Commercial Code, including the right to possession of any such property or any part thereof, and the right to enter, without legal process, any premises where any such property may be found, it being agreed and understood by the Mortgagor that any requirement of the Uniform Commercial Code for reasonable notification shall be sent by mailing written notice to the Mortgagor at its address set forth below at least ten (10) days prior to sale or other event for which such notice is required, (vi) enforce this Mortgage in any other manner permitted under the laws of the state in which the Premises are situated, or (vii) pursue any and/or all remedies available under any of the Loan Documents.

c. **Expense of Litigation.** In any suit to foreclose the lien of this Mortgage or enforce any other remedy of the Mortgagee under this Mortgage or the Note there shall be allowed and included, as additional Secured Indebtedness in the judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee, including but not limited to, attorneys' fees, court costs, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title commitments, title reports, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Premises.

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d. **Mortgagee's Right of Possession in the Case of Default.** In any case in which, under the provisions of this Mortgage, the Mortgagee has a right to institute foreclosure proceedings whether or not the entire principal of the Indebtedness Secured Hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of the Mortgagee, the Mortgagor shall surrender to the Mortgagee and the Mortgagee shall be entitled to take actual possession of the Premises, or any part thereof, personally or by its agent or attorneys, as for condition broken and the Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of the Mortgagor or the then manager of the Premises relating thereto, and may exclude the Mortgagor, its agents, or servants, wholly therefrom and may, as attorney-in-fact or agent of the Mortgagor or in its own name as the Mortgagee and under the powers herein granted: (i) hold, operate, manage, and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to the Mortgagor, (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same, (iii) elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, (iv) extend or modify any then existing Leases and make new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Secured Indebtedness and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained herein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Secured Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the Premises as to the Mortgagee may seem judicious, (vi) insure and reinsure the Premises and all risks incidental to the Mortgagee's possession, operation, and management thereof, and (vii) receive all avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter without notice to the Mortgagor.

The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases. The Mortgagor shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said Leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases. Should the Mortgagee incur any such liability, loss or damage, under said Leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees and expenses, shall be additional Indebtedness Secured Hereby, and the Mortgagor shall reimburse the Mortgagee therefor immediately upon demand.

e. **Application of Rental Proceeds.** Any avails, rents, issues and profits of the Premises received by the Mortgagee after having possession of the Premises, or pursuant to any assignment thereof to the Mortgagee under the provisions of this Mortgage or of any separate assignment of rents or assignment of

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Leases, shall be applied in payment of or on account of the following, in such order as the Mortgagee (or in case of a receivership, as the court) may determine: (i) to the payment of the operating expenses of the Premises, including reasonable compensation to the Mortgagee or the receiver and its agent or agents, if management of the Premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring lessees and entering into Leases and the payment of premiums in insurance hereinabove authorized, (ii) to the payment of taxes, special assessments, and water taxes and other charges now due or which may hereafter become due on the Premises, or which may become a lien prior to the lien of this Mortgage, (iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises, including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the Premises, and of placing said priority in such condition as will, in the sole judgment of the Mortgagee or receiver, make the Premises readily rentable, (iv) to the payment of any Indebtedness Secured Hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any surplus or remaining funds, to the Mortgagor, its successors, or assigns, as their rights may appear.

f. **Appointment of Receiver.** Upon or at any time after the filing of any action to foreclose this Mortgage, the Mortgagor consents, upon application by the Mortgagee, to the appointment of a receiver of the Premises. Such appointment may be made either before or after sale without notice and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness Secured Hereby and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver shall have the power to take possession, control, and care of the Premises and to collect the rents, issues, and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by the Mortgagor), as well as during any further times when the Mortgagor or, its heirs, administrators, executors, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the Premises, during the whole of said period. To the extent permitted by law, said receiver may be authorized by the court to extend or modify any then existing Leases to make new Leases, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Secured Indebtedness, it being understood and agreed that any such Leases and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor, and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Secured Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

g. **Sale of Premises.** All or any portion of the Premises or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to this Mortgage shall be sold in one parcel as an entirety, or in such parcels and in such manner or order as the Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by the laws of the state in which the Premises are situated. At any such sale, the Mortgagee may bid for and acquire, as purchaser, the Premises or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of the Mortgagee's bid.

h. **Application of Proceeds From Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: (i) on account of all costs

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and expenses incident to the foreclosure proceedings, (ii) all other items which, under the terms hereof, constitute Secured Indebtedness additional to that evidenced by the Note, with interest thereon, at the Default Interest Rate specified in the Note, (iii) all principal and interest remaining unpaid on the Note in such order as the Mortgagee may, in its sole discretion, determine and (iv) any overplus to the Mortgagor, its successors or assigns, as their rights may appear.

i. **Application of Deposits Held by the Mortgagee.** With respect to any deposits made with or held by the Mortgagee or any depository pursuant to any of the provisions of this Mortgage, if an Event of Default hereunder shall occur, the Mortgagee may, at its option, without being required to do so, apply any monies or securities which constitute such deposits on any of the Mortgagor's, obligations herein or in the Note contained, in such order and manner as the Mortgagee may elect. When the Indebtedness Secured Hereby has been fully paid, any remaining deposits shall be paid to the Mortgagor, or to the then owner or owners of the Premises. Such deposits are hereby pledged as additional security for the prompt payment of the Indebtedness Secured Hereby and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

j. **Deficiency Decree.** If, at any foreclosure proceeding, the Premises shall be sold for a sum less than the total amount of the indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against the Mortgagor and against the property of the Mortgagor for the amount of such deficiency and the Mortgagor does hereby irrevocably consent to the appointment of a receiver for the Premises and the property of the Mortgagor and of the avails, rents, issues and profits thereof after such sale until such deficiency decree is satisfied in full.

k. **Waiver of Defenses.** No action for the enforcement of the lien of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action of law upon the Note.

l. **Partial Payments.** Acceptance by the Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the Mortgagee's right to exercise its option to declare the whole of the principal of the Indebtedness Secured Hereby then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of the Mortgagee without its express consent except and to the extent otherwise provided by law.

m. **Tender of Payment After Acceleration.** Upon the occurrence of an Event of Default hereunder and following the acceleration of maturity as aforesaid, a tender of payment of the amount necessary to satisfy the entire Indebtedness Secured Hereby made at any time prior to foreclosure sale by the Mortgagor, its successors or assigns or by anyone in behalf of the Mortgagor, its successors or assigns shall constitute an evasion of the prepayment privilege and shall be deemed to be a voluntary prepayment hereunder and such prepayment, to the extent permitted by law, will therefore include a premium required under the prepayment privilege, if any, contained in the Note. In case, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire Secured Indebtedness due hereunder, the Mortgagee shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be so much additional Indebtedness Secured Hereby, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses, and charges shall have been paid in full.

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n. **Delays and Omissions.** No delay in the exercise of or failure to exercise any remedy or right accruing on the occurrence of any Event of Default hereunder shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or of a different nature.

o. **Rescission of Election.** Acceleration of maturity, once made by the Mortgagee, may at the option of the Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at the Mortgagee's option, be discontinued or dismissed, whereupon, in either of such events, the Mortgagor and the Mortgagee shall be restored to their former positions, and the rights, remedies and power of the Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

p. **Remedies Cumulative and Concurrent.** The rights and remedies of the Mortgagee as provided in the Note, this Mortgage and the other Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against the Mortgagor, or the Premises, or any one or more of them, at the sole discretion of the Mortgagee, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by the laws of the state in which the Premises are situated. If the Mortgagee elects to proceed under one right or remedy under this Mortgage, the Note or the other Loan Documents, the Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Mortgage, the Note or the other Loan Documents.

q. **The Mortgagee's Use of Counsel.** The Mortgagee may employ counsel for advice or other legal service at the Mortgagee's discretion in connection with any dispute as to the obligations of the Mortgagor hereunder, or as to the title of the Mortgagee to the Premises pursuant to this Mortgage, or in any litigation to which the Mortgagee may be a party which may affect the title to the Premises or the validity of the Indebtedness Secured Hereby, and any attorneys' fees so incurred shall be added to and be a part of the Indebtedness Secured Hereby. Any costs and expenses incurred in connection with any other dispute or litigation affecting said debt or the Mortgagee's title to the Premises, including estimated amounts to conclude the transaction, shall be added to and be a part of the Indebtedness Secured Hereby. All such amounts shall be payable by the Mortgagor to the Mortgagee without formal demand, and if not paid, shall be included as a part of the Secured Indebtedness and shall include interest at the Default Interest Rate as set forth in the Note, from the dates of their respective expenditures.

23. **The Mortgagee's Performance of Defaulted Acts.** If an Event of Default hereunder shall occur, the Mortgagee may, but need not, make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient by the Mortgagee. By way of illustration and not in limitation of the foregoing, the Mortgagee may, but need not, (i) make full or partial payments of principal, interest, penalties or late charges on prior encumbrances, if any, (ii) purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof, (iii) redeem from any tax sale or forfeiture affecting the Premises, (iv) contest any tax or assessment, (v) collect rents, (vi) prosecute collection of any sums due with respect to the Premises, and (vii) make repairs to the Premises. The Mortgagee is hereby authorized to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental charges, fines, impositions, or liens asserted against the Premises and may do so according to any bill, statement, or estimate procured from the appropriate governmental authority without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof, and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge, or payment otherwise

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relating to any other purpose herein and hereby authorized, but not otherwise enumerated herein and may do so whenever, in the Mortgagee's sole judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this Mortgage, and in connection with any such advance, the Mortgagee, at its option, may and is hereby authorized to obtain a continuation abstract or report of title or commitment for title insurance or title insurance policy prepared by an abstractor or title insurance company of the Mortgagee's choosing. All monies paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, shall be so much additional Indebtedness Secured Hereby, and shall become immediately due and payable by the Mortgagor to the Mortgagee without notice and with interest thereon at the Default Interest Rate specified in the Note. Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of the Mortgagor.

24. **Giving of Notice.** All notices which any party may be required or may desire to give in connection with this Mortgage shall be in writing, and shall be either personally delivered, sent by overnight express delivery by a nationally recognized delivery service, freight prepaid, or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

- a. If to the Mortgagor at the address set forth above.
- b. If to the Mortgagee at the address set forth above to the attention of the Commercial Loan Department.

Notices, demands and requests which shall be served in the manner aforesaid shall be deemed to be sufficiently delivered or given for all purposes hereunder (i) in the case of personal delivery upon such delivery, (ii) in the case of overnight express delivery, one (1) business day after delivery to such delivery service and (iii) in the case of mailing by Registered or Certified Mail, two (2) business days after such notice, demand or request shall be mailed. By notice complying with the foregoing provisions of this paragraph, either party may from time to time change its address for notice purposes, except that any such notice shall not be deemed delivered until actually received. Except as otherwise specifically required, notice of the exercise of any option, right or remedy granted to the Mortgagee herein, in the Note or in the other Loan Documents is not required to be given.

25. **Time is of the Essence.** It is specifically agreed that time is of the essence of this Mortgage. The waiver of any of the options, rights or remedies of the Mortgagee shall not at any time thereafter be held to be abandonment of such rights.

26. **Mortgagee's Lien for Service Charge and Expenses.** At all times, regardless of whether any proceeds of the Note have been disbursed, this Mortgage shall secure (in addition to any proceeds of any Secured Indebtedness disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the Indebtedness Secured Hereby.

27. **Modifications.** This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

28. **Covenants to Run with the Real Estate.** All the covenants of the Mortgagor hereof shall run with and touch and concern the Real Estate.



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29. **Captions.** The captions and headings of various paragraphs are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

30. **Construction.** This Mortgage shall be governed by and construed and enforced according to the laws of the State of Illinois.

31. **Binding on Successors and Assigns and Certain Definitions.** This Mortgage and all provisions and covenants of the Mortgage hereof shall extend to and be binding upon the Mortgagor's successors and assigns and all persons claiming under or through the Mortgagor and the word "the Mortgagor" when used herein shall include and refer to, in addition to the Mortgagor named herein, (i) all such persons liable for the payment of the Secured Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage, (ii) the Mortgagor's successors and assigns and (iii) all owners from time to time of the Premises. The word "the Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note. The following words and phrases shall be construed as follows: "any" shall be construed as "any and all"; "include" and "including" shall be construed as "including but not limited to"; and "will" and "shall" shall each be construed as mandatory. The words "hereby", "hereof", "hereto", "herein" and "hereunder" and any similar terms shall refer to this Mortgage as a whole and not to any particular paragraph or subparagraph. The word "hereafter" shall mean after the date of this Mortgage and the word "heretofore" shall mean before the date of this Mortgage. Words of the masculine, feminine or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number and vice versa. Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

32. **Further Assurances.** The Mortgagor shall execute, acknowledge and deliver to the Mortgagee and to any subsequent holder of the Note from time to time upon demand (and pay the costs of preparation and recording thereof) any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to re-affirm, to correct and to perfect the evidence of the obligations and Indebtedness Secured Hereby and the lien of the Mortgagee to all or any part of the Premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof, and will do or cause to be done all such further acts and things as may be necessary fully to effectuate the intent of this Mortgage.

33. **Recording and Filing.** The Mortgagor, at its expense, will cause this Mortgage and all supplements thereto for which constructive notice must be given to protect the Mortgagee, at all times to be recorded and filed, and re-recorded and refiled, in such manner and in such places as the Mortgagee shall request, and will pay all such recording, filing, re-recording, re-filing, taxes, fees and other charges to the maximum extent permitted by the laws of the state in which the Premises are situated.

34. **Right to Contest Taxes and Mechanics' Liens.** The obligations of the Mortgagor under this Mortgage relating to real estate taxes and mechanics' liens are subject to the rights the Mortgagor shall have to contest in good faith the validity or amount of any tax or assessment or lien arising from any work performed at or materials furnished to the Premises which right, however, is conditional upon (i) such contest having the effect of preventing the collection of the tax, assessment or lien so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same, (ii) the Mortgagor giving the Mortgagee written notice of its intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any such tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanics' lien claim, shall mean within ten (10) days after the Mortgagor receives actual notice of the

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filing thereof, (iii) the Mortgagor making and thereafter maintaining with the Mortgagee or such other depository as the Mortgagee may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in the Mortgagee's sole discretion, be acceptable to the Mortgagee, and in either case having a present value equal to the amount herein specified) in an amount not less than One Hundred Fifty percent (150%) of the amount which, in the Mortgagee's sole judgment, determined from time to time, shall be sufficient to pay in full such contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination thereof adverse to the Mortgagor or in the event the Mortgagor fails to prosecute such contest as herein required, and (iv) the Mortgagor diligently prosecuting such contest by appropriate legal proceedings. In the event the Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds, or other security as aforesaid, on deposit as hereinabove provided, the Mortgagee may, at its option, liquidate the securities deposited with the Mortgagee, and apply the proceeds thereof and other monies deposited with the Mortgagee in payment of, or on account of, such taxes, assessments, or liens or any portion thereof then unpaid, including the payment of all penalties and interest thereon.

35. **Waivers by the Mortgagor.** To the extent permitted by applicable law, the Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, redemption, stay, extension, or exemption laws or any so called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. The Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. The Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagor, the trust estate, if any, and all persons beneficially interested therein, if any, and each and every person acquiring any interest in or title to the Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by law. THE MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS MORTGAGE, THE NOTE, ANY OTHER OF THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT REFERRED TO HEREIN OR THEREIN AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

36. **Condition of the Premises.** As of the date hereof, the condition of the Premises is substantially the same as that shown on the survey delivered to the Mortgagee and the Mortgagor has not taken any action, nor suffered any action to be taken, which might adversely affect the Mortgagor's interest in the Premises, or the Mortgagor's ability to perform its covenants hereunder.

37. **After Acquired Property.** Any and all property hereafter acquired and placed, installed or incorporated on or into the Premises, which is of the kind or nature herein provided, or is intended to be and becomes subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act of the Mortgagor's become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein, but nevertheless, the Mortgagor shall from time to time, if requested by the Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

38. **Business Loan Recital.** The loan evidenced by the Note constitutes a loan which comes within the purview of 815 ILCS 205/4 (1) (a)-(n), inclusive, and is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, et seq.

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39. **No Merger.** It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should the Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the said fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the said fee simple title.

40. **No Partnership or Joint Venture.** The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, the Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, the Note, the other Loan Documents or otherwise.

41. **No Liability on the Mortgagee.** This Mortgage is intended only as security for the obligations herein set forth. Notwithstanding anything contained herein to the contrary, the Mortgagee shall not be obligated to perform or discharge and does not hereby undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether hereunder, under any of the leases affecting the Premises, under any contract relating to the Premises or otherwise, and the Mortgagor shall and does hereby agree to indemnify against and hold the Mortgagee harmless of and from: (i) any and all liability, loss or damage which the Mortgagee may incur under or with respect to any portion of the Premises or under or by reason of its exercise of rights hereunder and (ii) any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any of the contracts, documents or instruments affecting any portion of the Premises or affecting any rights of the Mortgagor thereto. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any lessee, licensee, employee, stranger or other person. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers herein granted to it, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage under any of the leases affecting the Premises or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees.

42. **Consent and Approval.** In any instance where the Mortgagee's consent or approval is required hereunder, except and to the extent otherwise specifically provided, the granting or withholding of such consent or approval shall be within the Mortgagee's absolute and sole discretion. Whenever in this Mortgage or as a matter of law it is provided or held that the Mortgagee's consent or approval shall not be unreasonably withheld or the actions of the Mortgagee shall be reasonable or not unreasonable, the remedy of the Mortgagor in the event it shall claim and establish that the Mortgagee has unreasonably withheld such consent or approval or has acted unreasonably, shall be limited to injunction or declaratory judgment and in no event shall the Mortgagee be liable for a money judgment.

[Signature page to follow]

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IN WITNESS WHEREOF, the Mortgagor has signed these presents the day and year first above written.

**MORTGAGOR:**

Riley Investment, LLC  
A South Carolina Limited Liability Company  
F/K/A Riley Development, LLC

By: Charles P. Mackin  
Charles P. Mackin  
Its: Member

**NOTICE ADDRESS FOR MORTGAGOR:** 1801 Hwy. 72 NE, Greenwood, SC 29649

STATE OF SOUTH CAROLINA )  
) SS  
COUNTY OF CHARLESTON )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Charles P. Mackin personally known to me to be a Member of Riley Investment, LLC, a South Carolina limited liability company, f/k/a Riley Development, LLC, 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 that in such capacity, he/she signed and delivered the said instrument, pursuant to authority given by the members of said company, as his/her free and voluntary act, and as the free and voluntary act of the company, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND and notarial seal on September 12, 2007.

Antessa R. Donner  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 7/24/2008

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EXHIBIT "A"

THE WESTERLY 110 FEET OF LOT 3 IN GLENBROOK COMMERCIAL PARK, BEING A  
SUBDIVISION OF THE SOUTH 1/2 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 9 EAST,  
OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address of: 1648 South Greenmeadows Blvd., Streamwood, Illinois

Tax Parcel No. 06-12-414-026-0000

Property of Cook County Clerk's Office