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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
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## CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING

THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING ("Mortgage") dated as of November 14, 2007 from **BIRCHWOOD INDUSTRIAL CENTER PG, LLC**, an Illinois limited liability company ("Borrower"), **MOSS PROPERTIES, LLC**, a California limited liability company ("Moss") and **RED WATER MANAGEMENT COMPANY**, a California limited partnership ("Red Water") (Moss, Red Water and Borrower are hereinafter collectively referred to as "Mortgagor"), with a mailing address of c/o Panattoni Development Company, 6250 N. River Road, Suite 4050, Rosemont, Illinois 60018, Attention: Mr. Chris Hutter to and for the benefit of **ASSOCIATED BANK, NATIONAL ASSOCIATION**, a national banking association, with an office at 500 Lake Cook Road, Suite 210, Deerfield, Illinois 60015 (hereinafter referred to as "Mortgagee").

PREPARED BY AND RETURN TO:

Tax Identification Number(s):

Scott M. Lapins, Esq.  
Schwartz Cooper Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601

09-28-300-021-0000

Box 400-CTCC

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## WITNESSETH THAT:

WHEREAS, Borrower has executed and delivered to Mortgagee a Promissory Note of even date herewith payable to Mortgagee in the principal amount of Seven Million Six Hundred Thousand and 00/100 Dollars (\$7,600,000.00) (said note and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "Note"), pursuant to which Borrower promises to pay said principal sum (or so much thereof as may be outstanding at the maturity thereof), together with interest on the balance of principal from time to time outstanding and unpaid thereon at the rates (some of which may be variable) and at the times specified in the Note.

WHEREAS, the Note has been issued under and subject to the provisions of a Construction Loan Agreement bearing even date herewith between Borrower and Mortgagee (such Construction Loan Agreement being hereinafter referred to as the "Loan Agreement"); and

NOW, THEREFORE, to secure (i) the payment when and as due and payable of the principal of and interest on the Note or so much thereof as may be advanced from time to time under and pursuant to the Loan Agreement, (ii) the payment of all other indebtedness which this Mortgage by its terms secures and (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Loan Agreement, the Note, the Environmental Indemnity Agreement by Borrower and Panattoni Investments, LLC, a California limited liability company, for the benefit of Mortgagee of even date herewith (the "Environmental Indemnity Agreement"), Rate Management Transaction (as that term is defined in the Loan Agreement), currency swap agreement, interest rate swap, cap, collar or floor agreement or other interest rate management device, letter of credit reimbursement obligations, and all other instruments or documents securing the Note (collectively, the "Loan Documents") (all of such indebtedness, obligations and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the "indebtedness hereby secured"), the Mortgagor does hereby grant, sell, convey, mortgage and assign unto the Mortgagee, its successors and assigns and does hereby grant to Mortgagee, its successors and assigns a security interest in all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V and VI below all of same being collectively referred to herein as the "Mortgaged Premises":

### GRANTING CLAUSE I

That certain real estate (the "Real Estate") lying and being in the County of Cook and State of Illinois, more particularly described in Exhibit "A" attached hereto and made a part hereof.

### GRANTING CLAUSE II

All right, title and interest of Mortgagor in all buildings and all improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials owned by Mortgagor and intended for construction, reconstruction, alteration and repair of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the Real Estate, and, all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever owned by Mortgagor and now or hereafter attached to or contained in or used in connection with Real Estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including but not limited to, all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window

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and structural cleaning rigs and all other machinery and other equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property owned by Mortgagor and used or useful in the operation, maintenance and protection of the Real Estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the Real Estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code of Illinois (as in effect from time to time, the "Code") for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the indebtedness hereby secured. The addresses of Mortgagor (debtor) and Mortgagee (secured party) appear at the beginning hereof.

### GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements licenses, franchises, appurtenances and royalties, mineral, oil and water rights belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent or for security) under any and all leases and renewals thereof or under any contracts or options for the sale of all or any part of said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees that until an Event of Default (as hereinafter defined) shall occur giving Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive (but not more than 30 days in advance) distribute and enjoy such rents.

### GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvements now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively "Condemnation Awards").

### GRANTING CLAUSE V

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All property and rights, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter by installation or writing of any kind, be subjected to the lien hereof.

## GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

**TO HAVE AND TO HOLD** the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged and assigned, and in which a security interest is granted, unto Mortgagee, its successors and assigns, forever; provided, however, that this instrument is upon the express condition that if the principal of and interest on the Note shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed and any commitment to advance funds contained in the Loan Agreement shall have been terminated, then this instrument and the estate and rights hereby granted shall cease, determine and be void and this instrument shall be released by Mortgagee.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. Payment of the Indebtedness Hereby Secured. The indebtedness hereby secured will be promptly paid as and when the same becomes due.
2. Representation of Title and Further Assurances. Mortgagor will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this instrument and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be. At the time of delivery of these presents, the Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Premises which constitutes real property subject only to the matters set forth in Exhibit "B" attached hereto and hereby made a part hereof (the "Permitted Exceptions"), and Mortgagor has good right, full power and lawful authority to convey, mortgage and create a security interest in the same, in the manner and form aforesaid; except as set forth in Exhibit "B" hereto, the same is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, including the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature, and the Mortgagor shall and will forever defend the title to the Mortgaged Premises against the claims of all persons whomsoever, other than persons claiming under the Permitted Exceptions.
3. Mortgage Constitutes Construction Mortgage. This Mortgage, in part, secures an obligation for the construction of improvements on the real property herein described, and constitutes a construction mortgage for the purpose of Article Nine of the Code and is entitled to all of the benefits afforded construction mortgages thereunder.
4. Compliance with Loan Agreement. Borrower will abide by and comply with and be governed and restricted by all of the material terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.



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5. Provisions of Loan Agreement. The proceeds of the Note are to be disbursed by the Mortgagee in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Mortgagor covenants that any and all monetary disbursements made in accord with the Loan Agreement shall constitute adequate consideration to Mortgagor for the enforceability of this Mortgage and the Note, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Mortgage; provided, however, that the total indebtedness secured by the Note and any other document or instrument now or hereafter given as security for the indebtedness hereby secured shall not in any event exceed \$15,200,000.00. Upon the occurrence of an Event of Default under the Loan Agreement, the Mortgagee may (but need not): (i) declare the entire principal indebtedness and interest thereon due and payable and pursue all other remedies conferred upon Mortgagee by this Mortgage or by law upon a default; or (ii) complete the construction of the improvements described in the Loan Agreement and enter into the necessary contracts herefor. All monies so expended shall be so much additional indebtedness secured by this Mortgage and shall be payable on demand with interest at the Default Interest Rate (as defined in the Note). Mortgagee may exercise either or both of the aforesaid remedies. The provisions, rights, powers and remedies contained in the Loan Agreement are in addition to, and not in substitution for, those contained herein.

6. Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced, no such tax, assessment charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, conducted in good faith and with due diligence and if Mortgagor shall have furnished such security, if any, as may be required in the proceedings or required by Mortgagee's title insurer to insure over the lien of such taxes.

7. Payment of Taxes on Note, Mortgage or Interest of Mortgagee. Mortgagor agrees that if any tax, assessment or imposition upon this Mortgage or the indebtedness hereby secured or the Note or the interest of Mortgagee in the Mortgaged Premises or upon Mortgagee by reason of any of the foregoing (but excepting therefrom any income tax on interest payments on the principal portion of the indebtedness hereby secured imposed by the United States or any State or any corporate privilege, franchise and excise taxes,) is levied, assessed or charged, then, unless all such taxes are paid by Mortgagor to, for or on behalf of Mortgagee as they become due and payable (which Mortgagor agrees to do upon demand of Mortgagee, to the extent permitted by law), or Mortgagee is reimbursed for any such sum advanced by Mortgagee, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee upon thirty (30) days' notice to Mortgagor, notwithstanding anything contained herein or in any law heretofore or hereafter enacted, including any provision thereof forbidding Mortgagor from making any such payment. Mortgagor agrees to provide to Mortgagee, within thirty (30) days after the due date, official receipts showing payment of all taxes and charges which Mortgagor is required to pay hereunder.

8. Tax and Insurance Deposits. Upon Mortgagee's request during the existence of an Event of Default or the failure of Borrower to timely pay annual taxes and assessments on the Mortgaged Premises, Mortgagor covenants and agrees to deposit with Mortgagee, on the first day of each month following such request until the indebtedness secured by this Mortgage is fully paid, a sum equal to (i)

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one-twelfth (1/12th) of the annual taxes and assessments (general and special) on the Mortgaged Premises (unless said taxes are based upon assessments which exclude improvements thereon now constructed or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed) and (ii) one-twelfth (1/12th) of the annual premiums payable for the insurance required to be maintained in accordance with Paragraph 12 hereof. All of such deposits shall be held in an interest bearing account with Mortgagee which is pledged to Mortgagee. If prior deposits are insufficient, immediately following an Event of Default (as hereinafter defined), Mortgagor shall deposit with Mortgagee an amount of money which, together with the aggregate of the monthly deposits made or to be made pursuant to (i) above as of one month prior to the date on which the total annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full the total annual taxes and assessments estimated by Mortgagee to become due and payable with respect to the Mortgaged Premises for the current calendar year, and an amount of money which, together with the aggregate deposits made or to be made pursuant to (ii) above as of one month prior to the date on which the next annual insurance premium becomes due, shall be sufficient to pay in full the total annual insurance premium estimated by Mortgagee to next become due and payable with respect to the Mortgaged Premises. Such deposits are to be used for the payment of taxes and assessments (general and special) and insurance premiums, respectively, on the Mortgaged Premises next due and payable when they become due. Mortgagee may, at its option, itself pay such taxes, assessments and insurance premiums when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for payment of such taxes, assessments and insurance premiums. If the funds so deposited are insufficient to pay any such taxes, assessments (general or special) and premiums for any year when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes, assessments (general and special) and premiums in full. If the funds so deposited exceed the amount required to pay such taxes, assessments (general and special) and premiums for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee.

9. Mortgagee's Interest In and Use of Deposits. Upon the occurrence of an Event of Default under this Mortgage, the Note, the Loan Agreement or any other document securing the Note, the Mortgagee may at its option, without being required so to do, apply any monies at the time on deposit pursuant to Paragraph 8 hereof to the performance of any of Mortgagor's obligations hereunder or under the Note or Loan Agreement, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of which they were deposited, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

10. Recordation and Payment of Taxes and Expenses Incident Thereto. Mortgagor will pay for the recording and filing of this Mortgage, all mortgages supplemental hereto and any financing statement or other notices of a security interest required by Mortgagee at all times to be kept, recorded and filed in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refile of a mortgage, security interest, assignment or other lien or charge upon the Mortgaged Premises, or any part thereof, in order fully to preserve and protect the rights of Mortgagee hereunder, and, without limiting the foregoing, Mortgagor will pay or reimburse Mortgagee for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or

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re-recording, including any documentary stamp tax or tax imposed upon the privilege of having this instrument or any instrument issued pursuant hereto recorded.

11. Security Agreement. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Mortgaged Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and (c) with respect to all of the property described in Exhibit "C" attached hereto and by this reference made a part hereof (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the indebtedness hereby secured. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

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

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

(c) The Collateral will be kept at the Real Estate, except for Obsolete Collateral (as hereinafter defined), and 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 Real Estate but will not be affixed to any other real estate.

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

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

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(f) Upon an Event of 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, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and 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 ten (10) 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 ten (10) days before the time of the sale or disposition. Mortgagee may buy any of the Collateral at any public sale. Mortgagee may buy any of the Collateral at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Mortgaged Premises. If Mortgagee so elects, the Mortgaged 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 attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the indebtedness hereby secured in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Paragraph 11, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

(h) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Mortgaged Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located. Mortgagor is the record owner of the Real Estate.

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

(j) Mortgagor represents and warrants that:

(i) Mortgagor is the record owner of the Real Estate;

(ii) Each Mortgagor's chief executive office is located as follows: (A) Illinois for Borrower, (B) California for Moss, and (C) California for Red Water;



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(iii) Each Mortgagor's state of formation is as follows: (A) Illinois for Borrower, (B) California for Moss, and (C) California for Red Water;

(iv) Each Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage; and

(v) Each Mortgagor's organizational identification number is as follows: (A) 0237503-6 for Borrower, (B) 199909210026 for Moss, and (C) 9408200009 for Red Water.

(k) Mortgagor agrees that:

(i) Mortgagee is authorized to file a financing statement describing the Collateral;

(ii) Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;

(iii) Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iv) Until the indebtedness secured hereby is paid in full, Mortgagor will not change the state where it is located or change its name without giving the Mortgagee at least 30 days' prior written notice in each instance.

12. Insurance. Mortgagor will, at its expense, maintain insurance in accordance with the requirements of the Loan Agreement. The proceeds of such insurance shall be applied as provided in Section 13 hereof. In the event of foreclosure, Mortgagor authorizes and empowers Mortgagee to effect insurance upon the Mortgaged Premises in the amounts aforesaid, for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor, to cancel any or all existing insurance policies.

13. Damage to and Destruction of the Improvements.

(a) Notice. In the case of any material damage to or destruction of any improvements which are or will be constructed on the Mortgaged Premises or any part thereof, Mortgagor shall promptly give notice thereof to Mortgagee generally describing the nature and extent of such damage or destruction. Material damage shall mean damages in excess of \$100,000.00.

(b) Restoration. Upon the occurrence of any damage to or destruction of any improvements on the Mortgaged Premises, provided Mortgagee permits the proceeds of insurance to be used for repairs, restoration and rebuilding (collectively "Restoration"), Mortgagor shall cause same to be restored, replaced or rebuilt as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such Restoration shall be effected promptly and Mortgagor shall notify the Mortgagee if it appears that such Restoration may unduly delay completion of such improvements. Any amounts required for Restoration in excess of insurance proceeds shall be paid by Mortgagor.

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(c) Application of Insurance Proceeds. Net insurance proceeds received by the Mortgagee under the provisions of this Mortgage or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the Mortgaged Premises or any part thereof shall be applied by the Mortgagee at its option as and for a prepayment on the Note (whether or not the same is then due or otherwise adequately secured) or shall be disbursed for Restoration of such improvements (in which event the Mortgagee shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Note). If Mortgagee elects to permit the use of insurance proceeds for Restoration it may do all necessary acts to accomplish that purpose including using funds deposited by Mortgagor with it for any purpose and advancing additional funds, all such additional funds to constitute part of the indebtedness secured by the Mortgage. If Mortgagee elects to make the insurance proceeds available to Mortgagor for the purpose of effecting such a Restoration, or, following an Event of Default, elects to restore such improvements, any excess of insurance proceeds above the amount necessary to complete such Restoration shall be applied as and for a prepayment on the Note. Notwithstanding the foregoing provisions, Mortgagee agrees that net insurance proceeds shall be made available to Mortgagor for the Restoration of the portion of the Mortgaged Premises damaged or destroyed if the following conditions are satisfied: (i) no Event of Default shall then exist, (ii) Mortgagor shall have submitted to the Mortgagee plans and specifications for the Restoration which shall be reasonably satisfactory to the Mortgagee, (iii) Mortgagor shall have submitted to the Mortgagee contracts with good and responsible contractors and materialmen covering all work and materials necessary to complete Restoration and providing for a total completion price not in excess of the amount of insurance proceeds available for Restoration, or, if a deficiency shall exist, Mortgagor shall have deposited the amount of such deficiency with the Mortgagee or posted other collateral reasonably acceptable to the Mortgagee, (iv) the Restoration will, in the reasonable judgment of the Mortgagee, be completed not later than the Maturity Date, (v) the Restoration will be completed within the time periods provided and will not constitute a default under any Lease (as those terms are defined in the Loan Agreement), and (vi) Borrower shall have deposited with Lender a sufficient amount to cover all additional soft costs including interest, that may be incurred as a result of the Restoration, any insurance proceeds to be released pursuant to the foregoing provisions shall be disbursed from time to time as Restoration progresses to pay for Restoration work completed and in place and such disbursements shall be disbursed in compliance with each of the disbursement procedures outlined in Section 4.3 of the Loan Agreement unless waived in writing by Mortgagee. Mortgagee may impose such further conditions upon the release of insurance proceeds (including the receipt of the insurance) as are customarily imposed by prudent construction lenders to insure the completion of the Restoration work free and clear of all liens or claims for lien. All necessary and reasonable title insurance charges and other costs and expenses paid by Mortgagee in connection with the release of such insurance proceeds shall constitute so much additional indebtedness secured by this Mortgage to be payable upon demand and if not paid upon demand shall bear interest at the Default Interest Rate (as defined in Section 37 hereof). Mortgagee may deduct any such costs and expenses from insurance proceeds at any time held by Mortgagee. No interest shall be payable to Mortgagor upon insurance proceeds held by Mortgagee.

(d) Adjustment of Loss. As long as no Event of Default exists, Mortgagor is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies covering or relating to the Mortgaged Premises, subject to Mortgagee's prior approval of any adjustment or compromise of losses exceeding \$100,000.00, which approval shall not be unreasonably withheld providing the proceeds are used to repair the damage pursuant to Paragraph 13(c) above. While an Event of Default exists, Mortgagee shall have the right to adjust or compromise any loss under any insurance policies covering or relating to the Mortgaged

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Premises, and in any event, Mortgagee shall be entitled to collect and receive the proceeds from any such policy or policies in excess of \$100,000.00. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment (i) of 100% of all such losses of more than \$100,000.00 directly to Mortgagee alone and (ii) of 100% of all such losses of said amount or less directly to Mortgagor alone, and in no case to Mortgagor and Mortgagee jointly. After deducting from such insurance proceeds any reasonable expenses incurred by Mortgagee in the collection and settlement thereof, including without limitation attorneys' and adjusters' fees and charges, Mortgagee shall apply the net proceeds as provided in Paragraph 13(c). Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

## 14. Eminent Domain.

(a) Notice. Mortgagor covenants and agrees that Mortgagor will give Mortgagee prompt notice of the actual or threatened commencement of any proceedings of which it is aware under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings.

(b) Assignment of Claim, Power of Attorney to Collect, Etc. Any and all awards hereafter made or to be made to the present and all subsequent owners of the Mortgaged Premises by any governmental body for taking or affecting the whole or any part of said Mortgaged Premises, the improvements on the Mortgaged Premises or any easement therein or appurtenance thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the award for payment thereof) are hereby assigned by Mortgagor to Mortgagee to the extent of the then indebtedness hereby secured and Mortgagor hereby irrevocably constitutes and appoints Mortgagee its true and lawful attorney in fact with full power of substitution for it and in its name, place and stead to collect and receive the proceeds of any such award granted by virtue of any such taking and to give proper receipts and acquittances therefor. As long as no Event of Default exists, Mortgagor shall have the right to settle and compromise any condemnation award with the condemning party, subject to Mortgagee's prior approval of the settlement or compromise of any award in excess of \$25,000.00, which approval shall not be unreasonably withheld. While an Event of Default exists, Mortgagee shall have the right to settle and compromise any condemnation award with the condemning party without the consent of the Mortgagor.

(c) Effect of Condemnation and Application of Awards. In the event that any condemnation or eminent domain proceedings are commenced by any governmental body or other person to take or otherwise affect the Mortgaged Premises, the improvements thereon or any easement therein or appurtenance thereto, Mortgagee shall make the proceeds of any award related thereto available to Mortgagor for the repair and restoration of the Mortgaged Premises subject to the same terms and conditions as are set forth in Section 13(c) hereof with respect to insurance proceeds provided that any reference therein to insurance proceeds shall be deemed to mean condemnation or eminent domain award proceeds for purposes of this Section 14(c).

15. Construction, Repair, Waste, Etc. Except for the improvements on the Mortgaged Premises to be constructed pursuant to the provisions of the Loan Agreement, Mortgagor covenants and agrees (i) that except for leasehold improvements and alterations thereto required or permitted under any

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Lease (as that term is defined in the Loan Agreement), no building or other improvement on the Mortgaged Premises and constituting a part thereof shall be materially altered, removed or demolished nor shall any of Borrower's fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the consent of Mortgagee, which such consent shall not be unreasonably withheld; 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, the same will 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 encumbrance thereon or reservation of title thereto; (ii) to permit, commit or suffer no waste, impairment or deterioration of the Mortgaged Premises or any part thereof; (iii) to keep and maintain said Mortgaged Premises and every part thereof in good and first class repair and condition (ordinary wear and tear excepted); (iv) to effect such repairs as Mortgagee may reasonably require and from time to time to make all needful and proper replacements and additions so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good and first class condition, fit and proper for the respective purposes for which they were originally erected or installed; (v) to comply, in all material respects, with all statutes, orders, requirements or decrees relating to said Mortgaged Premises by any Federal, State or Municipal authority; (vi) to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Premises or any part hereof and not to initiate or acquiesce in any changes to or terminations of any of the foregoing or of zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Mortgagee, which such consent shall not be unreasonably withheld; and (vii) to make no alterations in or improvements or additions to the Mortgaged Premises without Mortgagee's written permission, which such permission shall not be unreasonably withheld, except for leasehold improvements and alterations thereto, or as contemplated by the Loan Agreement or required by governmental authority.

16. Liens and Encumbrances. Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created, or to remain, and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge or conditional sale or other title retention agreement with respect to the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this instrument and the lien of all other documents given to secure the indebtedness hereby secured; provided, however, that Mortgagor may contest the validity of any mechanic's lien, charge or encumbrance (other than the lien of this Mortgage or of any other document securing payment of the Note) upon giving Mortgagee timely notice of its intention to contest the same and either (a) maintaining with Mortgagee a deposit of cash or negotiable securities reasonably satisfactory to Mortgagee in an amount sufficient in the reasonable opinion of Mortgagee to pay and discharge or to assure compliance with the matter under contest in the event of a final determination thereof adversely to Mortgagor or (b) obtaining title insurance coverage over such lien on Mortgagee's title insurance policy by endorsements reasonably acceptable to Mortgagee. Mortgagor agrees to prosecute and contest such lien diligently and by appropriate legal proceedings which will prevent the enforcement of the matter under contest and will not impair the lien of this Mortgage or interfere with the normal conduct of business on the Mortgaged Premises. On final disposition of such contest, any cash or securities in Mortgagee's possession not required to pay or discharge or assure compliance with the matter contested shall be returned to Mortgagor without interest.

17. Right of Mortgagee to Perform Mortgagor's Covenants, Etc. If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter upon prior written notice to Mortgagor and failure of Mortgagor to make such payment or



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perform such act within any applicable cure period provided herein or in any other Loan Document make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Interest Rate, shall constitute so much additional indebtedness hereby secured and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof.

18. After-Acquired Property. Any and all property hereafter acquired which is of the kind or nature herein provided and related to the premises described in Granting Clause I hereof, or intended to be and become subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act on the part of Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

19. Inspection by Mortgagee. Mortgagee and its agents shall have the right to inspect the Mortgaged Premises at all reasonable times, and access thereto shall be permitted for that purpose, upon reasonable prior notice and subject to the rights of any tenants under any Leases.

20. Subrogation. Mortgagor acknowledges and agrees that Mortgagee shall be subrogated to any lien discharged out of the proceeds of the loan evidenced by the Note or out of any advance by Mortgagee hereunder or under the Loan Agreement, irrespective of whether or not any such lien may have been released of record.

21. Transfer of the Mortgaged Premises.

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

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(b) In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Mortgagor and in the value of the Mortgaged Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Mortgaged Premises free of subordinate financing liens, Mortgagor agrees that if this Paragraph be deemed a restraint on alienation, that it is a reasonable one, and Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of, or the granting of any option in, or any contract for any of the foregoing (on an installment basis or otherwise), unless the indebtedness hereby secured would be repaid in full upon the closing of such contract, pertaining to

(i) the Mortgaged Premises, any part thereof, or any interest therein except for: (a) the Permitted Exceptions as expressly permitted under Construction Loan Agreement and (b) sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral; or

(ii) except as permitted by Section 7.12 of the Loan Agreement, any membership interest in Borrower, whether involuntary or by operation of law or otherwise, without the prior written consent of Mortgagee having been obtained to such sale, assignment, conveyance, mortgage, option, pledge, encumbrance or other transfer. Mortgagor agrees that in the event the ownership of the Mortgaged Premises or any membership interest of the Borrower, or any interest therein or any part thereof becomes vested in a person other than their current owners, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the Note, and any other document evidencing the indebtedness secured hereby, without in any way vitiating or discharging Mortgagor's liability hereunder or under any other document evidencing the indebtedness secured hereby. No sale of the Mortgaged Premises, forbearance to any person with respect to this Mortgage, or extension to any person of the time for payment of the Note given by Mortgagee shall operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by Mortgagee. Without limitation of the foregoing, in any event in which the written consent of Mortgagee is required in this Paragraph 21 (except as set forth in subsection (d)(ii) below), Mortgagee may condition its consent upon any combination of (i) the payment of compensation to be determined by Mortgagee, (ii) the increase of the interest rate payable under the Note, (iii) the shortening of maturity of the Note, and (iv) other modifications of the terms of the Note or the other instruments evidencing the indebtedness secured hereby.

(c) Without limitation of the foregoing, in any event in which Mortgagee's consent is requested in accordance with the terms of this Paragraph 21, Mortgagor shall pay all expenses incurred by Mortgagee, including reasonable attorneys' fees, in connection with the processing of such request.

(d) Notwithstanding anything to the contrary contained in the Loan Documents, with Lender's review and reasonable approval, Lender shall permit (i) the collateral assignment or the pledge and hypothecation of the manager and/or member (including managing member) interests in Borrower as security for additional financing provided, however, that such collateral

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assignment or pledge and hypothecation shall not encumber the property with any lien or any rights that would survive foreclosure by Lender, and further provided, that in the event that any party succeeds to such member or manager interests and such transfer would violate paragraph 21(b) above, such realization upon the collateral assignment, pledge or hypothecations shall constitute an Event of Default under the Mortgage and (ii) Mortgagor to convey portions of the Mortgaged Premises to additional tenants-in-common approved by Mortgagee, provided that Mortgagor, at its cost and expense, (A) deliver to Mortgagee all applicable organizational documents and resolutions for such additional tenants-in-common, (B) delivers to Mortgagee such endorsements to Mortgagee's Title Policy (as defined in the Loan Agreement) as required by Mortgagee, (iii) delivers to Mortgagee such modifications of the Loan Documents as required by Mortgagee, and (iv) delivers to Mortgagee such other instruments, agreements, and certificates as reasonably required by Mortgagee.

22. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) Default in making payment within ten (10) days of the date when due (whether by lapse of time, acceleration, or otherwise) of the principal of or interest on any of the Note or any other indebtedness hereby secured;

(b) Any violation of Sections 12 or 21 hereof;

(c) The Mortgaged Premises is abandoned by the Mortgagor;

(d) Default in the observance or performance of any other covenant, condition, agreement or provisions hereof or of the Note or any additional collateral document which is not remedied within thirty (30) days after written notice thereof to Mortgagor by Mortgagee; provided, however, that if such default cannot be cured within thirty (30) days, then, so long as Mortgagor promptly commences and diligently performs all actions necessary to cure such default, the period for effecting the cure thereof shall be extended for a period of sixty (60) additional days;

(e) Any representation or warranty made by any Mortgagor herein or in the Note, Loan Agreement, Environmental Indemnity Agreement or any other Loan Document proves untrue in any material respect as of the date of the issuance or making thereof and is not cured within the cure periods set forth in subsection (d);

(f) Any Mortgagor becomes insolvent or bankrupt or admits in writing its or their inability to pay its or their debts as they mature or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee, custodian or receiver for either of them or for the major part of the property of either of them;

(g) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy laws or laws for the relief of debtors are instituted voluntarily by any Mortgagor; or are instituted involuntarily against any Mortgagor and are not dismissed within sixty (60) days after such institution;

(h) Any judgment or judgments, writ or writs or warrant or warrants of attachment or any similar process or processes in an aggregate amount in excess of \$25,000.00 shall be entered or filed against Mortgagor, or against any of their respective property or assets, and remains unsatisfied, unvacated, unbonded or unstayed for a period of sixty (60) days;

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(i) The title company refuses to issue the endorsements provided for in Section 5.4(a)(vi) or 5.4(a)(vii) of the Loan Agreement because of a change in the state of title or a survey exception and Mortgagor is unable to correct the condition giving rise to the refusal and procure issuance of the notice within the cure periods set forth in subsection (d);

(j) Any Event of Default shall occur under the Loan Agreement or any other document evidencing or securing the indebtedness evidenced by the Note (collectively the "Loan Documents"); or

(k) A default under the Ground Lease.

23. Remedies. When any Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument) and in addition to such other rights as may be available under applicable law or under the Loan Agreement, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Mortgagee may, by written notice to Mortgagor, declare the Note and all unpaid indebtedness of Mortgagor hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Uniform Commercial Code. Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Code, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of the Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The expenses of retaking, selling and otherwise disposing of said property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the Default Interest Rate.

(c) Foreclosure. Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness hereby secured in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as from time to time amended (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Premises. All expenditures and expenses of the nature mentioned in this paragraph, and such other reasonable expenses and fees as may be incurred in the protection of the Mortgaged Premises and rents and income therefrom and the maintenance of the lien of this



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Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged Premises, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional indebtedness hereby secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate until paid.

(d) Appointment of Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession Collecting Rents, Etc. Upon demand by Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagor in possession or receiver as provided in the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Premises, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Premises subordinate to this Mortgage;

(iv) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Premises, 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 loan evidenced by the Note and the issuance of a

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deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Premises as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Premises, to the payment of taxes, premiums and other charges applicable to the Mortgaged Premises, or in reduction of the indebtedness hereby secured in such order and manner as Mortgagee shall select.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Mortgagor promises to pay upon demand together with interest at the Default Interest Rate from the date incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon from the date incurred at the Default Interest Rate.

#### 24. Compliance with Illinois Mortgage Foreclosure Law.

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

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

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in

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Sections 22(c) or 25 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

25. Waiver of Right to Redeem From Sale - Waiver of Appraisalment, Valuation, Etc. Mortgagor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Note and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Mortgaged Premises does not constitute agricultural real estate, as defined in Section 15-1201 of the Act, or residential real estate, as defined in Section 15-1219 of the Act. To the fullest extent permitted by law, Mortgagor, pursuant to Section 15-1601(b) of the Act, hereby voluntarily and knowingly waives any and all rights of redemption on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

26. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, and all of which expenditures shall become so much additional indebtedness hereby secured which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Interest Rate.

27. Insurance After Foreclosure. Wherever provision is made in the Mortgage or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale. Upon confirmation of sale, Mortgagee shall be empowered to assign all policies of insurance to the purchaser at the sale.

28. Protective Advances. All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively

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“Protective Advances”), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act.

(b) payments by Mortgagee of: (i) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1506 of the Act.

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens.

(d) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Section 1504 (d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action.

(e) Mortgagee's reasonable fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act.

(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage.

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

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (a) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 15-1704 of the Act; (b) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (c) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the mortgaged real estate; (d) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the mortgaged real estate; (e) pursuant to any lease or other agreement for occupancy of the Mortgaged Premises.



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All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Interest Rate.

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

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (i) determination of the amount of indebtedness secured by this Mortgage at any time;
- (ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;
- (iv) application of income in the hands of any receiver or Mortgagee in possession; and
- (v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 15-1508 and Section 15-1511 of the Act.

29. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Premises or of any sale of property pursuant to Section 23(c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 23(b), 23(c) and 26 hereof; second, to all other items which under the terms hereof constitute indebtedness hereby secured in addition to that evidenced by the Note with interest thereon as herein provided; third, to all interest on the Note; fourth, to all principal on the Note with any overplus to whomsoever shall be lawfully entitled to same.

30. Mortgagee's Remedies Cumulative - No Waiver. No remedy or right of Mortgagee shall be exclusive but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or provided for in the Loan Agreement. No delay in the exercise or omission to exercise any remedy or right accruing on any default 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 different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

31. Mortgagee Party to Suits. If Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee shall incur any costs or expenses in preparation for the commencement of any foreclosure proceeding or for the defense of any threatened suit

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or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Mortgagor agrees to pay to Mortgagee, immediately and without demand, all reasonable costs, charges, expenses and attorneys' fees incurred by Mortgagee in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the Default Interest Rate.

32. Modifications Not To Affect Lien. Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may in its discretion release any part of the Mortgaged Premises or any person liable for any of the indebtedness hereby secured, may extend the time of payment of any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released, and may agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest applicable thereto).

33. Indemnification. To the fullest extent permitted by law and except to the extent resulting solely from Mortgagee's gross negligence or willful misconduct, Borrower agrees to protect, indemnify, defend and save harmless Mortgagee and their directors, officers, agents, employees, successors and assigns for, from and against any suits, claims or demands, including legal fees and expenses on account of or arising out of: (a) this Mortgage or the Loan Documents or otherwise in connection herewith or in connection with the Mortgaged Premises, any collateral provided by Mortgagor to Mortgagee or any Mortgagor Liabilities, including any suit, claim or demand arising out of the removal of, or failure to remove, any and all nuclear, toxic radioactive or other Hazardous Materials (as that term is defined in Loan Agreement) from the Mortgaged Premises; (b) any Lease; (c) any applicable CC&Rs, including any suit, claim or demand that Mortgagor, any Tenant or any other person has violated or failed to comply with any such CC&Rs; (d) any applicable approvals by any Governmental Authority, including any suit, claim or demand that seeks to challenge any approval (including zoning approvals) issued or granted by any such Governmental Authority with respect to the Project; and (e) any matter arising from or related to the construction of the Improvements, the Contractor, any Construction Contractor, any Subcontractor or any other person providing labor, services or materials with respect to the Project, including any suit, claim or demand that Mortgagees are obligated to make any disbursements of Loan proceeds to or for the benefit of any such person. The indemnification provided above shall not apply to matters arising out of (b), (c) or (d) above to the extent that such suit, claim or demand relates to any condition which first exists subsequent to the time that Mortgagee or its successors or assigns acquired title to the Mortgaged Premises. Upon receiving knowledge of any suit, claim or demand asserted by a third party that Mortgagee believes is covered by this indemnity, Mortgagee shall give Mortgagor notice of the matter and an opportunity to defend it, at Mortgagor's sole cost and expense, with legal counsel satisfactory to Mortgagee. Mortgagee may also require Mortgagor to so defend the matter. The obligations on the part of Mortgagor under this Section shall survive the closing of the Loan and the repayment thereof, to the extent of all events occurring in whole or in part prior to such repayment. Mortgagor hereby acknowledges that Mortgagee shall not be deemed to have assumed any responsibility or liability in respect to the design of the Project, or the adequacy of the Plans and Specifications, on account of Mortgagee's receipt or review of the Plans and Specifications delivered pursuant to this Mortgage. All defined terms in this paragraph not otherwise defined herein shall have the meaning ascribed in the Loan Agreement.

34. Notices. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) received after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail,

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postage prepaid, return receipt requested, (iii) when received if sent by private courier service, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

To Mortgagee: Associated Bank, National Association  
500 Lake Cook Road  
Suite 210  
Deerfield, Illinois 60015  
Attention: Ms. Rosemary Kehr

With copy to: Schwartz Cooper Chartered.  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
Attention: Scott M. Lapins, Esq.

To Mortgagor: c/o Panattoni Investments, LLC  
6250 N. River Road  
Suite 4050  
Rosemont, Illinois 60018  
Attention: Mr. Carl D. Panattoni

With copy to: Panattoni Law Firm  
6055 Primacy Parkway  
Suite 150  
Memphis, Tennessee 38119  
Attention: Laurence D. Conn, Esq.

or to each such party at such other addresses as such party may designate in a written notice to the other parties.

35. Partial Invalidity. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

36. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

37. Default Interest Rate. For purposes of this Mortgage, "Default Interest Rate" shall mean the "Default Interest Rate" as defined in the Note.

38. Headings. The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

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39. Changes, Etc. This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

40. Governing Law. This Mortgage shall be governed by and construed under the laws of the State of Illinois.

41. Future Advances. Mortgagee shall have the right, but not the obligation, to advance additional funds in excess of \$7,600,000.00 to Mortgagor pursuant to this Mortgage and the other Loan Documents; and any sum or sums which may be so loaned or advanced by Mortgagee to Mortgagor pursuant to this Mortgage and the other Loan Documents within ten (10) years from the date hereof, together with interest thereon at the rate specified herein or therein, shall be equally secured with and have the same priority as the original indebtedness and be subject to all the terms and provisions of this, provided, however, that the indebtedness secured hereby shall in no event exceed \$15,200,000.00.

42. Jury Waiver. THE UNDERSIGNED AND MORTGAGEE (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THE UNDERSIGNED AND MORTGAGEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT OR ANY OTHER RELATED DOCUMENT, OR ANY RELATIONSHIP BETWEEN LENDER AND THE UNDERSIGNED. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER RELATED DOCUMENTS.

43. Waiver of Partition. Mortgagor shall not, either directly or indirectly, take any action to require partition or appraisal of the Mortgaged Premises, and notwithstanding any provisions of applicable law or principle of equity to the contrary, each of the undersigned hereby irrevocably waives any and all rights to maintain any action for partition or to compel any sale with respect to its interest in the Mortgaged Premises.

44. Subordination. Each Mortgagor hereby agrees that the lien of this Mortgage in favor of Mortgagee, and any renewals or extensions hereof, shall unconditionally be and remain at all times a lien or charge on the Mortgaged Premises, prior and superior to any lease, lien, charge, option to purchase, claim or interest of any Mortgagor in the Mortgaged Premises, including but not limited to the any Agency Agreements, Options to Purchase, Ground Leases, Memoranda of Ground Lease, and any other agreement entered into between the Mortgagors (collectively, the "Junior Documents"). This Mortgage shall be the whole and only agreement with regard to the subordination of the lien or charge of the Junior Documents to the lien or charge of this Mortgage and shall supersede and cancel, but only insofar as would affect the priority between the Junior Documents and this Mortgage. This provision shall control irrespective of: (i) the time, order, manner or method of creation, attachment or perfection of the respective security interests, guaranties, interests, and/or liens created under the Junior Documents; (ii) the time or manner of the filing and or recording of any Junior Document; (iii) the dating, execution or delivery of any Junior Document; and (iv) any provision of the Code or any other applicable law. It being agreed that the Junior Documents and all claims, rights and interests therein or arising therefrom or related thereto against any Mortgagor, the Mortgaged Premises, or any part thereof, are hereby subjected and subordinated to this Mortgage, the Loan Documents and all liens, rights, titles, assignments and security interests created by this Mortgage and the Loan Documents, in lien, priority, right, claim, payment and collection.



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45. Counterparts. This Mortgage may be executed in any number of counterparts, all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page.

46. Non Recourse. Notwithstanding anything contained in this Mortgage to the contrary, the liability of Moss under this Mortgage shall be limited solely to Moss's right, title and interest, now owned or hereafter acquired, in and to the Mortgaged Premises. However, notwithstanding anything to the contrary contained herein, Moss shall be personally liable to Mortgagee for any liabilities, costs, expenses (including reasonable attorneys' fees and expenses), claims, losses or damages incurred by Mortgagee (including, without limitation, any impairment of Mortgagee's security for the Loan) with respect to any of the following matters: (i) fraud or material misrepresentation committed by Moss; (ii) waste of the Mortgaged Premises committed or permitted by Moss; (iii) failure by Moss to pay property or other taxes, assessments or charges which may create liens senior to the lien of this Mortgage on all or any portion of the Mortgaged Premises, except where, by contract, the obligation to pay such property or other taxes, assessments or charges has been assumed by Borrower; or (iv) failure by Moss to deliver any insurance or condemnation proceeds or awards or any security deposits received by Moss to Mortgagee or to otherwise apply such sums as required under the terms of the Loan Documents.

Notwithstanding anything contained in this Mortgage to the contrary, the liability of Red Water under this Mortgage shall be limited solely to Red Water's right, title and interest, now owned or hereafter acquired, in and to the Mortgaged Premises. However, notwithstanding anything to the contrary contained herein, Red Water shall be personally liable to Mortgagee for any liabilities, costs, expenses (including reasonable attorneys' fees and expenses), claims, losses or damages incurred by Mortgagee (including, without limitation, any impairment of Mortgagee's security for the Loan) with respect to any of the following matters: (i) fraud or material misrepresentation committed by Red Water; (ii) waste of the Mortgaged Premises committed or permitted by Red Water; (iii) failure by Red Water to pay property or other taxes, assessments or charges which may create liens senior to the lien of this Mortgage on all or any portion of the Mortgaged Premises, except where, by contract, the obligation to pay such property or other taxes, assessments or charges has been assumed by Borrower; or (iv) failure by Red Water to deliver any insurance or condemnation proceeds or awards or any security deposits received by Red Water to Mortgagee or to otherwise apply such sums as required under the terms of the Loan Documents.

Nothing contained in this Paragraph shall be deemed to release, affect or impair the indebtedness evidenced by the Note or the obligations of Borrower under, or the liens and security interests created by, the Loan Documents, or Mortgagee's rights to enforce its remedies under the Loan Documents, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief, or any suit or action in connection with the preservation, enforcement or foreclosure of the liens, mortgages, assignments and security interests which are now or at any time hereafter security for the payment and performance of any of the obligations under the Note or the other Loan Documents.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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IN WITNESS WHEREOF, Mortgagor has executed, sealed and delivered this Mortgage as of the date and year first written above.

**BIRCHWOOD INDUSTRIAL CENTER PG, LLC**, an Illinois limited liability company

By: JP Portfolio, LLC, an Illinois limited liability company, its Manager

By: \_\_\_\_\_  
Name: John Pagliari  
Title: Sole Member

**RED WATER MANAGEMENT COMPANY**, a California limited partnership

By: \_\_\_\_\_  
Name: Scott A. Stone  
Title: General Partner

By: \_\_\_\_\_  
Name: Kenneth C. Stone  
Title: General Partner

By: \_\_\_\_\_  
Name: Suzanne Stone  
Title: General Partner

**MOSS PROPERTIES, LLC**, a California limited liability company

By: \_\_\_\_\_  
Name: John T. Benjamin  
Title: Manager

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed, sealed and delivered this Mortgage as of the date and year first written above.

**BIRCHWOOD INDUSTRIAL CENTER PG, LLC**, an Illinois limited liability company

By: JP Portfolio, LLC, an Illinois limited liability company, its Manager

By: \_\_\_\_\_

Name: John Pagliari

Title: Sole Member

**RED WATER MANAGEMENT COMPANY**, a California limited partnership

By: *S. A. Stone*

Name: Scott A. Stone

Title: General Partner

By: *Kenneth C. Stone*

Name: Kenneth C. Stone

Title: General Partner

By: *Suzanne Stone*

Name: Suzanne Stone

Title: General Partner

**MOSS PROPERTIES, LLC**, a California limited liability company

By: \_\_\_\_\_

Name: John T. Benjamin

Title: Manager

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed, sealed and delivered this Mortgage as of the date and year first written above.

**BIRCHWOOD INDUSTRIAL CENTER PG, LLC**, an Illinois limited liability company

By: JP Portfolio, LLC, an Illinois limited liability company, its Manager

By: \_\_\_\_\_  
Name: John Pagliari  
Title: Sole Member

**RED WATER MANAGEMENT COMPANY**, a California limited partnership

By: \_\_\_\_\_  
Name: Scott A. Stone  
Title: General Partner

By: \_\_\_\_\_  
Name: Kenneth C. Stone  
Title: General Partner

By: \_\_\_\_\_  
Name: Suzanne Stone  
Title: General Partner

**MOSS PROPERTIES, LLC**, a California limited liability company

By: \_\_\_\_\_  
Name: John T. Benjamin  
Title: Manager

Property of Cook County Clerk's Office



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STATE OF ILLINOIS  
COUNTY OF COOK ) SS.

I HEREBY CERTIFY that on this 13<sup>TH</sup> day of November, 2007, before me personally appeared John Pagliari, the sole Member of JP Portfolio, LLC, an Illinois limited liability company, the Manager of Birchwood Industrial Center PG, LLC, an Illinois limited liability company, to me known to be the same persons who signed the foregoing instrument as his free act and deed on behalf of such limited liability company for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited liability company.

WITNESS my signature and official seal at Rosemont in the County of COOK and State of Illinois the day and year last aforesaid.

(NOTARY SEAL)



[Signature]  
Notary Public

My Commission Expires: 6/2/08

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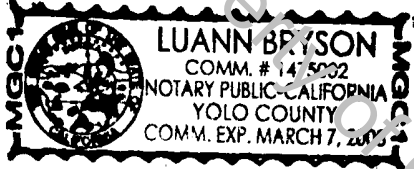
STATE OF CAL )

COUNTY OF YOLO ) SS.

I HEREBY CERTIFY that on this 12<sup>th</sup> day of November, 2007, before me personally appeared Scott A. Stone, a General Partner of Red Water Management Company, a California limited partnership, to me known to be the same persons who signed the foregoing instrument as his free act and deed on behalf of such limited partnership for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited partnership.

WITNESS my signature and official seal at DAVIS in the County of YOLO and State of California, the day and year last aforesaid.

(NOTARY SEAL)



*[Handwritten Signature]*

Notary Public

My Commission Expires: 3/7/08

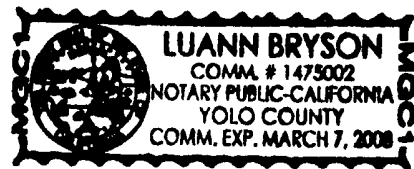
STATE OF CA )

COUNTY OF YOLO ) SS.

I HEREBY CERTIFY that on this 12<sup>th</sup> day of November, 2007, before me personally appeared Kenneth C. Stone, a General Partner of Red Water Management Company, a California limited partnership, to me known to be the same persons who signed the foregoing instrument as his free act and deed on behalf of such limited partnership for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited partnership.

WITNESS my signature and official seal at DAVIS in the County of YOLO and State of California, the day and year last aforesaid.

(NOTARY SEAL)



*[Handwritten Signature]*

Notary Public

My Commission Expires: 3/7/08

# UNOFFICIAL COPY

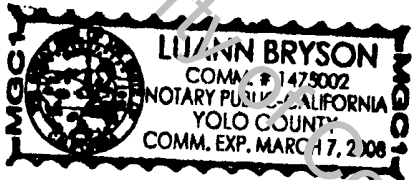
STATE OF CA )

COUNTY OF yolo ) SS.

I HEREBY CERTIFY that on this 12<sup>th</sup> day of November, 2007, before me personally appeared Suzanne Stone, a General Partner of Red Water Management Company, a California limited partnership, to me known to be the same persons who signed the foregoing instrument as her free act and deed on behalf of such limited partnership for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited partnership.

WITNESS my signature and official seal at Davis in the County of yolo and State of ~~Illinois~~ California, the day and year last aforesaid.

(NOTARY SEAL)



[Signature]  
Notary Public  
My Commission Expires: 3/17/08

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this \_\_\_\_\_ day of November, 2007, before me personally appeared John T. Benjamin, the Manager of Moss Properties, LLC, a California limited liability company, to me known to be the same persons who signed the foregoing instrument as his free act and deed on behalf of such limited liability company for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited liability company.

WITNESS my signature and official seal at \_\_\_\_\_ in the County of \_\_\_\_\_ and State of Illinois, the day and year last aforesaid.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

# UNOFFICIAL COPY

STATE OF \_\_\_\_\_ )

) SS.

COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this \_\_\_\_\_ day of November, 2007, before me personally appeared Suzanne Stone, a General Partner of Red Water Management Company, a California limited partnership, to me known to be the same persons who signed the foregoing instrument as her free act and deed on behalf of such limited partnership for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited partnership.

WITNESS my signature and official seal at \_\_\_\_\_ in the County of \_\_\_\_\_ and State of Illinois, the day and year last aforesaid.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF CA )

) SS.

COUNTY OF Sacramento

I HEREBY CERTIFY that on this 12 day of November, 2007, before me personally appeared John T. Benjamin, the Manager of Moss Properties, LLC, a California limited liability company, to me known to be the same persons who signed the foregoing instrument as his free act and deed on behalf of such limited liability company for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited liability company.

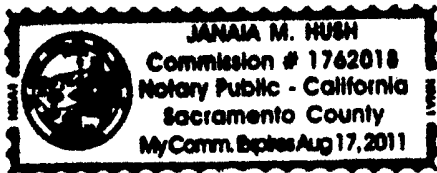
WITNESS my signature and official seal at Sacramento in the County of Sacramento and State of ~~Illinois~~, the day and year last aforesaid.

California

(NOTARY SEAL)

Jamaica Bush  
Notary Public

My Commission Expires: Aug. 17, 2011





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## EXHIBIT "A"

### LEGAL DESCRIPTION

THAT PART OF THE WEST  $\frac{1}{2}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 28, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH EAST CORNER OF SAID WEST  $\frac{1}{2}$ , THENCE SOUTH 1196.048 FEET ALONG THE EAST LINE OF SAID WEST  $\frac{1}{2}$ ; THENCE WEST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID WEST  $\frac{1}{2}$  723.98 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING TRACT OF LAND; THENCE CONTINUING WEST ALONG SAID PARALLEL LINE 450.0 FEET; THENCE NORTH PERPENDICULARLY TO SAID PARALLEL LINE TO A POINT ON A LINE 756.066 FEET SOUTH OF (AS MEASURED ALONG THE EAST LINE OF SAID WEST  $\frac{1}{2}$ ) AND PARALLEL WITH THE NORTH LINE OF SAID WEST  $\frac{1}{2}$ ; THENCE EAST ALONG THE LAST DESCRIBED PARALLEL LINE 450.0 FEET; THENCE SOUTH TO THE HEREIN DESCRIBED POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

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## EXHIBIT "B"

### PERMITTED EXCEPTIONS

Exceptions A, K, L, M, T, U, V, AS, and AT, inclusive, on that certain Proforma Loan Policy of Title Insurance No. 1401-0088392309-D2 issued by Chicago Title Insurance Company.

Property of Cook County Clerk's Office

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## EXHIBIT "C"

### PERSONAL PROPERTY

Mortgagor has granted to Mortgagee a security interest in the property owned by Mortgagor and described as follows:

(a) All personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used in connection with the real estate legally described on Exhibit A to this Mortgage (the "Real Estate") or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Mortgagor in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Mortgagor or on its behalf;

(b) Any and all rents, revenues, issues, profits, proceeds, income, royalties, accounts, including health care insurance receivables, accounts receivable, escrows, reserves, impounds, security deposits and other rights to monies now owned or hereafter acquired and arising from or out of the Real Estate and/or the businesses and operations conducted by Mortgagor thereon.

(c) All fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Real Estate or the improvements thereon, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor;

(d) All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Real Estate or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Real Estate or improvements thereon or proceeds of any sale, option or contract to sell the Real Estate or improvements thereon or any portion thereof;

(e) Any and all other personal property of any kind, nature or description, whether tangible or intangible, (including without limitation, any and all goods, contract rights, franchises, licenses, permits, chattel paper, money, equipment, deposit accounts, including health care insurance receivables, documents, investment property, instruments, letter of credit rights, supporting obligators and general intangibles) of Mortgagor relating to or used in connection with the operation or maintenance of the Real Estate, whether now owned or hereafter acquired, or in which Mortgagor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise).

(f) Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing.

(g) All of the books and records pertaining to the foregoing.