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Cook County Recorder of Deeds  
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## SUBORDINATED LEASEHOLD MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

by and from

Barney's, Inc., "Mortgagor"

to

Citicorp USA, Inc., in its capacity as Administrative Agent, "Mortgagee"

Dated as of September 6, 2007

Location:	25 East Oak Street
Municipality:	Chicago
County:	Cook
State:	Illinois

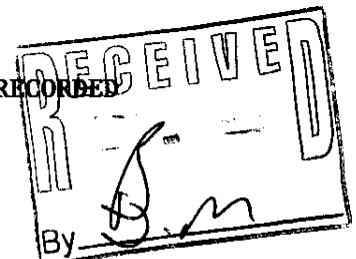
Mortgagor's Employee Identification No: 13-4942980

THE SECURED PARTY (MORTGAGEE) DESIRES THIS FIXTURE FILING TO BE INDEXED AGAINST THE RECORD OWNER OF THE REAL ESTATE DESCRIBED HEREIN.

PREPARED BY, RECORDING REQUESTED BY,  
AND WHEN RECORDED MAIL TO:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Samuel Zylberberg, Esq. (CDL)

"THIS MORTGAGE IS RECORDED TO CORRECT MORTGAGE PREVIOUSLY RECORDED OCTOBER 22, 2007 AS DOCUMENT NO. 0729534085"



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## SUBORDINATED LEASEHOLD MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

**THIS SUBORDINATED LEASEHOLD MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING** (this "**Mortgage**") is dated as of September 6, 2007 by BARNEY'S, INC., a New York corporation ("**Mortgagor**"), whose address is 575 Fifth Avenue, New York, New York 10017 in favor of CITICORP USA, INC. ("**CUSA**"), a Delaware corporation, as mortgagee, assignee and secured party, in its capacity as administrative agent for the Lenders and the Issuers (each, as defined in the Credit Agreement referred to below) (in such capacity, "**Administrative Agent**") (Administrative Agent, together with its successors and assigns ("**Mortgagee**") having an address at 388 Greenwich Street, 19th Floor, New York, New York 10013.

### RECITALS:

WHEREAS, pursuant to the Revolving Credit Facility Agreement, dated as of September 6, 2007 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among STITHMAR BENTLEY ACQUISITION CO. (the "**Borrower**"), the lenders from time to time party thereto (the "**Lenders**"), the issuers from time to time party thereto (the "**Issuers**") and CUSA, as administrative agent (in such capacity, the "**Administrative Agent**" and, together with the Lenders and the Issuers, the "**ABL Secured Parties**") and collateral agent for the Lenders and the Issuers, the Lenders have severally agreed to make extensions of credit and the Issuers have agreed to issue Letters of Credit (as defined in the Credit Agreement) to the Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, the Credit Agreement evidences certain indebtedness, including, without limitation, a revolving credit facility in an original maximum aggregate principal amount of \$200,000,000.00;

WHEREAS, Mortgagor guaranteed the Obligations (as defined in the Credit Agreement) pursuant to the Guaranty dated as of the date hereof;

WHEREAS, Mortgagor acknowledges that it will derive substantial direct and indirect benefit from the Lenders making the loan to Borrower;

WHEREAS, Mortgagor is the owner and holder of that certain leasehold interest in a portion of the real estate located in the County of Cook and State of Illinois (the "**State**"), and more fully described on Exhibit A attached hereto, which forms a portion of the Mortgaged Property described below, and a memorandum of lease with respect thereto has been recorded on February 1, 1999, in the Office of the Recorder of Deeds of Cook County, Document No. 99106304, each between Iseton of America, Inc., as landlord ("**Landlord**") and Mortgagor, as tenant (said lease agreement and memorandum, together with any and all amendments, modifications, replacements and supplements thereto, and any other or future lease of all or a portion of the real estate, being hereafter referred to as the "**Lease**");

WHEREAS, the Intercreditor Agreement (as defined below) provides, among other things, that any Lien on the Collateral securing any ABL Facility Obligations, shall be junior and subordinate in all respects to all Liens on the Collateral securing any Term Loan Obligations (as such terms are defined in the Intercreditor Agreement) in accordance with, and subject to the terms thereof;

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WHEREAS, notwithstanding anything to the contrary contained in this Mortgage or under applicable law as to the priority of the lien created by or rights to payment under this Mortgage, the Mortgagee, in its capacity as Second Lien Agent for and on behalf of the ABL Secured Parties acknowledges and agrees, that such lien and rights to payment are subject and subordinate to the lien of that certain Mortgage, Assignment of Rents and Leases, and Fixture Filing dated as of the date hereof by Mortgagor for the benefit of Mortgagee (the "**Senior Mortgage**"), securing the Term Loan Obligations (as defined in the Intercreditor Agreement) in accordance with the terms and provisions of the Intercreditor Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit and the Issuers to issue Letters of Credit to the Borrower under the Credit Agreement that the Mortgagor shall have executed and delivered this Mortgage to the Administrative Agent;

NOW, THEREFORE, in consideration of the premises and to induce the Lenders, the Issuers and the Administrative Agent to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit and the Issuers to issue Letters of Credit to the Borrower thereunder, Mortgagor hereby agrees with the Administrative Agent as follows:

## ARTICLE 1

### DEFINITIONS

**Section 1.1** Definitions. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein have the meanings given to them in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) "**Default Rate**": A rate equal to two percent per annum in excess of the rate of interest applicable to such Term Loan or other Obligation from time to time, as set forth in Section 2.8(c) of the Credit Agreement.

(b) "**Intercreditor Agreement**": That certain Intercreditor Agreement, dated as of September 6, 2007, among CUSA, as administrative agent and collateral agent for the ABL Secured Parties (as defined in the Intercreditor Agreement), including its successors and assigns from time to time (the "**First Lien Agent**"), CUSA, as administrative agent and collateral agent for the Term Loan Facility Secured Parties (as defined in the Intercreditor Agreement), including its successor and assigns from time to time (the "**Second Lien Agent**"), the Borrower and certain of the Borrower's Subsidiaries.

(c) "**Mortgaged Property**": Mortgagor's leasehold estate together with Mortgagor's right, title and interest in and to (1) the property described on Exhibit A attached hereto (the "**Leased Property**"), which interest is granted pursuant to the agreement described on Exhibit A-1 attached hereto and incorporated herein by this reference (as this such agreement may be amended, supplemented or otherwise modified from time to time, the "**Mortgaged Lease**"), (2) all improvements now owned or hereafter acquired by Mortgagor, now or at any time situated, placed or constructed upon or within the Leased Property (the "**Improvements**"; the Leased Property and Improvements are collectively referred to as the "**Premises**"), (3) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Leased Property, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "**Fixtures**"), (4) all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal

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property as defined in the UCC (defined below), now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Premises (the “**Personalty**”), (5) all reserves, escrows or impounds required under the Credit Agreement and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property (the “**Deposit Accounts**”), (6) other than the Mortgaged Lease, all subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the “**Subleases**”), (7) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Subleases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the “**Rents**”), (8) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the “**Property Agreements**”), (9) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, (10) all property tax refunds payable with respect to the Mortgaged Property (the “**Tax Refunds**”), (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the “**Proceeds**”), (12) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor (the “**Insurance**”), and (13) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any portion of the Leased Property, Improvements, Fixtures or Personalty (the “**Condemnation Awards**”). As used in this Mortgage, the term “Mortgaged Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

(d) “**UCC**”: The Uniform Commercial Code of New York or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than New York, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

## ARTICLE 2

### GRANT

**Section 2.1 Grant.** To secure the full, prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations of Mortgagor, Mortgagor GRANTS, MORTGAGES, BARGAINS, ASSIGNS, SELLS, CONVEYS and CONFIRMS, to Mortgagee and its successors and assigns (for the benefit of the Lenders and the Issuers) forever and grants to Mortgagee and its successors and assigns (for the benefit of the Lenders and the Issuers) forever a continuing security interest in and to all of the Mortgaged Property, subject, however, only to Customary Permitted Liens and the lien of the Senior Mortgage.

## ARTICLE 3

### WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

**Section 3.1 Title to Mortgaged Property and Lien of this Instrument.** Mortgagor owns good and marketable leasehold title to the Mortgaged Property free and clear of any liens, claims or

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interests, except Customary Permitted Liens. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property subject only to Customary Permitted Liens and the Senior Mortgage.

**Section 3.2** Second Lien Status. Mortgagor shall preserve and protect the second lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than a Customary Permitted Lien or the lien of the Senior Mortgage is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement.

**Section 3.3** Payment and Performance. Mortgagor shall pay the and perform the Secured Obligations in full when they are required to be paid or performed.

**Section 3.4** Replacement of Fixtures and Personalty. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty owned or leased by Mortgagor to be removed at any time from the Leased Property or Improvements, unless the removed item is removed temporarily for maintenance and repair or is permitted to be removed pursuant to the terms of the Credit Agreement.

**Section 3.5** Inspection. Mortgagor shall from time to time permit the Administrative Agent and the Lenders, or any agents or representatives thereof, within two Business Days after written notification of the same (except that during the continuance of an Event of Default, no such notice shall be required) to (a) examine and make copies of and abstracts from the records and books of account of Mortgagor and (b) visit the Mortgaged Property.

**Section 3.6** Insurance; Condemnation Awards and Insurance Proceeds.

(a) Insurance. Mortgagor shall maintain or cause to be maintained, with financially sound and reputable insurers, insurance with respect to the Mortgaged Property against loss or damage of the kinds customarily carried or maintained under similar circumstances by corporations of established reputation engaged in similar businesses. Each such policy of insurance shall name Mortgagee as the loss payee (or, in the case of liability insurance, an additional insured) thereunder for the ratable benefit of the Secured Parties, and shall provide for at least 30 days' prior written notice of any material modification or cancellation of such policy.

(b) Condemnation Awards. Mortgagor assigns all Condemnation Awards to Mortgagee and authorizes Mortgagee to collect and receive such Condemnation Awards and to give proper receipts and acquittances therefor, subject to the terms of the Credit Agreement.

(c) Insurance Proceeds. Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly.

**Section 3.7** Other Covenants. All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the Leased Property.

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## ARTICLE 4

### DEFAULT AND FORECLOSURE

**Section 4.1 Remedies.** Upon the occurrence and during the continuance of an Event of Default, Mortgagee may, at Mortgagee's election exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Subject to any provisions of the Loan Documents providing for the automatic acceleration of the Indebtedness upon the occurrence of certain Events of Default, declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon. If Mortgagor remains in possession of the Mortgaged Property following the occurrence and during the continuance of an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) **Operation of Mortgaged Property.** Hold, sublease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable in accordance with the terms of the Lease), and apply all Rents and other amounts collected in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure and Sale.** Institute proceedings for the complete foreclosure of this Mortgage, either by judicial action or by power of sale, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels as Mortgagee may determine. With respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee or any of the Secured Parties may be a purchaser at such sale. If Mortgagee is the highest bidder, Mortgagee may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash. In the event this Mortgage is foreclosed by judicial action, appraisal of the Mortgaged Property is waived.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7.

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(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity.

## Section 4.2 Intentionally Omitted.

Section 4.3 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee and the Secured Parties shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee or the Secured Parties, as the case may be, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee or the Secured Parties in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a second priority lien and security interest in and to the Mortgaged Property. For payment of the Secured Obligations, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 4.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Mortgagee to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6 Discontinuance of Proceedings. If Mortgagee or the Secured Parties shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee or the Secured Parties, as the case may be, shall have the unqualified right to do so and, in such an event, Mortgagor, Mortgagee and the Secured Parties shall be restored to their former positions with respect to the Secured Obligations, the Secured Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee and the Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee or the Secured Parties thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 4.7 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

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(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) attorneys' and accountants' fees and expenses, and (4) costs of advertisement;

(b) to the Secured Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(c) the balance, if any, to the Persons legally entitled thereto.

**Section 4.8** Occupancy After Foreclosure. Any sale of the Mortgaged Property or any part thereof in accordance with Section 4.1(d) will divest all right, title and interest of Mortgagor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Mortgagor retains possession of such property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

**Section 4.9** Additional Advances and Disbursements; Costs of Enforcement.

(a) Upon the occurrence and during the continuance of any Event of Default, Mortgagee and each of the Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee or any Secured Party under this Section 4.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Secured Obligations or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

**Section 4.10** No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Subleases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee or any Secured Party to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee or any Secured Party to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Subleases or otherwise.

## ARTICLE 5

### ASSIGNMENT OF RENTS AND SUBLEASES

**Section 5.1** Assignment. In furtherance of and in addition to the assignment made by Mortgagor in Section 2.1 of this Mortgage, Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Mortgagee all of its right, title and interest in and to all Subleases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This



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assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Subleases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Secured Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Secured Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate, without notice to Mortgagor by Mortgagee (any such notice being hereby expressly waived by Mortgagor to the extent permitted by applicable law).

**Section 5.2** Perfection Upon Recordation. Mortgagor acknowledges that Mortgagee has taken all actions necessary to obtain, and that upon recordation of this Mortgage Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected, second priority, present assignment of the Rents arising out of the Subleases and all security for such Subleases. Mortgagor acknowledges and agrees that upon recordation of this Mortgage, Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and to the extent permitted under applicable law, all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "**Bankruptcy Code**"), without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

**Section 5.3** Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

**Section 5.4** No Merger of Estates. So long as part of the Secured Obligations remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any tenant or any third party by purchase or otherwise.

## ARTICLE 6

### SECURITY AGREEMENT

**Section 6.1** Security Interest. This Mortgage constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Subleases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Mortgagor grants to Mortgagee a second priority security interest in the Personalty, Fixtures, Subleases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance, Condemnation Awards and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Secured Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Subleases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

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**Section 6.2** Financing Statements. Mortgagor shall prepare and deliver to Mortgagee such financing statements, and shall execute and deliver to Mortgagee such documents, instruments and further assurances, in each case in form and substance satisfactory to Mortgagee, as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder. Mortgagor hereby irrevocably authorizes Mortgagee to cause financing statements and any such documents, instruments and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor's jurisdiction of organization is set forth in the introductory paragraph of this Mortgage. After the date of this Mortgage, Mortgagor shall not change its name, type of organization, organizational identification number (if any), jurisdiction of organization or location (within the meaning of the UCC) without giving at least thirty (30) days' prior written notice to Mortgagee.

**Section 6.3** Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. The information provided in this Section 6.3 is provided so that this Mortgage shall comply with the requirements of the UCC for a mortgage instrument to be filed as a financing statement. Mortgagor is the "Debtor" and its name and mailing address are set forth in the preamble of this Mortgage immediately preceding Article 1. Mortgagee is the "Secured Party" and its name and mailing address from which information concerning the security interest granted herein may be obtained are also set forth in the preamble of this Mortgage immediately preceding Article 1. A statement describing the portion of the Mortgaged Property comprising the fixtures hereby secured is set forth in Section 1.1(c) of this Mortgage. The record owner of the Mortgaged Property is Mortgagor. The employer identification number of Debtor (Mortgagor) and the organizational identification number of Debtor (Mortgagor) are set forth on the cover page hereof.

## ARTICLE 7

### LEASEHOLD MORTGAGE PROVISIONS

**Section 7.1** The Mortgaged Lease. (a) With respect to each Mortgaged Lease, Mortgagor hereby warrants and represents as follows: (i) Mortgagor is the owner of a valid and subsisting interest as tenant under the Mortgaged Lease; (ii) the Mortgaged Lease is in full force and effect, unmodified and not supplemented by any writing or otherwise, and is not currently pledged or assigned to any Person other than Mortgagee under this Mortgage; (iii) all rent, additional rent and other charges and impositions reserved in the Mortgaged Lease have been paid to the extent they are payable to the date hereof; (iv) Mortgagor enjoys the quiet and peaceful possession of the property demised by the Mortgaged Lease; (v) Mortgagor is not in default under any of the terms thereof and there are not circumstances which, with the passage of time or the giving of notice or both would constitute a default by Mortgagor thereunder; (vi) Mortgagor has not received notice from the lessor under the Mortgaged Lease of a default thereunder, which default has not been timely cured; (vii) to the best of Mortgagor's knowledge, the lessor under the Mortgaged Lease is not in default under any of the terms or provisions thereof on the part of the lessor to be observed or performed; (viii) the lessor under the Mortgaged Lease has satisfied all of its repair obligations, if any, to date pursuant to the terms of the Mortgaged Lease; (ix) the execution, delivery and performance of this Mortgage do not require any consent (other than those consents which have been obtained and are in full force and effect) under, and will not contravene any provisions of or cause a default under the Mortgaged Lease; (x) the use of the proceeds of any Loan by Mortgagor complies with all the requirements of the Mortgaged Lease; (xi) Mortgagor has delivered to Mortgagee a true, accurate and complete copy of the Mortgaged Lease; and (xii) the Mortgaged Lease or a memorandum thereof has been duly recorded and there have been no changes to the Mortgaged Lease since said recordation.

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(a) Further, with respect to each Mortgaged Lease, Mortgagor covenants and agrees as follows: (i) to promptly and faithfully observe, perform and comply with all the terms, covenants and provisions thereof on its part to be observed, performed and complied with, at the times set forth therein, and to do all things necessary to preserve unimpaired its rights thereunder; (ii) not to do, permit, or suffer any event or omission as a result of which there could be a default under or breach of any of the terms thereof; (iii) not to terminate (pursuant to the terms thereof or otherwise), cancel, surrender, modify, amend or in any way alter or permit the alteration of any of the terms thereof and not to release the lessor under the Mortgaged Lease from any obligations imposed upon it thereby; (iv) not to assign the Mortgaged Lease in whole or in part nor sublet all or substantially all of the premises demised under the Mortgaged Lease without the prior written consent of Mortgagee; (v) to give Mortgagee immediate written notice of any default by Mortgagor or the lessor under the Mortgaged Lease and to immediately deliver to Mortgagee copies of each notice of default and all other material notices, communications, plans, specifications and other similar instruments received or delivered by Mortgagor in connection therewith; (vi) to furnish to Mortgagee such information and evidence as Mortgagee may reasonably require concerning Mortgagor's due observance, performance and compliance with the terms, covenants and provisions thereof, including proof of payment of all rent, additional rent and other charges and impositions required to be paid under the Mortgaged Lease; and (vii) Mortgagor shall not consent to the subordination of the Mortgaged Lease to any mortgage of the fee interest in the Leased Property or any lien, encumbrance or matter whatsoever.

(b) With respect to each Mortgaged Lease, in the event of any default by Mortgagor in the performance of any of its obligations under such Mortgaged Lease, including, without limitation, any default in the payment of rent, additional rent or other charges and impositions made payable by the tenant thereunder, then, in each and every case, Mortgagee may, at Mortgagee's option and without notice, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Mortgagor thereunder in the name of and on behalf of the Mortgagor but no such action by Mortgagee shall release Mortgagor from any default under this Mortgage. Mortgagor shall on demand, reimburse Mortgagee for all advances made and expenses incurred by Mortgagee in curing any such default (including, without limitation, reasonable attorneys' fees and disbursements), together with interest thereon at the Applicable Rate from the date that an advance is made or expense is incurred, to and including the date the same is paid and such monies so expended by Mortgagee with interest thereon shall be secured by this Mortgage. Mortgagor, at Mortgagor's sole cost and expense, shall execute and deliver to Mortgagee, within five (5) days after request, such documents, instruments or agreements as may be required to permit Mortgagee to cure any default under the Mortgaged Lease.

(c) With respect to each Mortgaged Lease, it is hereby agreed that the fee estate in the property subject to such Mortgaged Lease (hereinafter, the "**Real Estate**") and the leasehold estate created by such Mortgaged Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in a common owner, whether by purchase or otherwise, unless Mortgagee shall consent in writing to such merger, and Mortgagee shall continue to have and enjoy all of the rights and privileges of the Mortgagee as to the separate estate. If Mortgagor acquires the fee title to the property demised under such Mortgaged Lease, or any other estate, title or interest in the property demised under the Mortgaged Lease, the lien of this Mortgage shall attach to, cover and be a lien upon such acquired estate, title or interest and same shall thereupon be and become a part of the Leased Property with the same force and effect as if specifically encumbered herein. It is the intention of Mortgagor and Mortgagee that no documents, instruments or agreements shall be necessary to confirm the spread of this Mortgage to cover Mortgagor's interest in such acquired property and that such spreader shall occur automatically upon the consummation of Mortgagor's acquisition of such estate, title or interest to such acquired property. Notwithstanding the foregoing, Mortgagor agrees to execute all instruments and documents, which Mortgagee may reasonably require to ratify, confirm and further evidence Mortgagee's lien on the acquired estate, title or interest. Furthermore, Mortgagor hereby

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appoints Mortgagee its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of Mortgagor. This power, being coupled with an interest, shall be irrevocable as long as the secured indebtedness remains unpaid. Mortgagor shall not purchase any or all of the Real Estate without prior notice to Mortgagee. Mortgagor shall pay all expenses incurred by Mortgagee in connection with the preparation, execution, acknowledgement, delivery and/or recording of any such documents, including but without limiting the generality of the foregoing, all filing, registration and recording fees and charges, documentary stamps, mortgage taxes, intangible taxes, and reasonable attorneys' fees, costs and disbursements.

(d) If any Mortgaged Lease is canceled or terminated, and if Mortgagee or its nominee shall acquire an interest in any new lease of all or any part of the applicable Real Estate, Mortgagor shall have no right, title or interest in or to the new lease or the leasehold estate created by such new lease.

(e) With respect to each Mortgaged Lease, Mortgagor shall obtain and deliver to Mortgagee within ten (10) days after written demand by Mortgagee, an estoppel certificate from the applicable lessor under such Mortgaged Lease and addressed to Mortgagee, its successors and assigns, and such other persons as Mortgagee shall reasonably request, setting forth (i) the name of the tenant thereunder; (ii) that the Mortgaged Lease to which such lessor is a party is in full force and effect and has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification); (iii) the rent, additional rent and other charges and impositions payable under such Mortgaged Lease; (iv) the date to which all rent, additional rent and other charges and impositions have been paid by the tenant under the Mortgaged Lease; (v) whether a notice of default has been received by the lessor which has not been cured, and if such notice has been received, the date it was received and the nature of the default; (vi) whether there are any defaults or alleged defaults of the tenant under the Mortgaged Lease or if there are any events which have occurred which with notice, the passage of time or both, would constitute a default under the Mortgaged Lease, and, if there are, setting forth the nature thereof in reasonable detail; and (vii) the date upon which the term of the Mortgaged Lease expires.

(f) Notwithstanding anything to the contrary contained herein, this Mortgage shall not constitute an assignment of any Mortgaged Lease within the meaning of any provision thereof prohibiting its assignment and Mortgagee shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage. Mortgagee shall be liable for the obligations of the tenant arising under the Mortgaged Lease for only that period of time which Mortgagee is in possession of the Leased Property or has acquired, by foreclosure or otherwise, and is holding all of the Mortgagor's right, title and interest therein.

(g) No release or forbearance of any of Mortgagor's obligations under any Mortgaged Lease, pursuant to such Mortgaged Lease or otherwise, shall release Mortgagor from any of its obligations under this Mortgage or the other Loan Documents.

(h) With respect to each Mortgaged Lease, Mortgagor shall enforce the obligations of the lessor under such Mortgaged Lease to the end that Mortgagor may enjoy all of the rights granted to it under the Mortgaged Lease, and will immediately notify Mortgagee of any default by the lessor, or by Mortgagor as lessee, in the performance or observance of any of the terms, covenants and conditions on the part of the lessor or Mortgagor, as the case may be, to be performed or observed under the Mortgaged Lease and Mortgagor will immediately advise Mortgagee of the occurrence of any of the defaults enumerated in the Mortgaged Lease and of the giving of any notice by the lessor under the Mortgaged Lease to Mortgagor of any default by Mortgagor, as lessee thereunder, in the performance or observance of any of the terms, covenants or conditions of the Mortgaged Lease on the part of Mortgagor to be performed or observed and will immediately deliver to Mortgagee a true copy of each such notice. If,

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pursuant to the Mortgaged Lease, the lessor under the Mortgaged Lease shall deliver to Mortgagee a copy of any notice of default given to Mortgagor, as lessee under the Mortgaged Lease, such notice shall constitute full authority and protection to Mortgagee for any action taken or omitted to be taken by Mortgagee, in good faith and in reliance thereon.

(i) With respect to each Mortgaged Lease, Mortgagor shall give Mortgagee immediate notice of the commencement of any arbitration or appraisal proceeding under and pursuant to the provisions of such Mortgaged Lease. Except as provided in the Mortgaged Lease, Mortgagor will not agree to arbitrate any disputes arising under the Mortgaged Lease without the written consent of Mortgagee, which consent can be withheld at the sole discretion of Mortgagee. Mortgagee shall have the right to intervene and participate in any such proceeding and Mortgagor shall confer with Mortgagee and its attorneys and experts and cooperate with them to the extent, which Mortgagee deems reasonably necessary for the protection of Mortgagee. Upon the request of the Mortgagee, Mortgagor will exercise all rights of arbitration conferred upon it by the Mortgaged Lease. If at any time such proceeding shall be commenced, Mortgagor shall be in default in the performance or observance of any covenant, condition or other requirement of the Mortgaged Lease or of this Mortgage, on the part of Mortgagor to be performed or observed. Mortgagee shall have, and is hereby granted the sole and exclusive right to designate and appoint on behalf of Mortgagor, the arbitrator or arbitrators, or appraiser, in such proceeding. Nothing contained herein shall obligate Mortgagee to participate in such arbitration or appraisal proceeding.

(j) With respect to each Mortgaged Lease, if any action or proceeding shall be instituted to evict Mortgagor or to recover possession of the Leased Property or any part thereof or interest therein or any action or proceeding otherwise affecting the Mortgaged Lease or this Mortgage shall be instituted, then Mortgagor will, immediately upon service thereof on or to Mortgagor, or by Mortgagor, deliver to Mortgagee a true and complete copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings, and papers, however designated, served in any such action or proceeding.

(k) With respect to each Mortgaged Lease, Mortgagor acknowledges that the Mortgaged Lease permits the proceeds of insurance required to be carried by Mortgagor hereunder on any part of the Leased Property to be determined, paid over and applied as stated in this Mortgage.

(l) Mortgagor will, promptly after the execution and delivery of this Mortgage or of any instrument or agreement supplemental hereto, notify the lessor under each Mortgaged Lease in writing of the execution and delivery hereof and deliver to the lessor a copy of each such instrument or agreement, and notify the lessor of the address(es) of Mortgagee for notices.

(m) With respect to each Mortgaged Lease, if the Mortgaged Lease is rejected in any case, proceeding or other action commenced by or against the lessor under the Mortgaged Lease (or any person or party constituting or having an interest in the Mortgaged Lease) under the Bankruptcy Code or any comparable federal or state statute or law, (i) Mortgagor, immediately after obtaining notice thereof, shall give notice thereof to Mortgagee, (ii) Mortgagor, without the prior written consent of Mortgagee, shall not elect to treat the Mortgaged Lease as terminated pursuant to Section 365(h)(i) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Mortgagor made without such consent shall be void, and (iii) this Mortgage and all the liens, terms, covenants and conditions of this Mortgage shall extend to and cover Mortgagor's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to the lessor's rejection of the Mortgaged Lease. In addition, Mortgagor hereby assigns to Mortgagee Mortgagor's rights to accept disaffirmance of the Mortgaged Lease and to remain in possession of the premises demised under the Mortgaged Lease and to offset rents under the Mortgaged Lease in the event any case, proceeding or other action is commenced by

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or against the lessor under the Mortgaged Lease (or any person or party constituting or having an interest in the Mortgaged Lease) under the Bankruptcy Code or any comparable federal or state statute or law.

(n) With respect to each Mortgaged Lease, Mortgagor hereby assigns to Mortgagee Mortgagor's right to seek an extension of the 60-day period within which Mortgagor must assume or reject the Mortgaged Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Mortgagor under the Bankruptcy Code or comparable federal or state statute or law. In the event of any such case, proceeding or other action, Mortgagor covenants that (i) it shall not reject or disaffirm the Mortgaged Lease without the prior consent of Mortgagee, and (ii) at the direction of Mortgagee it shall, in a timely fashion, (A) take all actions (including curing all existing defaults and providing assurance of future performance) as may be required to permit Mortgagor to assume the Mortgaged Lease and (B) assume the Mortgaged Lease, and (iii) at Mortgagee's request, Mortgagor shall assign its interest in the Mortgaged Lease to Mortgagee in lieu of rejecting the Mortgaged Lease as described above, upon receipt by Mortgagor of written notice from Mortgagee of such request together with the agreement of Mortgagee to cure any existing defaults of Mortgagor under the Mortgaged Lease.

(o) With respect to each Mortgaged Lease, Mortgagor hereby unconditionally and irrevocably assigns to Mortgagee (i) any right which Mortgagor has pursuant to the terms of the Mortgaged Lease to renew and/or extend the term thereof, (ii) any right which Mortgagor has pursuant to the terms of the Mortgaged Lease to cancel or terminate the Mortgaged Lease, and (iii) any option or right that Mortgagor has pursuant to the Mortgaged Lease to purchase any or all of the premises demised thereunder, provided that Mortgagee shall not exercise any such rights or options prior to the occurrence of any default.

(p) With respect to each Mortgaged Lease, Mortgagor shall exercise any option to renew or extend the term of the Mortgaged Lease if at the time such right or option becomes exercisable the Secured Obligations have not been fully paid and discharged and shall give written confirmation thereof to Mortgagee within ten (10) days after the date on which such option or right first becomes exercisable, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney in fact, with power of substitution, to exercise such option on behalf of Mortgagor if Mortgagor is required under the foregoing provisions to exercise said option but for any reason fails or refuses to exercise said option within a reasonable time prior to the expiration of Mortgagor's time to exercise the option.

## ARTICLE 8

### MISCELLANEOUS

**Section 8.1** Notices. Any notice required or permitted to be given under this Mortgage shall be given in accordance with Section 11.8 of the Credit Agreement.

**Section 8.2** Covenants Running with the Land. All Secured Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property. All Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

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**Section 8.3** Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Subleases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare and file or record financing statements and continuation statements, and to prepare, execute and file or record applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, and (d) after the occurrence and during the continuance of any Event of Default, to perform any obligation of Mortgagor hereunder, however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the highest rate at which interest is then computed on any portion of the Indebtedness; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section 7.3.

**Section 8.4** Time of Essence. Time is of the essence of this Mortgage.

**Section 8.5** Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee, the Secured Parties and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

**Section 8.6** No Waiver. Any failure by Mortgagee or the Secured Parties to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee and the Secured Parties shall each have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

**Section 8.7** Credit Agreement. If any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall govern.

**Section 8.8** Release or Reconveyance. Upon payment in full of the Indebtedness and performance in full of the Secured Obligations or upon a sale or other disposition of the Mortgaged Property permitted by the Credit Agreement, Mortgagee, at Mortgagor's request and expense, shall release the liens and security interests created by this Mortgage or reconvey the Mortgaged Property to Mortgagor.

**Section 8.9** Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Indebtedness or Secured Obligations secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee, or the Secured Parties.

**Section 8.10** Applicable Law. The provisions of this Mortgage regarding the creation, perfection and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the State. All other provisions of this Mortgage shall be governed by the

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laws of the State of New York (including, without limitation, Section 5-1401 of the General Obligations Law of the State of New York).

**Section 8.11** Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 8.12** Severability. If any provision of this Mortgage shall be held by any court of competent jurisdiction to be unlawful, void or unenforceable for any reason, such provision shall be deemed severable from and shall in no way effect the enforceability and validity of the remaining provisions of this Mortgage.

**Section 8.13** Entire Agreement. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagor and Mortgagee and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**Section 8.14** Subordination. Notwithstanding anything to the contrary contained in this Mortgage or under applicable law as to the priority of the lien created by or rights to payment under this Mortgage, the Mortgagee, in its capacity as Second Lien Agent for and on behalf of the ABL Secured Parties acknowledges and agrees that such lien and rights to payment are subject and subordinate to the lien of the Senior Mortgage in accordance with the terms and provisions of the Intercreditor Agreement.

**Section 8.15** Mortgagee as Agent; Successor Agents.

(a) Administrative Agent has been appointed to act as Administrative Agent hereunder by the Secured Parties. Administrative Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of the Mortgaged Property) in accordance with the terms of the Credit Agreement, any related agency agreement among Administrative Agent and the Secured Parties (collectively, as amended, supplemented or otherwise modified or replaced from time to time, the “**Agency Documents**”) and this Mortgage. Mortgagor and all other persons shall be entitled to rely on releases, waivers, consents, approvals, notifications and other acts of Administrative Agent, without inquiry into the existence of required consents or approvals of the Secured Parties, therefor.

(b) Mortgagee shall at all times be the same Person that is Administrative Agent under the Agency Documents. Written notice of resignation by Administrative Agent pursuant to the Agency Documents shall also constitute notice of resignation as Administrative Agent under this Mortgage. Removal of Administrative Agent pursuant to any provision of the Agency Documents shall also constitute removal as Administrative Agent under this Mortgage. Appointment of a successor Administrative Agent pursuant to the Agency Documents shall also constitute appointment of a successor Administrative Agent under this Mortgage. Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent under the Agency Documents, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent as the Mortgagee under this Mortgage, and the retiring or removed Administrative Agent shall promptly (i) assign and transfer to such successor Administrative Agent all of its right, title and interest in and to this Mortgage and the Mortgaged Property, and (ii) execute and deliver to such successor Administrative Agent such assignments and amendments and take such other actions, as may be necessary or appropriate in connection with the assignment to such



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successor Administrative Agent of the liens and security interests created hereunder, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations under this Mortgage. After any retiring or removed Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Mortgage and the Agency Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was the Administrative Agent hereunder.

**Section 8.16** Waiver of Jury Trial. EACH OF THE ADMINISTRATIVE AGENT AND MORTGAGOR IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT.

## ARTICLE 9

### LOCAL LAW PROVISIONS

If any conflict or inconsistency exists between this Article 9 and the remainder of the attached Mortgage, this Article 9 shall govern.

**Section 9.1** Protective Advances. Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after a 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 Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq. (the "Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "**Protective Advances**"):

(i) all advances made by Mortgagee in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(ii) payments made by Mortgagee of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Mortgaged Property; (B) 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 Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) 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 15-1505 of the Act;

(iii) advances made by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any prior liens;

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

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(v) Mortgagee's reasonable, out-of-pocket fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(5) of Section 15-1508 of the Act;

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

(vii) reasonable, out-of-pocket expenses incurred and expenditures made by Mortgagee with respect to the Mortgaged Property for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) 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 existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or reasonably deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member if in any way affecting the Mortgaged Property; (G) costs incurred by Mortgagee for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Mortgaged Property.

All Protective Advances shall be additional indebtedness secured by this Mortgage and shall become due and payable within ten (10) days after written request therefor from Mortgagee and with interest thereon from the date of the advance until paid at the applicable rate set forth in the Credit Agreement. 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)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of indebtedness secured by this Mortgage at any time; (B) the amount of the indebtedness found due and owing to Mortgagee in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any 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); (C) if right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5-1603 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Mortgagee in possession; and (F) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of the Act.

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**Section 9.2** Waiver of Right of Redemption and Reinstatement. Without limiting the generality of Section 4.5 of this Mortgage, the waiver by Mortgagor of its rights of redemption and reinstatement in such Section, include the waivers of such rights provided under 735 ILCS 5/15-1601 and 735 ILCS 5/15-1602.

**Section 9.3** Business Loan Recital/Statutory Exemption. (i) Mortgagor acknowledges and agrees that (A) the proceeds of the indebtedness secured hereby will be used in conformance with subparagraph (1)(c) of Section 4 of the Illinois Interest Act, as amended (815 ILCS 205/4(1)(c)); (B) the indebtedness secured hereby has been incurred solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said Section 4; (C) the indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 et. seq. has been entered into solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said section. Without limiting the generality of anything contained herein, Mortgagor acknowledges and agrees that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201) or residential real estate (as defined in 735 5/15-1219).

**Section 9.4** Maximum Indebtedness. This Mortgage shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. This Mortgage also secures any and all future obligations and indebtedness arising under or in connection with this Mortgage or the other Loan Documents, which future obligations and indebtedness shall have the same priority as if all such future obligations and indebtedness were made on the date of execution hereof. Nothing in this Section or in any other provision of this Mortgage shall be deemed an obligation on the part of Mortgagee to make any future advances of any sort. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage shall secure (in addition to any loan proceeds disbursed from time to time) the payment of any and all reasonable out-of-pocket expenses and advances due to or incurred by Mortgagee in connection with the indebtedness to be secured hereby and which are to be reimbursed by Mortgagor under the terms of this Mortgage; provided, however, that at no time shall the amount of the indebtedness secured by this Mortgage exceed \$400,000,000.00 plus interest thereon.

**Section 9.5** Future Advances. Mortgagor acknowledges that the intent hereof is to secure the Secured Obligations, whether the entire amount shall have been advanced at the date hereof, or at a later date, and to secure any other amount or amounts that may be added to the indebtedness secured hereby under the terms of this Mortgage. The total amount of the principal indebtedness secured hereby may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed an amount equal to \$400,000,000.00 in principal plus interest thereon and any amounts expended by Mortgagee in accordance with the Loan Documents, including for the payment of taxes, levies, or insurance on the Mortgaged Property made in accordance with the Loan Documents, with interest thereon. This Mortgage shall secure any and all additional or further monies which may be advanced by Mortgagee to Mortgagor after the date hereof, but any and all such future advances secured by this Mortgage shall be made not more than twenty (20) years after the date hereof. Nothing herein contained shall be deemed an obligation on the part of Mortgagee to make any future advances.

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**Section 9.6** Illinois Mortgage Foreclosure Act. It is the express intention of Mortgagee and Mortgagor that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage is deemed inconsistent with any provision in 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.

**Section 9.7** Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property or any other collateral for Secured Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the Secured Obligations. Mortgagee may later cancel any insurance purchased by Mortgagee but only after Mortgagor provides to Mortgagee evidence that Mortgagor has obtained insurance as required by this Mortgage or any of the other Loan Documents. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the Secured Obligations, Mortgagor will be responsible for the costs of that insurance, including reasonable, out-of-pocket expenses of Mortgagee that Mortgagee may lawfully impose in connect with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

**Section 9.8** Maturity Date. The initial maturity date of the loans secured hereby is September 6, 2012.

**Section 9.9** No Agricultural Use. Mortgagor warrants and represents to Mortgagee that none of the Property is presently or will during the terms of this Mortgage, be used principally or at all for agricultural or farming purposes.

*[The remainder of this page has been intentionally left blank]*



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## EXHIBIT A-1

### DESCRIPTION OF THE MORTGAGED LEASE

Amended and Restated Lease Agreement, dated as of January 28, 1999, between Retail Properties Management, Inc, successor in interest to Isetan of America Inc., as Lessor and Barney's, Inc., successor in interest to Barneys America Inc., as Lessee, as amended by First Amendment to Amended and Restated Lease Agreement, dated June 14, 1999.

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**CHICAGO TITLE INSURANCE COMPANY  
 COMMITMENT FOR TITLE INSURANCE  
 SCHEDULE A (CONTINUED)**

ORDER NO.: 1401 008389100 D1

**5. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:**

THE ESTATE OR INTEREST IN THE LAND DESCRIBED BELOW AND COVERED HEREIN IS: THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1.c. OF THE ALTA LEASEHOLD ENDORSEMENT(S) ATTACHED HERETO), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, AS AMENDED AND RESTATED, EXECUTED BY: ISETAN OF AMERICA INC., A DELAWARE CORPORATION, AS LESSOR, AND BARNEYS AMERICA INC., A DELAWARE CORPORATION, AS LESSEE, DATED AS OF AUGUST 1, 1989, A MEMORANDUM OF WHICH LEASE WAS RECORDED FEBRUARY 1, 1999 AS DOCUMENT 99108304, WHICH LEASE DEMISES THE FOLLOWING DESCRIBED LAND FOR A TERM OF YEARS BEGINNING AUGUST 1, 1989 AND ENDING JANUARY 27, 2009.

**THE LAND:****PARCEL 1:**

LOTS 1,2,3,4,5 AND 6 IN D.J. MCCORMICK'S SUBDIVISION OF PARTS OF LOTS 1 AND 2 IN THE SUBDIVISION OF THE NORTH 1/2 OF BLOCK 8 IN CANAL TRUSTEES SUBDIVISION OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

THAT PART OF LOT 3 IN BLOCK 8 AFORESAID LYING WEST OF A LINE DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF OAK STREET FROM A POINT IN SAID SOUTH LINE 4 FEET EAST OF THE NORTHWEST CORNER OF LOT 3 AFORESAID IN CANAL TRUSTEES SUBDIVISION OF SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

LOT 1 IN THE WETZLER'S SUBDIVISION OF THE PARTS OF LOTS 1,2,3, AND 4 IN THE SUBDIVISION OF NORTH 1/2 OF BLOCK 8 IN CANAL TRUSTEES SUBDIVISION OF SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## EXHIBIT A

### DESCRIPTION OF THE LEASED PROPERTY

**Address:** 25 East Oak Street, Chicago, IL

**Property Tax Index Number:**

17-0320700000

17-032070530000

17-032070070000

17-032070960000

*[See Attached Page(s) For Legal Description]*

Property of Cook County Clerk's Office