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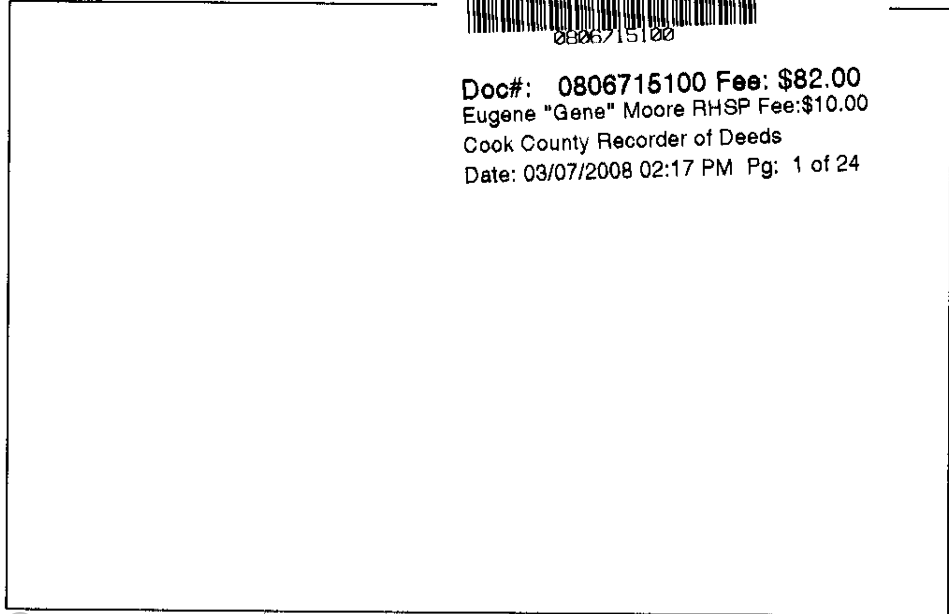


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Cook County Recorder of Deeds  
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Prepared By, Recording  
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## SECOND AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT

THIS SECOND AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT (as the same may from time to time be extended, renewed or modified, this "Instrument"), is made as of February 13, 2008 from HOT LIGHT BRANDS, LLC, a Delaware limited liability company, and (the "Borrower"), having its principal place of business at 11780 Manchester Road, Suite 207, St. Louis, Missouri 63131 to ALLIED CAPITAL CORPORATION, a Maryland corporation, having its principal place of business at 1919 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20006, its successors and assigns (the "Lender").

### RECITALS

A. Sweet Traditions, L.L.C. and Sweet Traditions of Illinois, L.L.C. (together the "Asset Sellers") are party to the Loan Agreement dated August 11, 2006 (the "Original Loan Agreement") among the Asset Sellers and the Lender, pursuant to which the Asset Sellers are indebted to the Lender and such loans are secured by, among other assets, the Security Property (as defined herein).

B. The Asset Sellers and Lender are party to that certain Amended and Restated Mortgage and Security Agreement dated as of August 11, 2006 (the "Original Security Instrument") whereby the Asset Sellers mortgaged their right, title and interest to the Security Property (as defined herein) to the Lender recorded at Document 0623343257 of the Official Records of Cook County, Illinois.

C. Pursuant to an Asset Purchase Agreement dated as of December 31, 2007, as amended by the First Amendment to the Asset Purchase Agreement dated as of February 5, 2008, among the Asset Sellers and Lender, the Borrower has assumed Twenty-Nine Million Three Hundred Seventy-Seven Thousand One Hundred Sixty and 09/100 Dollars (\$29,377,160.09) of

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indebtedness of the Asset Sellers to Lender incurred pursuant to the Original Loan Agreement (the "Assumed Indebtedness"), and the agreements of the Asset Sellers granting to Lender first priority liens in and to the assets acquired thereunder as security for such indebtedness.

D. The Borrower and Lender are Parties to a Loan Agreement dated February 13, 2008 (the "Loan Agreement") continuing, amending and restating the terms of the Assumed Indebtedness and pursuant to which Lender has agreed to make additional loans to the Borrower.

E. The Borrower and the Asset Sellers are party to an Assignment and Assumption Agreement, dated February 13, 2008 whereby the Asset Sellers assigned and Borrower assumed all of the rights and obligations of the Asset Sellers to the Original Security Instrument and the other documents listed therein as security for the payment of the Assumed Indebtedness.

F. The Borrower and the Lender desire to amend and restate the terms of the Amended Mortgage to replace the Asset Sellers with the Borrower and to amend and restate the Original Security Instrument as set forth herein.

Capitalized terms used but not defined herein shall the meanings set forth in the Loan Agreement.

NOW, THEREFORE, in consideration of and to secure the payment of (i) the Loan, (ii) all other sums, liabilities and obligations constituting the Obligations (hereinafter collectively, with the Loan, referred to as the "Debt"), (iii) the payment of all sums advanced or incurred by Lender contemplated hereby, and (iv) the performance of the obligations and covenants herein contained (all of the foregoing being collectively referred to herein as the "Secured Obligations"), Borrower and Lender hereby amend and restate the Original Security Instrument in its entirety.

Borrower has mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned, and hypothecated and by these presents does hereby mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Lender, all of its right, title and interest in and to the parcels of real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements"), with power of sale and right of entry and possession, all right, title, interest and estate of Borrower now owned or hereafter acquired, in and to the following property, rights, interests and estates (the Premises the Improvements together with the following property, rights, interests and estates being hereinafter described are collectively referred to herein as the "Security Property"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furnishings, equipment, work in process, goods, merchandise, furniture, supplies, tools and fixtures (including but not limited to all heating, air conditioning,

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plumbing, lighting, communications and elevator fixtures) and other personal property of every kind and nature, except for personal property proprietary to Krispy Kreme Doughnut Corporation, whether tangible or intangible, whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements, including without limitation, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, draperies, curtains, shades, Venetian blinds, screens, paintings, hangings, pictures, divans, couches, stools, sofas, food carts, cookware, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, ice makers, radios, televisions sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bell sash and iron conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Borrower in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Security Property is located (the "Uniform Commercial Code") superior in lien to the lien of this Instrument;

(c) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and Improvements;

(d) all leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Premises and the Improvements heretofore or hereafter entered into (including, without limitation, any and all security interests, guarantees, contractual liens and security deposits arising thereunder) (the "Leases") and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Premises and the Improvements, including, without limitation, revenues and credit card receipts collected from the rental, use or operation of restaurants, bars, meeting rooms and recreational facilities upon the Premises, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or any operator or manager of the commercial space located in the Improvements or space, or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering

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the Security Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Security Property;

(f) the right, in the name and on behalf of Borrower, to appear in and defend following an Event of Default (as hereinafter defined) any action or proceeding brought with respect to the Security Property and to commence any action or proceeding to protect the interest of Lender in the Security Property;

(g) all accounts, escrows, documents, instruments, chattel paper, claims, and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all contract rights, franchises, books, records, plans, specifications, permits, authorizations, franchise agreements, licenses (to the extent assignable), including liquor licenses, approvals, actions, and causes of action which now or hereafter relate to, are derived from or are used in connection with the Premises, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively called the "Intangibles"); and

(h) any and all proceeds and products of any of the foregoing and of any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Debt and the performance of Borrower's obligations under the Loan Documents.

TO HAVE AND TO HOLD the above granted and described Security Property unto and to the use and benefit of Lender and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender and otherwise discharge the Secured Obligations at the time and in the manner provided in the Notes, this Instrument and the other Loan Documents, and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Notes and in the other Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Borrower represents and warrants to and covenants and agrees with Lender as follows:

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Borrower will pay the Debt at the time and in the manner provided in the Notes, the Loan Agreement and in this Instrument and will duly and punctually perform all of the covenants, conditions and agreements contained in the Notes, this Instrument and the other Loan Documents to which it is a party, all of which covenants, conditions and agreements are hereby made a part of this Instrument to the same extent and with the same force as if fully set forth herein. To the extent applicable, the grant of mortgage and security interest pursuant to this Instrument confirms and reaffirms the grant of a mortgage and security interest in the Security Property granted pursuant to the Original Security Instrument, the Original Loan Agreement and agreements and instruments delivered pursuant thereto by the Asset Sellers party to such agreements and continues in all respects the grant set forth in such agreements with respect to such Security Property without in any way causing any interruption in the continuity from such original grant or in the continued evidence of the liens thereunder.

2. Warranty of Title. Borrower warrants that Borrower is the sole owner of and has good, legal, marketable and insurable fee simple title to the Security Property and has the full power, authority and right to execute, deliver and perform its obligations under this Instrument and to encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey,

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confirm, pledge, assign and hypothecate the same and that Borrower possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Security Property free and clear of all liens, encumbrances and charges whatsoever, except those exceptions approved by Lender and shown in the title insurance policy insuring the lien of this Instrument and that this Instrument is and will remain a valid and enforceable first lien on and security interest in the Security Property, subject only to said exceptions. Borrower shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

### 3. Insurance.

(a) Borrower, at its sole cost and expense, for the mutual benefit of itself and Lender, shall obtain and maintain during the entire term of this Instrument the policies of insurance (the "Policies") required pursuant to Section 5.7 of the Loan Agreement. Borrower shall pay the Premiums for such policies (the "Insurance Premiums") as the same become due and payable. If Borrower receives from any insurer any written notification or threat of any actions or proceedings regarding the noncompliance or nonconformity of the Security Property with any insurance requirements, Borrower shall give notice thereof to Lender.

(b) In the event of the entry of a judgment of foreclosure, sale of the Security Property by nonjudicial foreclosure sale, or delivery of a deed in lieu of foreclosure, Lender hereby is authorized (without the consent of Borrower) to assign any and all Policies to the purchaser or transferee thereunder, or to take such other steps as Lender may deem advisable to cause the interest of such transferee or purchaser to be protected by any of the Policies without credit or allowance to Borrower for prepaid premiums thereon.

(c) If the Security Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice thereof to Lender.

(i) In case of loss covered by the Policies, Lender may either (1) settle and adjust any claim without the consent of Borrower, or (2) allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss; provided that Borrower may adjust losses aggregating not in excess of \$100,000.00 if such adjustment is carried out in a competent and timely manner, and provided that in any case Lender shall and is hereby authorized to collect and receipt for any such insurance proceeds (and Borrower shall cause any such insurance proceeds to be paid directly to Lender); and the reasonable expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Borrower to Lender upon demand (unless deducted by and reimbursed to Lender from such proceeds).

(ii) In the event of any insured damage to or destruction of the Security Property or any part thereof (herein called an "Insured Casualty") where the loss is in an aggregate amount less than twenty-five percent (25%) of the original principal balance of the Notes and if, in the reasonable judgment of Lender (1) the Security Property can be restored within six (6) months (but not to extend beyond the maturity date of the Notes) after insurance proceeds are made available to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Insured Casualty) and not less useful than the same was prior to the Insured Casualty, (2) the insurance proceeds are sufficient for such restoration (or, should Lender reasonably

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determine that a deficiency will exist, Borrower shall have provided additional funds to Lender for disbursement pursuant to clause (iv) below or, at Lender's option, provided satisfactory assurances that such funds will be available), and (3) after such restoration the Security Property will adequately secure the outstanding balance of the Debt, then, if no Event of Default shall have occurred and be then continuing, the proceeds of insurance shall be made available to Borrower for the cost of restoring, repairing, replacing or rebuilding the Security Property or part thereof subject to the Insured Casualty, as provided for below; and Borrower hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Borrower shall pay all costs (and if required by Lender, Borrower shall deposit the total thereof with Lender in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(iii) Except as provided above, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Lender in its sole discretion, be applied to the payment of the Debt or made available to Borrower to pay for the cost of restoring, repairing, replacing or rebuilding the Security Property or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Debt shall be applied in the same manner as a voluntary prepayment as provided in the Loan Agreement. In the event that proceeds of insurance, if any, shall be made available to Borrower for the restoring, repairing, replacing or rebuilding of the Security Property, Borrower hereby covenants to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law and plans and specifications approved in advance by Lender.

(iv) In the event Borrower is entitled to receive insurance proceeds held by Lender, such proceeds (plus such additional sums provided by Borrower pursuant to clause (ii) above) shall be disbursed from time to time upon Lender being furnished with (1) evidence satisfactory to it (which evidence may include inspections of the work performed) that the percentage of restoration, repair, replacement and rebuilding covered by the disbursement has been completed in accordance with plans and specifications approved by Lender, (2) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (3) funds, or, at Lender's option, assurances satisfactory to Lender that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (4) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Lender may reasonably require and approve; and Lender may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Lender prior to commencement of work. With respect to disbursements to be made by Lender: (A) no payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; (B) funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and (C) at all times, the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain

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out of insurance proceeds held by Lender after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to Borrower to the extent of any restoration funds provided by them, and thereafter to any party entitled thereto. In no event shall Lender assume any duty or obligation for the adequacy, form or content of any such plans and specifications, nor for the performance, quality or workmanship of any restoration, repair, replacement and rebuilding.

(v) Notwithstanding anything to the contrary contained herein, the proceeds of insurance made available to Borrower in accordance with the terms and provisions of this Instrument shall be reduced by the reasonable costs (if any) incurred by Lender in the adjustment and collection thereof and the reasonable costs incurred by Lender of paying out such proceeds (including, without limitation, reasonable attorneys' fees whether suit be brought or not and costs paid to third parties for inspecting the restoration, repair, replacement and rebuilding and reviewing the plans and specifications therefor)

4. Payment of Taxes, etc. Borrower shall pay all taxes, assessments, water rents and sewer rents, now or hereafter levied or assessed or imposed against the Security Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Security Property or any part thereof (the "Other Charges") as same become due and payable. Subject to the contest rights provided in the Loan Agreement, Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Security Property, and shall promptly pay for all utility services provided to the Security Property.

5. [Intentionally Deleted].

6. Maintenance of Security Property. Borrower shall cause the Security Property to be operated and maintained in a good and safe condition and repair, normal wear and tear excepted, and in keeping with the condition and repair of properties of a similar use, value, age, nature and construction. Borrower shall not use, maintain or operate the Security Property in any manner which constitutes a public or private nuisance or which makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Lender. Borrower shall promptly comply with all laws, orders and ordinances affecting the Security Property, or the use thereof. Borrower shall promptly repair, replace or rebuild any part of the Security Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 5.20 of the Loan Agreement and shall complete and pay for any structure at any time in the process of construction or repair on the Premises, provided, however, that if Lender does not make insurance proceeds available to Borrower, Borrower shall have a period of ninety (90) days after the date Lender applies the insurance proceeds to the Debt in which to begin repairs, replacements and/or rebuilding as required hereby.

7. Use of Security Property. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any material private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Security Property or any part thereof, nor shall Borrower initiate, join in, acquiesce in, or consent to any zoning

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change or zoning matter affecting the Security Property without the express written consent of Lender. If under applicable zoning provisions the use of all or any portion of the Security Property is or shall become a nonconforming use, Borrower will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Lender. Borrower shall not permit or suffer to occur any waste on or to the Security Property or to any portion thereof and shall not take any steps whatsoever to convert the Security Property, or any portion thereof, to a condominium or cooperative form of management. Borrower will not install or permit to be installed on the Premises any underground storage tank.

## 8. Transfer or Encumbrance of the Security Property.

(a) Borrower acknowledges that Lender has examined and relied on the creditworthiness and experience of Borrower in owning and operating properties such as the Security Property in agreeing to make the loan secured hereby, and that Lender will continue to rely on Borrower's ownership of the Security Property as a means of maintaining the value of the Security Property as security for repayment of the Debt. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Security Property so as to ensure that, should Borrower default in the repayment of the Debt, Lender can recover the Debt by a sale of the Security Property. Borrower shall not, without the prior written consent of Lender, or as otherwise specifically permitted pursuant to the Loan Agreement, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Security Property or any part thereof, or permit the Security Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred, except upon payment in full of all amounts due pursuant to the Notes and the other Loan Documents.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this paragraph shall be deemed to include (i) an installment sales agreement wherein Borrower agrees to sell the Security Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Security Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) any change in the ownership interests in Borrower unless permitted by the provisions of Section 6.3 of the Loan Agreement.

## 9. Estoppel Certificates and No Default Affidavits.

(a) After request by Lender, Borrower shall within twenty (20) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Notes, (ii) the unpaid principal amount of the Notes, (iii) the rate of interest of the Notes, (iv) the date installments of interest and/or principal were last paid, (v) any known offsets or defenses to the payment of the Debt, if any, and (vi) that the Notes, this Instrument and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Lender, Borrower shall within twenty (20) days furnish Lender with a certificate reaffirming all representations and warranties of Borrower set forth herein and in the other Loan Documents as of the date requested by Lender or, to the extent of any changes to any such representations and warranties, so stating such changes.

(c) If the Security Property includes commercial property, Borrower shall deliver to Lender upon request, tenant estoppel certificates from each commercial tenant at the Security Property in form and substance reasonably satisfactory to Lender.



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10. Changes in the Laws Regarding Taxation. If any law is amended, enacted or adopted after the date of this Instrument which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Security Property, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, and such law states that such amounts cannot be added to the principal amount of the Debt, then in any such event, Lender shall have the option, by written notice of not less than forty-five (45) days, to declare the Debt and other Secured Obligations immediately due and payable.

11. No Credits on Account of the Debt and other Secured Obligations. Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt and other Secured Obligations for any part of the Taxes or Other Charges assessed against the Security Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Security Property, or any part thereof, for real estate tax purposes by reason of this Instrument or the Debt. In the event such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

12. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Notes or this Instrument, or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

13. Controlling Agreement. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this section shall control every other covenant and agreement in this Instrument and the other Loan Documents with respect to such matters. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Notes or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Lender's exercise of the option to accelerate the maturity of the Notes, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is the Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of the Notes and all other Debt (or, if the Notes and all other Debt have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Notes and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum rate permitted under applicable law from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

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14. Books and Records; Inspections. Borrower will maintain for itself and with respect to the Security Property the books, records and other financial data and information required pursuant to the Loan Agreement, and permit Lender and its representatives to copy and inspect the same as permitted in the Loan Agreement.

15. Performance of Other Agreements. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Security Property.

16. Further Acts and Assurances. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Instrument or for filing, registering or recording this Instrument. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively or perfect the security interest of Lender in the Security Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this paragraph.

17. Recording of Instrument, etc. Upon the execution and delivery of this Instrument and thereafter, from time to time, Borrower will cause this Instrument, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Security Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Lender in, the Security Property. Borrower will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Instrument, any mortgage supplemental hereto, any security instrument with respect to the Security Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Instrument, any mortgage supplemental hereto, any security instrument with respect to the Security Property or any instrument of further assurance, except where prohibited by law so to do. Borrower shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Instrument or any security instrument with respect to the Security Property.

18. Reporting Requirements. Borrower agrees to give prompt notice to Lender of the insolvency or bankruptcy filing of Borrower and agrees to otherwise comply with the reporting requirements set forth in the Loan Agreement.

19. Events of Default. The term "Event of Default" as used herein shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

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- (a) the occurrence of an Event of Default under the Loan Agreement;
- (b) subject to Borrower's right to contest as provided herein or in the Loan Agreement, if any of the Taxes or Other Charges are not paid when the same are due and payable, and such failure continues beyond the cure period provided for in the Loan Agreement; subject to Borrower's right to contest as provided herein or in the Loan Agreement, if the Security Property becomes subject to any mechanic's, materialman's or other lien except a lien for local real estate taxes and assessments not then due and payable;
- (c) if Borrower shall default under any term, covenant, or condition of this Instrument other than as specified in any of the above subparagraphs of this Section 19 which continues unremedied for a period often (10) days after notice thereof being given by Lender to Borrower, provided, however, if such default is a nonmonetary default and is not susceptible of cure within such ten (10) day period and Borrower has commenced curative action within such ten (10) day period and act with diligence thereafter in seeking such cure, Borrower shall be entitled to such additional time as is reasonably required to cure such default, not to exceed an additional thirty (30) days;
- (d) if in violation of the provisions of Section 8 of this Instrument, Borrower sells, conveys, alienates, mortgages, encumbers, pledges or otherwise transfers any portion of the Security Property or permits the Security Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, levied, pledged or otherwise transferred;
- (e) the Instrument shall cease to constitute a first-priority lien on the Security Property (other than as permitted in accordance with its terms); or
- (f) seizure or forfeiture of the Security Property, or any portion thereof, or Borrower's interest therein, resulting from criminal wrongdoing or other unlawful action of Borrower or their affiliates under any federal, state or local law.

20. Remedies. Upon the occurrence of an Event of Default, Lender may, at Lender's option, and by or through Lender itself or otherwise, do any one or more of the following:

- (a) Right to Perform Borrower's Covenants. If Borrower has failed to keep or perform any covenant whatsoever contained in this Instrument or the other Loan Documents, Lender may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant and any payment made or reasonable expense incurred in the performance or attempted performance of any such covenant, together with any sum expended by Lender that is chargeable to Borrower or subject to reimbursement by Borrower under the Loan Documents, shall be and become a part of the "Debt," and Borrower promises, upon demand, to pay to Lender, at the place where the Notes are payable, all sums so incurred, paid or expended by Lender, with interest from the date when paid, incurred or expended by Lender at the Default Rate as specified in the Notes.
- (b) Right of Entry. Lender may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Security Property, or any part thereof, and take exclusive possession of the Security Property and of all books, records and accounts relating thereto and to exercise without interference from Borrower any and all rights which Borrower has with respect to the management, possession, operation, protection or preservation of the Security Property, including without limitation the right to rent the same for the account of Borrower and to deduct from such Rents all reasonable costs, expenses, and liabilities of every character incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting or

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preserving the Security Property and to apply the remainder of such Rents on the Debt in such manner as Lender may elect. All such reasonable costs, expenses, and liabilities incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Security Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Borrower and shall bear interest from the date of expenditure until paid at the Default Rate as specified in the Notes, all of which shall constitute a portion of the Debt. If necessary to obtain the possession provided for above, Lender may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Lender pursuant to this subparagraph, Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Security Property, or any part thereof, or from any other act or omission of Lender in managing the Security Property unless such loss is caused by the willful misconduct or gross negligence of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. Borrower shall and does hereby agree to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss, or damage, which may or might be incurred by Lender under any such Lease or under or by reason hereof or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any such Lease. Should Lender incur any such liability, the amount thereof, including without limitation reasonable costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate as specified in the Notes, shall be secured hereby, and Borrower shall reimburse Lender therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, liability or responsibility upon Lender for (i) the control, care, management, leasing, or repair of the Security Property, (ii) the carrying out of any of the terms and conditions of any Lease; (iii) any waste committed on the Security Property by the tenants or by any other parties, (iv) any hazardous substances or environmental conditions on or under the Security Property, (v) any dangerous or defective condition of the Security Property or (vi) any negligence in the management, leasing, upkeep, repair, or control of the Security Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Borrower hereby assents to, ratifies and confirms any and all actions of Lender with respect to the Security Property taken under this subparagraph.

(c) Right to Appear. Lender may, without notice to Borrower and in the name and behalf of Borrower, appear in and defend any action or proceeding brought with respect to the Security Property and to commence any action or proceeding to protect the interest of Lender in the Security Property.

(d) Right to Accelerate. Lender may, without notice, except as provided in Section 19 above, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner whatsoever on the Debt, declare the entire unpaid balance of the Debt immediately due and payable, and upon such declaration, the entire unpaid balance of the Debt shall be immediately due and payable.

(e) Foreclosure - Power of Sale. Subject to the provisions of applicable law, Lender may, with or without entry, personally or by its agents or attorneys, insofar as applicable:

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(i) sell the Security Property or any part thereof to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, at one or more sales, as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or

(ii) institute proceedings for the complete or partial foreclosure of this Instrument; or

(iii) take such steps to protect and enforce its rights, whether by action, suit or proceeding in equity or at law, for the specific performance of any covenant, condition or agreement in the Notes, this Instrument or any other Loan Document, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy as Lender shall elect.

(f) Rights Pertaining to Sales.

(i) Lender may adjourn from time to time any sale by it to be made under or by virtue of this Instrument by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Lender, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(ii) Upon the completion of any sale or sales made under or by virtue of this Section 20, Lender, or any officer or any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or instruments conveying, assigning and transferring all estate, right, title and interest in and to the Security Property and other rights sold. Lender is hereby irrevocably appointed the true and lawful attorney of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of any part of the Security Property and other rights so sold. Lender may, for such purpose, execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Borrower, if so requested by Lender, shall ratify and confirm any such sale or sales by executing and delivering to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Lender, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 20, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties, interests and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same or any part thereof from, through or under Borrower.

(iii) In the event of any sale made under or by virtue of this Section 20 (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or a judgment or decree of foreclosure and sale), the entire principal of and interest on the Notes, if not previously due and payable, and all other sums required to be paid by Borrower pursuant to this Instrument and/or any other Loan Documents, immediately thereupon shall, anything in the Notes, this Instrument or any other Loan Documents to the contrary notwithstanding, become due and payable.

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(iv) The purchase money proceeds or avails of any sale made under or by virtue of this Section 20, together with any other sums which then may be held by Lender under this Instrument, whether under the provisions of this Section 20 or otherwise, shall be applied as follows:

First: to the payment of the reasonable costs and expenses of such sale, including a sales commission to the Lender making the sale in an amount not to exceed five percent (5%) of the amount of said sale or sales, reasonable compensation to the Lender's agents and attorneys, all taxes, assessments, rents and prior liens which are due and which Lender deems proper or expedient to pay, and the reasonable costs and expenses of any judicial proceedings wherein the sale may be made, as well as all expenses, liabilities and advances made or incurred by Lender under this Instrument, together with interest at the Default Rate on all advances made by Lender and all taxes or assessments paid by Lender, except any taxes, assessments or other charges subject to which the Security Property shall have been sold;

Second: to the payment of the whole amount then due, owing or unpaid upon the Notes for principal and interest, with interest on the unpaid principal at the Default Rate from and after the happening of any Event of Default until the same is paid;

Third: to the payment of any other sums required to be paid by Borrower pursuant to any provision of this Instrument, the Notes, or any other Loan Document, all with interest at the Default Rate, from the date such sums were or are required to be paid under this Instrument, the Notes or the other Documents; and

Fourth: to the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

(v) Immediately upon the first insertion of any advertisement or notice of sale, there shall be and become due and owing by Borrower all reasonable expenses incident to said advertisement or notice, all court costs and all reasonable expenses incident to any foreclosure proceedings under this Instrument, including reasonable attorneys' fees and a commission on the total amount of the then outstanding indebtedness, principal and interest, equal to two and one-half percent (2-1/2%) of the amount then secured hereby (such commission to be part of and not in addition to the commissions referenced in Section 20(f)(iv) hereof), and no party shall be required to receive only the aggregate indebtedness then secured hereby with the interest thereon to the date of payment, unless the same be accompanied by a tender of the said expenses, costs and commission.

(vi) Upon any sale made under or by virtue of this Section 20, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or a judgment or decree of foreclosure and sale, Lender may bid for and acquire the Security Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of Borrower secured by this Instrument the net sales price, after deducting therefrom the reasonable expenses of the sale and the reasonable costs of the action and any other sums which Lender is authorized to deduct under this Instrument.

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(g) Lender's Right to Appointment of Receiver. Lender, as a matter of right and (i) without regard to the sufficiency of the security for repayment of the Debt, (ii) without notice to Borrower, (iii) without any showing of insolvency, fraud, or mismanagement on the part of Borrower, (iv) without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, and (v) without regard to the then value of the Security Property, shall be entitled to the appointment of a receiver or receivers for the protection, possession, control, management and operation of the Security Property, including (without limitation), the power to collect the Rents, enforce this Instrument and, in case of a sale and deficiency, during the full statutory period of redemption (if any), whether there is a redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collection of such Rents. Borrower hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(h) Lender's Uniform Commercial Code Remedies. The Lender may exercise its rights of enforcement under the Uniform Commercial Code in effect in the state in which the Security Property is located.

(i) Discontinuance of Remedies. Except as otherwise provided by applicable law, in case Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right to do so and, in such event, Borrower and Lender shall be restored to their former positions with respect to the Debt, the Loan Documents, the Security Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

(j) Remedies Cumulative. All rights, remedies, and recourses of Lender granted in the Notes, this Instrument and the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Borrower, the Security Property, or any one or more of them, at the sole discretion of Lender; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be non-exclusive; and (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Security Property prior to Lender bringing suit to recover the Debt.

(k) Election of Remedies. Lender may release, regardless of consideration, any part of the Security Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Instrument or the other Loan Documents or affecting the obligations of Borrower or any other party to pay the Debt. For payment of the Debt, Lender may resort to any collateral securing the payment of the Debt in such order and manner as Lender may elect. No collateral taken by Lender shall in any manner impair or affect the lien or security interests given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(l) Waivers. Borrower hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Borrower by virtue of any present or future law exempting the Security Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (ii) all notices of any Event of Default except as expressly provided herein or in any of the Loan Documents or of Lender's exercise of any right, remedy, or

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recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets, a sale in inverse order of alienation or any other right to direct in any manner, the order of sale of any of the Security Property.

(m) Statute of Limitations. To the extent permitted by applicable law, Lender's rights hereunder shall continue even to the extent that a suit for collection of the Debt, or part thereof, is barred by a statute of limitations. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt.

21. Right of Inspection. Lender and its agents shall have the right to enter and inspect the Security Property during normal business hours upon reasonable notice.

22. Security Agreement. This Instrument is both a real property mortgage or mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Security Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Security Property. Borrower, by executing and delivering this Instrument, has granted and hereby grants to Lender, as security for the Debt and other Secured Obligations, a security interest in the Security Property to the full extent that the Security Property or portions thereof may be subject to the Uniform Commercial Code (said portion of the Security Property so subject to the Uniform Commercial Code being called in this paragraph the "Collateral"). Borrower hereby agrees with Lender to execute and deliver to Lender, in form and substance satisfactory to Lender, such financing statements and such further assurances as Lender may from time to time reasonably consider necessary to create, perfect, and preserve Lender's security interest herein granted. This Instrument constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county or other jurisdiction in which the Security Property is located with respect to any and all fixtures included within the term "Security Property" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Instrument. If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender, Borrower shall at its expense assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Debt or other Secured Obligations in such priority and proportions as Lender in its discretion shall deem proper. In the event of any change in name, identity or structure of Borrower, Borrower shall notify Lender thereof and promptly, after request, shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Borrower shall, promptly after request, execute, file and record



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such Uniform Commercial Code forms or continuation statements as Lender shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Borrower's obligations under the Notes, this Instrument and the other Loan Documents. Borrower hereby irrevocably appoints Lender as their attorney-in-fact, coupled with an interest, to file with the appropriate public office on their behalf any financing or other statements signed only by Lender, as Borrower's attorney-in-fact, in connection with the Collateral covered by this Instrument. Notwithstanding the foregoing, Borrower shall appear and defend in any action or proceeding which affects or purports to affect the Security Property and any interest or right therein, whether such proceeding affects title or any other rights in the Security Property (and in Conjunction therewith, Borrower shall fully cooperate with Lender in the event Lender is a party to such action or proceeding).

23. Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Security Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect their interest in the Security Property. Lender shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

24. Waiver of Setoff and Counterclaim. All amounts due under this Instrument, the Notes and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Borrower hereby waives the right to assert a setoff, counterclaim or deduction in any action or proceeding in which Lender is a participant, or arising out of or in any way connected with this Instrument, the Notes, any of the other Loan Documents, or the Debt.

25. Contest of Certain Claims. Borrower shall have the right to contest mechanic's, materialman's and other such liens as provided in the Loan Agreement.

26. Handicapped Access.

(a) Borrower agrees that the Security Property shall at all times strictly comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively, the "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Security Property, Borrower shall not alter the Security Property in any manner unless in compliance with the applicable Access Laws without the prior written approval of Lender. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate from an architect, engineer, or other person acceptable to Lender of compliance with Access Laws.

(c) Borrower agrees to give prompt notice to Lender of the receipt by any Borrower of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

27. Indemnification. In addition to any other indemnification provided in any of the

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Loan Documents, Borrower shall protect, defend, indemnify and save harmless Lender, its subsidiaries, affiliates, persons controlling or under common control with Lender, their agents, officers, directors, shareholders, employees, servants, consultants, representatives and their respective successors and assigns (collectively, the "Indemnified Parties"), from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon, incurred by or asserted against any of the Indemnified Parties by reason of (a) ownership of this Instrument, the Security Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Security Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Security Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Instrument; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Security Property or any part thereof; (f) any failure of the Security Property to comply with any Access Laws; (g) any representation or warranty made in the Notes, this Instrument or the other Loan Documents being false or misleading in any respect as of the date such representation or warranty was made; (h) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Security Property or any part thereof under any legal requirement or any liability asserted against Lender with respect thereto; and (i) the claims of any lessee to any portion of the Security Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease, provided, however, that Borrower shall not be responsible for indemnifying the Indemnified Parties for any of the foregoing which arise or is caused solely by the gross negligence or willful misconduct of the Indemnified Parties or any of them. Any amounts payable to any of the Indemnified Parties by reason of the application of this paragraph shall be secured by this Instrument and shall become immediately due and payable and shall bear interest at the Default Rate specified in the Notes from the date loss or damage is sustained by any of the Indemnified Parties until paid. The indemnification obligations of Borrower hereunder shall survive repayment of the Secured Obligations.

28. Notices. Any notice, demand, statement, request or consent made hereunder shall be in writing and shall be given and deemed effective in accordance with the provisions of Section 10.1 of the Loan Agreement.

29. Authority. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and right to execute, deliver and perform their obligations pursuant to this Instrument, and to mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Security Property pursuant to the terms hereof and to keep and observe all of the terms of this Instrument on Borrower's part to be performed. Additionally, Borrower represents and warrants that Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations.

30. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower or is not so required by applicable law.

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31. Remedies of Borrower. In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under the Notes, this Instrument or the other Loan Documents, it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.

32. Sole Discretion of Lender. Wherever pursuant to this Instrument, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

33. Non-Waiver. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Instrument or otherwise enforce any of the provisions hereof or of the Notes or other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Security Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Notes, this Instrument, or the other Loan Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. The rights and remedies of Lender under this Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

34. No Oral Change. This Instrument may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

35. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

36. Severability. If any term, covenant or condition of this Instrument is held to be invalid, illegal or unenforceable in any respect, this Instrument shall be construed without such provision.

37. Headings, etc. The headings and captions of various paragraphs of this Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

38. Counterparts. This Instrument may be executed in any number of counterparts each of which shall be deemed to be an original but all of which when taken together shall constitute one agreement.

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39. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "Borrower and any subsequent owner or owners of the Security Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Notes," the word "Debt" shall mean the "Notes and any other evidence of indebtedness secured by this Instrument," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Security Property" shall include any portion of the Security Property and any interest therein and the words "attorneys' fees" shall include any and all attorneys' fees, paralegal and law clerk fees, including, but not limited to, fees at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Security Property and Collateral and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

40. Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Premises as against the collection of the Debt, or any part hereof Borrower hereby represents and warrants to Lender that no portion of the Premises constitutes the homestead of any person, that neither Borrower nor any of its principals or partners or their relatives reside on any portion of the Premises or claim any portion of the Premises as their homestead, and that no individual residing on the Premises or any portion thereof has any claim to homestead rights on any portion of the Premises.

41. Assignments. Lender shall have the right to assign or transfer its rights under this Instrument and the other Loan Documents without limitation, including, without limitation, the right to assign or transfer its rights to a servicing agent. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Instrument and the other Loan Documents.

42. Survival of Obligations, Survival of Warrants and Representations. Each and all of the covenants and obligations of Borrower (other than warranties and representations) shall survive the execution and delivery of the Loan Documents and shall continue in full force and effect until the Debt shall have been paid in full; provided, however, that nothing contained in this paragraph shall limit the obligations of Borrower except as otherwise set forth herein. In addition, any and all warranties and representations of Borrower shall survive the execution and delivery of the Loan Documents and (i) shall continue for a period of one (1) year following any release of this Instrument executed by Lender and satisfaction of the Loan, and (ii) shall survive the transfer or assignment of this Instrument, the entry of a judgment of foreclosure, sale of the Security Property by nonjudicial foreclosure or deed in lieu of foreclosure (including, without limitation, any transfer of the Instrument or of any of its rights, title and interest in and to the Security Property by Lender to any party, whether or not affiliated with Lender).

43. Governing Law; Jurisdiction. THIS INSTRUMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE SECURITY PROPERTY IS LOCATED (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY COURT OF COMPETENT JURISDICTION LOCATED IN THE STATE IN WHICH THE SECURITY PROPERTY IS LOCATED IN CONNECTION WITH ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS INSTRUMENT.

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44. Time. Time is of the essence in this Instrument and the other Loan Documents.

45. No Third Party Beneficiaries. The provisions of this Instrument and the other Loan Documents are for the benefit of Borrower and Lender and shall not inure to the benefit of any third party (other than any successor or assignee of Lender). This Instrument and the other Loan Documents shall not be construed as creating any rights, claims or causes of action against Lender or any of its officers, directors, agents or employees in favor of any party other than Borrower including but not limited to any claims to any sums held in the Tax and Insurance Escrow Fund and Replacement Reserve Account.

46. Relationship of Parties. The relationship of Lender and Borrower is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with the Borrower, and no term or condition of any of the Loan Documents shall be construed to create a relationship other than that of debtor and creditor. Borrower represents and acknowledges that the Loan Documents do not provide for any shared appreciation rights or other equity participation interest.

47. Investigations. Any and all representations, warranties, covenants and agreements made in this Instrument (and/or in other Loan Documents) shall survive any investigation or inspection made by or on behalf of Lender.

48. Waiver of Right to Trial by Jury. BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS INSTRUMENT, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

49. Maximum Amount Secured. Notwithstanding anything contained herein to the contrary, the maximum amount of indebtedness secured by this Instrument at execution or which under any contingency may become secured hereby at any time hereafter is (i) the principal sum of Twenty-Nine Million Three Hundred Seventy-Seven Thousand One Hundred Sixty and 09/100 Dollars (\$29,377,160.09) plus interest and late charges thereon (at such rates as provided for in the Notes or herein, as applicable), plus (ii) amounts expended by Lender to maintain the lien of this Instrument or to protect the property secured by this Instrument, including, without limitation, amounts in respect of insurance premiums, real estate taxes, litigation expenses to prosecute or defend the rights, remedies and lien of this Instrument or title to the Security Property secured hereby, and any costs, charges or amounts to which Lender becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority, together with interest on all the foregoing amounts at such rates as provided for in the Notes or herein, as applicable.

50. State Specific Provisions.

Notwithstanding anything herein contained to the contrary, the Borrower and Lender agree as follows:

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(a) Foreclosure.

(i) The captions in this Instrument are for convenience and reference only and do not define, limit or describe the scope of the provisions hereof.

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

(iii) 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 Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes, Chapter 735, Act 5, Section 15-1101, et seq. (as from time to time amended, the "Act") whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Instrument, shall be added to the indebtedness secured hereby or by the judgment of foreclosure.

(b) Waiver of Homestead and Redemption. Borrower hereby expressly waives any and all rights of redemption and reinstatement in connection with foreclosure of the lien of this Instrument, it being the intent hereof that any and all such rights of redemption and reinstatement of Borrower and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of the Act or other applicable law or replacement statutes.

(c) Purpose of Loan. The entire proceeds of the loan evidenced by the Notes constitute a "business loan" as that term is used in Illinois Compiled Statutes, Chapter 815, Act 205, Section 4, and the beneficiary of Mortgagor is a "business" as that term is defined in said Illinois Compiled Statutes, Chapter 815, Act 205, Section 4.

(d) Receiver. In addition to any provision of this Instrument authorizing the Lender to take or be placed in possession of the Security Property or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in possession of the Security Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Instrument, all powers, immunities and duties as provided for in the aforementioned sections of the Act.

[SIGNATURE PAGE FOLLOWS]

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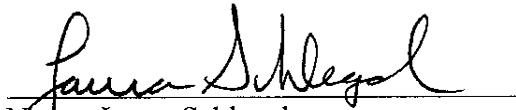
Borrower has executed this Instrument the day and year first above written.

WITNESS:

BORROWER:

HOT LIGHT BRANDS, LLC

By: Hot Light Brands Inc., its sole member



Name: Laura Schlegel

Title: President

STATE OF MISSOURI

City  
COUNTY OF SAINT LOUIS

ss:

On this 13th day of February, 2008, before me personally appeared Laura Schlegel, who by me duly sworn did say that she is the President of Hot Light Brands Inc., a Delaware corporation, the sole member of Hot Light Brands, LLC, a Delaware limited liability company, and that said instrument was duly executed by said Laura Schlegel in behalf of said corporation by authority of its Board of Directors, and said Laura Schlegel acknowledged that she signed and delivered the said instrument as her own free act and deed as President of Hot Light Brands Inc., the sole member of said Hot Light Brands, LLC, and as the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

  
Notary Public

My Commission Expires: 8-28-2010

**PAT SERTL**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis City  
My Commission Expires: August 28, 2010  
Commission # 06428786

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Exhibit A

Legal Description of Property

LOT 1 IN KRISPY KREME COMMISSARY, A RESUBDIVISION OF PART OF LOTS 21 AND 22 IN WILLIAM LUMPP'S DEVON AVE FARMS, A SUBDIVISION IN THE SOUTH ½ OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number (P.I.N.): 08-33-401-048-0000

Property Address: 412 E. Devon Ave., Elk Grove Village, IL 60007

Property of Cook County Clerk's Office