



Doc#: 0908329017 Fee: \$78.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 03/24/2009 11:59 AM Pg: 1 of 22

Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 04-19-201-020-0000

Address:

Street: 2401 Sanders Road

Street line 2:

City: Northbrook

State: IL

ZIP Code: 60062

Lender: BP Products North America Inc.

Borrower: 2401 Willow Real Estate LLC

Loan / Mortgage Amount: \$600,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 77/7 et seq. because it is commercial property.

Certificate number: C162A01A-6ABC-4BC5-B663-5DF8124A0CC9

Execution date: 11/24/2008

Property of Cook County Clerk's Office

22

388690 10P2 SA /DFC

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**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

**BP WEST COAST PRODUCTS LLC
4 Centerpointe Dr., LPR 4-243
La Palma, CA 90623-1066
Attn: Jean Smith
Facility: 15680
SCDB: 50021
Location: 2401 Sanders Road
Northbrook, IL 60062**

APN: 04-19-201-020-0000

Property of Cook County Clerk's Office
Not 388690
10/2 SA

**2401 WILLOW REAL ESTATE LLC, an Illinois limited liability company, as mortgagor
(Mortgagor)**

**BP PRODUCTS NORTH AMERICA INC. a Maryland corporation, as mortgagee
(Mortgagee)**

**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Dated: As of November 24, 2008
Location: 2401 Sanders Road
Northbrook, IL 60062

County: Cook
Tax Identification Numbers: 04-19-201-020-0000

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**MORTGAGE,
ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

(Includes Fixture Filing Under the Uniform Commercial Code)

This Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing ("Mortgage") is made as of November 24, 2008, by 2401 WILLOW REAL ESTATE LLC, an Illinois limited liability company ("Mortgagor"), whose address is 2401 Sanders Road, Northbrook, IL 60062, in favor of BP PRODUCTS NORTH AMERICA INC., a Maryland corporation ("Mortgagee"), whose mailing address is c/o BP West Coast Products LLC, P.O. Box 5077, Buena Park, California 90622-5077.

Pursuant to that certain Loan and Security Agreement dated as of even date herewith, by and between Mortgagor and Mortgagee ("Loan Agreement"), Mortgagee has made available to Mortgagor a non-revolving loan in the maximum principal amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00) (the "Loan"). The Loan is evidenced by that certain Secured Promissory Note dated as of even date herewith (the "Note"). To secure to Mortgagee repayment of the indebtedness evidenced by the Note, together with interest on unpaid principal, and all renewals, extensions and modifications thereof, the repayment of any future advances made by Mortgagee to Mortgagor, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of each covenant and obligation of Mortgagor under the Loan Agreement, the Note, this Mortgage and any other instrument, agreement or document executed by Mortgagor in connection with the Loan (collectively, the "Loan Documents") excluding the Environmental Indemnity (which shall not be secured by this Mortgage), and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby irrevocably grants, transfers and assigns to Mortgagee, with power of sale, under and subject to the terms and conditions hereinafter set forth, for the benefit and security of Mortgagee, all of its present and future estate, right, title and interest in and to the real property described in Exhibit A attached hereto (the "Real Property"), together with all of the following now owned or hereafter acquired by Mortgagor:

(a) all buildings, structures, improvements and tenements now or hereafter located on the real property described above;

(b) all fixtures, machinery, equipment, trailers, furniture, furnishings, building materials, appliances, apparatuses, communications and utility systems and facilities, landscaping and goods of every nature whatsoever now or hereafter located in or on, or used or intended to be used in connection with, the Real Property, whether or not physically affixed to the Real Property;

(c) all rights to minerals, oil and gas and other hydrocarbon substances, all water, irrigation and drainage rights, and all crops and timber on, under or relating to the Real Property; all shares of stock in any water company or other utility supplying water or utility services to the Real Property; and all damages, royalties and revenues of every kind, nature and description whatsoever that Mortgagor may be entitled to receive from any person or entity owning or hereafter acquiring a right to the oil, gas and mineral rights and reservations of the Real Property;

(d) all privileges and other rights now or hereafter appurtenant or incidental to the Real Property, including air rights and development rights relating to the Real Property and all right, title and interest of Mortgagor in and to all streets, curbs, gutters, sidewalks, sewers, storm drains, roads and public places, open or proposed; and all easements and rights of way, public or private, now or hereafter used in connection with the Real Property;

(e) subject and subordinate to the absolute assignment set forth in paragraph 12, below, all rents (including minimum rents, additional rents and percentage rents), cash, income, issues, accounts receivable, royalties, proceeds, profits, service charges, parking and maintenance charges and fees, tax and insurance

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contributions, proceeds from the sale of utilities and services, cancellation premiums, and other revenues of or relating to the Real Property or any business conducted thereon (including those now due, past due or to become due by virtue of any "Lease" (as defined below) or in consideration of any service performed by Mortgagor or in connection with the use or hiring of the Property, regardless of to whom payable), also including any rights to payment for goods sold or leased or to be sold or leased or for services rendered or to be rendered or for claims for damages arising from any breach of the Leases, proceeds from any sale or other disposition of all or any portion of the Property (as defined after subparagraph (r) below), and all other benefits arising from the use or enjoyment of, or the lease, sale or other disposition of, all or any portion of the Property (collectively, "Rents");

(f) subject and subordinate to the absolute assignment set forth in paragraph 14, below, Mortgagor's right, title and interest in and to any and all existing and future leases, subleases, tenancies, occupancy agreements, licenses and other agreements for the use and occupancy of all or any portion of the Property, whether written or oral, and any guarantees thereof, together with any and all extensions, modifications, amendments, assignments and renewals thereof, and all cash or other security deposited to secure performance by the lessees or tenants of their obligations thereunder, whether such cash or security is to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due prior to the expiration of the term thereof (collectively, the "Leases");

(g) all insurance and insurance policies insuring the Property or any activity thereon or part thereof or interest therein, and all proceeds of such insurance policies; all claims, awards, damages, causes of action, judgments, recoveries, compensation and insurance proceeds arising on account of injury or damage to or taking of all or any part of the Property or for any loss or diminution in value of the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all deposits made with or other security given by Mortgagor to governmental authorities or utility companies with respect to the Property; all claims or demands with respect to such deposits or security; and all right to refunds or rebates of any such insurance premiums or deposits, taxes or assessments on the Property;

(h) all funds deposited by Mortgagor with Mortgagee in connection with the Loan;

(i) any and all plans, specifications, contracts and agreements for construction of any improvements on the Real Property and all studies, data and drawings relating thereto; Mortgagor's rights under all payment, performance or other bonds and in all deposits and other security delivered to, by or for the benefit of Mortgagor in connection with the construction of improvements on the Real Property; any and all construction materials, supplies and equipment used or to be used in connection with the construction of improvements on the Real Property, whether or not stored on the Real Property, and all warranties and guarantees relating thereto; any and all contracts, agreements, and purchase orders with contractors, subcontractors, suppliers and materialmen incidental to construction of improvements on the Real Property; all reserves, deferred payment deposits, cost savings and payments of any kind relating to construction of such improvements; and any and all drawings, maps, plats, surveys, studies and reports relating to the Real Property prepared by or on behalf of Mortgagor;

(j) all licenses (including liquor licenses, operating licenses or similar licenses), contracts, management contracts or agreements, franchise agreements, building, occupancy and other governmental permits, authorities, consents or certificates acquired or used in connection with the construction, use, ownership, operation, occupancy, maintenance, repair, improvement or development of, or conduct of business on, the Real Property;

(k) all accounts receivable, general intangibles and contract rights relating to the construction, ownership, operation, occupancy, maintenance, repair, improvement, use or development of, the Real Property, including Mortgagor's leasehold interest in any equipment leased by Mortgagor;

(l) all names, trade names, trademarks, service marks, and logos by which the Real Property is known or operated, all rights to conduct business under any such name or any variation thereof, and all goodwill in any way relating to the Real Property;

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(m) all right, title and interest of Mortgagor in and to any entity that has any interest of any nature in the Real Property; and all share certificates, membership cards and other evidences of Mortgagor's ownership, membership, participation or rights in such entity or entities;

(n) all sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into by or on behalf of Mortgagor for the sale of all or any portion of the Real Property, and all deposits thereunder and proceeds thereof, all purchase agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into by or on behalf of Mortgagor for the purchase of all or any portion of the Real Property, and all proceeds thereof;

(o) all books, records, accounts and other documents relating to the construction, ownership, use, management, operation, occupancy, leasing, maintenance, repair, improvement, or development of, or conduct of business on, the Real Property;

(p) all causes of action, monetary judgments, monetary awards and monetary liens, whether arising by judgment or otherwise, and whether accrued before or after the date of this Mortgage, for damage or injury to the Property or any part thereof, or in connection with the transaction financed in whole or in part by the funds loaned to Mortgagor by Mortgagee, or in connection with or affecting the Property or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact;

(q) all other personal property of Mortgagor, whether tangible or intangible, located on, used or to be used in any way in connection with, the Real Property or the construction, ownership, use, management, operation, occupancy, leasing, maintenance, repair, improvement, or development of, the Real Property, whether now owned or hereafter acquired or created (including without limitation equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts, accounts receivable, deposit accounts, and contract rights, as all such terms are used in the Uniform Commercial Code); and

(r) all supplements, modifications and amendments to any of the foregoing; all substitutions, replacements, additions, and accessions to any and all of the foregoing; any of the foregoing hereafter acquired by Mortgagor; and all proceeds of all of the foregoing.

The Real Property and all of the items described in paragraphs (a) through (r) above are hereinafter referred to collectively as the "Property."

Mortgagor covenants, represents and warrants for the benefit of Mortgagee as follows:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Mortgagor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note and all other sums secured by this Mortgage.

2. **APPLICATION OF PAYMENTS.** Except to the extent otherwise required by law, Mortgagee shall apply and credit funds received by Mortgagor pursuant to this Mortgage, the Loan Agreement or any other Loan Document in the manner and order of priority set forth in the Loan Agreement, and if the Loan Agreement does not specify the manner and order of priority, funds shall be applied and credited (a) first, to pay or reimburse Mortgagee for amounts advanced by Mortgagee (other than principal of the Loan) pursuant to any provision of this Mortgage or any other Loan Document, (b) second, to fund any deposits that Mortgagor may be required by the terms of any Loan Document to make with Mortgagee and that Mortgagor has in fact failed to make, including any deposits to be used to pay the cost of repairing or constructing any improvements, insurance premiums, property taxes and assessments and utility charges, (c) third, to pay any late payment charges due under the Note or any other Loan Document, (d) fourth, to pay any other sums due under the Loan Documents, excluding interest earned or accrued under the Note and principal, (e) fifth, to pay any interest earned or accrued under the Note and not added to principal, and (f) sixth, to pay principal outstanding under the Note (including any accrued interest added to principal).

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3. **LIENS, ENCUMBRANCES, AND CHARGES.** Mortgagor shall (a) pay all indebtedness secured by liens, encumbrances and charges upon the Property or any part thereof (whether senior or junior in priority to the lien of this Mortgage) as and when such indebtedness becomes due; (b) immediately pay in full and discharge all liens, encumbrances and charges that may be or appear to be superior to the lien of this Mortgage, except for any such liens, encumbrances or charges that have been approved by Mortgagee and are shown as exceptions to title in Mortgagee's title insurance policy (if any); and (c) immediately cause any statutory lien for labor or materials or any other statutory or involuntary lien, encumbrance or charge that may arise against the Property to be removed and discharged, either by paying in full the amount claimed to be due by the lienor or by obtaining and recording a surety bond that by statute will result automatically in the removal and discharge of such lien, encumbrance or charge. Mortgagor shall pay, at least 10 days prior to delinquency, all taxes, assessments, levies, licenses, and fees of any kind whatsoever, including maintenance charges, owners' association dues, charges or fees, and levies or charges resulting from covenants, conditions and restrictions affecting the Property that become due and payable and create or appear to create a lien upon or are levied, assessed or imposed with respect to the construction, ownership, use, management, operation, occupancy, leasing, maintenance, repair, improvement or development of the Property or any part thereof or interest therein or the conduct of business thereon, and any tax, assessment, levy or charge in lieu of or in addition to any of the foregoing (collectively, "Impositions"). If any Imposition is payable in installments, Mortgagor may pay the same, in installments as the same may become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. Upon the request of Mortgagee, Mortgagor shall promptly furnish to Mortgagee official receipts of the appropriate taxing or assessing authority, or other proof satisfactory to Mortgagee, evidencing the payment thereof. Mortgagor shall pay when due all utility charges incurred by or on behalf of Mortgagor in connection with, or that may become a charge or lien against, the Property and all other assessments or charges of a similar nature, public or private, affecting the Property or any portion thereof (collectively, "Utility Charges").

4. **PRESERVATION, MAINTENANCE AND REPAIR.** Mortgagor (a) shall not commit or permit waste, impairment or deterioration of the Property; (b) shall not abandon the Property; (c) shall keep the Property in good condition and repair and, in the event of any damage, injury or loss, shall restore or repair promptly and in a good and workmanlike manner the Property to the equivalent of its condition prior to such damage, injury or loss, or such other condition as Mortgagee may approve in writing, whether or not insurance proceeds are available to cover, in whole or in part, the costs of such restoration or repair, and shall replace fixtures, equipment, machinery and appliances when necessary to keep such items in good repair; (d) shall comply with all, and not suffer or permit to exist any violation of, any laws, ordinances, regulations and requirements of governmental bodies having jurisdiction over the Property, any covenants, conditions and restrictions and servitudes (including those contained in any declaration and constituent documents of any condominium, cooperative, planned development or other common interest project), whether public or private, of every kind and character, and any requirements of insurance companies and all bureaus or agencies that establish standards of insurability; (e) shall, if requested by Mortgagee, provide for professional management of the Property by a rental property manager satisfactory to Mortgagee pursuant to a contract approved by Mortgagee in writing; (f) shall generally operate and maintain the Property in a manner to ensure maximum rentals; (g) shall obtain, keep in effect and perform all obligations under all permits, licenses, rights, privileges, franchises, concessions, maps, bonds and other agreements required by applicable laws or granted to or contracted for by Mortgagor (including zoning variances and other special exceptions, exemptions and permits) for the construction, ownership, use, management, operation, occupancy, leasing, maintenance, repair, improvement, financing, sale, or development of, or conduct of business on the Property; (h) shall not take any action that might invalidate any insurance carried on the Property; and (i) shall give notice in writing to Mortgagee of and, unless otherwise directed in writing by Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security, validity or priority of this Mortgage or the rights or powers of Mortgagee. Without limiting the foregoing and except as otherwise provided in the Loan Agreement, Mortgagor shall not remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind and value.

5. **USE OF PROPERTY.** Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance or zoning classification or conditions of use, or other public or private restrictions limiting the uses that may be made of the Property. Mortgagor shall not alter or permit the alteration of the general use of all or any part of the Property.

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6. **REPRESENTATIONS AND WARRANTIES.** Any representations and warranties made by Mortgagor in the Loan Documents shall remain continuing representations and warranties so long as any portion of the indebtedness secured by this Mortgage remains outstanding. Should any representation or warranty prove to be untrue as of the date of this Mortgage, then Mortgagee may declare a default under the Loan Agreement, Note and Mortgage. Mortgagor agrees to indemnify and hold Mortgagee free and harmless from all liabilities, obligations, damages, causes of action, judgments, cost and expenses (including without limitation reasonable attorneys' fees) that Mortgagee may incur or suffer in connection with any breach by Mortgagor of any of Mortgagor's representations or warranties.

7. **INSURANCE.** Mortgagor, for itself and on behalf of its insurers, hereby releases Mortgagee from any liability as to which insurance is required to be carried pursuant to any of the Loan Documents, including liability by way of contribution, indemnity, or subrogation.

In the event of loss sustained with respect to the Property or any part thereof under any policy of insurance required by the Loan Agreement, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Mortgagor hereby authorizes and empowers Mortgagee as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claim under any of the insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Mortgage shall require Mortgagee to incur any expense or to take any action hereunder. Mortgagor further authorizes Mortgagee, at Mortgagee's option, (a) to hold the balance of such proceeds to be used to reimburse Mortgagor for the cost of reconstruction or repair of the Property, or (b) to apply the balance of such proceeds to the payment of the sums secured by this Mortgage, whether or not then due, in the order of application set forth in paragraph 2 hereof. Unless Mortgagor and Mortgagee otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments required under the Note or any other payments required under the Note or this Mortgage.

In the event that insurance proceeds remaining after deduction of Mortgagee's costs and expenses incurred in obtaining such proceeds are made available to Mortgagor for payment of the costs and expenses of repair and restoration of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Mortgagee may approve in writing in Mortgagee's sole discretion. Mortgagee may condition disbursement of said proceeds on Mortgagor's compliance with construction loan disbursement procedures and requirements, which may include the following: (i) submission to and approval by Mortgagee of plans and specifications, a detailed budget and cost breakdown and a construction contract with a licensed general contractor reasonably satisfactory to Mortgagee, (ii) submission by Mortgagor and the general contractor of vouchers, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of completion of the work for which disbursement is requested and the cost thereof, and (iii) receipt by Mortgagee of evidence of Mortgagor's procurement of performance and payment bonds, where required by any applicable governmental authority, and builder's risk insurance and such other forms of insurance coverage as may be reasonably required by Mortgagee. Notwithstanding any other provision to the contrary hereinabove, Mortgagee shall have no obligation to disburse insurance proceeds unless Mortgagee is reasonably satisfied that the portion of the Property damaged, lost or destroyed, can and shall be fully restored to the equivalent of its original condition and value, or such other condition as Mortgagee may approve, within a reasonable period of time and in any event prior to maturity of the Loan and Mortgagor is not in default under the terms of the Loan Documents. In the event of foreclosure of this Mortgage or other transfer of title to the Property that extinguishes the lien of this Mortgage, all right, title and interest of Mortgagor in and to all then existing policies of insurance or premiums or payments in satisfaction of claims or any other rights thereunder shall be deemed assigned to, and thereupon shall inure to the benefit of and pass to the purchaser or grantee, regardless of the amount bid at such foreclosure sale.

8. **TRANSFER OF PROPERTY OR INTEREST IN MORTGAGOR.** Upon any sale, encumbrance, pledge or other transfer of the Property, or any part of or interest in the Property or upon any sale, encumbrance, pledge or other transfer of any interest, including without limitation beneficial interest in Mortgagor, or, of the voting stock or capital of a corporation, trust or other entity that directly or indirectly owns or controls Mortgagor, Mortgagee may, at its option, declare all of the sums secured by this Mortgage to be immediately due and payable, and if such sums are not immediately paid in full, Mortgagor shall be in default under this Mortgage

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and Mortgagee may invoke all of the remedies available under this Mortgage and the other Loan Documents as well as all additional remedies available at law or at equity.

9. **INSPECTIONS.** Mortgagee and its agents, representatives and workmen are hereby authorized to enter at any reasonable time upon the Property to inspect or investigate the same for any purpose relating to Mortgagee's interest in the Property, including, without limitations, ascertaining the status of compliance with applicable laws, ordinances, covenants and restrictions or performing any act Mortgagee is authorized to perform under this Mortgage; provided, however, no such entry upon the Property shall unreasonably interfere with Mortgagor's or Mortgagor's tenants' use of the Property. Mortgagor shall cooperate with Mortgagee in the conduct of all inspections and investigations under this paragraph and shall cause all tenants to permit Mortgagee access for the purpose of such inspections and investigations. Mortgagor acknowledges that Mortgagee's rights under this Paragraph shall include, but not be limited to, the right to conduct a site assessment and environmental audit prior to or in connection with the commencement of foreclosure proceedings or acceptance of a deed in lieu of foreclosure. Mortgagor agrees to reimburse Mortgagee, upon demand, for all reasonable expenses, costs or other amounts incurred by Mortgagee in performing any inspection, investigation or site assessment and environmental audit.

10. **PROTECTION OF MORTGAGEE'S SECURITY.** If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Mortgagee therein, including, but not limited to eminent domain, insolvency or code enforcement, then Mortgagee, at Mortgagee's option, without notice to or demand upon Mortgagor, and without releasing Mortgagor from any obligation hereunder, and within such times and in such manner as Mortgagee may deem reasonable, may make such appearances, disburse such sums and take such actions as Mortgagee deems necessary, in its sole discretion, to protect Mortgagee's interests, including, but not limited to, (i) disbursement of attorneys' fees, (ii) entry upon the Property to make repairs, and (iii) procurement of satisfactory insurance as provided in the Loan Agreement. Any amounts disbursed by Mortgagee pursuant to this paragraph, with interest thereon, shall become additional indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest compounded monthly from the date of disbursement at the highest rate set forth in the Note, unless collection from Mortgagor of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Mortgagor under applicable law. Nothing contained in this paragraph shall require Mortgagee to incur any expense or to take any action hereunder.

11. **BOOKS AND RECORDS.** Mortgagor shall keep and maintain at all times, at Mortgagor's address stated on the first page of this Mortgage, or such other place as Mortgagee may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and the business conducted thereon, and copies of all written contracts, budgets, leases and other documents, instruments and agreements that affect the Property or the ownership, operation, use, management, occupancy, maintenance, repair, improvement or development thereof or construction of improvements or conduct of business thereon. Such books, records and documents shall be subject to examination, inspection and copying at reasonable times by Mortgagee and its agents and representatives.

12. **ASSIGNMENT OF RENTS AND LEASES.** Mortgagor hereby absolutely and unconditionally assigns and transfers to Mortgagee all Rents and all of Mortgagor's rights under and interest in the Leases. This assignment is made concurrently with the granting by Mortgagor to Mortgagee of a security interest in the rents and Leases, which security interest shall be subject and subordinate to this assignment. This assignment is an absolute assignment and not an assignment as additional security, and Mortgagee's right to Rents is not contingent upon, and may be exercised without Mortgagee's taking possession of, the Property. Neither this assignment nor any action taken by Mortgagee pursuant to this assignment shall: (a) impose upon Mortgagee any duty to produce Rents from the Property; (b) cause Mortgagee to be a "mortgagee in possession" for any purpose unless Mortgagor and Mortgagee, subsequent hereto, shall enter into a written agreement for Mortgagee to enter into possession as a mortgagee in possession; or (c) impose upon Mortgagee any responsibility or liability for the performance of any obligations of the lessor under any Lease, any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, any negligence in the management, maintenance, repair or control of the Property, or any security deposits paid to the lessor under any Lease by the lessee unless such security deposits are delivered to Mortgagee.

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To the best knowledge and belief of Mortgagor, and not including any Leases to Mortgagee as tenant, Mortgagor represents and warrants to Mortgagee that: (a) the Leases are in full force and effect and have not been modified or amended; (b) the Rents have not been waived, discounted, compromised, setoff or paid more than one month in advance; (c) there are no other assignments, transfers, pledges or encumbrances of any Leases or Rents; (d) no lessee under the Leases has any defense, set off or counterclaim under any of the Leases; and (e) neither Mortgagor nor the lessees under the Leases are in default under the Leases, nor has any event occurred that with the giving of notice or the passage of time would become a default.

Mortgagor shall (a) fulfill or perform each and every material term, covenant and provision of the Leases to be fulfilled or performed by the lessor thereunder, (b) furnish to Mortgagee, immediately upon delivery or receipt, a copy of any notice or demand to or from any lessee under the Leases and (c) enforce, short of termination thereof, the performance or observance of each and every material term, covenant and provision of each Lease to be performed or observed by the lessees thereunder. If Mortgagor becomes aware that any lessee proposes to do, or is doing, any act or thing that may give rise to any right of set-off against rent, Mortgagor shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (b) notify Mortgagee thereof and of the amount of said set-offs, and (c) within 10 days after such accrual, reimburse the lessee who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

Mortgagor, without the prior written consent of Mortgagee, shall not (a) cancel, modify, alter, extend or renew or accept the surrender of, any Lease, except for Leases of one year or less, and then only in good faith, (b) accept any Rents more than one month in advance of the accrual thereof, (c) pledge or assign future Rents or Leases, (d) consent to an assignment of the lessee's interest in any Lease or to any subletting unless all preceding lessees remain liable for the obligations under such Lease, or (e) do or permit any thing, the omission of which could be a material breach or default under the terms of any Lease or a basis for termination thereof.

Mortgagee hereby grants to Mortgagor a license to collect, receive and hold the Rents as they become due and payable, and to exercise the rights of the lessor under the Leases, until the occurrence of an Event of Default. Mortgagor hereby authorizes and directs each and every lessee named in a Lease or any other or future lessee or occupant of the Property or any part thereof, upon receipt of written notice from Mortgagee, to pay all Rents to Mortgagee, and to continue to do so until otherwise notified in writing by Mortgagee. Upon the occurrence of an Event of Default, the license granted pursuant to this paragraph shall automatically terminate, and upon such termination, regardless of the adequacy of Mortgagee's security for the indebtedness secured by this Mortgage, Mortgagee may:

a. Sue for, collect and retain the Rents (including those past due and unpaid) without notice to or demand upon Mortgagor or lessees under any of the Leases, and without taking possession of the Property, and demand payment from Mortgagor of all Rents collected by Mortgagor from the date on which the Event of Default occurred, which shall, from and after the occurrence of an Event of Default, be held by Mortgagor in trust for Mortgagee;

b. In person, by an agent, or by a court appointed receiver, enter upon and take possession of the Property or any part thereof, and in so doing, assume control of the use, operation, repair and maintenance thereof and conduct of business thereon and do any or all of the following: (i) exclude Mortgagor and Mortgagor's agents and employees from the Property; (ii) sue for and collect the Rents; (iii) complete any construction that may be in progress; (iv) do such maintenance and make such repairs and alterations as Mortgagee or the receiver deems necessary; (v) use all stores of materials, supplies and equipment on the Property and replace such items at the expense of the receivership estate; (vi) pay all real property taxes, insurance premiums, utility charges and any and all other charges, costs and expenses of operating the Property, and the cost of maintenance and repair of the Property; (vii) execute, cancel or modify Leases or contracts providing for management, maintenance or other services rendered to the Property; and (viii) generally do anything that Mortgagor could legally do if Mortgagor were in possession of the Property, on such terms as Mortgagee shall deem appropriate, in its sole and absolute discretion, to protect and preserve the security of this Mortgage. All expenses incurred by Mortgagee or the receiver shall constitute part of the indebtedness secured hereby. Mortgagee and the receiver shall be entitled to have access to those books and records of Mortgagor that contain information necessary to enable Mortgagee or the receiver to manage and operate the Property. Mortgagor hereby agrees that it will do nothing to impair Mortgagee's

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or the receiver's ability to collect and retain the Rents and that any lessee occupying the Property or any part thereof may pay any and all rents or other charges directly to Mortgagee or the receiver upon notice from Mortgagee without the necessity of any notice from Mortgagor; and/or

c. Exercise any other rights or remedies available under applicable law or under the Loan Documents.

The Rents collected by Mortgagee or the receiver shall be applied: (i) first, to payment of the costs and expenses of the receivership, including attorneys' fees incurred by the receiver, borrowings of the receiver, receivers' fees, premiums on receiver's bonds, costs of repairs of the Property, insurance premiums, real estate taxes, utility charges and other costs, expenses and charges of operating the Property, and the costs of discharging any obligation or liability of Mortgagor as lessor of the Property; (ii) second, to payment of the reasonable attorneys' fees and other expenses incurred by Mortgagee in connection with the action and proceedings in which the receiver was appointed; and (iii) third, to payment of the indebtedness secured by this Mortgage. If the Rents are insufficient in amount to defray all costs and expenses of the receivership, any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Neither the entry into possession of the Property by Mortgagee, its agent or a receiver pursuant to this Mortgage nor any application of Rents pursuant hereto shall cure or waive any Event of Default hereunder or invalidate any notice of default under this Mortgage or any action taken pursuant hereto.

The assignment of Rents herein includes an assignment of all security deposits received by Mortgagor or its agents. After occurrence of an Event of Default, Mortgagor shall, as and when requested by Mortgagee, deliver to Mortgagee all security deposits relating to the Property and execute and deliver to Mortgagee such instruments, documents and agreements in connection therewith as Mortgagee may require. Prior to such request by Mortgagee, Mortgagor shall maintain the security deposits in a separate, identifiable account in a financial institution acceptable to Mortgagee. Any security deposits held by Mortgagee shall not bear interest unless required by applicable law.

The recordation in the official records of the county in which the Real Property is located of a full satisfaction and/or release of the Mortgage shall operate as a reassignment of Rents and Leases to the person or persons legally entitled thereto, unless such satisfaction and/or release expressly provides to the contrary.

Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from Mortgagee's failure to let the Property or any part thereof or from any other act or omission of Mortgagee in managing the Property, unless such loss is caused by the gross negligence or willful misconduct of Mortgagee. Mortgagee shall not be obligated to perform or discharge, nor does Mortgagee undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this assignment, and Mortgagor agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from, any liability, loss or damage that may be incurred under the Leases or under or by reason of this assignment and from any claims and demands that may be asserted against Mortgagee by reason of any alleged obligations or undertakings to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Mortgagee incur any such liability under the Lease, or under or by reason of this assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be reimbursed by Mortgagor to Mortgagee immediately upon demand, and upon failure of Mortgagor to make such reimbursement within five days after the date of such demand, the unpaid portion thereof, while still immediately due and payable, shall bear interest at the highest rate of interest permitted under the Note.

13. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. Mortgagor hereby grants to Mortgagee a security interest in goods that are or are to become fixtures (as that term is defined in the Uniform Commercial Code) and all other items included among the Property now owned or hereafter acquired by Mortgagor in which a security interest may be granted pursuant to the Uniform Commercial Code (such items shall herein be referred to collectively as the "Personal Property"). Such security interest is subject and subordinate to the absolute assignment to Mortgagee of Rents and Leases pursuant to paragraph 12. Mortgagee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code, as well as all other rights and remedies available at law or in equity. The security interest granted in this paragraph shall not be construed to derogate from or impair the lien or any provision of, or any rights of Mortgagee under, this Mortgage with respect to any of the

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Property that may be real property. Mortgagor and Mortgagee intend that, to the extent permitted by Law, all of the Property shall be deemed to be real property, regardless of the means or extent of its affixation to the Real Property. The security interest granted in this paragraph is separate and distinct from the lien of this Mortgage, and there shall be no merger of any lien on the Real Property created by this Mortgage with the security interest granted hereunder by reason of Mortgagee's acquiring title to the Real Property. The address of Mortgagee from which information concerning this security interest may be obtained is the address set forth on the first page of this Mortgage.

Mortgagor shall, from time to time upon the reasonable request of Mortgagee, provide to Mortgagee a current inventory of the Personal Property in such detail as Mortgagee may require.

Mortgagor shall not, without Mortgagee's prior written consent:

a. Lease, sell, convey, transfer or remove from the Property any Personal Property in which Mortgagee has a security interest, unless (i) such Personal Property is replaced by similar property of at least equivalent value, with respect to which Mortgagee will immediately have a valid security interest of first priority or (ii) such removal is incidental to repair or routine maintenance of such Personal Property; or

b. Assign, pledge or encumber or otherwise permit any liens or security interests (other than purchase-money liens created pursuant to the Uniform Commercial Code) to attach to any of the Personal Property or enter into any lease of the Personal Property; or

c. Install on or in the Property any materials, equipment, fixtures or articles of personal property in which any third party holds a security interest or reserves or purports to reserve title or the right of removal or repossession or the right to consider such items personal property after their incorporation into the Property (other than purchase-money liens created pursuant to the Uniform Commercial Code). No consent given by Mortgagee pursuant to this paragraph shall be deemed to constitute an agreement to subordinate any right of Mortgagee in the Personal Property.

Mortgagor covenants to pay all sums and perform all obligations secured by a security interest in the Personal Property in favor of any creditor other than Mortgagee. If Mortgagor fails to make any payment on an obligation secured by such a security interest in the Personal Property, Mortgagee, at its option, upon notice to Mortgagor, may make such payment and such amount shall become part of the indebtedness secured by this Mortgage.

Upon the occurrence of an Event of Default, Mortgagee shall have the right to cause the Personal Property or any part thereof to be sold at any one or more public or private sales as permitted by applicable law, including the Uniform Commercial Code, and Mortgagee shall further have all other rights and remedies, whether at law or in equity, available to secured creditors under applicable law, including the right to use and operate any of the Personal Property in the possession of Mortgagee in connection with the construction, use, ownership, operation, occupancy, maintenance, repair, improvement, development, sale or financing, or conduct of business on, the Real Property. The proceeds of any sale or other disposition of the Personal Property shall be applied: (a) first, to the reasonable expenses of retaking, holding, handling, preparing for sale (or other disposition) of the Personal Property, including the reasonable attorneys fees and court costs, if any, incurred by Mortgagee in so doing; (b) then, to any and all indebtedness secured hereby; and (c) the surplus, if any, shall be delivered to the parties entitled thereto pursuant to the Uniform Commercial Code. Mortgagee may buy at any public sale of the Personal Property and if the Personal Property is of a type customarily sold in a recognized market or in the subject of widely or regularly distributed price quotations, then Mortgagee may buy at any private sale. Any such sale (whether public or private) may be conducted by an auctioneer, or by an officer, attorney or agent of Mortgagee. Mortgagor, upon demand of Mortgagee, shall assemble the Personal Property and make it available to Mortgagee at the Real Property, which is hereby agreed to be a place reasonably convenient to Mortgagee and Mortgagor. Mortgagee shall give Mortgagor at least five days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale is to be held, and it is hereby agreed that if such notice is sent to Mortgagor, as the same is provided for the mailing of notices herein, such notice and such sale shall be deemed commercially reasonable. Mortgagee shall have no obligation to apply any proceeds of any disposition of Personal Property pursuant to the Uniform Commercial Code to reinstate the indebtedness secured by this Mortgage or otherwise to cure any default of Mortgagor hereunder, and may continue to pursue any and all remedies it may have with respect to any other part

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of the Property. Mortgagee may elect to enforce any of its rights, remedies or interests against the Real Property or the Personal Property or both, or any part of either, as Mortgagee may from time to time deem appropriate. In the event that Mortgagee elects to sell the Real Property separately from and prior to the Personal Property, the provisions of this Mortgage, insofar as they constitute a security agreement covering the Personal Property, shall survive the extinguishment of the lien of this Mortgage.

This Mortgage constitutes and is filed as a fixture filing under the Uniform Commercial Code. Certain of the Property consists of goods that are or are to become fixtures upon the Real Property, and this Mortgage is to be recorded in the Official Records of the County in which the Real Property is located. This Mortgage shall remain in effect as a fixture filing until released or satisfied of record or its effectiveness otherwise terminates as to the Real Property.

14. REMEDIES UPON DEFAULT. Any of the following shall constitute an "Event of Default": (i) Mortgagor's failure to make any payment of money in accordance with the terms of the Loan Agreement, the Note or any other Loan Document; or (ii) Mortgagor's failure to perform fully and when due any other covenant or obligation of Mortgagor under the Loan Agreement, the Note or any other Loan Document when such obligation is required hereunder to be performed; or (iii) Mortgagor's failure to make any payment of money in accordance with the terms of this Mortgage or to perform fully and when due any other covenant or obligation of Mortgagor under this Mortgage when such obligation is required hereunder to be performed, (iv) a determination by Mortgagee that Mortgagor's representations or warranties, if any, contained in this Mortgage is untrue or misleading in any material respect; or (v) the lien or security interest of this Mortgage loses validity or priority; or (vi) the occurrence of an event of default under, or the institution of judicial foreclosure or other proceedings to enforce, any mortgage, security interest, or other lien or encumbrance of any kind upon the Property or any portion thereof, whether senior or junior in priority to the lien of this Mortgage or any security interest granted to Mortgagee in the Loan Documents; or (vii) the issuance of any writ of attachment or execution or any similar process against the Property or any part thereof of interest therein or the entry of any judgment that shall become a lien on the Property or any part thereof or interest therein, if such execution, attachment, process or judgment is not released, bonded, satisfied, vacated or stayed within 30 days after its entry or levy; or (viii) any substantial damage to or destruction of the Property if for any reason the Property cannot be (or is not) restored to its prior condition within a reasonable period of time, as determined by Mortgagee; or (ix) any governmental action that in the reasonable judgment of Mortgagee will have a materially adverse effect on Mortgagor's ability to repay the Loan as agreed; (x) the occurrence of an "Event of Default" under the Loan Agreement or any other Loan Document; or (xi) should Mortgagor, any guarantor of any obligation of Mortgagor under any of the Loan Documents, or any successor or permitted assignee of any of them become insolvent, or fail generally, or admit in writing generally, its inability to pay its debts as they become due.

At any time after the occurrence of an Event of Default, Mortgagee may do any one or more of the following, in any order:

- a. With or without notice to Mortgagor, declare all indebtedness secured hereby to be immediately due and payable;
- b. With or without notice, and without releasing Mortgagor from its obligations relative to such Event of Default, cure such Event of Default, and the costs and expense incurred by Mortgagee in so doing shall become a part of the indebtedness secured hereby;
- c. Exercise any remedy afforded by paragraphs 13 or 14;
- d. Commence and maintain an action or actions to foreclose this Mortgage, to specifically enforce any rights of Mortgagee hereunder (including rights with respect to possession and sale of any additional security for the Loan), to enjoin any conduct that impairs or threaten to impair the security of this Mortgage, or to obtain such other equitable remedies as may be appropriate;
- e. To the extent permitted by applicable law, execute a written declaration of default and demand for sale, and a written notice of default and election to cause the Property or any part thereof to

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be sold by exercise of Mortgagor's power of sale under this Mortgage, which notice shall be filed for record in the Official Records of the county in which the Property is located;

f. Resort to and realize upon the security for the Loan and any other security now or hereafter held by Mortgagee in such order as Mortgagee may, in its sole discretion, determine, concurrently or successively or in one or several consolidated or independent judicial actions or proceedings; and

g. Exercise any and all other remedies at law, including any action for damages suffered by Mortgagee as a result of any Event of Default, or in equity as may be available now or hereafter, as Mortgagee may elect.

Should Mortgagee elect to exercise any power of sale herein contained, to the extent permitted by applicable law, Mortgagee shall cause to be recorded, published and/or delivered to Mortgagor a written declaration of default and election to sell as may then be required by law and by this Mortgage. After giving notice of default and notice of sale, and the lapse of such time period as may be required by law, Mortgagee may, without demand on Mortgagor, at the time and place of sale fixed in the notice of sale, either as a whole or in separate parcels or items or through two or more successive sales, sell the Property or any part thereof at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Mortgagor shall have no right to direct the order in which the Property is sold. Mortgagee may, in its sole discretion, designate the order in which the Property shall be offered for sale or sold and determine if the Property shall be sold in a single sale or in two or more successive sales or in any other manner Mortgagee deems to be in its best interests. If Mortgagee determines that the Property shall be sold in two or more sales, Mortgagee may, at its option, cause such sales to be conducted simultaneously or successively on the same day or on different days and times and in such order as Mortgagee shall determine, and no such sale shall extinguish or otherwise affect the lien of this Mortgage or any part of the Property not then sold until all indebtedness secured hereby has been fully paid. Mortgagor shall pay the costs and expenses of each such sale and any judicial proceeding in which any such sale may be made. Mortgagee shall deliver to such purchaser its deed conveying the portion of the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Mortgagee, may purchase at such sale. After deducting all costs, fees and expenses of Mortgagee and of the sale, including costs of evidence of title in connection with the sale, Mortgagee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the rate then in effect under the Note, all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto.

Upon any sale pursuant to this paragraph, Mortgagor shall be completely and irrevocably divested, to the maximum extent permitted by law, of all its right, title, interest, claims and demands at law or in equity in and to the Property sold or any part thereof, and such sale shall be a perpetual bar both at law and in equity against Mortgagor and any and all other persons claiming any such right, title, interest, claims or demands by, through or under Mortgagor.

15. WAIVER OF OFFSETS AND OTHER MATTERS. All sums payable by Mortgagor under the Loan Documents shall be paid without notice, demand, or defense, without right of counterclaim, setoff, or deduction, and without abatement, suspension, deferment, diminution or reduction, all of which rights now or hereafter conferred by law are hereby waived by Mortgagor. Without limiting the generality of the foregoing, Mortgagor also waives, to the fullest extent permitted by law: (a) any rights Mortgagor may have under any law hereinafter existing that enables Mortgagor to offset any sums owed by Mortgagor to Mortgagee; (b) any right to require Mortgagee, prior to or as a condition to the enforcement of this Mortgage, to proceed against or exhaust any other security for the obligations secured hereby or pursue any other remedy whatsoever; (c) any defense arising by reason of: (i) any disability or other defense of Mortgagor with respect to the obligations secured hereby; (ii) the unenforceability or invalidity of any security for the indebtedness secured hereby; or the lack of perfection or failure of priority of any security for the indebtedness secured hereby; or (iii) any act or omission of Mortgagee or others that directly or indirectly results in or aids in the discharge or release of Mortgagor or the indebtedness secured hereby or any other security therefor by operation of law or otherwise.

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16. CONDEMNATION.

a. Immediately upon obtaining knowledge of the commencement or threat of any action in connection with (1) any condemnation, (2) any other taking of the Property or any part thereof by any public authority or private entity having the power of eminent domain, or (3) any conveyance in lieu of such condemnation or taking of the Property or any part thereof ("Condemnation"), Mortgagor shall notify Mortgagee in writing but in no event later than ten (10) days after Mortgagor obtains knowledge of the commencement of or threat of a Condemnation. Mortgagee shall have the right, but not the obligation, to participate in any proceedings relating to any Condemnation and may, in its sole discretion, consent or withhold its consent to any settlement, adjustment, or compromise of any claims arising from the Condemnation and no such settlement, adjustment or compromise shall be final or binding upon Mortgagee without Mortgagee's prior consent. All proceeds of any Condemnation, or purchase in lieu thereof, of the Property or any portion thereof ("Condemnation Proceeds") are hereby assigned to and shall be paid to Mortgagee.

b. If all or part of the Property is taken by Condemnation and Mortgagee in its reasonable judgment determines that the remainder of the Property, if any, cannot be operated as an economically viable entity at substantially the same level of operations as immediately prior to such Condemnation, then the Condemnation Proceeds shall be paid over to Mortgagee and shall be applied first toward reimbursement of the costs and expenses (including reasonable attorneys' fees) of Mortgagee, if any, in connection with the recovery of such Condemnation Proceeds, and then, in the sole and absolute discretion of Mortgagee and without regard to the adequacy of its security under this Mortgage, shall be applied against all amounts due herein or under the Loan Documents, and any remaining Condemnation Proceeds shall be released to the Mortgagor.

c. If less than all of the Property is taken by Condemnation and Mortgagee in its reasonable judgment determines that the remainder of the Property can be operated as an economically viable entity at substantially the same level of operations as immediately prior to such Condemnation, then Mortgagor shall diligently restore the Property to a condition and use as close as possible to its condition and use immediately prior to the Condemnation, and that portion of the Condemnation Proceeds as reasonably determined by Mortgagee shall be made available to Mortgagor for such restoration. Mortgagee shall have the right to obtain an opinion of an independent contractor or engineer satisfactory to Mortgagee, at Mortgagor's expense, to estimate the cost to restore the remaining portion of the Property. If the amount of the Condemnation Proceeds is not sufficient to restore the Property based on the opinion of an independent contractor or engineer, subject to revision as restorations are made, Mortgagor shall be obligated to pay the difference toward the restoration of the Property.

d. If an Event of Default exists at any time from the time of a Condemnation through the completion of restoration and payment of any Condemnation Proceeds, the use of the Condemnation Proceeds shall be governed by the remedies set forth in paragraph 16 herein. If an event has occurred which with notice, the passage of time, or both, could become an Event of Default, then the Condemnation Proceeds shall be held by Mortgagee pending cure of such event.

17. **GOVERNING LAW.** This Mortgage shall be governed by and construed and enforced under the laws of the State where the Property is located.

18. **TIME OF THE ESSENCE.** Time is of the essence in the performance of each provision of this Mortgage.

19. **STATEMENTS OF ACCOUNT; OTHER CHARGES.** Upon payment to Mortgagee of a sum designated by it, with such sum not in excess of the maximum amount permitted by law, Mortgagee shall issue to any person entitled thereto under applicable law a statement regarding the obligations secured by this Mortgage. Mortgagor further agrees to pay the reasonable charges of Mortgagee for any other service rendered to Mortgagor or on Mortgagor's behalf in connection with this Mortgage or the indebtedness secured hereby.

20. **ADDITIONAL POWERS OF MORTGAGEE.** Without affecting the liability of any other person liable for the payment of or performance of any indebtedness hereby secured, and without affecting the lien or charge of this Mortgage upon any portion of the Property not then or theretofore released as security for the

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full amount of all unpaid indebtedness, Mortgagee may, at any time, and from time to time, without notice to or consent of Mortgagor: (i) release or modify the obligations of any person primarily or secondarily liable for payment or performance of any indebtedness secured by this Mortgage; (ii) extend the maturity date of or alter any of the terms of any such indebtedness or accept partial payments thereon; (iii) grant forbearances; (iv) accept new or additional instruments, documents or agreements in exchange for or relative to any of the Loan Documents or the indebtedness secured hereby; (v) release or cause to be released any or all of the Property; (vi) take or release any other or additional security for any indebtedness hereby secured; or (vii) consent to the transfer of any security.

At any time, and from time to time, without liability therefor and without the need for any notice to Mortgagor, upon written request of Mortgagee and presentation of this Mortgage and the Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Mortgage upon the remainder of the Property, Mortgagee may: (i) release all or any part of the Property; (ii) consent in writing to the making of any map or plat thereof; (iii) join in granting any easement thereon; or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

Mortgagee may from time to time apply in any court of competent jurisdiction for aid and direction in the execution of the trusts hereunder and the enforcement of the rights and remedies available hereunder, and Mortgagee may obtain orders or decrees directing, confirming or approving acts in the execution of such trusts and the enforcement of such remedies. All costs and expenses of any such proceeding (including reasonable attorneys' fees) shall be borne by Mortgagor. Whenever a power of attorney is conferred upon Mortgagee under this Mortgage, it is understood and agreed that such power is conferred with full power of substitution, and Mortgagee may elect in its sole discretion to delegate such power or any part thereof to one or more sub-agents.

21. **INTENTIONALLY OMITTED.**

22. **NOTICES.** Except as otherwise required by Law, whenever Mortgagee, Mortgagor shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage or any other Loan Document ("Notice"), each such Notice shall be in writing and shall be given in the manner required under Section 10.2 of the Loan Agreement. The addresses of the parties to which Notices shall be sent (until notice of a change is served) are as set forth on the first page of this Mortgage. Notice of change of address shall be given by written notice in the manner required under the Loan Agreement.

23. **REQUEST FOR NOTICE OF DEFAULT.** Mortgagor requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at the address set forth on the first page of this Mortgage.

24. **ESTOPPEL CERTIFICATE.** Within 10 days after any request by Mortgagee, Mortgagor shall deliver to Mortgagee a written statement, duly acknowledged, confirming the outstanding balance of the Loan, acknowledging that no Event of Default exists and that no act, event or circumstance has occurred that, with the giving of notice or the passage of time or both, would become an Event of Default (or if any such act, event or-circumstance has occurred, specifying the nature thereof), and setting forth such other information concerning the Loan and the Property as Mortgagee may reasonably request.

25. **INVALIDITY OF LIEN.** If Mortgagee makes an advance under the Note or this Mortgage that is determined to be unsecured, if the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured hereby, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the indebtedness, and all payments made on the indebtedness, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the indebtedness that is not secured or fully secured by the lien of this Mortgage.

26. **CHANGES IN TAX LAWS.** In the event that following the date of this Mortgage any federal, state or local governmental entity having jurisdiction over the Property enacts any Law that imposes upon

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Mortgagee the payment of all or any part of the taxes, charges or liens required to be paid by Mortgagor under this Mortgage, then the indebtedness secured hereby shall become immediately due and payable at the option of Mortgagee unless (i) Mortgagor is permitted by law to bear and pay the full amount of such taxes, charges or liens, or to reimburse Mortgagee therefor, and such payment or reimbursement would not result in the imposition of interest in excess of the maximum amount permitted by law, and (ii) Mortgagor pays such taxes, charges or liens or reimburses Mortgagee therefor and agrees in writing to pay or reimburse Mortgagee for any such taxes, charges and liens thereafter levied. The obligations of Mortgagor under any such agreement shall be secured by this Mortgage.

27. **PARTIAL OR LATE PAYMENT.** The acceptance by Mortgagee of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of any other sums then and thereafter secured hereby. The acceptance by Mortgagee of any sum or sums in an amount less than the sums then due shall be deemed an acceptance on account only and upon the condition that it shall not constitute a waiver of the Event of Default existing by virtue of Mortgagor's failure to pay the entire sum then due, or of Mortgagee's right to declare or maintain an acceleration by virtue of such Event of Default. Mortgagor's failure to pay the entire sum then due shall be and continue to be an Event of Default notwithstanding such acceptance of such amount on account, and Mortgagee shall be at all times thereafter until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums or accounts, or otherwise, entitled to exercise all rights in this Mortgage conferred upon them or either of them upon the occurrence of an Event of Default.

28. **SUBROGATION.** To the extent that any proceeds of the Loan or any other amount paid or advanced by Mortgagee is used directly or indirectly to pay, discharge or satisfy, in whole or in part, indebtedness secured by any lien, charge or encumbrance on the Property or any part thereof senior in priority to the lien of this Mortgage, Mortgagee shall be subrogated to such other lien, charge or encumbrance regardless of whether such lien, charge or encumbrance is released.

29. **NO MERGER.** If Mortgagor's and Mortgagee's estates hereunder shall at any time become vested in one owner, this Mortgage and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger, and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee hereunder.

30. **WAIVER OF RIGHT TO REQUIRE MARSHALING OF ASSETS.** Mortgagor waives all right to require a marshaling of assets by Mortgagee, and the right to require Mortgagee to resort first to any portion of the Property retained by Mortgagor before resorting to any other portion of the Property that may have been transferred or conveyed subject hereto.

31. **CAPTIONS.** The captions or headings at the beginning of Articles, Sections and paragraphs hereof are for the convenience of reference only and shall not be used in the interpretation of any provision of this Mortgage.

32. **INCORPORATION BY REFERENCE.** Each Exhibit, Schedule and Rider attached hereto is incorporated herein by the references thereto contained herein.

33. **REFERENCES AND CROSS REFERENCES.** All references and cross-references in this Mortgage to Sections, Exhibits, Schedules and Riders, unless specified otherwise, refer to provisions in, or Exhibits, Schedules or Riders to, this Mortgage.

34. **SEVERABILITY.** Should any provision of this Mortgage be invalid, illegal or unenforceable, such provision shall be severable from the rest of this Mortgage, and the validity, legality and enforceability of the remaining provisions of this Mortgage shall not in any way be affected or impaired thereby and shall remain in full force and effect.

35. **SUCCESSORS AND ASSIGNS.** This Mortgage applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Mortgagee" shall mean the owner and holder (including a pledgee) of the Note, whether or not named an

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Mortgagee herein. The term "Mortgagor" shall mean all parties executing this Mortgage as Mortgagor, their respective heirs, legatees, devisees, administrators, executors, successors in interest and assigns to the extent permitted by this Mortgage, provided that Mortgagee shall not be obligated to give notice of default or notice of sale hereunder to any person, firm or entity other than the Mortgagor shown on the face page hereof.

36. **GENDER AND NUMBER.** In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

37. **NON-LIABILITY OF MORTGAGEE.** Mortgagee neither undertakes nor assumes any responsibility or duty to Mortgagor or any third party to select, review, inspect, examine, supervise, pass judgment upon or inform Mortgagor or any third party of the quality, adequacy or suitability of: (i) any plans and specifications for the construction or alteration of improvement on the Property; (ii) architects, contractors, subcontractors or materialmen employed or utilized in such construction or alteration; (iii) the presence of any hazardous materials on the Property; (iv) any appraisal of the Property; (v) the progress or course of construction or its conformance or nonconformance with plans and specifications or any amendments, alterations or changes thereto; (vi) any environmental report; or (vii) any other matter or item that Mortgagee has the right to review, inspect, examine or approve under this Mortgage. Any such selection, review, inspection, examination and the like is solely for the purpose of (i) determining whether or not Mortgagor's obligations under this Mortgage are being properly discharged and (ii) protecting Mortgagee's security and preserving Mortgagee's rights under this Mortgage, and such selection, review, inspection, examination and the like shall not render Mortgagee liable to Mortgagor or any third party for the sufficiency, accuracy, completeness, or legality thereof and shall not operate to waive any rights of Mortgagee hereunder.

Mortgagee owes no duty of care to protect or inform Mortgagor or any third party against negligent, faulty, inadequate or defective building or construction, or the existence of any environmentally hazardous condition in any manner arising out of or related to the presence of any hazardous materials on the Property, and Mortgagee shall not be responsible or liable to Mortgagor or any other party therefor. Mortgagor shall make or cause to be made such independent inspections as Mortgagor may desire for its own protection.

By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Mortgagee pursuant hereto, including any financial statement, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation to anyone with respect thereto by Mortgagee.

Prior to Mortgagee's actual entry upon and taking possession of the Property, nothing in this Mortgage shall operate to impose upon Mortgagee any responsibility for the operation, control, care, management or repair of the Property, and the execution of this Mortgage by Mortgagor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Mortgagor prior to Mortgagee's actual entry and taking possession.

Mortgagee is hereby authorized to disclose information concerning Mortgagor, the Property or the indebtedness secured hereby to any insurance agency or company.

38. **LIMITATION ON MORTGAGEE'S OBLIGATIONS.** No provision of this Mortgage that grants Mortgagee the right to incur any expense or take any action hereunder shall be construed as requiring Mortgagee to incur such expense or take such action.

39. **RELATIONSHIP OF MORTGAGEE AND MORTGAGOR.** Neither this Mortgage, nor the Loan Documents, nor any agreements, instruments, documents or transactions contemplated hereby or thereby, nor any statements or representations made by Mortgagee pursuant to any of the foregoing or otherwise, shall in any respect be interpreted, deemed or construed as making Mortgagor and Mortgagee partners or joint venturers with one another, or as creating or constituting any partnership, joint venture, association or other such relationship between Mortgagor and Mortgagee other than that of debtor and creditor.

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40. **CUMULATIVE RIGHTS AND REMEDIES; NO WAIVER.** The rights, powers and remedies given to Mortgagee pursuant to this Mortgage shall be in addition to, and shall not supersede or preempt, any rights, powers and remedies given to Mortgagee by virtue of any applicable Law. Every power or remedy given by this Mortgage to Mortgagee or to which Mortgagee may be otherwise entitled, may be exercised concurrently, independently, or successively, in any order whatsoever, from time to time and as often as may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. No forbearance, failure or delay by Mortgagee in exercising any right, power or remedy granted to Mortgagee hereunder shall be deemed a waiver of such right, power or remedy, nor shall any such forbearance, failure or delay preclude the further exercise of such right, power or remedy, or any other right, power or remedy; and every such right, power and remedy of Mortgagee shall continue in full force and effect until such right, power or remedy is explicitly waived by Mortgagee in writing. Consent or approval by Mortgagee to or of any act by Mortgagor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

41. **MODIFICATION.** This Mortgage may be modified, supplemented or amended only by an instrument in writing signed by Mortgagor or and Mortgagee.

42. **SURVIVAL OF REPRESENTATIONS AND WARRANTIES.** All of the representations and warranties made by Mortgagor in this Mortgage shall survive the closing of the Loan and shall continue for so long as any portion of the indebtedness secured hereby remains outstanding.

43. **INTERPRETATION.** In the event of any inconsistency or conflict between the terms of this Mortgage (excluding Section 17 above) and any other Loan Document, including the Note, the terms of such other Loan Document shall prevail. The use in this Mortgage of the word "including" shall be construed as providing examples only and shall not limit the generality of any provision in which it is used.

44. **TAX SERVICE.** If requested by Mortgagee, Mortgagor shall cause to be furnished to Mortgagee, at Mortgagor's sole cost and expense, a property tax reporting service contract covering the Property, of a type and duration and with a company satisfactory to Mortgagee.

45. **FURTHER ASSURANCES.** Mortgagor shall, from time to time, at Mortgagee's reasonable request, execute and deliver to Mortgagee, and when appropriate, acknowledge, file and/or record such instruments, documents and agreements, and take such actions as Mortgagee may deem necessary or appropriate for the preservation, continuance, and perfection of the security of this Mortgage, to evidence or confirm the lien of this Mortgage on any of the Property, or otherwise to effectuate the intent and provisions of this Mortgage.

46. **JOINT AND SEVERAL LIABILITY.** If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage.

47. **STATE SPECIFIC PROVISIONS.**

a. **Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 47 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 48 shall control and be binding.

b. **Illinois Law Provisions.** This Mortgage shall be subject to the following additional terms and provisions:

(i) Upon the occurrence of an Event of Default, Mortgagee shall have the right to foreclose the lien hereof in accordance with the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-101, et seq. (1998) (the "Act") and to exercise any other remedies of Mortgagee provided in the Note, the Loan Agreement, the Loan Documents, or which Mortgagee may have, at law or in equity. Without limiting the generality of the foregoing, or the other provisions of this Mortgage, Mortgagee shall have all power, authority and duties as provided in the Act. Nothing herein shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Property.

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(ii) Mortgagor acknowledges that the Property does not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

(iii) Upon the occurrence of an Event of Default, or if Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to be placed in possession of the Property as provided in the Act, and Mortgagee, in its discretion and pursuant to court order, may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom.

(iv) Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint upon petition of Mortgagee, and at Mortgagee's sole option, a receiver of the Property pursuant to the Act. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not, and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to make leases to be binding upon all parties, including Mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Property after entry of a judgment of foreclosure, all as provided in the Act.

(v) At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Property upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Property is situated, of a unilateral declaration to that effect.

(vi) The proceeds of the Note will be used for the purposes specified in 815 ILCS 205/4 (1998), and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

(vii) At all times, regardless of whether any proceeds of the Loan have been disbursed, this Mortgage secures as part of the total indebtedness the payment of all loan commissions, service charges, liquidated damages, reasonable attorneys' fees, Additional Interest, expenses and advances due to or incurred by Mortgagee in connection with the Loan, all in accordance with the Note, the Loan Agreement, this Mortgage and the Loan Documents, provided, however, that in no event shall the total amount of the Loan, including proceeds of the Loan disbursed plus any additional charges, exceed two hundred percent (200%) of the face amount of the Note.

(viii) In addition to any other obligation secured by this Mortgage, this Mortgage shall also secure (i) all monies advanced by Mortgagee in accordance with the terms of this Mortgage: (a) to preserve or restore the Property; (b) to preserve the lien of this Mortgage or the priority thereof; or (c) to enforce this Mortgage whether made as an obligation, made at the option of Mortgagee, made after a reduction to a zero (0) or other balance, or made otherwise, to the same extent as if the future obligations and advances were made on the date of execution of this Mortgage, and (ii) future modifications, extensions and renewals of any indebtedness or obligations secured by this Mortgage. The lien of this Mortgage with respect to such future obligations, advances, modifications, extensions and renewals shall have the same priority to which this Mortgage otherwise would be entitled under 735 ILCS 5/15-1302 without regard to the fact that such future obligations, advances, modifications, extensions, or renewals may occur after this Mortgage is executed.

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

WITNESSES:

MORTGAGOR:

Name: _____
(Type or Print)

Patricia M. Byrnes
Name: Patricia M. Byrnes
(Type or Print)

2401 WILLOW REAL ESTATE LLC,
an Illinois limited liability company

By: *Meninder Bhambra*
Name: MENJINDER BHAMBRA
Title: Member

(Corporate Seal)

[NOTARIAL ACKNOWLEDGMENTS ATTACHED HERETO]

Property of Cook County Clerk's Office

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EXHIBIT A
TO
MORTGAGE

(Legal Description of Real Property)

The following real property located in the City of Northbrook, County of Cook, State of Illinois:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH LIES SOUTHERLY OF THE SOUTHERLY LINE OF WILLOW ROAD, AS DEDICATED BY DOCUMENT 11248487 AND EASTERLY OF THE EASTERLY LINE OF SANDERS ROAD, AS WIDENED BY DOCUMENT NO. 20658894 AND ALSO LYING NORTH AND WEST OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT IN THE EASTERLY LINE OF SAID SANDERS ROAD, 196.48 FEET SOUTHERLY OF THE ANGLE POINT IN SAID EASTERLY LINE; THENCE EASTERLY, PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST 1/4, A DISTANCE OF 184.30 FEET, MORE OR LESS, TO A POINT IN A LINE DRAWN AT RIGHT ANGLES TO SAID NORTH LINE OF THE NORTHEAST 1/4 AND PASSING THROUGH A POINT IN SAID SOUTHERLY LINE OF WILLOW ROAD THAT IS 196.48 FEET EAST OF THE POINT OF INTERSECTION OF SAID SOUTHERLY LINE AND THE DIAGONAL EASTERLY LINE OF SAID WIDENED SANDERS ROAD, THENCE NORTH ALONG SAID RIGHT ANGLE LINE, 193.75 FEET, MORE OR LESS, TO THE SAID SOUTHERLY LINE OF WILLOW ROAD, IN COOK COUNTY, ILLINOIS.

EXCEPT THEREFROM ANY PART FALLING WITHIN THE FOLLOWING:

THAT PART OF LOT 1 IN ASSESSORS DIVISION OF THE NORTH HALF OF SECTION 19 AND THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING SOUTHERLY OF THE SOUTHERLY RIGHT OF WAY LINE OF WILLOW ROAD AND EASTERLY OF THE EASTERLY RIGHT OF WAY LINE OF SANDERS ROAD DESCRIBED AS FOLLOWS: BEGINNING AT THE ANGLE POINT ON THE EASTERLY RIGHT OF WAY LINE OF SANDERS ROAD; THENCE ON AN ASSUMED BEARING OF NORTH 42 DEGREES 10 MINUTES 37 SECONDS EAST ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF SAID SANDERS ROAD, A DISTANCE OF 19.47 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF WILLOW ROAD; THENCE EASTERLY 196.48 FEET ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF WILLOW ROAD ON A CURVE TO THE RIGHT HAVING A RADIUS OF 2242.01 FEET, THE CHORD OF SAID CURVE BEARS SOUTH 85 DEGREES 35 MINUTES 26 SECONDS EAST, 196.42 FEET TO THE NORTHEAST CORNER OF THE GRANTOR; THENCE SOUTH 0 DEGREES 09 MINUTES 12 SECONDS EAST ALONG THE EAST LINE OF THE GRANTOR A DISTANCE OF 15.00 FEET; THENCE NORTH 74 DEGREES 26 MINUTES 42 SECONDS WEST 2.72 FEET; THENCE EASTERLY 114.45 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2416.12 FEET, THE CHORD OF SAID CURVE BEARS NORTH 82 DEGREES 51 MINUTES 00 SECONDS WEST 114.44 FEET; THENCE SOUTH 44 DEGREES 22 MINUTES 04 SECONDS WEST, 80.96 FEET; THENCE SOUTH 7 DEGREES 19 MINUTES 29 SECONDS EAST, A DISTANCE OF 137.33 FEET TO THE SOUTH LINE OF THE GRANTOR; THENCE SOUTH 89 DEGREES 50 MINUTES 48 SECONDS WEST ALONG THE SOUTH LINE OF THE GRANTOR A DISTANCE OF 28.48 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SANDERS ROAD; THENCE NORTH 7 DEGREES 22 MINUTES 10 SECONDS WEST ALONG THE SAID EASTERLY RIGHT OF WAY LINE OF SANDERS ROAD, A DISTANCE OF 196.48 FEET TO THE POINT OF BEGINNING.