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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1014541023 Fee: \$134.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/25/2010 10:08 AM Pg: 1 of 48

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 08-21-403-034-0000

**Address:**

**Street:** 1 EAST HIGGINS ROAD

**Street line 2:**

**City:** ELK GROVE VILLAGE

**State:** IL

**ZIP Code:** 60007

**Lender:** FIRST MIDWEST BANK

**Borrower:** RITELINE PROPERTIES LLC

**Loan / Mortgage Amount:** \$11,117,500.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 7/770 et seq. because it is commercial property.

**Certificate number:** BDA5D7DC-4A16-4B3E-AAC8-299C46879B13

**Execution date:** 05/19/2010

Box 400 Fagan

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This document was prepared by,  
and after recording, return to:

Randall S. Kulat, Esq.  
Meltzer, Purtill & Stelle LLC  
300 South Wacker Drive, Suite 3500  
Chicago, Illinois 60606-6704

Permanent Tax Index Numbers:

See **Exhibit A** attached hereto.

Property Address:

See **Exhibit A** attached hereto.

*This space reserved for Recorder's use only.*

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

This LEASEHOLD MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING dated as of May 19, 2010 (this "Mortgage"), is executed by **RITELINE PROPERTIES LLC**, an Illinois limited liability company (the "Mortgagor"), to and for the benefit of **FIRST MIDWEST BANK**, an Illinois banking corporation, its successors and assigns (the "Bank").

**R E C I T A L S:**

A. Pursuant to the terms and conditions contained in that certain Loan and Security Agreement dated as of even date herewith (the "Loan Agreement"; all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), executed by and among Mortgagor, RM Petroleum, Inc., an Illinois corporation ("Petroleum"; Mortgagor and Petroleum are hereinafter collectively referred to as the "Borrowers"), and Bank, the Bank has agreed to extend certain financial accommodations to the Borrowers in the aggregate amount of Eleven Million One Hundred Seventeen Thousand Five Hundred and 00/100 Dollars (\$11,117,500.00) (the "Loan"), which amount includes a Four Million and 00/100 Dollars (\$4,000,000.00) letter of credit facility.

B. The Loan shall be evidenced by (i) that certain Term Note of even date herewith in the principal amount of Seven Million One Hundred Seventeen Thousand Five Hundred and 00/100 Dollars (\$7,117,500.00) (the "Term Note") from Mortgagor and made payable to the order of the Bank and due on May 19, 2015, except as may be accelerated pursuant to the terms hereof (the "Maturity Date"), and (ii) that certain Letter of Credit Demand Term Note of even date herewith in the principal amount of Four Million and 00/100 Dollars (\$4,000,000.00) (the

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"Letter of Credit Note") from Petroleum and made payable to the order of the Bank and due on demand of the Bank (the Term Note and the Letter of Credit Note, each as amended, restated or replaced from time to time, are hereinafter collectively referred to as the "Notes"). The Notes, the Loan Agreement, together with any other document or instrument now or hereafter given to evidence or secure the payment of the Notes or delivered to induce the Bank to disburse the proceeds of the Loan, as amended, restated or replaced from time to time, are collectively referred to herein as the "Loan Documents".

C. The Bank requires as a condition precedent to the Bank's extension of the Loan to the Borrowers that Mortgagor execute and deliver this Mortgage with respect to the "Premises" described herein to Bank.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor agrees as follows:

## A G R E E M E N T S:

The Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to the Bank, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as the "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Leasehold Estate (as defined below) and not secondarily:

(a) The leasehold estate (the "Leasehold Estate") of Mortgagor in and to the real estate located in the County of Cook, State of Illinois and legally described on **Exhibits A-1** through and including **A-3** attached hereto and made a part hereof, and all of Mortgagor's estate, right, title and interest therein situate, which Leasehold Estate is held by Borrower pursuant to each "Ground Lease" described on **Exhibit B** attached hereto and made a part hereof, it being understood and agreed that this Mortgage constitutes a Leasehold Mortgage from Mortgagor with respect to the Leasehold Estate;

(b) All improvements of every nature whatsoever now or hereafter situated on the Premises, and all fixtures and personal property of every nature whatsoever now or hereafter owned by the Mortgagor and located on, or used in connection with the Premises or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of the Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by the Mortgagor or on its behalf (the "Improvements");

(c) All easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the

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Premises, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of the Mortgagor of, in and to the same;

(d) All rents, revenues, issues, profits, proceeds, income, royalties, Letter of Credit Rights (as defined in the Uniform Commercial Code of the State of Illinois (the "Code") in effect from time to time), escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by the Mortgagor thereon, to be applied against the Indebtedness (as hereinafter defined); provided, however, that the Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

(e) All interest of the Mortgagor in all leases now or hereafter on the Premises, whether written or oral (each, a "Lease", and collectively, the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to the Mortgagor to collect the rentals under any such Lease;

(f) All fixtures and articles of personal property now or hereafter owned by the Mortgagor and forming a part of or used in connection with the Premises or the Improvements including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Premises, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Premises or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by the Mortgagor and placed on the Premises or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute Goods (as defined in the Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in the Bank, as a Secured Party, and the Mortgagor, as Debtor, all in accordance with the Code;

(g) All of the Mortgagor's interests in General Intangibles, including Payment Intangibles and Software (each as defined in the Code) now owned or hereafter acquired

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and related to the Premises including, without limitation, all of the Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which the Mortgagor is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to the Mortgagor thereunder; (iii) all intellectual property related to the Premises; and (iv) all choses in action and causes of action relating to the Premises;

(h) All of the Mortgagor's accounts now owned or hereafter created or acquired as relate to the Premises and/or the businesses and operations conducted thereon including, without limitation, all of the following now owned or hereafter created or acquired by the Mortgagor: (i) Accounts (as defined in the Code), contract rights, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor); (v) Securities, Investment Property, Financial Assets and Securities Entitlements (each as defined in the Code); (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (vii) all warranties, guarantees, permits and licenses in favor of the Mortgagor with respect to the Premises; and

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

TO HAVE AND TO HOLD the Leasehold Estate, unto the Bank, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Leasehold Estate after the occurrence of any Event of Default; the Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, prepayment premiums, if any, interest rate swap or hedge expenses (if any), reimbursement obligations, fees and expenses for letters of credit issued by the Bank for the benefit of the Borrowers, if any, and other indebtedness evidenced by or owing under the Notes, any of the other Loan Documents, and any application for letters of credit and letter of credit reimbursement agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) any and all obligations, contingent or otherwise, whether now existing or hereafter arising, of Borrowers to Bank arising under or in connection with any interest rate, currency or commodity swap agreement, cap agreement or collar agreement,



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executed by and between the Borrowers, or any of them, and Bank from time to time (collectively, "Rate Management Agreements"), (iii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Borrowers or any other obligor to or benefiting the Bank which are evidenced or secured by or otherwise provided in the Notes, this Mortgage or any of the other Loan Documents; and (iv) the reimbursement to the Bank of any and all sums incurred, expended or advanced by the Bank pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, any of the other Loan Documents or any Rate Management Agreements or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, the "Indebtedness").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.**

The Mortgagor represents, warrants and covenants that (a) the Mortgagor is the holder of the Leasehold Estate, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of the Bank and as otherwise described on **Exhibit C** attached hereto and made a part hereof (the "Permitted Exceptions"); and (b) the Mortgagor has legal power and authority to mortgage and convey the Leasehold Estate.

2. **Maintenance, Repair, Restoration, Prior Liens, Parking.**

The Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, the Mortgagor will:

(a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose, or if and to the extent such requirement is the obligation of Landlord (as defined in **Exhibit B**) under the Ground Lease, use its good faith efforts to cause Landlord to promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, in either case whether or not proceeds of insurance are available or sufficient for the purpose;

(b) keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien, or if and to the extent such requirement is the obligation of Landlord under the Ground Lease, use its good faith efforts to cause Landlord to keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (in either case subject to the Mortgagor's right to contest liens as permitted by the terms of Section 27 hereof);

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(c) pay when due the Indebtedness in accordance with the terms of the Notes and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by the Borrowers under the Notes, this Mortgage and the other Loan Documents;

(d) pay when due, or if and to the extent such payment is the obligation of Landlord under the Ground Lease, use its good faith efforts to cause Landlord to pay when due, any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Bank (subject to the Mortgagor's right to contest liens as permitted by the terms of Section 27 hereof);

(e) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;

(f) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;

(g) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage;

(h) make no material alterations in the Premises or demolish any portion of the Premises without the Bank's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, except as required by law or municipal ordinance;

(i) suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Bank's prior written consent;

(j) pay when due all operating costs of the Premises;

(k) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without the Bank's prior written consent;

(l) provide and thereafter maintain, or, if and to the extent such provision and maintenance is the obligation of Landlord under the Ground Lease, use its good faith efforts to cause Landlord to provide and thereafter maintain, adequate parking areas within the Premises as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; and

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(m) shall comply, and shall cause the Premises at all times to be operated in compliance, with all applicable federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations, including, without limitation, Mortgagor shall (i) ensure, and cause each of its subsidiaries to ensure, that no person who owns any part of the equity interests in the Mortgagor, or otherwise controls the Mortgagor or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (ii) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (iii) comply, and cause each of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

### 3. Payment of Taxes and Assessments.

The Mortgagor will pay when due, or if and to the extent such payment is the obligation of Landlord under the Ground Lease, use its good faith efforts to cause Landlord to pay when due, and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to the Mortgagor's right to contest the same, as provided by the terms hereof; and the Mortgagor will, upon written request, furnish to the Bank duplicate receipts therefor within ten (10) days after the Bank's request.

### 4. Tax Deposits.

If under the applicable Ground Lease, the Mortgagor is responsible for the payment of Taxes and the Ground Lease does not require the Taxes be deposited or escrowed with the Landlord or the Landlord's lender, Mortgagor shall deposit, or cause to be deposited, with the Bank, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12<sup>th</sup>) of one hundred five percent (105%) of the most recent ascertainable annual Taxes on the Premises. If requested by the Bank, the Mortgagor shall also deposit with the Bank an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as estimated by the Bank. Such deposits are to be held without any allowance of interest and are to be used for the payment of Taxes next due and payable when they become due. So long as no Event of Default shall exist, the Bank shall, at its option, pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from the Mortgagor) or shall release sufficient funds to the Mortgagor for the payment thereof. If the funds so deposited are insufficient to pay any such Taxes for any year (or installments thereof, as applicable) when the same shall become due and payable, the Mortgagor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required



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to pay such Taxes for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of the Bank. The Bank, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. The Bank, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

## 5. **Bank's Interest In and Use of Deposits.**

Upon an Event of Default, the Bank may, at its option, apply any monies at the time on deposit pursuant to Section 4 hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as the Bank may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, the Mortgagor shall immediately, upon demand by the Bank, deposit with the Bank an amount equal to the amount expended by the Mortgagor from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to the Mortgagor. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of the Mortgagor. The Bank shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless the Mortgagor, prior to an Event of Default, shall have requested the Bank in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. The Bank shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

## 6. **Insurance.**

(a) The Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by the Bank in accordance with the terms, coverages and provisions described on **Exhibit D** attached hereto and made a part hereof, and such other insurance as the Bank may from time to time reasonably require. Unless the Mortgagor provides the Bank evidence of the insurance coverages required hereunder, the Bank may purchase insurance at the Mortgagor's expense to cover the Bank's interest in the Premises. The insurance may, but need not, protect the Mortgagor's interest. The coverages that the Bank purchases may not pay any claim that the Mortgagor makes or any claim that is made against the Mortgagor in connection with the Premises. The Mortgagor may later cancel any insurance purchased by the Bank, but only after providing the Bank with evidence that the Mortgagor has obtained insurance as required by this Mortgage. If the Bank purchases insurance for the Premises, the Mortgagor will be responsible for the costs of such insurance including, without limitation, interest and any other charges which the Bank may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the

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insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance the Mortgagor may be able to obtain on its own.

(b) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless the Bank is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to the Bank and such separate insurance is otherwise acceptable to the Bank.

(c) In the event of loss, the Mortgagor shall give prompt notice thereof to the Bank, who, if such loss exceeds the lesser of ten percent (10%) of the Indebtedness or One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "Threshold"), shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i), (ii) and (iii) of the immediately succeeding subsection are not satisfied, then the Bank, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or less than the Threshold, (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, (iii) the Bank determines that the work required to complete the repair or restoration of the Premises necessitated by such loss can be completed no later than six (6) months prior to the Maturity Date, and (iv) the total of the insurance proceeds and such additional amounts placed on deposit with the Bank by the Mortgagor for the specific purpose of rebuilding or restoring the Improvements equals or exceeds, in the sole and absolute discretion of the Bank, the reasonable costs of such rebuilding or restoration, then the Bank shall endorse to the Mortgagor any such payment and the Mortgagor may collect such payment directly. The Bank shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by the Bank pursuant to the terms of this section, after the payment of all of the Bank's expenses, either (i) on account of the Indebtedness, irrespective of whether such principal balance is then due and payable, or (ii) to the restoration or repair of the property damaged as provided in subsection (d) below. If insurance proceeds are made available to the Mortgagor by the Bank as hereinafter provided, the Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event of foreclosure of this Mortgage, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. If insurance proceeds are applied to the account of the Indebtedness, no prepayment fee under the Loan Agreement shall apply to such prepayment.

(d) If insurance proceeds are made available by the Bank to the Mortgagor, the Mortgagor shall comply with the following conditions:

(i) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, the Mortgagor shall obtain from the Bank its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

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(ii) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Premises to the extent permitted in subsection (c) above (which payment or application may be made, at the Bank's option, through an escrow, the terms and conditions of which are satisfactory to the Bank and the cost of which is to be borne by the Mortgagor), the Bank shall be satisfied as to the following:

(A) no Event of Default or any event which, with the passage of time or giving of notice would constitute an Event of Default, has occurred;

(B) either such Improvements have been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Exceptions. If, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Premises, the Mortgagor has deposited with the Bank such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Premises; and

(C) prior to each disbursement of any such proceeds, the Bank shall be furnished with a statement of the Bank's architect (the cost of which shall be borne by the Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by the Bank and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and the Bank shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(iii) If the Mortgagor shall fail to restore, repair or rebuild the Improvements within a time deemed satisfactory by the Bank, then the Bank, at its option, may (A) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of the Mortgagor, or (B) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

(e) Mortgagor's obligation to restore, repair or rebuild the Improvements as set forth in this Article 6 is subject to the terms and conditions set forth in the applicable Ground Lease.

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## 7. Condemnation.

If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to the Bank, who is empowered to collect and receive the same and to give proper receipts therefor in the name of the Mortgagor and the same shall be paid forthwith to the Bank. Such award or monies shall be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable. Notwithstanding the provisions of this section to the contrary, if any condemnation or taking of less than the entire Premises occurs and provided that no Event of Default and no event or circumstance which with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and if such partial condemnation, in the reasonable discretion of the Bank, has no material adverse effect on the operation or value of the Premises, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by the Mortgagor. If any condemnation proceeds are applied to the account of the Indebtedness, no prepayment fee under the Loan Agreement shall apply to such prepayment.

## 8. Stamp Tax.

If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Notes or any of the other Loan Documents, the Mortgagor shall pay such tax in the manner required by any such law. The Mortgagor further agrees to reimburse the Bank for any sums which the Bank may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, the Mortgagor shall not be required to pay any income or franchise taxes of the Bank.

## 9. Lease Assignment.

The Mortgagor acknowledges that, concurrently herewith, the Mortgagor has executed and delivered to the Bank, as additional security for the repayment of the Loan, an Assignment of Rents and Leases (the "Assignment") pursuant to which the Mortgagor has assigned to the Bank interests in the leases of the Premises and the rents and income from the Premises. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. The Mortgagor agrees to abide by all of the provisions of the Assignment.

## 10. Effect of Extensions of Time and Other Changes.

If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Notes is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in the

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Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by the Bank, notwithstanding such extension, variation, release or change.

**11. Effect of Changes in Laws Regarding Taxation.**

If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (b) the imposition upon the Bank of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by the Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or the Bank's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness or the holders thereof, then the Mortgagor, upon demand by the Bank, shall pay such Taxes or charges, or reimburse the Bank therefor; provided, however, that the Mortgagor shall not be deemed to be required to pay any income or franchise taxes of the Bank. Notwithstanding the foregoing, if in the opinion of counsel for the Bank it is or may be unlawful to require the Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the Bank may declare all of the Indebtedness to be immediately due and payable.

**12. Bank's Performance of Defaulted Acts and Expenses Incurred by Bank.**

If an Event of Default has occurred, the Bank may, but need not, make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient by the Bank, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of the Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by the Bank in regard to any tax referred to in Section 8 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by the Mortgagor to the Bank, upon demand, and with interest thereon accruing from the date of such demand until paid at the applicable Default Rate (as defined in the Notes). In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by the Bank in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of the Bank's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Notes, this Mortgage, any of the other Loan Documents or the Premises including, without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Notes, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by the Mortgagor to the Bank, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this section shall be immediately due and payable by the Mortgagor to the



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Bank, and shall be additional Indebtedness evidenced by the Notes and secured by this Mortgage. The Bank's failure to act shall never be considered as a waiver of any right accruing to the Bank on account of any Event of Default. Should any amount paid out or advanced by the Bank hereunder, or pursuant to any agreement executed by the Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then the Bank shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

## 13. Security Agreement.

The Mortgagor and the Bank agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of the Mortgagor or held by the Bank (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "Fixture" (within the meaning of Section 9-102(41) of the Code and which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "Supporting Obligations" (as defined in the Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Bank, and the Collateral and all of the Mortgagor's right, title and interest therein are hereby assigned to the Bank, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

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

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

(c) The Collateral will be kept at the Premises and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of the Bank (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Premises but will not be affixed to any other real estate.

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

(e) No Financing Statement (other than Financing Statements showing the Bank as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and the Mortgagor, at its own cost and expense, upon demand, will furnish to the Bank such further information and will execute and deliver to the Bank such financing statements and other documents in form satisfactory to the Bank and will do all such acts as the Bank may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting the Bank and no other party, and liens and encumbrances (if any) expressly permitted hereby; and the Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Bank to be desirable. The Mortgagor hereby irrevocably authorizes the Bank at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto, without the signature of the Mortgagor that (i) indicate the Collateral (A) is comprised of all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (B) as being of an equal or lesser scope or within greater detail as the grant of the security interest set forth herein, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether the Mortgagor is an organization, the type of organization, and any organizational identification number issued to the Mortgagor, and (B) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Collateral relates. The Mortgagor agrees to furnish any such information to the Bank promptly upon request. The Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by the Bank in any jurisdiction prior to the date of this Mortgage. In addition, the Mortgagor shall make appropriate entries on its books and records disclosing the Bank's security interests in the Collateral.

(f) Upon an Event of Default hereunder, the Bank shall have the remedies of a secured party under the Code including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as the Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Bank shall be entitled to hold, maintain, preserve and prepare the

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Collateral for sale, until disposed of, or may propose to retain the Collateral subject to the Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations, as provided in the Code. The Bank may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. The Bank may require the Mortgagor to assemble the Collateral and make it available to the Bank for its possession at a place to be designated by the Bank which is reasonably convenient to both parties. The Bank will give the Mortgagor at least ten (10) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of the Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. The Bank may buy at any public sale. The Bank may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If the Bank so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by the Bank, shall be applied against the Indebtedness in such order or manner as the Bank shall select. The Bank will account to the Mortgagor for any surplus realized on such disposition.

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

(h) This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of the Mortgagor (Debtor) and the Bank (Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located. The applicable Landlord is the record owner of fee simple title to the Premises and the Mortgagor is the owner of the Leasehold Estate.

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

(j) The Mortgagor represents and warrants that: (i) the applicable Landlord is the record owner of fee simple title to the Premises and the Mortgagor is the owner of the Leasehold Estate; (ii) the Mortgagor's chief executive office is located in the State of Illinois; (iii) the Mortgagor's state of incorporation is the State of Illinois; (iv) the Mortgagor's exact legal name is as set forth on Page 1 of this Mortgage; and (v) the Mortgagor's organizational identification number is 03250385.

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(k) The Mortgagor hereby agrees that: (i) where Collateral is in possession of a third party, the Mortgagor will join with the Bank in notifying the third party of the Bank's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of the Bank; (ii) the Mortgagor will cooperate with the Bank in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and (iii) until the Indebtedness is paid in full, Mortgagor will not change the state where it is organized or change its name or form of organization without giving the Bank at least thirty (30) days' prior written notice in each instance.

## 14. Restrictions on Transfer.

(a) The Mortgagor, without the prior written consent of the Bank (and the payment of any release amounts required under the Loan Agreement), shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

(i) The Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral ("Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

(ii) All or any part of the member's interest in the Mortgagor;

(iii) If there shall be any change in control (by way of transfers of stock or member interests or otherwise) in any member, manager or shareholder, as applicable, which directly or indirectly controls the day to day operations and management of the Mortgagor and/or owns a controlling interest in the Mortgagor, or if the Guarantor (as defined in the Loan Agreement) shall no longer own all of the membership interest in the Mortgagor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this section shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, or (iv) to leases permitted by the terms of the Loan Documents, if any.



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(b) In determining whether or not to make the Loan, the Bank evaluated the background and experience of the Mortgagor and its members and officers in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is the Bank's security for the Notes. The Mortgagor and its members and officers are well experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. The Mortgagor recognizes that the Bank is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. The Mortgagor further recognizes that any secondary junior financing placed upon the Premises (i) may divert funds which would otherwise be used to pay the Notes; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force the Bank to take measures and incur expenses to protect its security; (iii) would detract from the value of the Premises should the Bank come into possession thereof with the intention of selling same; and (iv) would impair the Bank's right to accept a deed in lieu of foreclosure, as a foreclosure by the Bank would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (a) protecting the Bank's security, both of repayment and of value of the Premises; (b) giving the Bank the full benefit of its bargain and contract with the Mortgagor; (c) allowing the Bank to raise the interest rate and collect assumption fees; and (d) keeping the Premises free of subordinate financing liens, the Mortgagor agrees that if this section is deemed a restraint on alienation, that it is a reasonable one. Notwithstanding anything set forth herein to the contrary, however, by accepting this Mortgage, the Bank acknowledges and agrees that it has consented to a junior and subordinate lien to be placed on the Premises by Albany Bank & Trust Company, N.A.. Furthermore, by accepting this Mortgage, the Bank acknowledges and agrees that it shall issue partial releases of the lien of this Mortgage in accordance with and subject to the terms and conditions contained in the Loan Agreement. Any such partial release shall not impair in any manner the validity or priority of this Mortgage on the portion of the Premises or the security remaining, nor release the personal liability of any person, persons or entity obligated to pay any indebtedness secured hereby, for the full amount of the indebtedness remaining unpaid.

## 15. Events of Default; Acceleration.

Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) The Borrowers fail to pay any installment of principal or interest payable pursuant to the terms of the Notes, or any other amount payable to Bank under any of the Notes, this Mortgage or any of the other Loan Documents when any such payment is due in accordance with the terms hereof or thereof, subject to any grace or cure period set forth therein;



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(b) The Borrowers fail to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by the Borrowers under the Notes, this Mortgage or any of the other Loan Documents; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by this Mortgage or any of the other Loan Documents and the value of the Premises are not impaired, threatened or jeopardized, then the Mortgagor shall have a period (the "Cure Period") of thirty (30) days after the Mortgagor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if the Mortgagor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate;

(c) the existence of any inaccuracy or untruth in any material respect in any certification, representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to the Bank by any of the Borrowers or Guarantor;

(d) Any of the Borrowers or Guarantor files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of any of the Borrowers or of all or any substantial part of the property of such Borrower, Guarantor, the Premises or all or a substantial part of the assets of the Borrower or the Guarantor are attached, seized, subjected to a writ or distress warrant or are levied upon, unless the same is released or vacated within thirty (30) days;

(e) the commencement of any involuntary petition in bankruptcy against any of the Borrowers or the Guarantor, or the institution against the any of the Borrowers or the Guarantor of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of any of the Borrowers or the Guarantor which shall remain undismissed or undischarged for a period of sixty (60) days;

(f) the occurrence of a Prohibited Transfer;

(g) the occurrence of an Event of Default under any of the Notes, the Loan Agreements or any of the other Loan Documents; or

(h) the occurrence of any default or event of default, after the expiration of any applicable periods of notice or cure, under any document or agreement evidencing or

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securing any other obligation or indebtedness of the any of the Borrowers or the Guarantor to the Bank.

If an Event of Default occurs, the Bank may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to the Mortgagor, with interest thereon accruing from the date of such Event of Default until paid at the Default Rate.

## 16. **Foreclosure; Expense of Litigation.**

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, the Bank shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 *et seq.*, Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, the Bank is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as the Bank may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Bank for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as the Bank may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this section and such other expenses and fees as may be incurred in the enforcement of the Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Bank in any litigation or proceeding affecting this Mortgage, the Notes, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by the Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

## 17. **Application of Proceeds of Foreclosure Sale.**

The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as the Bank may determine in its sole and absolute discretion.

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## 18. **Appointment of Receiver.**

Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by the Bank, appoint a receiver for the Premises in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and the Bank hereunder or any other holder of the Notes may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when the Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

## 19. **Bank's Right of Possession in Case of Default.**

At any time after an Event of Default has occurred, the Mortgagor shall, upon demand of the Bank, surrender to the Bank possession of the Premises. The Bank, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude the Mortgagor and its employees, agents or servants therefrom, and the Bank may then hold, operate, manage and control the Premises, either personally or by its agents. The Bank shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, the Bank shall have full power to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same;
- (b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

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(c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as the Bank deems are necessary;

(e) insure and reinsure the Premises and all risks incidental to the Bank's possession, operation and management thereof; and

(f) receive all of such avails, rents, issues and profits.

## 20. Application of Income Received by Bank.

The Bank, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as the Bank may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to the Bank and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

## 21. Compliance with Illinois Mortgage Foreclosure Law.

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

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(b) If any provision of this Mortgage shall grant to the Bank (including the Bank acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 18 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in the Bank or in such receiver under the Act in the absence of said provision, the Bank and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Bank which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Sections 12, 17 or 29 of this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

## 22. Rights Cumulative.

Each right, power and remedy herein conferred upon the Bank is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Bank, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of the Bank in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

## 23. Bank's Right of Inspection.

The Bank and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times upon not less than twenty four (24) hours' prior notice to the Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

## 24. Release Upon Payment and Discharge of Mortgagor's Obligations.

The Bank shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by the Bank in connection with the execution of such release.

## 25. Notices.

Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:



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To the Bank

First Midwest Bank  
8501 West Higgins Road  
Chicago, Illinois 60631  
Attention: Andrew E. Kelpsa

With a copy to:

Meltzer, Purtill & Stelle LLC  
300 South Wacker Drive, Suite 3500  
Chicago, Illinois 60606-6704  
Attention: Randall S. Kulat, Esq.

To the Mortgagor:

Riteline Properties LLC  
200 West Higgins Road, Suite 326  
Schaumburg, Illinois 60195

With copy to:

Daniel D. Drew  
Daniel D. Drew, P.C.  
1415 West 22nd Street  
Tower Floor  
Oak Brook, Illinois 60523

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

## 26. Waiver of Rights.

The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions

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of Illinois Compiled Statutes 735 ILCS 5/15-1601 or other applicable law or replacement statutes; and

(b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Bank but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

## 27. Contests.

Notwithstanding anything to the contrary herein contained, the Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (each, a "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

(a) The Mortgagor shall forthwith give notice of any Contested Lien to the Bank at the time the same shall be asserted;

(b) The Mortgagor shall either pay under protest or deposit with the Bank the full amount (the "Lien Amount") of such Contested Lien, together with such amount as the Bank may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment the Mortgagor may furnish to the Bank a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to the Bank;

(c) The Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit the Bank to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of the Bank's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);

(d) The Mortgagor shall pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to the Mortgagor, or (ii) forthwith upon demand by the Bank if, in the opinion of the Bank, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if the Mortgagor shall fail so to do, the Bank may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Bank to obtain the release and discharge of such liens; and any amount expended by the Bank in so doing shall be so much additional Indebtedness bearing interest at the applicable Default Rate until paid, and payable upon demand; and provided further that the Bank may in such case use and apply

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monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

## 28. **Expenses Relating to Notes and Mortgage.**

(a) The Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Notes, this Mortgage or any of the other Loan Documents including, without limitation, the Bank's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Notes, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided the Mortgagor shall not be required to pay any income or franchise taxes of the Bank), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Notes and this Mortgage. The Mortgagor recognizes that, during the term of this Mortgage, the Bank:

(i) May be involved in court or administrative proceedings including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which the Bank shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, the Bank's taking possession of and managing the Premises, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with the Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the Indebtedness or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with the Mortgagor or any of its agents, employees or attorneys pertaining to the Bank's approval of actions taken or proposed to be taken by the Mortgagor which approval is required by the terms of this Mortgage.

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(b) All expenses, charges, costs and fees described in this section shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by the Mortgagor forthwith upon demand.

## 29. Financial Statements.

The Mortgagor represents and warrants that the financial statements for the Borrowers and the Premises previously submitted to the Bank are true, complete and correct in all material respects, disclose all actual and contingent liabilities of the Borrowers or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of the Mortgagor or the Premises from the dates of said financial statements until the date hereof. The Mortgagor shall furnish to the Bank such financial information regarding the Mortgagor, its constituent members, the other Borrowers, the Premises and the Guarantor, as set forth in the Loan Agreement or as the Bank may from time to time reasonably request.

## 30. Single Asset Entity.

Other than with respect to the acquisition of the Properties and certain assets of the Seller (as defined in the Loan Agreement) in the manner contemplated in the Loan Agreement, the Mortgagor shall not hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any other real or personal property other than the Premises, or become a shareholder of or a member or partner in any entity which acquires any property other than the Properties, until such time as the Indebtedness has been fully repaid. The Mortgagor covenants:

(a) To maintain its assets, accounts, books, records, financial statements, stationery, invoices, and checks separate from and not commingled with any of those of any other person or entity;

(b) To conduct its own business in its own name, pay its own liabilities out of its own funds, allocate fairly and reasonably any overhead for shared employees and office space, and to maintain an arm's length relationship with its affiliates;

(c) To hold itself out as a separate entity, correct any known misunderstanding regarding its separate identity, maintain adequate capital in light of its contemplated business operations, and observe all organizational formalities;

(d) Not to guarantee or become obligated for the debts of any other entity or person or hold out its credits as being available to satisfy the obligations of others, including not acquiring obligations or securities of its members;

(e) Not to pledge its assets for the benefit of any other entity or person or make any loans or advances to any person or entity;

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(f) Not to enter into any contract or agreement with any party which is directly or indirectly controlling, controlled by or under common control with the Mortgagor (an "Affiliate"), except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any Affiliate;

(g) Neither the Mortgagor nor any constituent party of the Mortgagor will seek the dissolution or winding up, in whole or in part, of the Mortgagor, nor will the Mortgagor merge with or be consolidated into any other entity;

(h) The Mortgagor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any constituent party of the Borrowers, any Affiliate, the Guarantor or any other person;

Other than debt subordinated to the Loan, the Mortgagor now has and will hereafter have no debts or obligations other than normal accounts payable in the ordinary course of business, this Mortgage, and the Loan; and any other indebtedness or other obligation of the Mortgagor has been paid in full prior to or through application of proceeds from the funding of the Loan.

## 31. Statement of Indebtedness.

The Mortgagor, within seven (7) days after being so requested by the Bank, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

## 32. Further Instruments.

Upon request of the Bank, the Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

## 33. Additional Indebtedness Secured.

All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Notes and interest thereon; this Mortgage secures any and all other amounts which may become due under the Notes, any of the other Loan Documents or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness including, without limitation, any and all amounts expended by the Bank to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.



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## 34. **Indemnity.**

The Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against the Bank in the exercise of the rights and powers granted to the Bank in this Mortgage, and the Mortgagor hereby expressly waives and releases any such liability, except to the extent resulting from the gross negligence or willful misconduct of the Bank. The Mortgagor shall indemnify and save the Bank harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "**Claims**"), of whatever kind or nature which may be imposed on, incurred by or asserted against the Bank at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which the Bank may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to the Bank in accordance with the terms of this Mortgage; provided, however, that the Mortgagor shall not be obligated to indemnify or hold the Bank harmless from and against any Claims directly arising from the gross negligence or willful misconduct of the Bank. All costs provided for herein and paid for by the Bank shall be so much additional Indebtedness and shall become immediately due and payable upon demand by the Bank and with interest thereon from the date incurred by the Bank until paid at the Default Rate.

## 35. **Subordination of Property Manager's Lien.**

Any property management agreement for the Premises entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Premises shall be subject and subordinate to the lien of this Mortgage and shall provide that the Bank may terminate such agreement, without penalty or cost, at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at the Bank's request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, the Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with the Bank, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

## 36. **Compliance with Environmental Laws.**

Concurrently herewith the Borrowers and the Guarantor have executed and delivered to the Bank that certain Environmental Indemnity Agreement dated as of the date hereof (the "**Indemnity**") pursuant to which the Borrowers and the Guarantor have indemnified the Bank for environmental matters concerning the Premises, as more particularly described therein. The

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provisions of the Indemnity are hereby incorporated herein and this Mortgage shall secure the obligations of the Mortgagor thereunder.

## 37. Remedies Against Other Collateral.

The Mortgagor hereby acknowledges that certain Loan Documents other than this Mortgage create liens on collateral located at locations other than the location of the Premises. The Mortgagor further acknowledges that this Mortgage and the other Loan Documents are cross-defaulted and the Loan secured hereby is also secured by the other Loan Documents. The Mortgagor agrees that the Bank may proceed, at the same or at different times, to foreclose any or all liens against such collateral (or sell such collateral under power of sale) by any proceedings appropriate in the county where such collateral lies, and that no event of enforcement taking place in any county or with respect to any location pursuant to any of the Loan Documents shall preclude or bar enforcement in any other county or with respect to such other location. Any foreclosure or other appropriate remedy brought in any county in which collateral is located may be brought and prosecuted as to any part of such collateral without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other part of the collateral for the Loan.

## 38. Miscellaneous.

(a) Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against the Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of the Bank, its successors and assigns and any holder or holders, from time to time, of the Notes.

(b) Invalidity of Provisions; Governing Law. In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Mortgagor and the Bank shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

(c) Municipal Requirements. The Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Mortgagor hereby assigns to the Bank any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by the Mortgagor which would result in a violation of any of the provisions of this subsection shall be void.

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(d) Rights of Tenants. The Bank shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of the Bank. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding. By accepting this Mortgage, the Bank agrees that so long as a tenant is not in default under its lease, the possession by the tenant of the leased premises and the tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of this Mortgage or the enforcement of any rights under this Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under this Mortgage.

(e) Option of Bank to Subordinate. At the option of the Bank, 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 condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by the Bank of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(f) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Bank a mortgagee-in-possession in the absence of the actual taking of possession of the Premises by the Bank pursuant to this Mortgage.

(g) Relationship of Bank and Mortgagor. The Bank shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of the Mortgagor or of any lessee, operator, concessionaire or licensee of the Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, the Bank shall not be deemed to be such partner, joint venturer, agent or associate on account of the Bank becoming a mortgagee-in-possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of the Mortgagor and the Bank hereunder is solely that of debtor/creditor.

(h) Time of the Essence. Time is of the essence of the payment by the Mortgagor of all amounts due and owing to the Bank under the Notes and the other Loan Documents and the performance and observance by the Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

(i) No Merger. Mortgagor covenants and agrees that unless Bank shall otherwise expressly consent in writing, the fee title to the property demised by the Ground Lease and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in the Landlord, the Mortgagor or a third party by purchase or otherwise; and in case Mortgagor acquires the fee title or any other estate, title or interest in the

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Premises, this Mortgage shall attach to and cover and be a lien upon the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, mortgage or conveyance, become and be subject to the lien of and covered by this Mortgage.

(j) Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to Twenty-Four Million and 00/100 Dollars (\$24,000,000.00); provided, however, in no event shall the Bank be obligated to advance funds in excess of the face amount of the Notes.

(k) CONSENT TO JURISDICTION. TO INDUCE THE BANK TO ACCEPT THE NOTE, THE BORROWER IRREVOCABLY AGREE THAT, SUBJECT TO THE BANK'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTES AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. THE MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON THE BORROWER, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO THE BORROWER AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

(l) WAIVER OF JURY TRIAL. THE MORTGAGOR AND THE BANK (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE BANK OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

(m) Complete Agreement. This Mortgage, the Notes and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Mortgagor and the Bank.

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## 39. Leasehold Provisions.

Mortgagor hereby covenants, warrants and represents as follows with respect to each of the Premises:

(i) the Ground Lease is in full force and effect, unmodified by any writing or otherwise, has not been amended;

(ii) all conditions to the effectiveness or continuing effectiveness of the Ground Lease required to be satisfied as of the date hereof have been satisfied and Mortgagor has obtained any and all consents required under the Ground Lease with respect to the Loan and the Loan Documents;

(iii) all of the rights of the lessee under the Ground Lease have been validly transferred and assigned from Equilon Enterprises LLC to Mortgagor pursuant to that certain Assignment of Lease dated as of even date herewith;

(iv) to Mortgagor's knowledge based on information provided by Equilon Enterprises, LLC, all rent, additional rent and/or other charges reserved in or payable under the Ground Lease have been paid to the extent that they are payable to the date hereof;

(v) Mortgagor is in possession of the Leasehold Estate and Mortgagor's right to continue such possession is not being disputed;

(vi) Mortgagor is not in default under any of the terms of the Ground Lease and there are no circumstances which, with the passage of time or the giving of notice or both, would constitute a default under the Ground Lease;

(vii) Mortgagor has delivered to Bank a true, accurate and complete copy of the Ground Lease;

(viii) Except as expressly required by the terms of the Ground Lease Mortgagor shall not consent to the subordination of the Ground Lease (or the Leasehold Estate) to any mortgage of the fee interest in the Premises, unless Mortgagor is provided with a subordination and non-disturbance agreement that is first approved by Bank;

(ix) Mortgagor will pay or cause to be paid all rent and other charges required under the Ground Lease as and when the same are due and Mortgagor will keep, observe and perform, or cause to be kept, observed and performed, all of the other terms, covenants, provisions and agreements of the Ground Lease on the part of the lessee thereunder to be kept, observed and performed, and will not in any manner, cancel, terminate or surrender, or permit any cancellation, termination or surrender of the Ground Lease, in whole or in part, or, without the written consent of Bank, either orally or in



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writing, modify, amend or permit any modification or amendment of any of the terms thereof in any respect, and any attempt on the part of Mortgagor to exercise any such right without such written consent of Bank shall be null and void and of no effect.

(x) Mortgagor will do, or cause to be done, all things necessary to preserve and keep unimpaired the rights of Mortgagor as lessee under the Ground Lease, and to prevent any default under the Ground Lease, or any termination, surrender, cancellation, forfeiture or impairment thereof, and in the event of the failure of Mortgagor to make any payment required to be made by Mortgagor pursuant to the provisions of the Ground Lease or to keep, observe or perform, or cause to be kept, observed or performed, any of the terms, covenants, provisions or agreements of the Ground Lease, Mortgagor agrees that Bank may (but shall not be obligated to), after notice to Mortgagor (provided, however, that no such notice shall be required to be given after the occurrence of an Event of Default hereunder or under any of the other Loan Documents) take any action on behalf of Mortgagor, to make or cause to be kept, observed or performed any such terms, covenants, provisions or agreements and to enter upon the Premises and take all such action thereof as may be necessary therefor, to the end that the rights of Mortgagor in and to the Leasehold Estate shall be kept unimpaired and free from default, and all money so expended by Bank, with interest thereon at the applicable Default Rate from the date of each such expenditure, shall be paid by Mortgagor to Bank promptly upon demand by Bank and shall be added to the indebtedness and secured by this Mortgage and Bank shall have, in addition to any other remedy of Bank, the same rights and remedies in the event of non-payment of any such sum by Mortgagor as in the case of a default by Mortgagor in the payment of any sums due under the Notes.

(xi) Mortgagor will use its good faith efforts to enforce the obligations of the Landlord to the end that Mortgagor may enjoy all of the rights granted to it under the Ground Lease, and will promptly notify Bank in writing of any default by the Landlord or by Mortgagor in the performance or observance of any of the terms, covenants and conditions on the part of the Landlord or Mortgagor, as the case may be, to be performed or observed under the Ground Lease and Mortgagor will promptly advise Bank in writing of the occurrences of any of the events of default enumerated in the Ground Lease and of the giving of any notice by the Landlord to Mortgagor of any default by Mortgagor in performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of the Mortgagor to be performed or observed and will deliver to Bank a true copy of each such notice. If, pursuant to the Ground Lease, the Landlord shall deliver to Bank a copy of any notice of default given to Mortgagor, such notice shall constitute full authority and protection to Bank for any action taken or omitted to be taken by Bank in good faith in reliance thereon to cure such default.

(xii) If any action or proceeding shall be instituted to evict Mortgagor or to recover possession of the Premises or for any other purpose affecting the Ground Lease or this Mortgage, Mortgagor will, immediately upon service thereof on or to Mortgagor, deliver to Bank a true copy of each petition, summons, complaint, notice of motion, order

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to show cause and of all other provisions, pleadings, and papers, however designated, served in any such action or proceeding.

(xiii) No release or forbearance of any of Mortgagor's obligations under the Ground Lease, pursuant to the Ground Lease, or otherwise, shall release Mortgagor from any of its obligations under this Mortgage, including its obligation with respect to the payment of rent as provided for in the Ground Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease, to be kept, performed and complied with by the tenant therein.

(xiv) Upon the occurrence of an Event of Default hereunder, Mortgagor shall not make any election or give any consent or approval for which a right to do so is conferred upon Mortgagor as lessee under the Ground Lease without Bank's prior written consent. In case of any Event of Default under this Mortgage, all such rights, together with the right of termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, all of which have been assigned for collateral purpose to Bank, shall vest in and be exercisable solely by Bank.

(xv) Mortgagor will give Bank prompt written notice of the commencement of any arbitration or appraisal proceeding under and pursuant to the provisions of the Ground Lease. Bank shall have the right to intervene and participate in any such proceeding and Mortgagor shall confer with Bank to the extent which Bank deems necessary for the protection of Bank. Upon the written request of Bank, if an Event of Default exists, Mortgagor will exercise all rights of arbitration conferred upon it by the Ground Lease. Mortgagor shall select an arbitrator who is approved in writing by Bank, provided, however, that if at the time any such proceeding shall be commenced, Mortgagor shall be in default in the performance or observance of any covenant, condition or other requirement of the Ground Lease, or of this Mortgage, on the part of Mortgagor to be performed or observed, Bank shall have, and is hereby granted, the sole and exclusive right to designate and appoint on behalf of Mortgagor the arbitrator or arbitrators, or appraiser, in such proceeding.

(xvi) Mortgagor shall not exercise any option or right to renew or extend the term of the Ground Lease or exercise the fee option contained therein without the prior written consent of Bank, which consent shall not be unreasonably withheld, delayed or conditioned. Mortgagor shall give Bank written notice of the Mortgagor's decision to exercise such option or right to renew or extend, together with a copy of the instrument to be given to the Landlord exercising such option or right. If the event the Bank consents to the exercise of any such option, Mortgagor shall promptly deliver to Bank a copy of any acknowledgment by the Landlord with respect to the exercise of such option or right.

(xvii) The lien of this Mortgage shall attach to all of Mortgagor's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, 11 U.S.C. § 365(h), including, without limitation, all of Mortgagor's rights to remain in possession of the Premises.

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(xviii) Mortgagor shall not, without Bank's prior written consent, elect to treat the Ground Lease as terminated under Subsection 365(h)(1) of the Bankruptcy Code, 11 U.S.C. § 365(h)(1). Any such election made without Bank's consent shall be void.

(xix) Mortgagor hereby unconditionally assigns, transfers and sets over to Bank all of Mortgagor's claims and rights to the payment of damages arising from any rejection of the Ground Lease by the Landlord or any other fee owner of the Premises under the Bankruptcy Code. Bank shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute, either in its own name or in the name of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect to the Landlord or any fee owner under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the obligations secured by this Mortgage shall have been satisfied and discharged in full. Any amounts received by Bank as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all costs and expenses of the Bank (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Section and then in accordance with the provisions of this Mortgage. Mortgagor shall promptly make, execute, acknowledge and deliver, in form and substance satisfactory to Bank, a UCC Financing Statement and all such additional instruments, agreements and other documents, as may at any time hereafter be required by Bank to effectuate and carry out the assignment made pursuant to this Section.

(xx) If pursuant to Subsection 365(h)(2) of the Bankruptcy Code, 11 U.S.C. § 365(h)(2), Mortgagor shall seek to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance by the Landlord or any fee owner of any of their obligations under the Ground Lease after the rejection by the Landlord or any fee owner of the Ground Lease under the United States Bankruptcy Code, as now existing or hereafter amended (the "Bankruptcy Code"), Mortgagor shall, prior to effecting such offset, notify Bank of its intent to do so, setting forth the amounts proposed to be so offset and the basis therefor. Bank shall have the right to object to all or any part of such offset that, in the reasonable judgment of Bank, would constitute a breach of the Ground Lease, and in the event of such objection, Mortgagor shall not effect any offset of the amounts so objected to by Bank. Neither Bank's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Bank.

(xxi) If any action, proceeding, motion or notice shall be commenced or filed in respect of the Landlord or any fee owner, the Premises or the Ground Lease in connection with any case under the Bankruptcy Code, Bank shall have the option, exercisable upon notice from Bank to Mortgagor, to conduct and control any such litigation with counsel of Bank's choice. Bank may proceed in its own name or in the name of Mortgagor in

# UNOFFICIAL COPY

connection with any such litigation, and Mortgagor agrees to execute any and all powers, authorizations, consents or other documents reasonably required by Bank in connection therewith. Mortgagor shall, upon demand, pay to Bank all costs and expenses (including attorneys' fees) paid or incurred by Bank in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Mortgagor as aforesaid shall be secured by the lien of this Mortgage and shall be added to the principal amount of the indebtedness secured hereby. Mortgagor shall not commence any action, suit, proceeding or case, or file any application or make any motion (unless such motion is for the purpose of protecting the Ground Lease and its value as security for the obligations secured by this Mortgage), in respect of the Ground Lease in any such case under the Bankruptcy Code without the prior written consent of Bank, which consent shall not be unreasonably withheld or delayed.

(xxii) Mortgagor shall, after obtaining knowledge thereof, promptly notify Bank of any filing by or against the Landlord or other fee owner of a petition under the Bankruptcy Code. Mortgagor shall promptly deliver to Bank, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Mortgagor in connection with any such petition and any proceedings relating thereto.

(xxiii) If there shall be filed by or against Mortgagor a petition under the Bankruptcy Code and Mortgagor, as lessee under the Ground Lease, shall determine to reject the Ground Lease pursuant to Section 365(a) of the Bankruptcy Code, Mortgagor shall give Bank not less than thirty (30) days' prior notice of the date on which Mortgagor shall apply to the Bankruptcy Court for authority to reject the Ground Lease. Bank shall have the right, but not the obligation, to serve upon Mortgagor within such thirty (30) day period a notice stating that Bank demands that Mortgagor assume and assign the Ground Lease to Bank pursuant to Section 365 of the Bankruptcy Code. If Bank shall serve upon Mortgagor the notice described in the preceding sentence, Mortgagor shall not seek to reject the Ground Lease and shall comply with the demand provided for in the preceding sentence.

(xxiv) Notwithstanding anything to the contrary contained herein, this Mortgage shall not constitute an assignment of the Ground Lease and Bank shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage.

**[SIGNATURE PAGE FOLLOWS]**

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IN WITNESS WHEREOF, the Mortgagor has executed and delivered this Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing the day and year first above written.

**BORROWER:**

**RITELINE PROPERTIES LLC,**  
an Illinois limited liability company

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

Robert Stambolic, its Manager

Property of Cook County Clerk's Office

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**

LEASEHOLD MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF  
RENTS AND LEASES AND FIXTURE FILING  
SIGNATURE PAGE



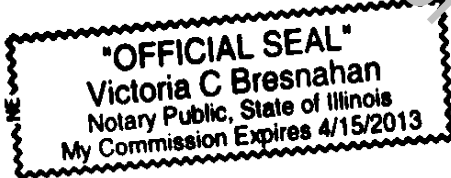
# UNOFFICIAL COPY

STATE OF ILLINOIS       )  
   ) SS.  
 COUNTY OF COOK        )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Robert Stambolic, the Manager of Riteline Properties LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19 day of May, 2010.

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



My Commission Expires:

4/15/2013

# UNOFFICIAL COPY

## EXHIBIT A-1

### LEGAL DESCRIPTION OF REAL ESTATE

THE ESTATE OR INTEREST IN THE LAND DESCRIBED BELOW AND COVERED HEREIN IS: THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1.c. OF THE ALTA LEASEHOLD ENDORSEMENT(S) ATTACHED HERETO), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY: JESSEE W. CUNDIFF, AS LESSOR, AND SHELL OIL COMPANY DATED JULY 1, 1986 AND DISCLOSED BY A MEMORANDUM OF LEASE RECORDED ON MAY 29, 1987 AS DOCUMENT NUMBER 87291201 FOR A TERM BEGINNING ON DECEMBER 1, 1986 AND ENDING SEPTEMBER 30, 2001 AND AS AMENDED BY AN UNRECORDED AGREEMENT DATED JUNE 28, 2001 EXTENDING THE TERM OF THE LEASE UNTIL SEPTEMBER 30, 2006 AND AS THEREAFTER AMENDED BY AN UNRECORDED AGREEMENT DATED JANUARY 17, 2006 EXTENDING THE TERM OF THE LEASE UNTIL SEPTEMBER 30, 2016 AND AS ASSIGNED BY SHELL OIL COMPANY TO EQUILON ENTERPRISES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE/ASSIGNEE, BY AN UNRECORDED ASSIGNMENT OF LEASE EFFECTIVE JULY 1, 1998 AS DISCLOSED BY A MEMORANDUM OF ASSIGNMENT OF LEASE RECORDED APRIL 5, 1999 AS DOCUMENT NUMBER 99323265

THAT PART OF THE EAST 208.00 FEET OF LOT 2 (AS MEASURED ON THE SOUTH LINE THEREOF), LYING NORTH OF A LINE DRAWN PERPENDICULARLY TO THE EAST LINE OF SAID LOT, THROUGH A POINT 309.47 FEET NORTH OF THE SOUTHEAST CORNER THEREOF ALL IN A. HEMINGWAY'S SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 1 AND PART OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THAT PART THEREOF TAKEN FOR NORTH HARLEM AVENUE, AS PER DOCUMENTS 24071455 AND 99968156, IN COOK COUNTY, ILLINOIS.

**Address:** 7201 W. Higgins, Chicago, Illinois

**PIN:** 12-12-202-077-0000

# UNOFFICIAL COPY

## EXHIBIT A-2

### LEGAL DESCRIPTION OF REAL ESTATE

THE ESTATE OR INTEREST IN THE LAND DESCRIBED BELOW AND COVERED HEREIN IS: THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1.c. OF THE ALTA LEASEHOLD ENDORSEMENT(S) ATTACHED HERETO), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY: FRED KELLERHALS AND MARIE F. KELLERHALS, HIS WIFE, AS LESSOR, AND SHELL OIL COMPANY, A DELAWARE CORPORATION, AS LESSEE, DATED OCTOBER 8, 1959, WHICH LEASE WAS RECORDED OCTOBER 8, 1959 AS DOCUMENT LR1926109 AND AS SUPPLEMENTED BY AGREEMENT FILED OCTOBER 10, 1960 AS DOCUMENT LR1948022 AND AS AMENDED BY AGREEMENT FILED APRIL 9, 1970 AS DOCUMENT LR2498174, WHICH LEASE DEMISES THE FOLLOWING DESCRIBED LAND FOR A TERM OF YEARS BEGINNING JULY 1, 1960 AND ENDING JUNE 30, 1975, TOGETHER WITH OPTIONS TO EXTEND THE TERMS FOR 4 ADDITIONAL PERIODS OF 5 YEARS EACH.

ASSIGNMENT TO EQUILON ENTERPRISES, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY, RECORDED APRIL 5, 1999 AS DOCUMENT 99323265.

THAT PART OF LOT 14 LYING WEST OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD IN MCDONNELL'S SUBDIVISION OF THE SOUTH EAST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF SAID SOUTH EAST 1/4 WITH THE CENTER LINE OF LEHIGH AVENUE; THENCE NORTHWESTERLY ALONG THE CENTER LINE OF SAID LEHIGH AVENUE, A DISTANCE OF 35.43 FEET; THENCE WEST ALONG A LINE 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4, A DISTANCE OF 32.21 FEET TO A POINT WHICH IS 30 FEET SOUTHWESTERLY OF (MEASURED AT RIGHT ANGLES TO) THE CENTER LINE OF SAID LEHIGH AVENUE FOR A POINT OF BEGINNING OF THIS TRACT; THENCE WEST ALONG A LINE WHICH IS 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4, A DISTANCE OF 183.74 FEET TO A POINT; THENCE NORTH ALONG A LINE AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 86 FEET TO A POINT; THENCE EAST ALONG A LINE AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 78.15 FEET TO A POINT; THENCE NORTH ALONG A LINE AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 6 FEET TO A POINT; THENCE EAST ALONG A LINE AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 26.40 FEET TO A POINT (THE LAST DESCRIBED LINE HEREINAFTER REFERRED TO AS LINE "A"); THENCE NORTHEASTERLY ALONG A DIAGONAL LINE DRAWN FROM SAID POINT TO A POINT IN THE SOUTHWESTERLY LINE OF SAID LEHIGH AVENUE WHICH POINT IS A DISTANCE OF 126.25 FEET NORTHWESTERLY OF THE POINT OF BEGINNING OF THIS TRACT AS MEASURED ALONG THE SOUTHWESTERLY LINE OF SAID LEHIGH AVENUE, A DISTANCE OF 41.95 FEET, (THE LAST DESCRIBED DIAGONAL LINE HEREINAFTER REFERRED TO AS LOT "B"); THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LEHIGH AVENUE A DISTANCE OF 126.25 FEET TO THE POINT OF BEGINNING OF THIS TRACT, **EXCEPT THAT PART DESCRIBED AS FOLLOWS:** THAT PART OF LOT 14 LYING WEST OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD IN MCDONNELL'S SUBDIVISION OF THE SOUTH EAST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH,

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RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF SAID SOUTH EAST 1/4 WITH THE CENTER LINE OF LEHIGH AVENUE, SAID POINT DISTANT EASTERLY 1002.14 FEET FROM THE SOUTHWEST CORNER OF SAID SOUTH EAST 1/4; THENCE ON AN ASSUMED BEARING OF NORTH 21 DEGREES, 19 MINUTES, 55 SECONDS WEST ALONG THE CENTER LINE OF SAID LEHIGH AVENUE 35.43 FEET; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST ALONG A LINE 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4, 32.21 FEET TO THE POINT OF BEGINNING, SAID POINT BEING 30 FEET SOUTHWESTERLY AS MEASURED AT RIGHT ANGLES TO THE CENTER LINE OF SAID LEHIGH AVENUE; THENCE CONTINUING NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST ALONG SAID LINE 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4, 183.74 FEET; THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST 7 FEET; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4, 158.52 FEET; THENCE NORTH 34 DEGREES, 20 MINUTES, 02 SECONDS EAST 25.36 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF SAID LEHIGH AVENUE; THENCE SOUTH 21 DEGREES, 19 MINUTES, 55 SECONDS EAST ALONG SAID RIGHT OF WAY LINE 30 FEET TO THE POINT OF BEGINNING), ALL IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

THAT PART OF LOTS 11 AND 14 LYING WEST OF THE RIGHT OF WAY OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, IN CHARLES MCDONNELL'S SUBDIVISION OF THE SOUTH EAST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (**EXCEPTING FROM SAID PARCEL OF LAND THAT PART OF LOT 14 DESCRIBED AS FOLLOWS:** COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF SAID SOUTH EAST 1/4 WITH THE CENTER LINE OF LEHIGH AVENUE; THENCE NORTHWESTERLY ALONG THE CENTER LINE OF SAID LEHIGH AVENUE A DISTANCE OF 35.43 FEET; THENCE WEST ALONG A LINE 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4, A DISTANCE OF 32.21 FEET TO A POINT WHICH IS 30 FEET SOUTHWESTERLY OF (MEASURED AT RIGHT ANGLES TO) THE CENTER LINE OF SAID LEHIGH AVENUE FOR A POINT OF BEGINNING OF TRACT HEREIN BEING DESCRIBED; THENCE WEST ALONG A LINE WHICH IS 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 183.74 FEET TO A POINT; THENCE NORTH ALONG A LINE AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 86 FEET TO THE A POINT; THENCE EAST ALONG A LINE AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 78.15 FEET TO A POINT; THENCE NORTH ALONG A LINE AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 6 FEET TO A POINT; THENCE EAST ALONG A LINE AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 26.40 FEET TO A POINT, (THE LAST DESCRIBED LINE HEREINAFTER REFERRED TO AS LINE "A"); THENCE NORTHEASTERLY ALONG A DIAGONAL LINE DRAWN FROM SAID POINT TO A POINT IN THE SOUTHWESTERLY LINE OF SAID LEHIGH AVENUE WHICH POINT IS A DISTANCE OF 126.25 FEET NORTHWESTERLY OF THE POINT OF BEGINNING OF THIS TRACT AS MEASURED ALONG THE SOUTHWESTERLY LINE OF SAID LEHIGH AVENUE, A DISTANCE OF 41.95 FEET, (THE LAST DESCRIBED DIAGONAL LINE HEREINAFTER REFERRED TO AS LINE "B"); THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LEHIGH AVENUE A DISTANCE OF 126.25 FEET TO THE POINT OF BEGINNING OF SAID TRACT; **ALSO EXCEPTING FROM SAID PARCEL OF LAND THAT PART THEREOF DESCRIBED AS FOLLOWS:** COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF SAID SOUTHEAST 1/4 WITH THE

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CENTERLINE OF LEHIGH AVENUE; THENCE NORTHWESTERLY ALONG THE CENTERLINE OF SAID LEHIGH AVENUE A DISTANCE OF 35.43 FEET; THENCE WEST ALONG A LINE 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4 A DISTANCE OF 32.21 FEET TO A POINT WHICH IS 30 FEET SOUTHWESTERLY OF (MEASURED AT RIGHT ANGLES TO) THE CENTERLINE OF SAID LEHIGH AVENUE; THENCE WEST ALONG A LINE WHICH IS 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4 A DISTANCE OF 183.74 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN BEING DESCRIBED; THENCE NORTH ALONG A LINE AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 173.0 FEET TO A POINT ON A LINE WHICH IS 206.0 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4; THENCE EAST ALONG SAID PARALLEL LINE A DISTANCE OF 116.14 FEET TO THE INTERSECTION OF SAID PARALLEL LINE WITH THE SOUTHWESTERLY LINE OF SAID LEHIGH AVENUE; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LEHIGH AVENUE A DISTANCE OF 609.23 FEET TO THE INTERSECTION OF SAID SOUTHWESTERLY LINE WITH THE WEST LINE OF SAID LOT 11; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT 11 AND THE WEST LINE OF SAID LOT 14 A DISTANCE OF 739.60 FEET TO THE INTERSECTION OF SAID LINE WITH A LINE WHICH IS 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4; THENCE EAST ALONG SAID PARALLEL LINE A DISTANCE OF 115.43 FEET TO THE POINT OF BEGINNING OF SAID TRACT) IN COOK COUNTY, ILLINOIS.

BEING ALL OF THAT CERTAIN TRACT DESCRIBED AS "WIC 212-5666-0305, 5900 TOUHY & LEAHIGH, NILES, COOK, ILLINOIS" IN EXHIBIT "A" OF THE ASSIGNMENT OF LEASE BETWEEN SHELL OIL COMPANY AND EQUILON ENTERPRISES, RECORDED APRIL 5, 1999 AS DOCUMENT NUMBER 99323265.

**Address:** 5900 West Touhy, Niles, Illinois:  
**PIN:** 10-29-402-028-0000  
 10-29-402-030-0000



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## EXHIBIT A-3

### LEGAL DESCRIPTION OF REAL ESTATE

(A) INTENTIONALLY DELETED

(B) THE ESTATE OR INTEREST IN THE LAND DESCRIBED BELOW AND COVERED HEREIN IS: THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1.c. OF THE ALTA LEASEHOLD ENDORSEMENT(S) ATTACHED HERETO), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY: LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 8, 1963 AND KNOWN AS TRUST NUMBER 30241, AS LESSOR, AND SHELL OIL COMPANY, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, A MEMORANDUM OF WHICH LEASE WAS RECORDED NOVEMBER 6, 1969 AS DOCUMENT 21005746, AGREEMENT SUPPLEMENTING LEASE RECORDED FEBRUARY 22, 1971 AS DOCUMENT 21402264, MEMORANDUM OF AGREEMENT AMENDING LEASE DATED JULY 31, 2005 AND RECORDED NOVEMBER 22, 1995 AS DOCUMENT 95811023 AND ASSIGNMENT OF LEASE RECORDED AS DOCUMENT 99323266, ASSIGNING LEASE TO EQUILON ENTERPRISES, L.L.C., WHICH LEASE DEMISES THE FOLLOWING DESCRIBED LAND FOR A TERM OF YEARS BEGINNING - AND ENDING:

THAT PART OF THE NORTH 1/2 OF CYNTHIA ROBINSON'S TRACT, LYING WEST OF THE CENTER OF DES PLAINES RIVER ROAD IN THE PARTITION OF THE NORTH SECTION OF ROBINSON'S RESERVATION IN TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 50.00 FEET SOUTH OF THE NORTH LINE OF SECTION 15, ALSO BEING THE CENTERLINE OF LAWRENCE AVENUE, AND 50.00 FEET WEST OF THE CENTERLINE OF RIVER ROAD; THENCE SOUTH ALONG A LINE 50.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF RIVER ROAD, A DISTANCE OF 150.00 FEET; THENCE NORTHWESTERLY, A DISTANCE OF 23.62 FEET TO A POINT ON A LINE 190.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 15; THENCE WEST ON LAST MENTIONED PARALLEL LINE, A DISTANCE OF 180.00 FEET TO A POINT ON A LINE 250.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF RIVER ROAD; THENCE NORTH ON LAST MENTIONED PARALLEL LINE TO A POINT 50.00 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 15; THENCE EAST ON A LINE 50.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 15 TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

BEING ALL OF THE SAME TRACT OF LAND DESCRIBED IN ABOVE LEASE AS ASSIGNED TO EQUILON ENTERPRISES LLC BY ASSIGNMENT RECORDED UNDER DOCUMENT NO. 99323266

**Address:** 4758 River Rd., Schiller Park, Illinois  
**PIN:** 12-15-100-14-0000

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## EXHIBIT B

### GROUND LEASES

#### **1. 7201 W. Higgins, Chicago, Illinois:**

Lease dated July 1, 1986 between Jesse W. Cundiff, as Lessor, and Shell Oil Company, a Delaware corporation, as Lessee, (i) as memorialized by Memorandum of Lease dated July 1, 1986 between Jesse W. Cundiff, as Lessor and Shell Oil Company, a Delaware corporation, as Lessee recorded on May 29, 1987 as Document No. 87291201; (ii) as assigned by the Assignment of Lease dated June 18, 1998, effective July 1, 1998 between Shell Oil Company and Equilon Enterprises, LLC, recorded on April 5, 1999 as Document No. 99323265; (iii) as extended by an unrecorded Agreement Extending Lease dated June 28, 2001 between Jesse W. Cundiff and Equilon Enterprises LLC; (iv) as extended by an unrecorded Agreement Extending Lease dated January 17, 2006 between Constance A. Cundiff and Equilon Enterprises LLC.

#### **2. 5900 West Touhy, Niles, Illinois:**

Lease dated October 8, 1959 between Fred Kellerhals and Marie F. Kellerhals, as Lessors, and Shell Oil Company, a Delaware corporation, as Lessee; (i) as supplemented under the Agreement Supplementing Lease dated July 11, 1960 between Fred Kellerhals and Marie F. Kellerhals, as Lessors, and Shell Oil Company, as Lessee, and recorded on October 18, 1960 under Document No. 1948022; (ii) as amended under Agreement Amending Lease dated October 8, 1969 between Fred Kellerhals and Marie F. Kellerhals, as Lessors, and Shell Oil Company, and recorded on April 4, 1970 under Document No. 2498174; (iii) as amended and extended under the Agreement Amending and Extending Lease dated June 20, 1990 between the National Bank & Trust Company of Sycamore, as Trustee under Trust Number 1837 and Shell Oil Company; (iv) as memorialized by an unrecorded Memorandum of Agreement Amending and Extending Lease dated June 20, 1990 between the National Bank & Trust Company of Sycamore, as Trustee under Trust Number 1837 and Shell Oil Company, and (v) as assigned under the Assignment of Lease dated June 18, 1998 between Shell Oil Company and Equilon Enterprises, LLC recorded April 5, 1999 under Document No. 99323265.

#### **3. 4758 River Rd., Schiller Park, Illinois:**

Lease dated July 31, 1969, between La Salle National Bank, as Trustee, as Lessor, and Shell Oil Company, a Delaware corporation, as Lessee; (i) as memorialized by a Memorandum of Lease dated July 31, 1969 between La Salle National Bank, as Trustee, as Lessor, and Shell Oil Company, a Delaware corporation, as Lessee and recorded as Document No. 21 005 746; (ii) as supplemented by the Agreement Supplementing Lease dated December 18, 1970, between La Salle National Bank and Shell Oil Company and recorded as Document No. 21 402 264; (iii) as amended by the Agreement Amending and Extending Lease dated July 31, 1995, between La Salle National Trust, N.A. and Shell Oil Company; (iv) as memorialized by a Memorandum of Agreement Amending Lease dated July 31, 1995 between La Salle National Trust, N.A. and Shell Oil Company and recorded as Document No. 98811023; (v) as revised by the Letter dated September 14, 1995 to Mr. Robert R. Krilich, Sr., revising the Agreement Amending and Extending Lease, dated July 31, 1995; and (vi) as assigned by the Assignment of Lease dated June 18, 1998 between Shell Oil Company and Equilon Enterprises, LLC recorded as Document No. 99323266.

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## EXHIBIT C

### PERMITTED EXCEPTIONS

1. General real estate taxes for the year 2009 and each year thereafter not yet due and payable.
2. Exceptions accepted by Mortgagor and contained on Schedule B of Chicago Title Insurance Company loan insurance pro formas.

Property of Cook County Clerk's Office  
COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_

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## EXHIBIT D

### INSURANCE REQUIREMENTS

#### GENERAL INFORMATION

1. All insurance policies referred to herein shall be in form and substance acceptable to First Midwest Bank ("Bank").
2. Bank must receive evidence/certificates of insurance at least ten (10) business days prior to closing. Original policies must be provided to Bank as soon as they are available from insurers. Certified copies should be available within sixty (60) to ninety (90) days.
3. Proof of coverage must be on an ACORD 28 - EVIDENCE OF PROPERTY INSURANCE form. Liability insurance must be written on ACORD 25S or its equivalent. NOTE: Please remove any "endeavor to" and "but failure to mail such notice shall impose ....representatives" language as it relates to notices. Initials of an authorized representative should appear next to any deletions on the certificates.
4. All property policies shall contain a standard mortgage clause in favor of Bank and shall provide for a thirty (30) day written notice to Bank of any material change or cancellation. Certificates with disclaimers will NOT be accepted.
5. The Mortgagor must be the named insured.
6. Property certificates must show Bank as First Mortgagee and Loss Payee as follows:  
  
First Midwest Bank  
8501 West Higgins Road  
Chicago, Illinois 60631  
Attention: Andrew E. Kelpsa  
  
(Bank may be shown as "Mortgagee and Loss Payee As Their Interests May Appear" until the insurance agent receives release of interest from the prior lender. At that time, the insurance policies will need to be endorsed to show Bank as First Mortgagee and Loss Payee).
7. The insured property must be identified as set forth in the legal descriptions.
8. All insurance companies must have a Policy Rating of "A" and a Financial Rating of "VIII" from AM Best's Rating Guide.
9. The insurance documentation must be signed by an authorized representative of the Insurer.

#### SPECIFIC REQUIREMENTS

LEASEHOLD MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF  
RENTS AND LEASES AND FIXTURE FILING  
EXHIBIT D-1

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1. If the property policy is a blanket policy or limit, Bank must receive a schedule of the amount allocated to the property/rents or the amounts allocated to the property must be indicated on the certificate.
2. Coverage must be on an "all risk" (Special Perils), 100% replacement cost basis without deduction for foundations and footings, and WITHOUT co-insurance. The co-insurance must be waived or an Agreed Amount endorsement must be included and either "No Co-insurance" or "Agreed Amount" must be provided and indicated on the certificate.
3. Ordinance or Law coverage providing for demolition and increased cost of construction, must be provided and indicated on the certificate.
4. Other coverages such as earthquake, boiler and machinery (which includes the mechanics of the building, such as elevators), and flood will be required when these risks are present.
5. Rent Loss or Business Income coverage shall be in an amount equal to 100% of the projected annual rents or revenue with a minimum period of indemnity of 12 months, or such greater period as Bank may require. This coverage needs to be written on a Gross Rental Income, Gross Profits or Extended Period of Indemnity form, not on an actual loss sustained basis which may terminate as soon as the premises are tenantable or operational.
6. Bank must be named as an Additional Insured for all general liability coverage, with a minimum limit of \$2,000,000 for any one occurrence.