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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1217004021 Fee: \$102.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/18/2012 09:03 AM Pg: 1 of 33

Report Mortgage Fraud
800-532-8785

8893285 02810

Property of Cook County Clerk's Office

The property identified as: PIN: 11-31-100-001-0000

Address:

Street: 7131 NORTH WESTERN AVENUE

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60645

Lender: WELLS FARGO CAPITAL FINANCE, LLC

Borrower: AMERICAN BLUE RIBBON HOLDINGS, LLC

Loan / Mortgage Amount: \$165,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7770 et seq. because it is commercial property.

Box 400-CTCC

Certificate number: 721D7D3F-A205-4476-AF95-69E086EFEAC0

Execution date: 05/31/2012

S	Y
P	33
S	N
SC	Y
INT	C.F.

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86 93285 079K1

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

**Paul Hastings LLP
600 Peachtree Street, N.E., Suite 2400
Atlanta, Georgia 30308
Attention: David J. Burch, Esq.**

**MORTGAGE, ASSIGNMENT OF RENTS AND
LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING
STATEMENT**

by and from:

AMERICAN BLUE RIBBON HOLDINGS, LLC, "Mortgagor"

to

**WELLS FARGO CAPITAL FINANCE, LLC,
in its capacity as administrative agent, "Mortgagee"**

Dated as of May 31, 2012

**Location: 7131 North Western Avenue
City: Chicago
County: Cook
State: Illinois**

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MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is dated as of May 31, 2012, by and from AMERICAN BLUE RIBBON HOLDINGS, LLC, a Delaware limited liability company ("Mortgagor"), whose address is c/o Fidelity Newport Holdings, LLC, 4050 Calle Real, Suite 210, Santa Barbara, California 93110, to WELLS FARGO CAPITAL FINANCE, LLC, a Delaware limited liability company, in its capacity as administrative agent for the Lender Group (as defined in the hereinafter defined Credit Agreement) (in such capacity, together with its successors and assigns, "Agent") pursuant to the Credit Agreement (as defined below), whose address is 2450 Colorado Avenue, Suite 3000 West, Santa Monica, California 90404, Attn: Specialty Finance Manager (Agent, together with its successors and assigns, is referred to herein as "Mortgagee").

RECITALS:

WHEREAS, Mortgagor is the fee owner of the real property and improvements described in Exhibit A attached hereto;

WHEREAS, Fidelity Newport Holdings, LLC, a Delaware limited liability company, ABRH, LLC, a Delaware limited liability company ("Borrower"), Agent and each of the Lenders (as defined in the Credit Agreement) who are or may become a party to the Credit Agreement (as therein defined, the "Lender Group") have entered into that certain Credit Agreement dated as of even date herewith (as amended, restated, supplemented or otherwise modified heretofore or hereinafter from time to time, whether among the same or different parties, the "Credit Agreement");

WHEREAS, contemporaneously herewith, Mortgagor and the other Guarantors (as such term is defined in the Credit Agreement) thereto have executed and delivered to Agent that certain Guaranty and Security Agreement (as amended, restated, supplemented, or otherwise modified heretofore or hereafter from time to time, the "Guaranty") guaranteeing the full and timely payment and performance of the now existing or hereafter arising "Obligations" under the Credit Agreement or any other Loan Document (as such term is defined in the Credit Agreement);

WHEREAS, Mortgagor as an affiliate of Borrower is receiving good and valuable benefit, the sufficiency and receipt of which are hereby acknowledged, from Agent and the Lender Group entering into the Credit Agreement with Borrower; and

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WHEREAS, Agent and the Lender Group are unwilling to enter into the Credit Agreement and make available to Mortgagor the credit facilities provided therein unless Mortgagor, among other things, executes and delivers this Mortgage.

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) **“Event of Default”**: Shall have the meaning ascribed to such term in Article 4 hereof.

(b) **“Mortgaged Property”**: All of Mortgagor’s right, title, interest and estate in (1) the fee interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference, together with any greater estate therein as hereafter may be acquired by Mortgagor (the **“Land”**), (2) all improvements now owned or hereafter acquired by Mortgagor, now or at any time situated, placed or constructed upon the Land (the **“Improvements”**; the Land and Improvements are collectively referred to herein as the **“Premises”**), (3) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to or installed in any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **“Fixtures”**), (4) all reserves, escrows or impounds required under the Credit Agreement and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property (the **“Deposit Accounts”**), (5) all existing and future leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use or occupy, all or any part of the Mortgaged Property, whether made before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code, together with any extension, renewal or replacement of the same and together with all related security and other deposits (the **“Leases”**), (6) all of the rents, additional rents, revenues, royalties, income, proceeds, profits, early termination fees or payments, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property or any part thereof, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code, subject, however, to the right of Mortgagor to receive and use the same and to exercise all rights and privileges as lessor under all of the Leases until an Event of Default shall have occurred (the **“Rents”**), (7) all other agreements to which Mortgagor is a party, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts,

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maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, franchises, authorizations, consents, approvals, certificates, entitlements, and other rights and privileges in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the "**Property Agreements**"), (8) all rights, privileges, tenements, hereditaments, rights-of-way, easements, air rights, development rights or credits, zoning rights, appendages and appurtenances appertaining to the foregoing, and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, and all right, title and interest of Mortgagor, if any, in and to all rights, royalties and profits with respect to all minerals, coal, oil, gas and other substances of any kind or character on or underlying the Land, together with all right, title and interest of Mortgagor, if any, in and to all water and water rights (whether riparian, appropriative or otherwise and whether or not appurtenant), (9) all property tax refunds, utility refunds, awards, and rebates, earned or received by Mortgagor at any time (the "**Tax Refunds**"), (10) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the "**Proceeds**"), (11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor (the "**Insurance**"), (12) all of Mortgagor's right, title and interest in and to any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements or Fixtures (the "**Condemnation Awards**"), (13) all of Mortgagor's rights to appear and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagor in the Mortgaged Property, (14) all rights, powers, privileges, options and other benefits of Mortgagor as lessor under the Leases, including, without limitation, the immediate and continuing right to claim for, receive, collect and receive all Rents payable or receivable under the Leases or pursuant thereto (and to apply the same to the payment of the Secured Obligations), and to do all other things which Mortgagor or any lessor is or may become entitled to do under the Leases, and (15) any and all after-acquired right, title or interest of Mortgagor in and to any property of the types described in the preceding clauses. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein. THE TERM "MORTGAGED PROPERTY" IS INTENDED TO AND SHALL EXCLUDE ALL ITEMS OF PERSONAL PROPERTY IN WHICH MORTGAGEE HAS OBTAINED AND/OR PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

(c) "**Permitted Liens**": Shall have the meaning ascribed to such term in the Credit Agreement.

(d) "**Secured Obligations**": All of (i) the agreements, covenants, conditions, warranties, representations and obligations of Borrower or any

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other Loan Party under the Credit Agreement and/or the other Loan Documents, including, but not limited to, the "Obligations", as such term is defined in the Credit Agreement (other than Bank Product Obligations), and specifically including, without limitation, (1) the repayment of all amounts outstanding from time to time under the Credit Agreement or the other Loan Documents (other than the Bank Product Agreements), including principal in the current maximum amount of \$165,000,000.00, interest (including all interest that, but for the provisions of the Bankruptcy Code, would have accrued), and all other amounts which may now or hereafter be advanced as Loans, as Protective Advances, as other additional loan amounts or as additional principal amounts of the Term Loan under the Credit Agreement, with such indebtedness maturing on May 31, 2017 (the "**Maturity Date**"), unless sooner accelerated pursuant to the terms of the Credit Agreement, (2) the full and prompt performance of any and all repayment, reimbursement, fee, and indemnification obligations with respect to any Letters of Credit in accordance with the Credit Agreement, (3) the payment of all fees, costs, expenses, charges and indemnification obligations accrued, incurred or arising in connection with any Loan Document (other than the Bank Product Agreements) pursuant to the terms thereof, (4) the repayment of all future advances made under or pursuant to the terms of the Credit Agreement, (5) the payment of any and all Net Cash Proceeds payable to Agent or the Lender Group in accordance with the Credit Agreement, and (6) all other payment and performance obligations of Borrower or any other Loan Party arising under the Credit Agreement or any other Loan Document, and (ii) the agreements, covenants, conditions, warranties, representations, and obligations of Mortgagor under the Guaranty, this Mortgage, or the other Loan Documents, including, but not limited to, the "Guaranteed Obligations," as such term is defined in the Guaranty (other than Bank Product Obligations), and all other payment obligations of Mortgagor arising under the Guaranty or any other Loan Document. This Mortgage is not security or collateral for the Bank Product Obligations, and the term Secured Obligations shall not be construed to include the Bank Product Obligations. The Credit Agreement (A) contains a revolving credit facility that permits Mortgagor to borrow certain principal amounts, repay all or a portion of such principal amounts, and re-borrow the amounts previously paid to Mortgagor for the benefit of the Lender Group, and (B) allows for the issuance from time to time of Letters of Credit for the account of Mortgagor, all upon satisfaction of certain conditions stated in the Credit Agreement. This Mortgage secures, without limitation, all Loans and re-advances under the revolving credit feature of the Credit Agreement, all future advances of any other loan amounts under the Credit Agreement, including amounts of the Term Loan, and all reimbursement obligations of Borrower or any other Loan Party with respect to any Letters of Credit issued pursuant to the Credit Agreement.

(e) "UCC": The Uniform Commercial Code of the state in which the Land is located or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the state in which the

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Land is located, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

ARTICLE 2 GRANT

Section 2.1 Grant. For and in consideration of all of the foregoing and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Mortgagor herein set forth, and in order to secure the full and timely payment and performance of the Secured Obligations, Mortgagor hereby irrevocably MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS, WARRANTS, TRANSFERS, CONFIRMS, and CONVEYS, to Mortgagee, as Agent for the Lender Group pursuant to the Credit Agreement, WITH POWER OF SALE and right of entry and possession, the Mortgaged Property, subject, however, to the Permitted Liens, TO HAVE AND TO HOLD the Mortgaged Property and all parts, rights and appurtenances thereof, to Mortgagee, subject to the terms and conditions of this Mortgage, the Credit Agreement and the other Loan Documents, with POWER OF SALE, forever, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee against every Person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that upon (a) the payment and performance in full of all Secured Obligations and all other Obligations (subject to the provisions of Section 8.7 hereof) and (b) the expiration or termination of the Commitments, then the liens, security interests, estates, and rights granted by this Mortgage shall cease, terminate, and be void; otherwise same shall remain in full force and effect. Notwithstanding anything to the contrary contained in the immediately preceding sentence or elsewhere in this Mortgage, Mortgagor hereby agrees and acknowledges that the Secured Obligations secured by this Mortgage include (A) a revolving loan, (B) a Term Loan, and (C) Letters of Credit that may be issued from time to time, all upon satisfaction of certain conditions stated in the Credit Agreement, and this Mortgage is intended to secure all Loans and re-advances under the revolving credit feature of the Credit Agreement, all future advances of any other loan amounts under the Credit Agreement, including any amounts of the Term Loan, and all reimbursement obligations of Borrower with respect to any Letters of Credit; accordingly, this Mortgage shall not terminate by the full and complete repayment of the Secured Obligations, so long as the Credit Agreement remains in force and effect.

TO HAVE AND TO HOLD, the Mortgaged Property, together with all and singular the parts, rights, privileges, hereditaments, and appurtenances thereto in any ways belonging or appertaining, to the use, benefit, and behoof of Mortgagee, its successors and assigns, in fee simple forever.

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Section 2.2 Maximum Amount Secured; Interest Rate. The maximum amount of indebtedness (now or hereafter at any one time outstanding) secured by this Mortgage is Three Hundred Thirty Million and No/100ths Dollars (\$330,000,000.00), inclusive of Protective Advances and other costs and expenses which Mortgagee is entitled to add to the Secured Obligations secured hereby pursuant to the terms of this Mortgage. Interest shall accrue on the Secured Obligations at the rates specified on Schedule I attached hereto and incorporated herein.

Section 2.3 Future Advances; Revolving Credit. Certain members of the Lender Group are obligated under the terms of the Credit Agreement to make advances as provided therein, and Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 5/15-1302(b) of the Illinois Mortgage Foreclosure Law, as amended (735 ILCS 5/15-1001 et seq) (the "IMF Law"). The Secured Obligations constitute revolving credit indebtedness secured by a mortgage on real property, pursuant to the terms and conditions of 205 ILCS 5/5d. This Mortgage is given to secure, among other things, a revolving credit loan under the Loan Documents, and shall secure not only presently existing indebtedness under the Loan Documents, but also such future advances, whether such advances are obligatory or to be made at the option of the Lenders, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of the execution of this Mortgage, and although there may be no indebtedness hereby secured outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Secured Obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Mortgaged Property is located. The total amount of the Secured Obligations may increase or decrease from time to time, but the total unpaid balance of the Secured Obligations at any time outstanding, shall not exceed the amount referred to in Section 2.2 herein. This Mortgage shall be valid and shall have priority over all subsequent liens and encumbrances, including statutory liens, except taxes and assessments levied on the Mortgaged Property, to the extent of the maximum amount secured hereby.

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.1 Title to Mortgaged Property and Lien of this Instrument. Mortgagor (i) has good and indefeasible title to the Mortgaged Property, in fee simple, (to the extent that the Mortgaged Property constitutes real property), free and clear of any Liens except the Permitted Liens, (ii) has good, sufficient and legal title to the Fixtures, and (iii) has full power and lawful authority to encumber the Mortgaged

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Property in the manner and form set forth in this Mortgage. Subject only to Permitted Liens, this Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property.

Section 3.2 First Lien Status. Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than the Permitted Liens (or any lien or security interest first approved in writing by Mortgagee) is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other material terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Mortgagee pursuant to the terms of the Credit Agreement).

Section 3.3 Payment and Performance. Mortgagor shall pay and perform or cause Borrower to pay and perform the Secured Obligations when due under the Loan Documents.

Section 3.4 Replacement of Fixtures and Alterations. Except as expressly permitted pursuant to the terms of the Credit Agreement, Mortgagor shall not, without the prior written consent of Mortgagee (not to be unreasonably withheld, conditioned or delayed), permit any of the Fixtures to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete, damaged or deemed useless and is replaced by an article of equal or better suitability and value (unless such removed item is redundant or no longer useful for continued operations at the Premises), owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be permitted under the Credit Agreement or first approved in writing by Mortgagee. Mortgagor shall not, without the prior written consent of Mortgagee, make any alterations to the Land or the Improvements if such alterations (i) are structural in nature, (ii) would reasonably be expected to materially and adversely affect the value of the Mortgaged Property, or (iii) would change its current use. Mortgagee's consent to any other alterations shall not be required.

Section 3.5 Inspection. Mortgagor shall permit Mortgagee and its agents, representatives and employees to inspect the Mortgaged Property and all books and records of Mortgagor located thereon, and to conduct such environmental and engineering studies as Mortgagee may reasonably require, at reasonable times and, so long as no Event of Default exists, all such testing and investigation shall be conducted at reasonable times and upon reasonable prior notice to Mortgagor.

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Section 3.6 Other Covenants. All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall, to the extent applicable, be covenants running with the land.

Section 3.7 Condemnation Awards and Insurance Proceeds.

(a) **Condemnation Awards.** Mortgagor, immediately upon obtaining actual knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, will notify Mortgagee of the pendency of such proceedings. Except as set forth in the Credit Agreement, Mortgagee may participate in any such proceedings and Mortgagor from time to time will deliver to Mortgagee all instruments reasonably requested by it to permit such participation. Mortgagor collaterally assigns all awards and compensation to which it is entitled for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances herefor, subject, however, to the terms of the Credit Agreement. Mortgagor, upon written request by Mortgagee, shall make, execute and deliver any and all instruments reasonably requested for the purpose of confirming the assignment of the aforesaid awards and compensation to Mortgagee free and clear of any Liens of any kind or nature whatsoever other than Permitted Liens. To the extent allowed by the Credit Agreement, any awards or compensation paid in connection with the condemnation or other taking, or purchase in lieu thereof, of any portion of the Mortgaged Property shall be made available to Mortgagor for restoration of the Mortgaged Property.

(b) **Insurance Proceeds.** Mortgagor collaterally assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Except as set forth in the Credit Agreement, Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly, as more specifically described in the Credit Agreement. In the event that the issuer of such insurance policy fails to disburse directly or solely to the Mortgagee but disburses instead either solely to Mortgagor or to Mortgagor and Mortgagee, jointly, Mortgagor shall immediately endorse and transfer such proceeds to Mortgagee; it being agreed, however, that such proceeds shall be applied by Mortgagee in accordance with the Credit Agreement. Upon Mortgagor's failure to do so within ten (10) days after written request, Mortgagee may execute such endorsements or transfers from and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's agent and attorney-in-fact so to do. To the extent allowed by the Credit Agreement, insurance proceeds paid with respect to damage to the Mortgaged Property shall be made available to Mortgagor for restoration of the Mortgaged Property.

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Section 3.8 Costs of Defending and Upholding the Lien. If any action or proceeding is commenced to which action or proceeding Mortgagee is made a party or in which it becomes necessary for Mortgagee to defend or uphold the lien of this Mortgage, including any extensions, renewals, amendments or modifications thereof, Mortgagor shall, on demand, reimburse Mortgagee for all expenses (including, without limitation, reasonable attorneys' fees and reasonable appellate attorneys' fees) incurred by Mortgagee in any such action or proceeding and all such expenses shall be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage or to recover or collect the Secured Obligations, the provisions of applicable law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

Section 3.9 TRANSFER OF THE SECURED PROPERTY. EXCEPT AS EXPRESSLY PERMITTED PURSUANT TO THE TERMS OF THE CREDIT AGREEMENT, MORTGAGOR SHALL NOT SELL, TRANSFER, PLEDGE, ENCUMBER, CREATE A SECURITY INTEREST IN, GROUND LEASE, OR OTHERWISE HYPOTHECATE ALL OR ANY PORTION OF THE MORTGAGED PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF MORTGAGEE. THE CONSENT BY MORTGAGEE TO ANY SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN, GROUND LEASE, OR OTHER HYPOTHECATION OF, ANY PORTION OF THE MORTGAGED PROPERTY SHALL NOT BE DEEMED TO CONSTITUTE A NOVATION OR A CONSENT TO ANY FURTHER SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN, GROUND LEASE OR OTHER HYPOTHECATION, OR TO WAIVE THE RIGHT OF MORTGAGEE, AT ITS OPTION, TO DECLARE THE SECURED OBLIGATIONS IMMEDIATELY DUE AND PAYABLE, WITHOUT NOTICE TO MORTGAGOR OR ANY OTHER PERSON OR ENTITY (EXCEPT AS REQUIRED BY THE CREDIT AGREEMENT), UPON ANY SUCH SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST, GROUND LEASE, OR OTHER HYPOTHECATION TO WHICH MORTGAGEE SHALL NOT HAVE CONSENTED.

Section 3.10 Security Deposits. To the extent required by law, or after an Event of Default has occurred and during its continuance, if required by Mortgagee, all security deposits of tenants of the Mortgaged Property shall be treated as trust funds not to be commingled with any other funds of Mortgagor. Within twenty (20) days after written request by Mortgagee, Mortgagor shall furnish satisfactory evidence of compliance with this Section 3.10, as necessary, together with a statement of all security deposits deposited by the tenants and copies of all Leases not theretofore delivered to Mortgagee, as requested thereby, certified by Mortgagor.

Section 3.11 Flood Zone. The Mortgaged Property is not located in an area identified by the Federal Emergency Management Agency ("FEMA") as having

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special flood hazards or if the Land or any part thereof is identified by the Federal Emergency Management Agency as an area having special flood hazards (including, without limitation, those areas designates as Zone A or Zone V), then Mortgagor has obtained the insurance required under the Credit Agreement and this Mortgage.

ARTICLE 4 **DEFAULT**

Section 4.1 Events of Default. The occurrence of an "Event of Default" under and as defined in the Credit Agreement shall constitute an event of default under this Mortgage (each an "Event of Default").

ARTICLE 5 **DEFAULT AND FORECLOSURE**

Section 5.1 Remedies. If an Event of Default exists, Mortgagee may, at Mortgagee's election, and in addition to any rights and remedies of Mortgagee under Article 9 of the Credit Agreement, exercise any or all of the following rights, remedies and recourses:

(a) To the extent permitted under the Credit Agreement, declare the Secured Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) Notify all tenants of the Premises and all others obligated on leases of any part of the Premises that all rents and other sums owing on leases have been assigned to Mortgagee and are to be paid directly to Mortgagee, and to enforce payment of all obligations owing on leases, by suit, ejectment, cancellation, releasing, reletting or otherwise, whether or not Mortgagee has taken possession of the Premises, and to exercise whatever rights and remedies Mortgagee may have under any assignment of rents and leases.

(c) As and to the extent permitted by law, enter the Mortgaged Property, either personally or by its agents, nominees or attorneys, and take exclusive possession thereof and thereupon, Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct business thereat; (ii) complete any construction on the Premises in such manner and form as Mortgagee deems advisable in the reasonable exercise of its judgment; (iii) exercise all rights and power of Mortgagor with respect to the Premises, whether in the name of Mortgagor, or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for,

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collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof, which rights shall not be in limitation of Mortgagee's rights under any assignment of rents and leases securing the Secured Obligations; and (iv) pursuant to the provisions of the Credit Agreement, apply the receipts from the Premises to the payment of the Secured Obligations, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees.

(d) Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 5.7 hereof.

(e) Require Mortgagor to assemble any collateral under the UCC and make it available to Mortgagee, at Mortgagor's sole risk and expense, at a place or places to be designated by Mortgagee, in its sole discretion.

(f) Institute proceedings for the complete foreclosure of this Mortgage, either by judicial action or by power of sale which is hereby conferred, in which case the Mortgaged Property may be sold for cash or credit in accordance with applicable law in one or more parcels as Mortgagee may determine. Except as otherwise required by applicable law, with respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee or any of the Lenders may be a purchaser at such sale. If Mortgagee is the highest bidder, Mortgagee may credit the portion of the purchase price that would be distributed to Mortgagee (on behalf of the Lender Group) against the Secured Obligations in lieu of paying cash. In the event this Mortgage is foreclosed by judicial action, appraisal and valuation of the Mortgaged Property is waived. In the event of any sale made under or by virtue of this Article 5 (whether made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) all of the Secured Obligations, if not previously due and payable, immediately thereupon shall become due and payable. The

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failure to make any such tenants of the Premises party to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagee, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby.

(g) With or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Secured Obligations then due and payable (if Mortgagee shall have elected not to declare all of the Secured Obligations to be immediately due and owing), subject to the continuing lien of this Mortgage for the balance of the Secured Obligations not then due; or (1) as and to the extent permitted by law, sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property; or (2) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any Loan Document; or (3) to the extent permitted by applicable law, recover judgment on the Credit Agreement either before, during or after any proceedings for the enforcement of this Mortgage.

(h) Make application to a court of competent jurisdiction for, and obtain to the extent permitted by law from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Secured Obligations, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 5.7 hereof.

(i) Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity or pursuant to any Loan Document.

Section 5.2 Separate Sales. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 5.3 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents

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

Section 5.4 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a first and prior lien and security interest in and to the Mortgaged Property. For payment or performance of the Secured Obligations, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 5.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Mortgagee to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 5.6 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Secured Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee, shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee, thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

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Section 5.7 Application of Proceeds. The proceeds of any sale made under or by virtue of this Article 5, together with any Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

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

(b) to the payment and performance of the Secured Obligations in such manner and order of preference as set forth in the Credit Agreement; and

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

Section 5.8 Occupancy After Foreclosure. Except as otherwise required by applicable law, any sale of the Mortgaged Property or any part thereof in accordance with Section 5.1(f) or Section 5.1(g) hereof will divest all right, title and interest of Mortgagor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Mortgagor retains possession of such property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and subject to applicable law, will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

Section 5.9 Additional Loans and Disbursements: Costs of Enforcement.

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses reasonably incurred at any time by Mortgagee under this Section 5.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Secured Obligations under the Credit Agreement, and all such sums, together with interest thereon, shall be secured by this Mortgage.

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

Section 5.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 5, the assignment of the Rents and Leases under Article 6, the security interests under Article 7, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

Section 5.11 WAIVER OF MORTGAGOR'S RIGHTS. BY EXECUTION OF THIS MORTGAGE, MORTGAGOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF MORTGAGEE TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE CREDIT AGREEMENT OR OTHER LOAN DOCUMENTS UPON THE OCCURRENCE OF AN EVENT OF DEFAULT AS SUCH RIGHT TO ACCELERATE IS SET FORTH IN THE CREDIT AGREEMENT; (B) TO THE EXTENT ALLOWED BY APPLICABLE LAW, WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES, THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY MORTGAGEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO MORTGAGEE; (C) ACKNOWLEDGES THAT MORTGAGOR HAS READ THIS MORTGAGE AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO MORTGAGOR AND MORTGAGOR HAS CONSULTED WITH LEGAL COUNSEL OF MORTGAGOR'S CHOICE PRIOR TO EXECUTING THIS MORTGAGE; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED FOR LOAN TRANSACTION.

Section 5.12 Uniform Commercial Code Remedies. Mortgagee shall have all of the rights, remedies and recourses with respect to the Personalty and the Fixtures afforded to it by the UCC, including, without limitation, the right to take

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possession of the Fixtures or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Fixtures, in addition to, and not in limitation of, the other rights, remedies and recourses afforded by this Mortgage and the other Loan Documents.

ARTICLE 6 **ASSIGNMENT OF RENTS AND LEASES**

Section 6.1 Assignment. In furtherance of and in addition to the assignment made by Mortgagor in Section 2.1 of this Mortgage, Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Mortgagee, as Agent for the Lender Group, all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. Mortgagor does hereby appoint irrevocably Mortgagee as Mortgagor's true and lawful attorney in Mortgagor's name and stead, which appointment is coupled with an interest to collect all rents; provided, however, so long as no Event of Default shall have occurred and be continuing and to the extent not prohibited by the Credit Agreement, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Secured Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Secured Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate, without notice by Mortgagee (any such notice being hereby expressly waived by Mortgagor). Upon (i) repayment in full of the Secured Obligations and performance in full of the Secured Obligations (other than unasserted contingent indemnification Secured Obligations and other than any Bank Product Secured Obligations that, at such time, are allowed by the Bank Product Providers to remain outstanding and that are not required by the provisions of the Credit Agreement to be repaid or cash collateralized), (ii) termination or expiration of all Letters of Credit, and (iii) termination of any obligation under the Credit Agreement on the part of any member of the Lender Group to make further loans or advances of credit under the Credit Agreement, the foregoing assignment shall terminate and be of no force and effect.

Section 6.2 Perfection Upon Recordation. Mortgagor acknowledges that Mortgagee has taken all actions necessary to obtain, and that upon recordation of this Mortgage, Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, absolute and present assignment of the Rents arising out of the Leases and all security for such Leases. Mortgagor acknowledges and agrees that upon recordation of this Mortgage in the applicable recording office and payment of any

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applicable recording fees, Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and all third parties, including, without limitation, any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

Section 6.3 Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

Section 6.4 No Merger of Estates. So long as part of the Secured Obligations remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any tenant or any third party by purchase or otherwise.

ARTICLE 7 SECURITY AGREEMENT

Section 7.1 Security Interest. This Mortgage constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards and all other Mortgaged Property which is personal property to secure the payment and performance of the Secured Obligations, and agrees Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor. THE TERM "MORTGAGED PROPERTY" IS INTENDED TO AND SHALL EXCLUDE ALL ITEMS OF PERSONAL PROPERTY IN WHICH MORTGAGEE HAS OBTAINED AND/OR PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS

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Section 7.2 Financing Statements. Upon the reasonable request of Mortgagee, Mortgagor shall execute and deliver to Mortgagee, in form and substance reasonably satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor's state of organization is the State of Delaware.

Section 7.3 Fixture Filing. The Mortgage is intended to be effective, from the date of recording of this Mortgage in the Office of the Recorder of Deeds of the county in which the Premises are located, as a financing statement filed as a fixture filing pursuant to Section 9-502(c) of the Code, as adopted in the State of Illinois, and for the purposes of the UCC, against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the address of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

ARTICLE 8 MISCELLANEOUS

Section 8.1 Notices. Any notice required or permitted to be given under this Mortgage shall be given in accordance with Section 11 of the Credit Agreement.

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

Section 8.3 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to

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execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder, however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Secured Obligations and shall bear interest at the rate or rates at which interest is then computed on the Secured Obligations under the Credit Agreement; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section 8.3. Notwithstanding the foregoing, Mortgagee shall be liable for its gross negligence, willful misconduct, fraud and bad faith in connection with exercising its rights hereunder by its agents, representatives and employees. Prior to the occurrence of an Event of Default, if Mortgagee makes any payment or takes any action in accordance with this Section, Mortgagee shall furnish Mortgagor with prompt written notice thereof.

Section 8.4 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee, the Lenders, and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 8.5 No Waiver. Any failure by Mortgagee or any other Lender to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all such terms, provisions and conditions.

Section 8.6 Credit Agreement. If any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall govern.

Section 8.7 Release or Reconveyance. Upon (a) the payment and performance in full of all Secured Obligations and the other Obligations and the expiration or termination of the Commitments, or (b) a sale or other disposition of the Mortgaged Property permitted by the Credit Agreement, then Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage or reconvey the Mortgaged Property to Mortgagor. Any reference in this Mortgage to the payment, repayment, or satisfaction in full of the Secured Obligations and the other Obligations shall mean (a) the payment or repayment in full in immediately available

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funds of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, together with the payment of any premium applicable to the repayment of the Loans, (ii) all Lender Group Expenses that have accrued and are unpaid regardless of whether demand has been made therefor, (iii) all fees or charges that have accrued hereunder or under any other Loan Document (including the Letter of Credit Fee and the Unused Line Fee) and are unpaid, (b) in the case of contingent reimbursement obligations with respect to Letters of Credit, providing Letter of Credit Collateralization, (c) in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization, (d) the receipt by Agent of cash collateral in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys fees and legal expenses), such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent Obligations, (e) the payment or repayment in full in immediately available funds of all other outstanding Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements provided by Hedge Providers) other than (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid, and (f) the termination of all of the Commitments of the Lenders.

Section 8.8 Waiver of Stay, Moratorium and Similar Rights.

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

Section 8.9 Applicable Law. The provisions of this Mortgage regarding the creation, perfection and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Mortgaged Property is located. All other provisions of this Mortgage shall be governed by the laws of the State of New York, without regard to conflicts of law principles.

Section 8.10 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

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Section 8.11 Entire Agreement. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagor and Mortgagee and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 8.12 Mortgagee as Agent; Successor Agents. Subject to Section 15.9 of the Credit Agreement:

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

(b) Mortgagee shall at all times be the same Person that is Agent under the Agency Documents. Written notice of resignation by Agent pursuant to the Agency Documents shall also constitute notice of resignation as Agent under this Mortgage. Removal of Agent pursuant to any provision of the Agency Documents shall also constitute removal as Agent under this Mortgage. Appointment of a successor Agent pursuant to the Agency Documents shall also constitute appointment of a successor Agent under this Mortgage and shall be subject to the terms of the Credit Agreement. Upon the acceptance of any appointment as Agent by a successor Agent under the Agency Documents, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent as the Mortgagee under this Mortgage, and the retiring or removed Agent shall promptly (i) assign and transfer to such successor Agent all of its right, title and interest in and to this Mortgage and the Mortgaged Property, and (ii) execute and deliver to such successor Agent such assignments and amendments and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Agent of the liens and security interests created hereunder, whereupon such retiring or removed Agent shall be discharged from its duties and obligations under this Mortgage. After any retiring or removed Agent's resignation or removal hereunder as Agent, the provisions of this Mortgage and the Agency Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was the Agent hereunder. During the occurrence of an Event of Default, Mortgagee shall furnish Mortgagor with written notice of the appointment of any successor Agent.

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(c) Each reference herein to any right granted to, benefit conferred upon or power exercisable, exercised or action taken by the "Mortgagee" shall be deemed to be a reference to or be deemed to have been so taken, as the case may be, by Mortgagee in its capacity as Agent pursuant to the Credit Agreement for the benefit of the Lender Group, all as more fully set forth in the Credit Agreement.

Section 8.13 Amount Secured; Last Dollar. So long as the balance of the Secured Obligations exceeds the portion of the Secured Obligations secured by this Mortgage, no payment on account of the Secured Obligations shall be deemed to be applied against or to reduce the portion of the Secured Obligations secured by this Mortgage, but shall, instead, be deemed to be applied against only such portions of the Secured Obligations that are not secured by this Mortgage.

Section 8.14 Modifications to Credit Agreement. This Mortgage will continue to secure the Secured Obligations under the Credit Agreement, as the Credit Agreement may in the future be amended, amended and restated, modified, assigned, or otherwise supplemented and in effect from time to time. In the event the Credit Agreement is amended, amended and restated, modified, assigned, or otherwise supplemented, there shall be no need to amend, modify or otherwise supplement this Mortgage, unless required by the laws of any State or Commonwealth in which portions of the Mortgaged Property are situated.

ARTICLE 9 LOCAL LAW PROVISIONS

Notwithstanding anything to the contrary contained in this Mortgage, the following provisions shall control:

Section 9.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article 9 and the other provisions of this Mortgage, the terms and conditions of this Article 9 shall control and be binding.

Section 9.2 In Rem Proceedings. Supplementing Section 5.1 hereof, mortgage foreclosures and other In Rem proceedings against Mortgagor may be brought in Cook County, Illinois or any federal court of competent jurisdiction in Illinois.

Section 9.3 Waiver of Rights of Reinstatement and Redemption. Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order, judgment 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 Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15-1601, as amended, or other applicable law or

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replacement statutes. Mortgagor represents that the Mortgaged Property does not constitute agricultural or residential real estate.

Section 9.4 Illinois Mortgage Foreclosure Law. It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the IMF Law, and with respect to such Act Mortgagor agrees and covenants that:

(a) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(b) Wherever provision is made in this Mortgage or the Credit Agreement for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale;

(c) All advances, disbursements and expenditure made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage or the Credit Agreement or by the IMF Law (collectively "**Mortgage Protective Advances**"), shall have the benefit of all applicable provisions of the IMF Law. All Mortgage Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of this advance until paid at the rate of interest payable after default under the terms of the Credit Agreement. This Mortgage shall be a lien for all Mortgage Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the IMF Law;

(d) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the IMF Law, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in

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this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 5/15-1701, 5/15-1703 and 5/15-1704 of the IMF Law; and

(e) Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law. Pursuant to Section 5/15-1601(b) of the IMF Law, Mortgagor hereby waives any and all right of redemption.

Section 9.5 Collateral Protection Act. Pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by the Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Mortgaged Property, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder. If Mortgagee purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of such insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance shall be added to the Secured Obligations secured hereby. The costs of such insurance may be greater than the costs of insurance Mortgagor may be able to obtain for itself.

Section 9.6 Remedies Against Other Collateral. Mortgagor hereby acknowledges that certain Loan Documents other than this Mortgage create liens on collateral located in counties and states other than the counties and state in which the Land is located. Mortgagor further acknowledges that this Mortgage and the other Loan Documents are cross-defaulted and the Secured Obligations secured hereby are also secured by the other Loan Documents. Mortgagor agrees that Mortgagee 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 to the extent permitted by applicable law) by any proceedings appropriate in the county and state where such collateral lies, and that no event of enforcement taking place in any county or state pursuant to any of the Loan Documents shall preclude or bar enforcement in the State of Illinois or any other county or state. Any foreclosure or other appropriate remedy brought in county or state 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 Secured Obligations.

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Section 9.7 Business Loan /Statutory Exemption. Mortgagor acknowledges and agrees that (i) any amounts advanced under the Credit Agreement will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 205/4(1)(1)); and (ii) that the Secured Obligations constitutes a business loan which comes within the purview of said Section 4.

ARTICLE 10 GUARANTY WAIVERS

Section 10.1 Mortgagor waives notice of the contracting, creation and existence of all and any of the Secured Obligations. Mortgagor also waives and relinquishes all present and future claims, rights and remedies against Borrower or any other obligated party arising out of the creation or performance of Mortgage under this Mortgage. This waiver includes, but is not limited to, the right of contribution, reimbursement, indemnification, subrogation, exoneration, and any right to participate in any claim or remedy Mortgagee may have against Borrower, all or any property, in addition to the Mortgaged Property, securing any of the Secured Obligations, or other party obligated for the Secured Obligations, whether or not such claim, remedy, or right arises in equity, or under contract, statute or common law. Mortgagor also waives presentment, demand, protest, notice of dishonor, and notice of acceptance of this Mortgage and, to the extent permitted by law, all defenses and claims that the Borrower could assert, any right to require Mortgagee to pursue any remedy or seek payment from any other person before taking any action or enforcing any remedies under this Mortgage, and all other defenses to the Secured Obligations, except payment in full.

Section 10.2 Mortgagee may, from time to time without notice to or consent of Mortgagor (a) retain or obtain security title to or a security interest in any property, in addition to the Mortgaged Property, to secure any of the Secured Obligations; (b) retain or obtain the primary or secondary obligation or liability of any party or parties, in addition to Mortgagor, with respect to any of the Secured Obligations; (c) extend or renew for any period (whether or not longer than the original period) or exchange any of the Secured Obligations, or release or compromise any of the Secured Obligations or any party or parties primarily or secondarily liable thereon; (d) release Mortgagee's security title to and security interest in all or any property, in addition to the Mortgaged Property, securing any of the Secured Obligations and permit any substitutions or exchange for any such properties; and (e) resort to the Mortgaged Property for payment of any of the Secured Obligations, whether or not Mortgagee shall have resorted to any other property or shall have proceeded against any party primarily or secondarily liable on any of the Secured Obligations.

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**COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____**

**COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____**


Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, Mortgagor has on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be duly EXECUTED AND DELIVERED by authority duly given.

MORTGAGOR:

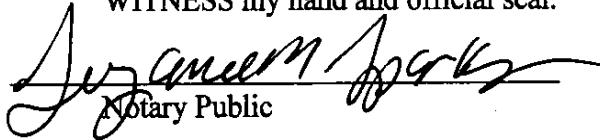
**AMERICAN BLUE RIBBON HOLDINGS,
LLC, a Delaware limited liability company**

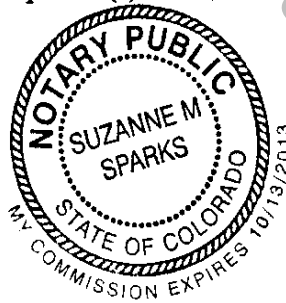
By: 
Name: Anita Adams
Title: CFO

STATE OF Colorado)
)ss.
COUNTY OF Denver)

On May 21, 2012, before me, the undersigned, Notary Public in and for said State and County, personally appeared Anita Adams, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public



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EXHIBIT A Legal Description

PARCEL 1:

Lots 141 to 150 Both Inclusive in the Resubdivision of Lot 95 in McGuire and Orr's Ridge Boulevard Addition to Rogers Park in the Northwest $\frac{1}{4}$ of Section 31, Township 41 North, Range 14, East of the Third Principal Meridian (Except That Part of Said Lots Taken for Widening of Western Avenue) in Cook County, Illinois.

PARCEL 2:

All That Part of the Vacated North-South 16 Foot Public Alley Lying West of the West Line of Lot 143; Lying East of the East Line of Lots 144 to 150, Both Inclusive; Lying South of a Line Drawn From the Northwest Corner of Said Lot 143 to the Northeast Corner of Said Lot 144; and Lying North of the South Line of Said Lot 150 Produced East to the West Line of Said Lot 143, All in Subdivision of Lot 95 of McGuire and Orr's Ridge Boulevard Addition to Rogers Park in the Northwest $\frac{1}{4}$ of Section 31, Township 41 North, Range 14, East of the Third Principal Meridian; Said Part of Public Alley being Further Described as the North 179 Feet, More or Less, of the North-South 16 Foot Public Alley in the Block Bounded by West Touhy Avenue, West Estes Avenue, North Western Avenue and North Oakley Avenue.

Permanent Real Estate Index Nos.: 11-31-100-001 thru 11-31-100-007; 11-31-100-015 thru 11-31-100-017

Street Address: 7131 North Western Avenue, Chicago, IL

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SCHEDULE I Interest Rate

The Secured Obligations shall accrue interest at the rates described below, all as more particularly provided in the Credit Agreement.

(a) **Defined Terms.** All capitalized terms used but not defined herein shall have the meanings ascribed thereto in Mortgage to which this Schedule is attached, and otherwise in the Credit Agreement. The following capitalized terms shall have the following meanings:

“**Base Rate**” means the greatest of (a) the Federal Funds Rate plus ½%, (b) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of 1 month and shall be determined on a daily basis), plus 1 percentage point, and (c) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its “prime rate”, with the understanding that the “prime rate” is one of Wells Fargo’s base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate.

“**Base Rate Loan**” means each portion of the Revolving Loans or the Term Loan that bears interest at a rate determined by reference to the Base Rate.

“**Applicable Margin**” means, as of any date of determination and with respect to Base Rate Loans, LIBOR Rate Loans and Unused Line Fees, as applicable, the applicable margin set forth in the following table that corresponds to the most recent Total Lease Adjusted Leverage Ratio calculation delivered to Agent pursuant to Section 5.1 of the Agreement (the “**Total Lease Adjusted Leverage Ratio Calculation**”); provided, that for the period from the Closing Date through the date Agent receives the Total Lease Adjusted Leverage Ratio Calculation in respect of the testing period ending September 30, 2012, the Applicable Margin shall be at the margin in the row styled “Level III”; provided further, that any time an Event of Default has occurred and is continuing, the Applicable Margin shall be set at the margin in the row styled “Level IV”:

<u>Level</u>	<u>Total Lease Adjusted Leverage Ratio Calculation</u>	<u>Applicable Margin Relative to Base Rate Loans (the “Base Rate Margin”)</u>	<u>Applicable Margin Relative to LIBOR Rate Loans (the “LIBOR Rate Margin”)</u>	<u>Applicable Margin Relative to Unused Line Fees</u>
I	If the Total Lease Adjusted Leverage Ratio is less 3.25:1.0	2.00 percentage points	3.00 percentage points	0.375 percentage points
II	If the Total Lease Adjusted Leverage Ratio is greater than or equal to 3.25:1.0	2.25 percentage points	3.25 percentage points	0.375 percentage points

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	and less than 3.75:1.0			
III	If the Total Lease Adjusted Leverage Ratio is greater than or equal to 3.75:1.0 and less than 4.25:1.0	2.50 percentage points	3.50 percentage points	0.50 percentage points
IV	If the Total Lease Adjusted Leverage Ratio is greater than or equal to 4.25:1.0	2.75 percentage points	3.75 percentage points	0.50 percentage points

Except as set forth in the foregoing proviso, the Applicable Margin shall be based upon the most recent Total Lease Adjusted Leverage Ratio Calculation, which will be calculated as of the end of each Fiscal Quarter. Except as set forth in the foregoing proviso, the Applicable Margin shall be re-determined quarterly on the first day of the month following the date of delivery to Agent of the certified calculation of the Total Lease Adjusted Leverage Ratio pursuant to Section 5.1 of the Agreement; provided, that if Borrower fails to provide such certification when such certification is due, the Applicable Margin shall be set at the margin in the row styled "Level III" as of the first day of the month following the date on which the certification was required to be delivered until the date on which such certification is delivered (on which date (but not retroactively), without constituting a waiver of any Default or Event of Default occasioned by the failure to timely deliver such certification, the Applicable Margin shall be set at the margin based upon the calculations disclosed by such certification. In the event that the information regarding the Total Lease Adjusted Leverage Ratio contained in any certificate delivered pursuant to Section 5.1 of the Agreement is shown to be inaccurate, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Period") than the Applicable Margin actually applied for such Applicable Period, then (i) Borrower shall immediately deliver to Agent a correct certificate for such Applicable Period, (ii) the Applicable Margin shall be determined as if the correct Applicable Margin (as set forth in the table above) were applicable for such Applicable Period, and (iii) Borrower shall immediately deliver to Agent full payment in respect of the accrued additional interest as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by Agent to the affected Obligations.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it.

"LIBOR Rate" means the rate per annum rate appearing on Macro*World's (www.mworld.com; the "Service") Page BBA LIBOR - USD (or on any successor or substitute
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page of such Service, or any successor to or substitute for such Service) 2 Business Days prior to the commencement of the requested Interest Period, for a term, and in an amount, comparable to the Interest Period and the amount of the LIBOR Rate Loan requested (whether as an initial LIBOR Rate Loan or as a continuation of a LIBOR Rate Loan or as a conversion of a Base Rate Loan to a LIBOR Rate Loan) by Borrower in accordance with the Agreement (and, if any such rate is below zero, the LIBOR Rate shall be deemed to be zero), which determination shall be made by Agent and shall be conclusive in the absence of manifest error.

“LIBOR Rate Loan” means each portion of a Revolving Loan or the Term Loan that bears interest at a rate determined by reference to the LIBOR Rate.

“LIBOR Rate Margin” has the meaning set forth in the definition of Applicable Margin.

(b) **Interest Rates.** Except as provided in Section (d) below, all Secured Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest as follows:

(i) if the relevant Secured Obligation is a LIBOR Rate Loan, at a *per annum* rate equal to the LIBOR Rate plus the LIBOR Rate Margin, and

(ii) otherwise, at a *per annum* rate equal to the Base Rate plus the Base Rate Margin.

(c) **Letter of Credit Fee.** Borrower shall pay Agent (for the ratable benefit of the Revolving Lenders), a Letter of Credit fee (the “Letter of Credit Fee”) that shall accrue at a *per annum* rate equal to the LIBOR Rate Margin times the undrawn amount of all outstanding Letters of Credit.

(d) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default and at the election of Agent or the Required Lenders,

(i) all Secured Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest at a *per annum* rate equal to 2 percentage points above the *per annum* rate otherwise applicable thereunder, and

(ii) the Letter of Credit Fee shall be increased to 2 percentage points above the *per annum* rate otherwise applicable hereunder.

(e) **Computation.** All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue, other than interest for Base Rate Loans which shall be computed on the basis of 365 or 366 day year, as applicable, and actual days elapsed. In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate.