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Cook County Recorder of Deeds
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This Document Prepared by
and After Recording
Return to:
Leila Rachlin, Esq.
White & Case LLP
1155 Avenue of the Americas
New York, New York 10036

Address	Property Tax Index Number:
947 N. State, Chicago IL 60611	17-03-206-001-0000
946 N. Rush St., Chicago IL 60611	17-03-206-009-0000
940 N. Rush St, Chicago IL 60611	17-03-206-010-0000

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

by and from **FIDELITY NATIONAL TITLE**

Barney's, Inc., "Mortgagor"

To

Wilmington Trust, National Association, in its capacity as Administrative Agent,
"Mortgagee"

Dated as of September 10, 2012

Location: Rush and Oak
and State Streets

Municipality: Chicago

County: Cook

State: Illinois

This document serves as a fixture filing under the Illinois Uniform Commercial Code,
Chapter 810 ILCS 5/9-502(b) et seq.

Mortgagor's Organizational Identification No: 13-4942980

1 of 2

FIDELITY NATIONAL TITLE 999011280

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

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

**White & Case LLP
1155 Avenue of the Americas
New York, New York 10036
Attention: Leila Rachlin, Esq.**

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

THIS AMENDED AND RESTATED LEASEHOLD MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (this "**Mortgage**") is dated as of September 10, 2012 by BARNEY'S, INC., a New York corporation ("**Mortgagor**"), whose address is 575 Fifth Avenue, New York, New York 10017 in favor of WILMINGTON TRUST, NATIONAL ASSOCIATION. ("**WT**"), a national banking association, as mortgagee, assignee and secured party, in its capacity as administrative agent for the Secured Parties (as defined in the Credit Agreement referred to below) (in such capacity together with its successors and permitted assigns, "**Administrative Agent**") (Administrative Agent, together with its successors and assigns, "**Mortgagee**") having an address at 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota 55402.

RECITALS:

WHEREAS, pursuant to the Second Amended and Restated Term Loan Agreement, dated as of May 7, 2012 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among the Mortgagor, the lenders party thereto (the "**Lenders**") and WT, as administrative agent (in such capacity, the "**Administrative Agent**") and collateral agent for the Lenders, the Lenders have severally agreed to make extensions of credit to the Mortgagor upon the terms and subject to the conditions set forth therein;

WHEREAS, the Credit Agreement amends and restates in entirety that certain Term Loan Agreement, dated as of September 6, 2007 (as the same may have been amended, restated, supplemented or otherwise modified from time to time and as in effect immediately prior to May 7, 2012, the "**Original Credit Agreement**"), among ISTITHMAR BENTLEY ACQUISITION CO., now known as BARNEY'S NEW YORK, INC. (of which, the Mortgagor is a wholly-owned Subsidiary), the lenders from time to time party thereto and WT (as successor to CITICORP USA, INC., a Delaware corporation, the initial administrative agent ("**Initial Agent**")), as administrative agent and collateral agent for the lenders thereunder;

WHEREAS, the Initial Agent and WT entered into that certain Successor Agent Agreement dated as of April 1, 2010, whereby Initial Agent resigned as administrative agent under the Original Credit Agreement and WT was appointed as and accepted the position of successor administrative agent under the Original Credit Agreement;

WHEREAS, the Credit Agreement evidences certain indebtedness, including, without limitation, a term loan facility in an original aggregate principal amount of \$50,000,000.00;

WHEREAS, Mortgagor is the owner and holder of that certain leasehold interest in a portion of the real estate located in the County of Cook and State of Illinois (the "**State**"), and more fully described on Exhibit A attached hereto pursuant to the terms and conditions of that certain Retail Lease between Oak and Rush LLC as landlord ("**Landlord**") and Barney's

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Inc., as Tenant dated January 22, 2007 (and more particularly described on Exhibit A-1 attached hereto), which forms a portion of the Mortgaged Property described below, and a memorandum of lease with respect thereto has been recorded on 1-11-2008, in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 0801141072 (said Retail Lease and memorandum of lease, together with any and all amendments, modifications, replacements and supplements thereto, and any other or future lease of all or a portion of the real estate, being hereafter referred to as the “**Lease**”);

WHEREAS, as security for its obligations arising under the Original Credit Agreement, the Mortgagor executed and delivered that certain “Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing” dated January 4, 2008 and recorded with the Cook County Recorder of Deeds, at Document No. 0801141070 (the “**Original Mortgage**”);

WHEREAS, in connection with the execution and delivery of the Credit Agreement, the Mortgagee and Mortgagor have agreed to amend and restate the Original Mortgage in its entirety as provided for herein;

WHEREAS, it is a condition precedent to the obligation of the Lenders to continue to make their respective extensions of credit to the Mortgagor under the Credit Agreement that the Mortgagor shall have executed this Mortgage;

NOW, THEREFORE, in consideration of the premises and to induce the Lenders and the Administrative Agent to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Mortgagor, Mortgagor and Mortgagee hereby agree that the Original Mortgage is hereby amended and restated as follows:

ARTICLE 1

DEFINITIONS

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

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

(b) “**Intercreditor Agreement**”: That certain Amended and Restated Intercreditor Agreement, dated as of June 5, 2012, among, Wells Fargo Bank, National Association, as administrative agent and collateral agent for the ABL Secured Parties (as defined therein), including its successors and permitted assigns from time to time (the “**Second Lien Agent**”), Wilmington Trust, National Association, as administrative agent and collateral agent for the Term Loan Facility Secured Parties (as defined therein), including its successor and permitted assigns from time to time (the “**First Lien Agent**”), the Mortgagor and certain of the Mortgagor’s affiliates signatory party thereto.

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(c) **“Mortgaged Property”**: Mortgagor’s leasehold estate together with Mortgagor’s right, title and interest in and to (1) the property described on Exhibit A attached hereto (the **“Leased Property”**), which interest is granted pursuant to the Lease described on Exhibit A-1 attached hereto and incorporated herein by this reference (as this such agreement may be amended, supplemented or otherwise modified from time to time, the **“Mortgaged Lease”**), (2) all improvements now owned or hereafter acquired by Mortgagor, now or at any time situated, placed or constructed upon or within the Leased Property (the **“Improvements”**); the Leased Property and Improvements are collectively referred to as the **“Premises”**), (3) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Leased Property, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **“Fixtures”**), (4) all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC (defined below), now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Premises (the **“Personalty”**), (5) all reserves, escrows or impounds required under the Credit Agreement and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property (the **“Deposit Accounts”**), (6) other than the Mortgaged Lease, all subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the **“Subleases”**), (7) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Subleases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the **“Rents”**), (8) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the **“Property Agreements”**), (9) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, (10) all property tax refunds payable with respect to the Mortgaged Property (the **“Tax Refunds”**), (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the **“Proceeds”**), (12) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor (the **“Insurance”**), and (13) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any portion of the Leased Property, Improvements, Fixtures or Personalty (the **“Condemnation Awards”**). As used in this Mortgage, the term **“Mortgaged Property”** shall mean all or, where the context permits or requires, any portion of the above or any interest therein. Notwithstanding anything to the contrary, the term **“Mortgaged Property”** shall not include any Excluded Assets; provided that, if and when any property shall cease to be Excluded Assets, such property shall be deemed at all times from and after the date thereof to constitute Mortgaged Property.

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(d) **“Permitted Liens”**: Any and all Liens permitted under Section 8.2 of the Credit Agreement.

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

ARTICLE 2

GRANT

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

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.1 Title to Mortgaged Property and Lien of this Instrument.

Mortgagor owns good and marketable leasehold title to the Mortgaged Property free and clear of any liens, claims or interests, except Permitted Liens. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property subject only to Permitted Liens.

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 a Permitted Lien is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement.

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

Section 3.4 Replacement of Fixtures. After the occurrence and during the continuation of an Event of Default, Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures owned or leased by Mortgagor to be removed at any time from the Leased Property or Improvements, unless the removed item is removed temporarily for

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maintenance and repair or for modifications made in the ordinary course or is permitted to be removed pursuant to the terms of the Credit Agreement.

Section 3.5 Inspection. Mortgagor shall from time to time permit the Administrative Agent, or any agents or representatives thereof, within two (2) Business Days (or such later date as the Mortgagee may agree) after written notification of the same (except that during the continuance of an Event of Default, no such notice shall be required) to (a) examine and make copies of and abstracts from the records and books of account of Mortgagor and (b) visit the Mortgaged Property, in each case, at reasonable times.

Section 3.6 Insurance; Condemnation Awards and Insurance Proceeds.

(a) Reserved

(b) Condemnation Awards. Subject to the provisions of the Mortgaged Lease, Mortgagor collaterally assigns all Condemnation Awards to Mortgagee and authorizes Mortgagee, after the occurrence and during the continuation of a Cash Dominion Event, to collect and receive such Condemnation Awards and to give proper receipts and acquittances therefor, subject to the terms of the Credit Agreement.

(c) Insurance Proceeds. Subject to the provisions of the Mortgaged Lease, Mortgagor collaterally assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property subject to the terms of the Credit Agreement. Mortgagor authorizes Mortgagee, after the occurrence and during the continuation of a Cash Dominion Event to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policy to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly.

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

ARTICLE 4

DEFAULT AND FORECLOSURE

Section 4.1 Remedies. Upon the occurrence and during the continuance of an Event of Default, subject to the terms of the Credit Agreement, Mortgagee may, at Mortgagee's election exercise any or all of the following rights, remedies and recourses;

(a) Acceleration. Subject to any provisions of the Loan Documents providing for the automatic acceleration of the Obligations upon the occurrence of certain Events of Default, declare the 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.

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

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

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

(e) Receiver. Upon, or at any time prior or after, the filing of any complaint to foreclose the lien of this Mortgage or instituting any other foreclosure of the liens and security interests provided for in this Mortgage or any other legal proceedings under this Mortgage, Mortgagee may, at Mortgagee's sole option, make application to a court of competent jurisdiction for appointment of a receiver pursuant to Section 15-1702 of the Act (defined herein) for all or any part of the Mortgaged Property, as a matter of strict right and without notice to Mortgagor, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Mortgagee, but nothing herein is construed to deprive Mortgagee of any other right, remedy or privilege Mortgagee may now have under the law to have a receiver appointed; *provided* that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of all of the rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Mortgage. Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Obligations; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act,

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including the power to take possession, control and care of the Mortgaged Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Obligations, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then-existing leases and make new leases of the Mortgaged Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

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

Section 4.2 Intentionality Omitted.

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

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

Section 4.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process,

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redemption or extension of time for payment and (b) any right to a marshalling of assets or a sale in inverse order of alienation.

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

Section 4.7 Application of Proceeds. Upon the occurrence and during the continuance of an Event of Default, subject to the terms of the Credit Agreement, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

- (a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) attorneys' and accountants' fees and expenses, and (4) costs of advertisement;
- (b) to the Obligations in such manner and order of preference as set forth in the Credit Agreement; and
- (c) the balance, if any, to the Persons legally entitled thereto.

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

Section 4.9 Additional Advances and Disbursements; Costs of Enforcement.

- (a) Upon the occurrence and during the continuance of any Event of Default, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 4.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest as set forth in the Credit Agreement from the date that such

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sum is advanced or expense incurred, to but excluding the date of reimbursement, and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Subject to and in accordance with the terms of Section 11.3 of the Credit Agreement, Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

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

ARTICLE 5

ASSIGNMENT OF RENTS AND SUBLEASES

Section 5.1 Assignment. In furtherance of and in addition to the assignment made by Mortgagor in Section 2.1 of this Mortgage, Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys (in each case of the foregoing, on a collateral assignment basis) to Mortgagee all of its right, title and interest in and to all Subleases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute collateral assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Subleases, including the right to receive and collect all Rents and to 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 Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate, without notice to Mortgagor by Mortgagee (any such notice being hereby expressly waived by Mortgagor to the extent permitted by applicable law).

Section 5.2 Perfection Upon Recordation. Mortgagor acknowledges that Mortgagee has taken all actions necessary to obtain, and that upon recordation of this Mortgage Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Subleases and all security for such Subleases. Mortgagor acknowledges and agrees that upon recordation of this Mortgage, Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and to the extent permitted under applicable law, all third parties, including,

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without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the “**Bankruptcy Code**”), without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

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

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

ARTICLE 6

SECURITY AGREEMENT

Section 6.1 **Security Interest.** This Mortgage constitutes a “security agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Subleases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards, in each case of the foregoing, other than any Excluded Assets. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Personalty, Fixtures, Subleases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance, Condemnation Awards and all other Mortgaged Property which is personal property, in each case of the foregoing, other than any Excluded Assets (provided that, if and when any property shall cease to be Excluded Assets, then from and after the date thereof, such property shall be deemed subject to the security interest granted hereunder), to secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Subleases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2 **Financing Statements.** Mortgagor shall prepare and deliver to Mortgagee such financing statements, and shall execute and deliver to Mortgagee such documents, instruments and further assurances, in each case in form and substance reasonably satisfactory to Mortgagee, as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee’s security interest hereunder. Mortgagor hereby irrevocably authorizes Mortgagee to cause financing statements and any such documents, instruments and assurances to be recorded and filed, at such times and places as may be required

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or permitted by law to so create, perfect and preserve such security interest. Mortgagor's jurisdiction of organization as of the ABL Closing Date is set forth in the introductory paragraph of this Mortgage.

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

ARTICLE 7

LEASEHOLD MORTGAGE PROVISIONS

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

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

(c) With respect to each Mortgaged Lease, it is hereby agreed that the fee estate in the property subject to such Mortgaged Lease (hereinafter, the "**Real Estate**") and the leasehold estate created by such Mortgaged Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in a common owner, whether by purchase or otherwise, unless Mortgagee shall consent in writing to such merger, and Mortgagee shall continue to have and enjoy all of the rights and privileges of the Mortgagee as to the separate estate. If Mortgagor acquires the fee title to the property demised under such Mortgaged Lease, or any other estate, title or interest in the property demised under the Mortgaged Lease, the lien of this Mortgage shall attach to, cover and be a lien upon such acquired estate, title or interest and same shall thereupon be and become a part of the Leased Property with the same force and effect as if specifically encumbered herein. It is the intention of Mortgagor and Mortgagee that no documents, instruments or agreements shall be necessary to confirm the spread of this Mortgage to cover Mortgagor's interest in such acquired property and that such spreader shall occur automatically upon the consummation of Mortgagor's acquisition of such estate, title or interest to such acquired property. Notwithstanding the foregoing, Mortgagor agrees to execute all instruments and documents, which Mortgagee may reasonably require to ratify, confirm and further evidence Mortgagee's lien on the acquired estate, title or interest. Furthermore, Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of Mortgagor. This power, being coupled with an interest, shall be irrevocable as long as the secured indebtedness under the Loan Documents remains unpaid. Mortgagor shall not purchase any or all of the Real Estate without notice to Mortgagee. Mortgagor shall pay all expenses incurred by Mortgagee in connection with the preparation, execution, acknowledgement, delivery and/or recording of any such documents, including but without limiting the generality of the foregoing, all filing, registration and recording fees and charges, documentary stamps, mortgage taxes, intangible taxes, and reasonable attorneys' fees, costs and disbursements, subject to the terms of the Credit Agreement.

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(d) If the Mortgaged Lease is canceled or terminated, and if Mortgagee or its nominee shall acquire an interest in any new lease of all or any part of the applicable Real Estate pursuant to the exercise of its rights and remedies hereunder after the occurrence and during the continuation of an Event of Default, Mortgagor shall have no right, title or interest in or to the new lease or the leasehold estate created by such new lease.

(e) With respect to each Mortgaged Lease, Mortgagor shall use commercially reasonable efforts to obtain and deliver to Mortgagee within thirty (30) days after written demand by Mortgagee, an estoppel certificate from the applicable lessor under such Mortgaged Lease and addressed to Mortgagee, its successors and assigns, and such other persons as Mortgagee shall reasonably request, setting forth (i) the name of the tenant thereunder; (ii) that the Mortgaged Lease to which such lessor is a party is in full force and effect and has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification); (iii) the rent, additional rent and other charges and impositions payable under such Mortgaged Lease; (iv) the date to which all rent, additional rent and other charges and impositions have been paid by the tenant under the Mortgaged Lease; (v) whether a notice of default has been received by the lessor which has not been cured, and if such notice has been received, the date it was received and the nature of the default; (vi) whether there are any defaults or alleged defaults of the tenant under the Mortgaged Lease or if there are any events which have occurred which with notice, the passage of time or both, would constitute a default under the Mortgaged Lease, and, if there are, setting forth the nature thereof in reasonable detail; and (vii) the date upon which the term of the Mortgaged Lease expires.

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

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

(h) With respect to each Mortgaged Lease, Mortgagor shall use its business judgment to determine whether to enforce the obligations of the lessor under such Mortgaged Lease to the end that Mortgagor may enjoy all of the rights granted to it under the Mortgaged Lease. If, pursuant to the Mortgaged Lease, the lessor under the Mortgaged Lease shall deliver to Mortgagee a copy of any notice of default given to Mortgagor, as lessee under the Mortgaged Lease, such notice shall constitute full authority and protection to Mortgagee for any action taken or omitted to be taken by Mortgagee, in good faith and in reliance thereon.

(i) With respect to each Mortgaged Lease, Mortgagor shall give Mortgagee prompt notice of the commencement of any arbitration proceeding under and pursuant to the provisions of such Mortgaged Lease. Except as provided in the Mortgaged Lease, if an Event of Default shall have occurred and be continuing, Mortgagor will not agree to arbitrate any disputes

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arising under the Mortgaged Lease without the written consent of Mortgagee, which consent can be withheld at the sole discretion of Mortgagee. Mortgagee shall have the right, if an Event of Default shall have occurred and be continuing, to intervene and participate in any such proceeding and Mortgagor shall confer with Mortgagee and its attorneys and experts and cooperate with them to the extent which Mortgagee deems reasonably necessary for the protection of Mortgagee. Upon the request of the Mortgagee, if an Event of Default shall have occurred and be continuing, Mortgagor will exercise all rights of arbitration conferred upon it by the Mortgaged Lease. If at any time such proceeding shall be commenced, Mortgagor shall be in default in the performance or observance of any covenant, condition or other requirement of the Mortgaged Lease or of this Mortgage on the part of Mortgagor to be performed or observed, if an Event of Default shall have occurred and be continuing, Mortgagee shall have, and is hereby granted the right to designate and appoint on behalf of Mortgagor, the arbitrator or arbitrators, or appraiser, in such proceeding. Nothing contained herein shall obligate Mortgagee to participate in such arbitration or appraisal proceeding.

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

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

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

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

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rents under the Mortgaged Lease in the event any case, proceeding or other action is commenced by or against the lessor under the Mortgaged Lease (or any person or party constituting or having an interest in the Mortgaged Lease) under the Bankruptcy Code or any comparable federal or state statute or law.

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

(o) With respect to each Mortgaged Lease, Mortgagor hereby unconditionally and irrevocably collaterally assigns to Mortgagee (i) any right which Mortgagor has pursuant to the terms of the Mortgaged Lease to renew and/or extend the term thereof, (ii) any right which Mortgagor has pursuant to the terms of the Mortgaged Lease to cancel or terminate the Mortgaged Lease, and (iii) any option or right that Mortgagor has pursuant to the Mortgaged Lease to purchase any or all of the premises demised thereunder, provided that Mortgagee shall not exercise any such rights or options set forth in clauses (i), (ii), and (iii) unless an Event of Default has occurred and is continuing.

(p) With respect to each Mortgaged Lease, Mortgagor shall exercise any option to renew or extend the term of the Mortgaged Lease if at the time such right or option becomes exercisable the Obligations have not been fully paid and discharged in accordance with Section 7.14 of the Credit Agreement and shall give written confirmation thereof to Mortgagee within ten (10) days after the date on which such option or right first becomes exercisable, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney in fact, with power of substitution, to exercise such option on behalf of Mortgagor if Mortgagor is required under the foregoing provisions to exercise said option but for any reason fails or refuses to exercise said option within a reasonable time prior to the expiration of Mortgagor's time to exercise the option.

ARTICLE 8

MISCELLANEOUS

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

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Section 8.2 Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property. All Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party (other than Loan Parties and their subsidiaries) 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 (or such later date as the Mortgagee may agree), (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Subleases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare and file or record financing statements and continuation statements, and to prepare, execute and file or record applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, and (d) after the occurrence and during the continuance of any Event of Default, to perform any obligation of Mortgagor hereunder, however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the highest rate at which interest is then computed on any portion of the Obligations in accordance with the provisions of 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.

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

Section 8.5 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee, the Secured Parties and Mortgagor and their respective successors and permitted assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder other than in connection with a transaction permitted by Section 8.7 of the Credit Agreement.

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

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

Section 8.8 Release or Reconveyance. Upon payment in full of the Obligations (other than unasserted contingent obligations) and performance in full of the Obligations or upon a sale or other disposition of the Mortgaged Property which is expressly permitted by the Credit Agreement, this Mortgage shall terminate automatically without further action or consent by any Person, and the Mortgaged Property and the rights therewith shall automatically revert to Mortgagor and, in connection with any such termination, Mortgagee, at Mortgagor's request and expense, shall promptly execute and deliver (without recourse, representation or warranty) a release of the liens and security interests created by this Mortgage, an assignment of this Mortgage to Mortgagor's designee, in proper form for recording, or reconvey the Mortgaged Property to Mortgagor.

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

Section 8.10 Applicable Law. The provisions of this Mortgage regarding the creation, perfection and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the State of Illinois. All other provisions of this Mortgage shall be governed by the laws of the State of New York (including, without limitation, Section 5-1401 of the General Obligations Law of the State of New York).

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

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

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

Section 8.14 Mortgagee as Agent; Successor Agents.

(a) Administrative Agent has been appointed to act as Administrative Agent hereunder by the Secured Parties. Administrative Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain

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from taking any action (including, without limitation, the release or substitution of the Mortgaged Property) in accordance with the terms of the Credit Agreement, any related agency agreement among Administrative Agent and the Secured Parties (collectively, as amended, supplemented or otherwise modified or replaced from time to time, the “Agency Documents”) and this Mortgage. Mortgagor and all other persons shall be entitled to rely on releases, waivers, consents, approvals, notifications and other acts of Administrative Agent, without inquiry into the existence of required consents or approvals of the Secured Parties therefor.

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

(c) Notwithstanding anything to the contrary in this Mortgage, the right of the Secured Parties hereunder may be enforced only by the Administrative Agent acting in accordance with the provisions of the Credit Agreement, and no other Secured Party shall have any right individually to seek to enforce, it being understood and agreed that such rights and remedies may be exercised by the Administrative Agent for the ratable benefits of the Secured Parties in accordance with the Credit Agreement.

Section 8.15 Intercreditor Agreement. By accepting the benefit of this Mortgage, each Secured Party grants the Administrative Agent the power to enter into the Intercreditor Agreement and to bind such Secured Party to the provisions thereof. Notwithstanding anything herein to the contrary, the Lien and security interest granted pursuant to this Mortgage and the exercise of any right or remedy hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Mortgage, the terms of the Intercreditor Agreement shall govern and control. Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, all rights and remedies of the Administrative Agent (and the

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other Secured Parties) with respect to the “ABL Facility Primary Collateral” (as defined in the Intercreditor Agreement) shall be subject to the terms of the Intercreditor Agreement.

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

ARTICLE 9

LOCAL LAW PROVISIONS

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

Section 9.1 Protective Advances. Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after a judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq. (the “Act”), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, “**Protective Advances**”).

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

(ii) payments made by Mortgagee of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Mortgaged Property; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

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

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

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

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

(vii) reasonable, out-of-pocket expenses incurred and expenditures made by Mortgagee with respect to the Mortgaged Property for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or reasonably deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member if in any way affecting the Mortgaged Property; (G) costs incurred by Mortgagee for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Mortgaged Property.

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

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

Section 9.3 Business Loan Recital/Statutory Exemption. (i) Mortgagor acknowledges and agrees that (A) the proceeds of the indebtedness secured hereby will be used in conformance with subparagraph (1)(c) of Section 4 of the Illinois Interest Act, as amended (815 ILCS 20514(1)(c)); (B) the indebtedness secured hereby has been incurred solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said Section 4; (C) the indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 et. seq. has been entered into solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said section. Without limiting the generality of anything contained herein, Mortgagor acknowledges and agrees that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201) or residential real estate (as defined in 735 5/15-1219).

Section 9.4 Maximum Indebtedness. This Mortgage shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. This Mortgage also secures any and all future obligations and indebtedness arising under or in connection with this Mortgage or the other Loan Documents, which future obligations and indebtedness shall have the same priority as if all such future obligations and indebtedness were made on the date of execution hereof. Nothing in this Section or in any other provision of this Mortgage shall be deemed an obligation on the part of Mortgagee to make any future advances of any sort. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage shall secure (in addition to any loan proceeds disbursed from time to time) the payment of any and all reasonable out-of-pocket expenses and advances due to or incurred by Mortgagee in connection with the indebtedness to be secured hereby and which are to be reimbursed by Mortgagor under the terms of this Mortgage; provided, however, that at no time shall the amount of the indebtedness secured by this Mortgage exceed \$560,000,000.00 plus interest thereon.

Section 9.5 Future Advances. Mortgagor acknowledges that the intent hereof is to secure the Obligations, whether the entire amount shall have been advanced at the date hereof, or at a later date, and to secure any other amount or amounts that may be added to the indebtedness secured hereby under the terms of this Mortgage. The total amount of the principal indebtedness secured hereby may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed an amount equal to \$560,000,000.00 in principal plus interest thereon and any amounts expended by Mortgagee in accordance with the Loan Documents, including for the payment of taxes, levies, or insurance on the Mortgaged Property made in accordance with the Loan Documents, with interest thereon. This Mortgage shall secure any and all additional or further monies which may be advanced by Mortgagee to Mortgagor after the date hereof, but any and all such future advances secured by this Mortgage shall be made not more than twenty (20) years after the date hereof. Nothing herein contained shall be deemed an obligation on the part of Mortgagee to make any future advances.

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Section 9.6 Illinois Mortgage Foreclosure Act. It is the express intention of Mortgagee and Mortgagor that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage is deemed inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

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

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

Section 9.8 Maturity Date. The maturity date of the Obligations is September 6, 2014.

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

Section 9.10 Adjustable Mortgage Loan Provision. The applicable interest rate under the Credit Agreement is a variable rate equal to, as the case may be, the (i) Eurodollar Rate, plus the Applicable Margin, or (ii) the Base Rate, plus the Applicable Margin (as such terms are defined in the Credit Agreement), all in accordance with and subject to the terms and conditions set forth in the Credit Agreement.

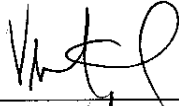
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IN WITNESS WHEREOF, Mortgagor has on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be duly EXECUTED AND DELIVERED by authority duly given.

MORTGAGOR:

BARNEY'S, INC.,
a New York corporation

By: 
Name: Vince Phelan
Title: CFO

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MORTGAGEE:

**WILMINGTON TRUST, NATIONAL
ASSOCIATION, as Administrative Agent**

By: 
Name: **Joshua G. James**
Title: **Assistant Vice President**

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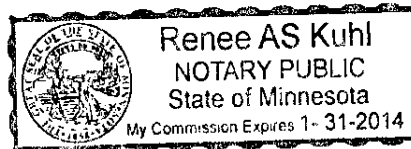
State of MINNESOTA)
) ss.
County of HENNEPIN)

On 8/29/12, before me, personally appeared Joshua G. James, 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 upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public

My Commission expires:
1-31-2014



Property of Cook County Clerk's Office

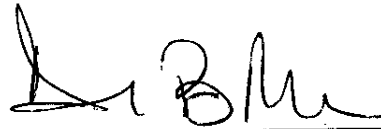
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State of New York)
) ss.
County of New York)

On September 18, 2012, before me, personally appeared Vince Phelan, 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 upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]



Notary Public

My Commission expires:

APRIL B. ABRAMS
Notary Public, State of New York
No. 01AB5030907
Qualified in Nassau County
Commission Expires July 25, 2014

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EXHIBIT A

DESCRIPTION OF THE LEASED PROPERTY

Address

Property Tax Index Number:

947 N. State, Chicago IL 60611

17-03-206-001-0000

946 N. Rush St., Chicago IL 60611

17-03-206-009-0000

940 N. Rush St, Chicago IL 60611

17-03-206-010-0000

[See Attached Page(s) For Legal Description]

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EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

LOTS 1, 2 AND 3 IN THE PARTITION OF THE NORTH 1/2 OF BLOCK 9 CANAL TRUSTEE'S SUBDIVISION OF THE SOUTH FRACTIONAL 1/4 OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 6 IN THE PARTITION OF THE NORTH 1/2 OF BLOCK 9 OF CANAL TRUSTEE'S SUBDIVISION OF THE SOUTH FRACTIONAL 1/4 OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Address	Property Tax Index Number:
947 N. State, Chicago IL 60611	17-03-206-001-0000
946 N. Rush St., Chicago IL 60611	17-03-206-009-0000
940 N. Rush St, Chicago IL 60611	17-03-206-010-0000

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EXHIBIT A-1

DESCRIPTION OF THE MORTGAGED LEASE

Lease dated as of January 22, 2007 by and between M Oak Rush LLC and L.I. Oak Rush, LLC (collectively, Landlord) and Barney's Inc., (together with its successors and assigns, Tenant) for premises located at Rush and Oak and State Streets, Chicago, Illinois, as amended by that certain First Amendment to Lease dated as of June 11, 2008, as further amended by that certain Second Amendment to Lease dated as of March 6, 2009, as further amended by that certain Third Amendment to Lease dated as of March 25, 2009, as supplemented by that certain Notice Letter dated March 12, 2009, from M Oak Rush LLC to Tenant regarding substantial completion of the Premises, and as further supplemented by that certain Warranty Work Letter dated April 14, 2010, from M Oak Rush LLC to Tenant regarding certain warranty work at the Premises, and a memorandum of lease with respect thereto has been recorded on 1-11-2008, in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 0801141072