



1411957086

Illinois Anti-Predatory Lending Database Program

Doc#: 1411957086 Fee: \$90.00
RHSP Fee:\$9.00 RPRF Fee: \$1.00
Karen A.Yarbrough
Cook County Recorder of Deeds
Date: 04/29/2014 02:27 PM Pg: 1 of 27



Doc#: Fee: \$18.00
Karen A.Yarbrough
Cook County Recorder of Deeds
Date: 04/29/2014 02:27 PM Pg: 0

Certificate of Exemption

40011499 (13/15) **GIT**

Mortgage being re-recorded to reflect parcels

42, 43, 44, 45, 46, 47, 48, 49, 50 and 51

Report Mortgage Fraud

800-532-8785

The property identified as: PIN: 32-25-408-047

Address:

Street: 2435 Apache Ave.

Street line 2:

City: Sauk Village

State: IL

ZIP Code: 60411

Lender: Capitalsource Bank

Borrower: AM CSB, LLC

Loan / Mortgage Amount: \$15,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: B93DF6E5-EB39-42DA-82CD-FC99E81689A0

Execution date: 03/04/2014

27
plus
9

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

Arent Fox LLP
1717 K St, NW
Washington, D.C. 20036
Attention: David Martin, Esq.

[SPACE ABOVE LINE FOR RECORDER'S USE ONLY]

**MORTGAGE, SECURITY AGREEMENT
AND FIXTURE FILING**

This Mortgage, Security Agreement and Fixture Filing (this "**Mortgage**") is executed as of the 4 day of March, 2014 by AM CSB, LLC, an Illinois limited liability company ("**Mortgagor**"), whose address for all purposes is 626 W. Randolph, Suite 1, Chicago, IL 60661 Attn: Stuart L. Miller to **CAPITALSOURCE BANK**, a California industrial bank, whose address for notice is 5404 Wisconsin Avenue, 2nd Floor, Chevy Chase, Maryland 20815, Attn: SFG Portfolio Manager, in its capacity as administrative agent, payment agent and collateral agent ("**Mortgagee**") for the Lenders (as defined below).

RECITALS

A. Mortgagee has agreed, subject to the terms and conditions of that certain Loan Agreement, of even date herewith, by and among Mortgagor, Mortgagee and the lenders party thereto (collectively, the "**Lenders**") (as amended, restated, extended, assumed and joined or otherwise modified from time to time, the "**Loan Agreement**"), to make a term loan (the "**Loan**") to Mortgagor. The terms and provisions of the Loan Agreement are hereby incorporated by reference in this Mortgage. All capitalized and undefined terms shall have the same meaning as set forth in the Loan Agreement.

B. Mortgagee wishes to secure all of the following (collectively, the "**Obligations**"), subject to the maximum indebtedness limitations set forth in Section 8.3 hereof : (a) (i) the payment of the Loan evidenced by the Note, in the original maximum principal amount of FIFTEEN MILLION AND NO/100 (\$15,000,000.00) made by the Mortgagor in favor of the Mortgagee of even date herewith, together with all interest thereon (as set forth in the Loan Documents), and prepayment premiums and late charges, if any (as set forth in the Loan Documents); (ii) all costs and expenses, repayment for expenditures and protective advances of the Mortgagee for which Borrower is responsible under this Mortgage, the Loan Agreement

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and/or other Loan Documents, including principal, interest, prepayment fees, Loan Expenses (as defined in Article 1), release fees, indemnity obligations, taxes, insurance, loan charges, custodial fees, reasonable attorneys' and paralegals' fees and expenses and other fees or expenses incurred by Mortgagee or advanced to or on behalf of Mortgagor by Mortgagee pursuant to any of the Loan Documents, and the prompt and complete payment and performance by Mortgagor of all covenants, obligations, indebtedness and liabilities pursuant to the Loan Agreement, any of the Loan Documents or otherwise; and (iii) all other amounts, if any, due or owing under this Mortgage, the Loan Agreement and/or other Loan Documents, including the payment of any additional indebtedness accruing to Mortgagee on account of any future advances; (b) the performance of each and every covenant, condition, and agreement contained in the Loan Documents; and (c) the payment of any and all other debts, claims, obligations (including, without limitation, the Obligations (as defined in the Loan Agreement)), demands, monies, liabilities and indebtedness of any kind or nature now or hereafter owing, arising, due or payable from Mortgagor to Mortgagee in connection with any future loan agreements, notes or other agreements among Mortgagor and Mortgagee, or by Mortgagor in favor of Mortgagee, and all other existing and future obligations of Mortgagor to Mortgagee and expressly indicating that such debts, claims, obligations, demands, monies, liabilities and indebtedness are secured hereby. Subject to acceleration or prepayment in full as set forth herein or in the Loan Documents, the Loan matures on March __, 2017, provided Mortgagor has the option, subject to satisfaction of the conditions set forth in Section 2.17 of the Loan Agreement, to extend the maturity date of the Loan to March __, 2018.

ARTICLE 1 DEFINITIONS

Section 1.1 **Definitions.** All terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement. As used herein, the following terms shall have the following meanings:

"IMFL": The Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as amended from time to time.

"Land": The real property described on of Exhibit A, together with any greater estate therein as hereafter may be acquired by Mortgagor.

"Loan Agreement": As defined in Recital A hereto.

"Loan Documents" means this Mortgage, the Loan Agreement, the Note or Notes, each Guaranty, the Environmental Indemnity, each Security Instrument, the Assignment of Rents, each Operating Account Agreement, the Assignment of Agreements, the Assignment of Management Agreement, the Assignment of Interest Rate Agreement, the Uniform Commercial Code financing statements, such assignments of management agreements, brokerage agreements, contracts and other rights as may be required or otherwise requested by Mortgagee, such estoppel certificates and subordination, non-disturbance and attornment agreements to which Mortgagor is a party regarding any existing Leases as may be required or otherwise requested by Mortgagee, all other documents to which Mortgagor is a party evidencing, securing, governing

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or otherwise pertaining to the Loan and the other Obligations, including but not limited to any Note executed by Mortgagor, any post-closing agreement by and between Mortgagor and Mortgagee, but excluding any agreement exclusively among Mortgagee and lenders, and including all amendments, restatements, modifications, renewals, substitutions and replacements of any of the foregoing.

“Loan Expenses” means all fees, costs and expenses of any nature due and payable by Mortgagor to Mortgagee pursuant to the terms of the Loan Agreement.

“Mortgaged Property”: (1) the Land, (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the **“Premises”**), (3) all fixtures, machinery, equipment, and appliances at any time attached to, or located in or on the Land in which Mortgagor has an interest, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Land, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (the **“Fixtures”**), (4) all Personalty, (5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Premises, and all amendments and modifications thereof (the **“Plans”**), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant 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 **“Leases”**), (8) all of the rents, revenues, income and proceeds of the Mortgaged Property and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (without derogation of Article 5 hereof), including, without limitation, damages received upon the occurrence of a default under any of the Leases or payments applicable to a termination of a Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from damage to any part of the Mortgaged Property, all of Mortgagor’s rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable bankruptcy or debtor relief law (all of the foregoing items described in this subparagraph (8) being referred to herein as **“Income”**), (9) all other agreements, such as construction contracts,

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architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Property Agreements**"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (14) all of Mortgagor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Premises, Fixtures or Personalty. 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.

"Obligations": As defined in Recital B hereto.

"Permitted Exceptions": has the meaning assigned to such term in the Loan Agreement.

"Personalty." means all "Accounts", "Cash proceeds", "Chattel paper", "Collateral", "Commercial tort claims", "Deposit accounts", "Documents", "Electronic chattel paper", "Equipment", "Fixtures", "General intangibles", "Goods", "Instruments", "Inventory", "Investment property", "Letter-of-credit rights", "Noncash proceeds", "Payment intangibles", "Proceeds", "Software", "Supporting Obligations", and "Tangible chattel paper", as defined in the Uniform Commercial Code, in which Mortgagor has any interest, whether currently owned or hereafter acquired, including but not limited to all such property relating to, generated from, arising out of or incidental to the ownership, development, use or operation of the Real Property (whether or not subsequently removed from the Real Property (other than that portion of the Mortgaged Property consisting of the Real Property)), including, without limitation, all of the following relating to, generated from, arising out of or incidental to the ownership, development, use or operation of such Real Property: (i) machinery and tools; (ii) rugs, carpets and other floor coverings; (iii) draperies and drapery rods and brackets, awnings, window shades, venetian blinds and curtains; (iv) lamps, chandeliers and other lighting fixtures; (v) office maintenance and other supplies; (vi) apparatus, appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment; (vii) potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, conduits, compressors, brackets, electrical signs, bulbs, bells, fuel, conveyors, cabinets, lockers, shelving, dishwashers, garbage disposals, washers and dryers, other customary single family home or 1-4 unit residential properties equipment; (viii) rights, royalties, Rents, security deposits, advance rentals, revenues, profits and benefits, credit card receipts collected from tenants, license, lease, sublease and concession fees and rentals, service charges, vending machine sales and any other items of revenue, receipts and/or income; (ix) Leases, lease guarantees, contracts, contract rights,

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franchise agreements, licenses, permits and certificates; (x) deposits, funds, money and deposit accounts; (xi) tenements, hereditaments and appurtenances; (xii) approvals and parcel maps (whether tentative or final), building permits and certificates of occupancy; (xiii) names under or by which the Mortgaged Property or any of the Improvements may at any time be operated or known and rights to carry on business under any such names or any variant thereof; (xiv) trademarks, other intellectual property and good will; (xv) management agreements, service contracts, supply contracts or other contracts or agreements; (xvi) warranties; (xvii) water stock; (xviii) shares of stock or other evidence of ownership of any part of the Mortgaged Property or Improvements that is owned by Mortgagor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing, maintaining or operating any part of the Mortgaged Property or Improvements; (xx) sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into respecting the sale to any purchasers of any part of the Mortgaged Property and other proceeds of the sale thereof; (xxi) damages, royalties and revenue of every kind, nature and description whatsoever that Mortgagor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Mortgaged Property; (xxii) deposits made with or other security given to utility companies by Mortgagor with respect to the Mortgaged Property and/or Improvements; (xxiii) advance payments of insurance premiums made by Mortgagor with respect to, and all claims or demands with respect to, insurance; (xxiv) negotiable certificates of deposit of Mortgagor in Mortgagee's possession and all accounts of Mortgagor maintained with Mortgagee and each deposit account of Mortgagor assigned or pledged to Mortgagee pursuant to any agreement; (xxv) insurance proceeds (including insurance proceeds for insurance not required under the terms of this Instrument); (xxvi) condemnation awards; (xxvii) causes of action, claims, compensation, awards and recoveries for any damage or injury to the Mortgaged Property and/or Improvements or for any loss or diminution in value of the Mortgaged Property and/or Improvements; (xxviii) books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof; (xxix) guaranties of and security for any of the foregoing; (xxx) all reserve, deposit and impound accounts including without limitation the Reserves (as defined in the Loan Agreement) and all Loan accounts established pursuant to the Loan Agreement either as reserves or accounts for the Loan; (xxxi) all substitutions, renewals, improvements, attachments, accessions, additions and replacements to any of the foregoing; and all "Proceeds" (as such term is defined in the Uniform Commercial Code), collections, insurance proceeds and products of any of the property listed in (i) through (xxxi) above, proceeds of any voluntary or involuntary disposition or claim respecting any part thereof (pursuant to judgment, condemnation award or otherwise) and all documents, instruments, general intangibles, goods, equipment, inventory, chattel paper, monies, accounts, deposit accounts and other personal property that may arise from the sale or disposition of any of the foregoing, all guaranties of and security for any of the foregoing, and all books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof, relating to any of the foregoing. Notwithstanding the foregoing to the contrary, Personal Property excludes any removable personal property owned by any occupant of such Real Property other than Mortgagor on the date in question.

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“UCC”: The Uniform Commercial Code of Illinois or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than Illinois, 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 and timely payment and performance of the Obligations, Mortgagor MORTGAGES, WARRANTS, GRANTS, CONVEYS, AND ASSIGNS to Mortgagee (subject, however, to the Permitted Exceptions), all estate, right, title and interest which Mortgagor now has or may hereafter acquire in, to, under or derived from any or all of the Mortgaged Property; HEREBY RELEASING AND WAIVING ALL RIGHTS UNDER AND BY VIRTUE OF THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ILLINOIS.

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 the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Exceptions. This Mortgage creates a valid, enforceable first priority lien and security interest 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 Loan Documents. If any lien or security interest other than the Permitted Exceptions is asserted against the Mortgaged Property, Mortgagor shall promptly, upon obtaining knowledge thereof, 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 Loan Agreement (including any requirement to provide a bond or other security satisfactory to Mortgagee).

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

Section 3.4 **Replacement of Fixtures and Personalty.** Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Premises, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, 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 for those in accordance with the Loan Documents and such as may be first approved in writing by Mortgagee; provided, however, Mortgagor shall not be required to replace worn or obsolete equipment if Mortgagor determines in its prudent business judgment that such equipment is no longer necessary to maintain the Mortgaged Property in working order.

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Section 3.5 **Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall maintain, and shall use its best efforts to cause to be maintained thereafter, all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements, and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Mortgagor shall comply with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 3.6 **Inspection.** Subject to the rights of owners and transient occupiers, Mortgagor shall permit Mortgagee, and its agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such environmental and engineering studies as Mortgagee may require, provided, that such inspections and studies shall not unreasonably interfere with the use and operation of the Mortgaged Property.

Section 3.7 **Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the Land. The covenants set forth in the Loan Agreement include, among other provisions: (a) the prohibition against the further sale, transfer or encumbering of any of the Mortgaged Property and against certain transfers of interests in Mortgagor or in entities owning interests in Mortgagor except as provided in the Loan Agreement, (b) the obligation to pay when due all Taxes on the Mortgaged Property or assessed against Mortgagee with respect to the Loan, (c) the right of Mortgagee to inspect the Mortgaged Property, (d) the obligation to keep the Mortgaged Property insured as Mortgagee may require as set forth in the Loan Agreement, and (e) the obligation to comply with all Legal Requirements, maintain the Mortgaged Property in good condition, and promptly repair any damage or casualty.

Section 3.8 **Condemnation Awards and Insurance Proceeds.**

(a) **Condemnation Awards.** Mortgagor assigns all awards and compensation 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 therefor, subject to the terms of the Loan Agreement.

(b) **Insurance Proceeds.** Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property in accordance with the terms of the Loan 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, subject to the terms of the Loan Agreement.

ARTICLE 4 **PROTECTIVE ADVANCES; DEFAULT AND FORECLOSURE**

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Section 4.1 **Default and Remedies.** The term "Event of Default" means (1) the occurrence of a Default or an Event of Default under the Loan Agreement and/or (ii) the issuance of any stay order, cease and desist order or similar judicial or nonjudicial sanction limiting or otherwise affecting the ownership or use of all or any portion of the Mortgaged Property and any such order or sanction shall have been outstanding for more than thirty (30) days from the date of its entry and shall not have been discharged in full or stayed by appeal, bond or otherwise and/or (iii) the failure of Mortgagor to timely and properly observe, keep or perform any covenant, agreement or condition required in this Mortgage for thirty (30) days following the occurrence of such failure; provided, however, that if such failure of performance cannot by its nature be cured with the exercise of commercially reasonable diligence within thirty (30) days and Mortgagor has commenced to cure such failure during the initial thirty (30) days following the occurrence of such failure and is diligently pursuing such cure, such cure period shall be extended for an additional one hundred fifty (150) days and no Event of Default shall exist hereunder unless Mortgagor fails to complete such cure within the extended cure period. If an Event of Default exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the maturity of any or all of the Obligations to be or become accelerated as provided in the Loan Agreement.

(b) **Enforcement of Assignment.** Prior or subsequent to taking possession of any portion of the Mortgaged Property or taking any action with respect to such possession, Mortgagee may: (1) collect and/or sue for the Income in Mortgagee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees and expenses, apply the net proceeds thereof to the Obligations in such manner and order as Mortgagee may elect and/or to the operation and management of the Mortgaged Property, including the payment of management, brokerage and reasonable attorney's fees and expenses; and (2) require Mortgagor to transfer all security deposits and records thereof to Mortgagee together with original counterparts of the Leases.

(c) **Entry on Mortgaged Property.** Enter the Mortgaged Property, or any portion thereof, and take exclusive possession thereof and of all books, records and accounts relating thereto; provided, that if Mortgagor remains in possession of any portion of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(d) **Operation of Mortgaged Property.** 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 Income and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7 herein,

(e) **Remedies Under UCC.** Exercise any or all of the rights and remedies available to a secured party under the UCC in such order and in such manner as Mortgagee, in its sole discretion, may determine (including, without limitation, requiring Mortgagor to assemble

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the Mortgaged Property that is personal property and make such Mortgaged Property available to Mortgagee at a reasonably convenient location); provided, however, that the expenses of retaking, holding, preparing for sale and the like as provided thereunder shall include reasonable attorneys' fees and other expenses of Mortgagee and shall constitute Obligations secured by this Mortgage. 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.

(f) **Foreclosure.** Foreclose the lien hereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the IMFL. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for appraisers' fees, reasonable attorneys' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

(g) **Receiver.** Make application to a court of competent jurisdiction for, and obtain 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 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 Income in accordance with the provisions of Section 4.7 herein.

(h) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action to foreclose this Mortgage, or for specific performance of any covenant contained herein or in the other Loan Documents).

Section 4.2 **Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in Mortgagee's sole discretion.

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Section 4.3 **Remedies Cumulative, Concurrent and Nonexclusive**. Mortgagee 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 Agreement and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (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 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 interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment and performance 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, Reinstatement, Notice and Marshaling 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 appraisal, valuation, stay of execution, exemption from civil process, right of redemption or reinstatement (including, without limitation, any rights of redemption and reinstatement pursuant to the IMFL) or extension of time for payment, (b) except as otherwise set forth in the Loan Agreement or any other Loan Document, all notices of any Event of Default or of Mortgagee's election to exercise or his actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any rights, whether legal or equitable, to a marshaling of assets or a sale in inverse order of alienation.

Section 4.6 **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 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.

Section 4.7 **Application of Proceeds**. The proceeds of any sale of, and the Income and other amounts generated by the holding, leasing, management, operation or other use of, the

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Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in accordance with the terms of the Loan Agreement.

Section 4.8 **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1 above shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of unlawful detainer in any court having jurisdiction over the Mortgaged Property.

Section 4.9 **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Default exists, Mortgagee shall have the right, but not the obligation, to cure such 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 from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as defined in Exhibit B), and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) 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 Income and Leases 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 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 4.11 **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, and any Protective Advance, shall have the benefit of all applicable provisions of the IMFL, shall be secured by this Mortgage and shall bear interest at the Default Rate.

Section 4.12 **Illinois Mortgage Foreclosure Law.** 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 IMFL and/or as otherwise permitted by

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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 IMFL, the provisions of the IMFL 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 IMFL. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon any Default hereunder which are more limited than the rights that would otherwise be vested in Mortgagee under IMFL in the absence of said provision, Mortgagee shall be vested with the rights granted in IMFL to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

ARTICLE 5

ASSIGNMENT OF INCOME AND LEASES

Section 5.1 **Assignment.** Mortgagor hereby irrevocably assigns to Mortgagee all Income and all of Mortgagor's rights in and under all Leases. Mortgagee shall have the right, power and privilege (but shall be under no duty) to demand possession of the Income, which demand shall to the fullest extent permitted by applicable law be sufficient action by Mortgagee to entitle Mortgagee to immediate and direct payment of the Income (including delivery to Mortgagee of Income collected for the period in which the demand occurs and for any subsequent period), for application as provided in the Loan Agreement, all without the necessity of any further action by Mortgagee, including, without limitation, any action to obtain possession of any portion of the Mortgaged Property. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Income is not contingent upon, and may be exercised without, possession of the Mortgaged Property. Notwithstanding the foregoing, Mortgagee confers upon Mortgagor a license ("**License**") to collect and retain the Income as it becomes due and payable and to exercise the rights of lessor under the Leases, until the occurrence of an Event of Default hereunder. Upon and during the continuance of an Event of Default, without notice to or consent of Mortgagor, Mortgagee shall have the right to terminate the License, and Mortgagee may collect and apply the Income without notice and without taking possession of the Mortgaged Property. Mortgagor hereby irrevocably authorizes the lessees to comply with any notice or demand by Mortgagee for the payment to Mortgagee of any Income, and the lessees shall have no duty to ascertain whether or not an Event of Default then exists hereunder, it being agreed that the lessee may conclusively rely upon the demand by Mortgagee for the payment of Income to Mortgagee. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Income to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, without any obligation to determine whether an Event of Default has in fact occurred and regardless of whether Mortgagee has taken possession of any portion of the Mortgaged Property, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payment to Mortgagee shall constitute payment to Mortgagor under the Leases and Mortgagee is hereby empowered to give, acquittance to any tenants for such payments to Mortgagee after an Event of Default. The assignment contained in this Section 5.1 shall become null and void upon the release of this Mortgage.

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Section 5.2 **No Merger of Estates.** So long as any part of the Obligations secured hereby 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 lessee or any third party by purchase or otherwise.

Section 5.3 **No Liability of Mortgagee Regarding Leases and Income.** Mortgagee's acceptance of this assignment shall not be deemed to constitute Mortgagee a "mortgagee in possession," nor obligate Mortgagee to appear in or defend any proceeding relating to any Lease or to the Mortgaged Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Mortgagor by any tenant and not as such delivered to and accepted by Mortgagee. Mortgagee shall not be liable for any injury or damage to Person or property in or about the Mortgaged Property, or for Mortgagee's failure to collect or to exercise diligence in collecting Income, but shall be accountable only for Income that it shall actually receive. Neither the assignment of Leases and Income nor enforcement of Mortgagee's rights regarding Leases or Income (including collection of Income) nor possession of the Mortgaged Property by Mortgagee nor Mortgagee's consent to or approval of any Lease (nor all of the same), shall render Mortgagee liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option. If Mortgagee seeks or obtains any judicial relief regarding Income or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Mortgagee neither has nor assumes any obligations as lessor or landlord with respect to any Lease.

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 with respect to the Personality, Fixtures, Leases, Income and Property Agreements. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Personality, Fixtures, Leases, Income, Property Agreements and all other Mortgaged Property which is personal property 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 Personality, Fixtures, Leases, Income and Property Agreements 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 execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such UCC Financing Statements and such further assurances as Mortgagee may, from time to time, consider necessary to create, perfect and preserve Mortgagee's security interest hereunder. Mortgagee is irrevocably authorized to file UCC Financing Statements naming the Mortgagor as debtor, to perfect the Mortgagee's security interest in the Collateral, in all jurisdictions in which the Mortgagee believes in its sole discretion that such filing is appropriate. If the Mortgagee believes that an "all-asset" collateral description, as contemplated by Section 9-504(2) of the UCC, is

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appropriate, the Mortgagee is irrevocably authorized to use such a collateral description, whether in one or more separate filings or as part of the collateral description in a filing that particularly describes the Collateral. The Mortgagee is irrevocably authorized to file such continuation statements and other similar documents as it determines, in its sole opinion, are appropriate to protect and perfect its rights. Mortgageor's state of formation is the State of Illinois.

Section 6.3 **Fixture Filing**. THIS MORTGAGE SHALL ALSO CONSTITUTE A "FIXTURE FILING" FOR PURPOSES OF THE UCC. FOR PURPOSES OF THIS FIXTURE FILING, MORTGAGOR IS THE DEBTOR AND MORTGAGEE IS THE SECURED PARTY AND INFORMATION CONCERNING THE SECURITY INTEREST HEREIN GRANTED MAY BE OBTAINED AT THE ADDRESSES OF DEBTOR (MORTGAGOR) AND SECURED PARTY (MORTGAGEE) AS SET FORTH IN THE FIRST PARAGRAPH OF THIS MORTGAGE. MORTGAGOR'S ORGANIZATIONAL NUMBER IS 04720997. THIS FIXTURE FILING COVERS GOODS OR ITEMS OF PERSONAL PROPERTY WHICH ARE OR ARE TO BECOME FIXTURES UPON THE PROPERTY. THE NAME OF THE RECORD OWNER OF THE PROPERTY ON WHICH SUCH FIXTURES ARE OR ARE TO BE LOCATED IS MORTGAGOR.

ARTICLE 7 INTENTIONALLY OMITTED

ARTICLE 8 MISCELLANEOUS

Section 8.1 **Notices**. All notices or other written communications hereunder shall be delivered in accordance with Section 7.1 of the Loan Agreement. Mortgageor requests that a copy of any notice of default and notice of sale hereunder be mailed to Mortgageor at the address set forth for Mortgageor in the Loan Agreement.

Section 8.2 **Covenants Running with the Land**. All Obligations contained in this Mortgage are intended by Mortgageor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgageor" 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 (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities 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 Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 8.3 **Maximum Indebtedness**. This Mortgage is given to secure a term loan but also secures future advances as defined and authorized under applicable Illinois statutes, including, without limitation, 735 ILCS 5/15-1207 and 735 ILCS 5/15-1302, and it shall secure not only presently existing indebtedness under the Loan Agreement and the other Loan Documents but also future advances that constitute Obligations (whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise) as are made within twenty years (or the maximum period permitted by applicable law, whichever is longer) from the date of

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this Mortgage, to the same extent and with the same priority as if such future advances were made on the date of the execution of this Mortgage and without regard as to whether or not there is any advance made at the time of execution of this Mortgage and without regard as to whether or not there is any indebtedness outstanding at the time any advance is made. This Mortgage secures all present and future Obligations; provided, however, notwithstanding anything in the Loan Documents to the contrary, the maximum principal amount which may be secured hereby is Thirty Million Dollars (\$30,000,000) plus interest thereon, and any disbursements made by Mortgagee for the payment of taxes, special assessments, or insurance on the Mortgaged Property, with interest on such disbursements; provided, however, that the foregoing limitation shall apply only to the maximum amount of the lien created by this Mortgage, and it shall not in any manner limit, affect or impair any grant of any other security interest or other right in favor of the Mortgagee under the provisions of the Loan Agreement or under any of the other Loan Documents at any time executed by Mortgagor. To the fullest extent permitted by applicable law, the lien of this Mortgage, as to all such sums so advanced, shall have priority over all subsequent liens and encumbrances, including statutory liens (excepting solely taxes and assessments levied on the Mortgaged Property).

Section 8.4 **Intentionally Omitted.**

Section 8.5 **Business Loan Recital/Statutory Exemption.** Without limiting the generality of anything contained herein, Mortgagor covenants and agrees that:

(a) all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor;

(b) the entire principal obligation secured hereby constitutes (A) a "business loan" as that term is used in, and for all purposes of the Illinois Interest Mt, Section 815 ILCS 205/4(I)(c), and (B) "a loan secured by a mortgage on real estate" within the purview and operation of Section 815 ILCS 205/4(1X1); and

(c) 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 ILCS 5/15-1219).

Section 8.6 **Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee 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 8.7 **No Waiver.** Any failure by Mortgagee 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 of such terms, provisions and conditions.

Section 8.8 **Subrogation.** To the extent proceeds of the Loan Agreement have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the

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Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

Section 8.9 **Loan Agreement**. If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern; provided that in the event of any inconsistency between the definition of Obligations in this Mortgage and/or Section 8.3, on the one hand, and the Loan Agreement, on the other hand, the definition of Obligations set forth in this Mortgage and the provisions of Section 8.3 shall govern.

Section 8.10 **Release or Reconveyance**. Upon payment and performance in full of the Obligations, Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage or reconvey the Mortgaged Property to Mortgagor.

Section 8.11 **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 appraisal, valuation, stay, marshaling 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 indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 8.12 **Obligations of Mortgagor, Joint and Several**. If more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such persons or entities hereunder shall be joint and several.

Section 8.13 **Governing Law**. This Mortgage shall be governed by the laws of the State of New York; provided, however, that the creation, perfection and priority of the liens and security interests created hereby and the enforcement of remedies hereunder shall be governed by the laws of the State of Illinois (except to the extent the law of the jurisdiction of the Mortgagor applies pursuant to the UCC).

Section 8.14 **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 8.15 **Counterparts**. This Mortgage may be executed and recorded in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 8.16 **Entire Agreement**. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor 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.

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Section 8.17 **Additional Waivers**. Mortgagor acknowledges that the obligations secured hereby include obligations by parties other than Mortgagor and Mortgagor does not constitute a guarantor because Mortgagor is fully responsible for the obligations secured by this Mortgage, subject to the limitations of liability expressly set forth herein (and Mortgagor hereby waives any claim to the contrary). In addition, and without limitation on the foregoing waiver or any other waivers contained in this Mortgage:

(a) **Obligation Absolute**. Mortgagor hereby unconditionally waives any defense to the enforcement of this Mortgage based on the characterization of Mortgagor as a guarantor and without limitation :

(1) The obligations of Mortgagor hereunder shall remain in full force and effect without regard to, and shall not be affected or impaired by the following, any of which may be taken without the consent of, or notice to, Mortgagor, nor shall any of the following give Mortgagor recourse or right of action against Mortgagee:

(i) Any express or implied amendment, modification, renewal, addition, supplement, extension (including extensions beyond the original term) or acceleration of or to any of the Loan Documents;

(ii) Any exercise or non-exercise by Mortgagee of any right or privilege under the Loan Documents;

(iii) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagor, or any guarantor (which term shall include any other party at any time directly or contingently liable for any of Mortgagor's obligations under the Loan Documents) or any affiliate of Mortgagor, or any action taken with respect to the Loan Documents by any trustee or receiver, or by any court, in any such proceeding, whether or not Mortgagor shall have had notice or knowledge of any of the foregoing;

(iv) Any release or discharge of any endorser or guarantor or of any other party at any time directly or contingently liable for the obligations secured by this Mortgage;

(v) Any subordination, compromise, release (by operation of law or otherwise), discharge, compound, collection, or liquidation of any or all of the Mortgaged Property or other collateral described in any of the Loan Documents or otherwise in any manner, or any substitution with respect thereto;

(vi) Any assignment or other transfer of any of the Loan Documents;

(vii) Any acceptance of partial performance of the obligations;

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(viii) Any transfer or consent to the transfer of the Mortgaged Property or any portion thereof or any other collateral described in the Loan Documents or otherwise; and

(ix) Any bid or purchase at any sale of the Mortgaged Property or any other collateral described in the Loan Documents or otherwise.

(b) Waivers. Mortgagor unconditionally waives any defense to the enforcement of this Mortgage, including:

(1) All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Mortgage other than notices contemplated by this Mortgage, the Loan Agreement, or any other Loan Document;

(2) Any right to require Mortgagee to proceed against any guarantor at any time or to proceed against or exhaust any security held by Mortgagee at any time or to pursue any other remedy whatsoever at any time;

(3) The defense of any statute of limitations affecting the liability of Mortgagor hereunder, the liability of any guarantor under the Loan Documents, or the enforcement hereof, to the extent permitted by law;

(4) Any defense arising by reason of any invalidity or unenforceability of (or any limitation of liability in) any of the Loan Documents or any disability of any guarantor or of any manner in which Mortgagee has exercised its rights and remedies under the Loan Documents, or by any cessation from any cause whatsoever of the liability of any guarantor;

(5) Without limitation on clause (4) above, any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Mortgagor or any principal of Mortgagor or any defect in the formation of Mortgagor or any principal of Mortgagor;

(6) Any defense based upon the application by Mortgagor of the proceeds of the Loan for purposes other than the purposes represented by Mortgagor to Mortgagee or intended or understood by Mortgagee or Mortgagor;

(7) Any defense based upon an election of remedies by Mortgagee, including any election to proceed by foreclosure of any security, whether real property or personal property security, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, or any election of remedies, including remedies relating to real property or personal property security, which destroys or otherwise impairs the subrogation rights of Mortgagor or the rights of Mortgagor to proceed against or any guarantor for reimbursement, or both;

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(8) Any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of a principal;

(9) Any defense based upon Mortgagee's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute;

(10) Any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code;

(11) Any duty of Mortgagee to advise Mortgagor of any information known to Mortgagee regarding the financial condition of any guarantor and all other circumstances affecting any guarantor's ability to perform its obligations to Mortgagee, it being agreed that Mortgagor assumes the responsibility for being and keeping informed regarding such condition or any such circumstances; and

(12) Any right of subrogation, reimbursement, exoneration, contribution or indemnity, or any right to enforce any remedy which Mortgagee now has or may hereafter have against any guarantor or any benefit of, or any right to participate in, any security now or hereafter held by Mortgagee.

(c) Subrogation. Mortgagor understands that the exercise by Mortgagee of certain rights and remedies may affect or eliminate Mortgagor's right of subrogation against any guarantor and that Mortgagor may therefore incur partially or totally nonreimbursable liability hereunder. Nevertheless, Mortgagor hereby authorizes and empowers Mortgagee, its successors, endorsees and assigns, to exercise in its or their sole discretion, any rights and remedies, or any combination thereof, which may then be available, it being the purpose and intent of Mortgagor that the obligations hereunder shall be absolute, continuing, independent and unconditional under any and all circumstances. Notwithstanding any other provision of this Mortgage to the contrary, Mortgagor hereby waives and releases any claim or other rights which Mortgagor may now have or hereafter acquire against any guarantor of all or any of the obligations of Mortgagor hereunder that arise from the existence or performance of Mortgagor's obligations under this Mortgage or any of the other Loan Documents, including any right of subrogation, reimbursement, exoneration, contribution or indemnification, any right to participate in any claim or remedy of Mortgagee against any guarantor or any collateral which Mortgagee now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including, without limitation, the right to take or receive from any guarantor, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights. In addition, Mortgagor waives all rights and defenses that Mortgagor may have because the debtor's debt is secured by real property. This means, among other things:

(1) The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.

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(2) If the creditor forecloses on any real property collateral pledged by the debtor: (A) the amount of the debt may be reduced only by the price for which the collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) the creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor. This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property.

(d) Additional Waivers. Mortgagor shall not be released or discharged, either in whole or in part, by Mortgagee's failure or delay to (i) perfect or continue the perfection of any lien or security interest in any collateral which secures the obligations of Mortgagor or any guarantor, or (ii) protect the property covered by such lien or security interest.

(e) Independent Obligations. The obligation of Mortgagor hereunder is independent of the obligation of any guarantor and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Mortgagor whether or not Mortgagor is the alter ego of any guarantor and whether or not any guarantor is joined therein or a separate action or actions are brought against any guarantor. Mortgagee's rights hereunder shall not be exhausted until all of the obligations secured by this Mortgage have been fully paid and performed.

(f) Bankruptcy No Discharge; Repayments. Mortgagor understands and acknowledges that by virtue of this Mortgage, it has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to itself or any guarantor. As an example and not in any way of limitation, a subsequent modification of the obligations secured by this Mortgage in any reorganization case concerning any guarantor shall not affect the obligation of Mortgagor to pay and perform the obligation secured by this Mortgage in accordance with its original terms. In any bankruptcy or other proceeding in which the filing of claims is required by law, Mortgagor shall file all claims which Mortgagor may have against any guarantor relating to any indebtedness of any guarantor to Mortgagor and shall assign to Mortgagee all rights of Mortgagor thereunder. If Mortgagor does not file any such claim, Mortgagee, as attorney-in-fact for Mortgagor, is hereby authorized to do so in the name of Mortgagor or, in Mortgagee's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of Mortgagee's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Mortgagee or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Mortgagee the amount payable on such claim and, to the full extent necessary for that purpose, Mortgagor hereby assigns to Mortgagee all of Mortgagor's rights to any such payments or distributions; provided, however, Mortgagor's obligations hereunder shall not be satisfied except to the extent that Mortgagee receives cash by reason of any such payment or distribution. If Mortgagee receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Mortgage. Notwithstanding anything to the contrary herein, the liability of Mortgagor hereunder shall be reinstated and revised, and the rights of Mortgagee shall

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continue, with respect to any amount at any time paid by or on behalf of any guarantor on account of the Note or the other Loan Documents which Mortgagee shall restore or return by reason of the bankruptcy, insolvency or reorganization of any guarantor or for any other reasons, all as though such amount had not been paid.

Section 8.18 **Indemnification**. Mortgagor shall be subject to the indemnification provisions set forth in Section 7.3 of the Loan Agreement.

Section 8.19 **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, the Loan Agreement 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 the 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 Property or any other collateral for the Obligations. Mortgagor 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, the Loan Agreement 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, without limitation, interest and 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 added to the total outstanding balance of the indebtedness secured by this Mortgage. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

Section 8.20. **Expenses; Receiver, Additional Waivers**.

(a) All reasonable expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510(b) and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

(b) In addition to any provision of this Mortgage authorizing the Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Foreclosure Act, to be placed in possession of the Property or, at its request, to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties, as provided for in Sections 5/15-1701 and 5/15-1703 of the Foreclosure Act.

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(c) MORTGAGOR SHALL NOT AND WILL NOT APPLY FOR OR AVAIL ITSELF OF ANY APPRAISEMENT, VALUATION, STAY, EXTENSION OR EXEMPTION LAWS, OR ANY SO-CALLED "MORATORIUM LAWS," NOW EXISTING OR HEREAFTER ENACTED IN ORDER TO PREVENT OR HINDER THE ENFORCEMENT OR FORECLOSURE OF THIS MORTGAGE, BUT HEREBY WAIVES THE BENEFIT OF SUCH LAWS. MORTGAGOR FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT WAIVES ANY AND ALL RIGHT TO HAVE THE PROPERTY AND ESTATES COMPRISING THE PROPERTY MARSHALLED UPON ANY FORECLOSURE OF THE LIEN HEREOF AND AGREES THAT ANY COURT HAVING JURISDICTION TO FORECLOSE SUCH LIEN MAY ORDER THE PROPERTY SOLD AS AN ENTIRETY. IN THE EVENT OF ANY SALE MADE UNDER OR BY VIRTUE OF THIS MORTGAGE, THE WHOLE OF THE MORTGAGED PROPERTY MAY BE SOLD IN ONE PARCEL AS AN ENTIRETY OR IN SEPARATE LOTS OR PARCELS AT THE SAME OR DIFFERENT TIMES, ALL AS MORTGAGEE MAY DETERMINE. MORTGAGEE SHALL HAVE THE RIGHT TO BECOME THE PURCHASER AT ANY SALE MADE UNDER OR BY VIRTUE OF THIS MORTGAGE AND MORTGAGEE SHALL BE ENTITLED TO CREDIT BID THE INDEBTEDNESS OR ANY PORTION THEREOF IN MORTGAGEE'S SOLE DISCRETION.

(d) THE MORTGAGOR, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE FORECLOSURE ACT ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15 1602) AND REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS MORTGAGE (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15 1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT.

[Signatures follow]

UNOFFICIAL COPY

EXECUTED as of the date first above written.

AM CSB, LLC,
an Illinois limited liability company

By: AM CSB MEMBER, LLC
an Illinois limited liability company,
its sole member

By: [Signature]
Stuart Miller
Its Authorized Signatory

STATE OF IL)
COUNTY OF COOK))
SS

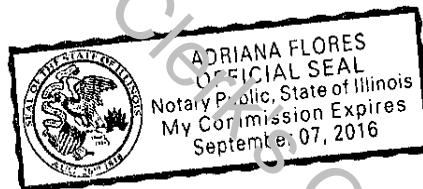
Subscribed and sworn to before me this 4th day of March, 2014, by Stuart C. Miller, Authorized Signer of AM CSB, LLC, an Illinois limited liability company, on behalf of said company.

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires:

9/7/16



[SIGNATURE PAGE TO MORTGAGE]

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Exhibit A

PARCEL 42:

LOT 12 IN INDIAN HILL SUBDIVISION UNIT 6, BEING A RESUBDIVISION OF LOTS 879 TO 911, AND LOTS 920 TO 985, IN INDIAN HILL SUBDIVISION UNIT 5, BEING A SUBDIVISION IN THE EAST 1/2 OF SECTION 25, TOWNSHIP 35 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

FOR INFORMATION PURPOSES ONLY WE NOTE:

60411

COMMONLY KNOWN AS: 2435 APACHE AVE., SAUK VILLAGE, IL; PIN: 32-25-408-047.

PARCEL 43:

LOT 2 IN ZACHARY RESUBDIVISION OF LOTS 19, 20, 21 AND 22 IN BLOCK 10 IN JACOBS RESUBDIVISION OF BLOCKS 1 TO 16 INCLUSIVE AND 21 TO 28 INCLUSIVE IN B. F. JACOBS EVERGREEN PARK SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 2, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

FOR INFORMATION PURPOSES ONLY WE NOTE:

60805

COMMONLY KNOWN AS: 9246 S. ST. LOUIS, EVERGREEN PARK, IL; PIN: 24-02-409-051.

PARCEL 44:

LOT 11 IN BLOCK 57 IN HOFFMAN ESTATES NO. 4, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 5, 1957 AS DOCUMENT 16870207 IN COOK COUNTY, ILLINOIS.

FOR INFORMATION PURPOSES ONLY WE NOTE:

60169

COMMONLY KNOWN AS: 10 W. THACKER ST., HOFFMAN ESTATES, IL; PIN: 07-15-323-021.

PARCEL 45:

LOT 10 (EXCEPT THE WEST 50 FEET THEREOF) AND THE WEST 50 FEET OF LOT 11 IN BLOCK 1 IN MACKLER HIGHLANDS, A SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

FOR INFORMATION PURPOSES ONLY WE NOTE:

COMMONLY KNOWN AS: 251 W. 10TH ST. CHICAGO HEIGHTS, IL; PIN: 32-17-307-063.

UNOFFICIAL COPY**PARCEL 46:**

LOT 14 (EXCEPT THE SOUTH 132 THEREOF) IN MIDLOTHIAN HIGHLANDS, A SUBDIVISION OF THE EAST 693 FEET OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 36 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF FILED MARCH 15, 1921 AS LR 128910, IN COOK COUNTY, ILLINOIS.

FOR INFORMATION PURPOSES ONLY WE NOTE:

COMMONLY KNOWN AS: 3623 147TH PL., MIDLOTHIAN, IL; *60445*
PIN: 28-11-307-027.

PARCEL 47:

LOT 22 IN SWANS-ASCROFT AND LYON'S ADDITION TO OAK LAWN GARDENS, BEING A SUBDIVISION OF THE EAST 1/2 OF THE EAST 1/2 OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

FOR INFORMATION PURPOSES ONLY WE NOTE:

COMMONLY KNOWN AS: 9246 S. 50TH AVE., OAK LAWN, IL; *60453*
PIN: 24-04-424-010.

PARCEL 48:

LOT 90 (EXCEPTING THEREFROM THE NORTHERLY 51 FEET THEREOF) IN MOUREAU'S CREST VIEW ADDITION TO BARTLETT, A SUBDIVISION IN THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

FOR INFORMATION PURPOSES ONLY WE NOTE:

COMMONLY KNOWN AS: 210 E. MORSE AVE., BARTLETT, IL; PIN: 06-35-103-016 *60103*

PARCEL 49:

LOT 645 IN EIGHTH ADDITION TO GLENWOOD GARDENS, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 3 AND PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 3, ALL IN TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

FOR INFORMATION PURPOSES ONLY WE NOTE:

COMMONLY KNOWN AS: 113 OAK LN., GLENWOOD, IL; PIN: 32-03-322-027. *60425*

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PARCEL 50:

LOT 164 IN LAKE LYNWOOD UNIT 5, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF SECTION 7, TOWNSHIP 35 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS, OCTOBER 30, 1974 AS DOCUMENT LR 2781172, IN COOK COUNTY, ILLINOIS.

FOR INFORMATION PURPOSES ONLY WE NOTE:

COMMONLY KNOWN AS: 2616 198TH ST., LYNWOOD, IL; PIN: 33-07-104-052.

60411

PARCEL 51:

LOT 3836 IN ELK GROVE VILLAGE SECTION 1 EAST, BEING A SUBDIVISION IN THE WEST 1/2 OF SECTION 27, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 15, 1963 AS DOCUMENT LR 2086010, IN COOK COUNTY, ILLINOIS.

FOR INFORMATION PURPOSES ONLY WE NOTE:

COMMONLY KNOWN AS: 138 SHADYWOOD LN., ELK GROVE VILLAGE, IL; PIN: 08-27-107-009.

60007

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