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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1425218065 Fee: \$92.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/09/2014 01:21 PM Pg: 1 of 28

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 17-07-311-008-0000

Address: <sup>w.</sup>  
Street: 20 56 WALNUT

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60612

Lender: VAF SUB-CDE XXVI, LLC

Borrower: 2056 WALNUT, L.L.C.

Loan / Mortgage Amount: \$1,000,000.00

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.

**Box 400-CTCC**

Certificate number: 5F3FC215-7EDF-4883-8955-0CCD25261211

Execution date: 09/08/2014

852 968

JYOK

CTI

104

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This instrument was prepared by  
and should be mailed to:

Jones Day  
77 West Wacker  
Chicago, IL 60601  
Attention: Sameer Patel, Esq.

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

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

by

2056 WALNUT, L.L.C., an Illinois limited liability company,

to and for the benefit of

VAF SUB-CDE XXVI, LLC, an Illinois limited liability company

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The lien created by this mortgage on the property described herein is junior and subordinate to the lien on such property created by any mortgage, deed of trust or similar instrument now or hereafter granted to MB Financial Bank, N.A., and its successors and assigns, in such property, to the extent provided in that certain Subordination Agreement, dated as of September 8, 2014, among MB Financial Bank, N.A., VAF Sub-CDE XXVI, LLC and Mortgagee, as amended from time to time.

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Mortgage") is made as of September 8, 2014 (the "Effective Date"), by 2056 WALNUT, L.L.C., an Illinois limited liability company ("Mortgagor"), to and for the benefit of VAF SUB-CDE XXVI, LLC, an Illinois limited liability company ("Mortgagee").

### RECITALS

A. Pursuant to the terms and conditions of that certain Credit Agreement, dated as of the Effective Date (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement") by and between Mortgagor and Mortgagee, Mortgagee has agreed to make one loan to Borrower in the aggregate original principal amount of \$1,000,000.00 (the "Loan").

B. The Loan shall be evidenced by that certain QLICI Loan Note in the original principal amount of ONE MILLION AND NO/100 DOLLARS (U.S. \$1,000,000.00) (as the same may be amended, extended, modified, supplemented, restated, refinanced, substituted or renewed, the "Loan Note"), executed as of the Effective Date, made by Mortgagor payable to Mortgagee in the aggregate principal amount of the Loan and due in accordance with the terms and conditions of the Note (defined below), the Credit Agreement, and the other Loan Documents (as defined in the Credit Agreement).

C. A condition precedent to Mortgagee's extension of the Loan to Mortgagor is the execution and delivery by Mortgagor of this Mortgage.

D. The Loan Note shall mature on the earlier of (i) September 30, 2020, or (ii) the date on which the unpaid principal balance of the Loan Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Mortgagee of any right or remedy under any of the Loan Documents.

E. All capitalized terms not defined herein shall have the respective meanings set forth in the Credit Agreement.

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

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

THE REAL ESTATE located at 2056 W. Walnut, Chicago, Illinois 60612 and legally described on Exhibit A attached hereto and made a part hereof (the "Real Estate");

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

TOGETHER WITH all easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

TOGETHER WITH all rents, revenues, issues, profits, proceeds, income, royalties (including without limitation all oil and gas royalties, and interests and rights thereof), "accounts," including "health-care-insurance receivables," escrows, letter-of-credit rights (each as defined in the UCC (defined below)), security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by Mortgagor thereon, to be applied against the Indebtedness (defined below); *provided, however*, that Mortgagor, so long as no Event of Default (defined below) has occurred and is continuing, may collect rent as provided hereunder;

TOGETHER WITH all interest of Mortgagor in any oral or written leases, subleases, licenses, concessions, residency agreements, occupancy agreements and other agreements for the use or occupancy made or agreed to by, any Person and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to all or any part of the Property, or any possessory interest therein, whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "Leases"), together with all rents, issues, security, and profits and any other payments by any and all Persons under the Leases in addition to rent (collectively, the "Rents"), subject, however, to the conditional permission given to Mortgagor hereunder to collect the rentals under any such Leases;

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

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from time to time, the "UCC")), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee, as a secured party, and Mortgagor, as debtor, all in accordance with the UCC;

TOGETHER WITH all of Mortgagor's interests in "general intangibles" including "payment intangibles" and "software" (each as defined in the UCC) now owned or hereafter acquired and related to the Premises, including, without limitation, all of Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Mortgagor is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to Mortgagor thereunder; (iii) all intellectual property related to the Premises; and (iv) all choses in action and causes of action relating to the Premises;

TOGETHER WITH all of Mortgagor's accounts now owned or hereafter created or acquired as relate to the Premises, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor); (v) "securities", "investment property," "financial assets," and "securities entitlements" (each as defined in the UCC); and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any Person with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Premises; and

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

TO HAVE AND TO HOLD the Premises, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Event of Default.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, reimbursement obligations, fees, expenses and other indebtedness evidenced by or owing under the Note, this Mortgage or any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Mortgagor and Steve Gorelik (the "Guarantor") or any other obligor to or benefiting Mortgagee which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement to Mortgagee of any and all sums incurred, expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the other Loan Documents, with interest thereon as provided herein or therein (collectively, the "Indebtedness").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

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1. Title. Mortgagor represents, warrants and covenants that (a) Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those Liens as defined in and as set forth under Section 6.2 of the Credit Agreement (incorporated herein by reference and made a part hereof) (collectively, the "Permitted Exceptions"); and (b) Mortgagor has legal power and authority to mortgage, convey, and hypothecate the Premises.
2. Maintenance, Repair, Restoration, Prior Liens, Parking. Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, Mortgagor will:
  - (a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose, unless insurance proceeds are not made available to Mortgagor in accordance with Section 4;
  - (b) keep the Premises in good condition and repair, without waste (other than ameliorating waste), and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien, except for the Permitted Exceptions (subject to Mortgagor's right to contest liens as permitted by the terms of Section 5.3 of the Credit Agreement);
  - (c) pay when due the Indebtedness in accordance with the terms of the Note and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Mortgagor under the Note, this Mortgage and the other Loan Documents;
  - (d) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;
  - (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof (subject to Mortgagor's right to contest any alleged violation of the same as permitted by the terms of Section 24);
  - (f) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any Governmental Authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage (subject to Mortgagor's right to contest any alleged violation of the same as permitted by the terms of Section 24);
  - (g) make no material alterations in the Premises which would diminish the value of the Premises or demolish any portion of the Premises, except for Obsolete Collateral as permitted by Section 11, without Mortgagee's prior written consent (such consent in Mortgagee's sole and absolute discretion);
  - (h) suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Mortgagee's prior written consent (such consent in Mortgagee's sole and absolute discretion);
  - (i) pay when due all operating costs of the Premises;
  - (j) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Mortgagee's prior written consent (such consent in Mortgagee's sole and absolute discretion);



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(k) provide and thereafter maintain adequate parking areas within the Premises as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; and

(l) cause the Premises at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations (subject to Mortgagor's right to contest any alleged violation of the same as permitted by the terms of Section 24).

3. Taxes and Other Liens. Mortgagor shall pay, or shall cause to be paid, when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever, except for income taxes or franchise taxes or any taxes imposed based on the revenue or income of Mortgagee (all herein generally called "Taxes") in accordance with Section 5.3 of the Credit Agreement (which is incorporated herein by reference and made a part hereof). Mortgagor shall, upon written request by Mortgagee, furnish to Mortgagee duplicate receipts for payment of any Taxes within 10 calendar days after Mortgagee's request. In addition to any other debt or obligation secured hereby, this Mortgage shall also secure unpaid balances of advances heretofore and hereafter made with respect to the Premises, for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Premises.

4. Insurance; Casualty or Condemnation. Section 5.7 of the Credit Agreement is incorporated herein by reference and made a part hereof.

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

6. Assignment of Leases and Rents. In order to further secure payment of the Indebtedness and the observance, performance and discharge of the obligations secured hereby Mortgagor hereby absolutely and irrevocably assigns and transfers to Mortgagee, all of Mortgagor's right, title and interest in and to the Leases and the Rents, subject only to the Permitted Exceptions. Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact, with the right, at Mortgagee's option at any time during which an Event of Default exists and remains uncured, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in Mortgagor's or Mortgagee's name, for all Rents. Notwithstanding the foregoing assignment of Leases and Rents, so long as no Event of Default has occurred and is continuing, Mortgagor shall have a license (such license to be deemed revoked upon the occurrence of an Event of Default) to collect, receive, enforce payment of, and use, all Rents, provided that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder. This assignment shall not be deemed or construed to constitute Mortgagee as a mortgagee in possession nor obligate Mortgagee to take any action or to incur expenses or perform or discharge any obligation, duty or liability. Exercise of any rights under this Section 6 and the application of the Rents to the Indebtedness or the obligations secured hereby shall not cure or waive any Event of Default.

7. Effect of Extensions of Time and Other Changes. If with the consent of the Mortgagor or as otherwise may be provided for in the Loan Documents, the payment of the Indebtedness or any part

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thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, any Person now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagee, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such Persons being expressly reserved by Mortgagee, notwithstanding such extension, variation, release or change.

8. Effect of Changes in Laws Regarding Taxation. If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (b) the imposition upon Mortgagee of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness or the holders thereof, then Mortgagor, upon demand by Mortgagee, shall pay such Taxes or charges, or reimburse Mortgagee therefor; *provided, however*, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee it is or may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may declare all of the Indebtedness to be immediately due and payable.
9. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee. If an Event of Default has occurred and is continuing, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees and expenses, and any other monies advanced by Mortgagee in regard to any tax referred to in Section 5 or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Note). In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees and expenses, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Mortgagee's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Section 9 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional Indebtedness evidenced by the Note and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of



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whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

10. Security Agreement. Mortgagor and Mortgagee agree that this Mortgage shall constitute a "Security Agreement" within the meaning of the UCC with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the UCC) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "supporting obligations" (as defined in the UCC) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 10 shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (being the "debtor" as that term is used in the UCC) is and will be the true and lawful owner of the Collateral and has rights in and the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other Person, and the Permitted Exceptions.

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

(c) The Collateral will be kept at the Real Estate and, except for Obsolete Collateral (defined below) and except as permitted by the Loan Documents, will not be removed therefrom without the prior written consent of Mortgagee (being the "secured party" as that term is used in the UCC). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

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

(e) No Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto and except as may be included in the Permitted Exceptions; and Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable. Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement

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or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the Effective Date.

(f) Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the UCC, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the UCC); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the UCC. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least 10 calendar days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least 10 calendar days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Mortgagee so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Section 10, unless the context otherwise requires, shall have the meanings and be construed as provided in the UCC.

(h) This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the UCC with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in Schedule A attached hereto. This Mortgage is to be filed for recording with the Recorder of Deeds or other applicable real property records of the county or counties where the Premises are located.

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

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- (j) Mortgagor represents and warrants that:
- (i) Mortgagor is the record owner of the Premises;
  - (ii) Mortgagor's chief executive office is located in the State of Illinois;
  - (iii) Mortgagor's state of formation is the State of Illinois;
  - (iv) Mortgagor's organizational identification number is 36-4304169; and
  - (v) Mortgagor's exact legal name is as set forth in the introductory paragraph of this Mortgage.

- (k) Mortgagor agrees that:

(i) Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;

(ii) Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) Until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its company name without giving the Mortgagee at least 30 calendar days' prior written notice in each instance.

## 11. Restrictions on Transfer.

(a) Mortgagor, without the prior written consent of Mortgagee, such consent in Mortgagee's sole and absolute discretion, shall not effect, suffer or permit any Prohibited Transfer (defined below). Except for Permitted Encumbrances, any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

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

(ii) Any shares of capital stock of a corporate Mortgagor, a corporation which is a general partner or managing member/manager in a partnership or limited liability company Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this Section 11(a)(ii) (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System);

(iii) All or any part of the managing member or manager interest, as the case may be, in a limited liability company Mortgagor or a limited liability company which is a general partner of a partnership Mortgagor;

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(iv) All or any part of the general partner or joint venture interest, as the case may be, of a partnership Mortgagor or a partnership which is a manager of a limited liability company Mortgagor or the conversion of a partnership Mortgagor to a corporation or limited liability company; or

(v) If there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable, which directly or indirectly controls the day to day operations and management of Mortgagor and/or owns a controlling interest in Mortgagor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; *provided, however*, that the foregoing provisions of this Section 11 shall not apply (A) to Liens securing the Indebtedness, (B) to the Permitted Exceptions, (C) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, or (D) any Leases specifically approved by Mortgagee in the Credit Agreement.

(b) In determining whether or not to make the applicable Loans, Mortgagee evaluated the background and experience of Mortgagor and its members and officers in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the applicable Note. Mortgagor and its members and officers are well experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this Section 11. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolios at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary junior financing placed upon the Premises (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (iii) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (iv) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (A) protecting Mortgagee's security, both of repayment and of value of the Premises; (B) giving Mortgagee the full benefit of its bargains and contracts with Mortgagor; (C) allowing Mortgagee to raise the interest rate and collect assumption fees; and (D) keeping the Premise free of subordinate financing liens, Mortgagor agrees that if this Section 11 is deemed a restraint on alienation, that it is a reasonable one.

12. Events of Default; Acceleration. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Mortgagor fails to pay (i) any installment of principal or interest payable pursuant to the Note when due, or (ii) any other amount payable to Mortgagee under the Note, this Mortgage or any of the other Loan Documents when any such payment is due in accordance with the terms hereof or thereof, and in each case, such failure continues after the giving of any required notice under the applicable Loan Document and the expiration of any applicable cure period thereunder;



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(b) the existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage;

(c) the occurrence of a Prohibited Transfer;

(d) Mortgagor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under this Mortgage; *provided, however*, that if such failure by its nature and the terms of this Mortgage can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by this Mortgage or any of the other Loan Documents, and the value of the Premises are not impaired, threatened or jeopardized, then Mortgagor shall have a period ("Cure Period") of 30 calendar days after Mortgagor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, *provided*, that for any default which cannot in the reasonable determination of Mortgagee be cured within 30 calendar days, it shall not be an Event of Default provided that Mortgagor commences a cure within 30 calendar days of notice and continues to diligently prosecute a cure to the satisfaction of Mortgagee; *provided, however*, that in no event shall Mortgagor have more than 60 calendar days from the date of notice to cure a default hereunder; or

(e) the occurrence of any "Event of Default" (as defined in the Credit Agreement), except a default under Section 8.1(f) of the Credit Agreement.

Upon the occurrence and continuance of an Event of Default, Mortgagee may, in its sole and absolute discretion, (i) declare the whole of the Indebtedness to be immediately due and payable without further notice to Mortgagor, with interest thereon accruing from the date of such Event of Default until paid at the Default Rate and/or (ii) exercise any one or more rights and remedies Mortgagee has under this Mortgage or any of the other Loan Documents.

### 13. Foreclosure; Expense of Litigation.

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy (i) provided in this Mortgage or any of the other Loan Documents or (ii) now or hereinafter available under the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 *et seq.*, Illinois Compiled Statutes) (as may be amended or restated from time to time, the "Act") or in equity. 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 in its sole and absolute discretion to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' costs, expenses and fees, appraisers' costs, expenses and fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs, expenses and fees (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 Section 13 and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this



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Mortgage, including the reasonable costs, expenses and fees of any attorney(s) employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

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

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

16. Mortgagee's Right of Possession in Case of an Event of Default. Upon the occurrence and continuance of an Event of Default, (a) Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Premises; (b) Mortgagee, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents; and (c) Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, upon the occurrence and continuance of an Event of Default, Mortgagee shall have full power to:

- (a) cancel or terminate any Lease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- (b) elect to disaffirm any Lease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing Leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such

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leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all Persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, if any, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

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

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

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

17. Application of Income Received by Mortgagee. Upon the occurrence and continuance of an Event of Default, Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

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

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

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

18. Compliance with Illinois Mortgage Foreclosure Law.

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

(b) If any provision of this Mortgage shall grant to Mortgagee (including Mortgagees acting as a mortgagee in possession) or a receiver appointed pursuant to the provisions of Section 15 any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, or otherwise permitted under applicable law or in equity, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Sections 9, 13 or 25, shall be added to the Indebtedness and/or by the judgment of foreclosure.

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19. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.
20. Mortgagee's Right of Inspection. Mortgagee and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times upon not less than 24 hours prior notice to Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.
21. Release Upon Payment and Discharge of Mortgagor's Obligations. Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Mortgagee in connection with the execution of such release.
22. Notices. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted under this Mortgage shall be in writing and shall be validly given if (a) sent by a nationally-recognized courier that obtains receipts, (b) delivered personally by a courier that obtains receipts, (c) mailed by United States certified mail (with return receipt requested and postage prepaid), (d) sent by facsimile (with a copy of such facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), or (e) sent by email (with a copy of such email and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), addressed to the applicable Person at the address set forth on Schedule A to this Mortgage. Each notice shall be effective upon being so sent, delivered, mailed, or transmitted, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed receipt. Further, any notice actually received shall be deemed receipt. Any Person may periodically change its address for notice (including different or additional addresses for copies) by giving the other party at least 10 calendar days' prior notice in accordance with the foregoing provisions.
23. Waiver of Rights. Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:
- (a) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every Person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other Persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of the Act, or other applicable law or replacement statutes;

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

(c) If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section 23 (including the waiver of reinstatement and redemption rights) were made at the express direction of Mortgagor's beneficiaries and the Persons having the power of direction over Mortgagor, and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other Persons mentioned above.

24. Contests. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any alleged violation of any (a) requirements of applicable law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof, (b) material permits, licenses, registrations and other authorizations with or granted by any Governmental Authorities with respect to the Premises and the use thereof, (c) federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations with respect to the Premises and the use thereof, or (d) any Taxes (all herein called "Contested Matters"), and no Contested Matter shall constitute an Event of Default hereunder, if, but only if:

(i) Mortgagor shall forthwith give notice of any Contested Matter to Mortgagee at the time the same shall be asserted,

(ii) Prior to the date on which payment of any amount is due with respect to any Contested Matter, Mortgagor shall either pay under protest or deposit with Mortgagee the full amount due with respect to such Contested Matter (herein called "Contested Amount"), together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; *provided*, in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee in its sole and absolute discretion;

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

(iv) Mortgagor shall pay such Contested Amounts together with interest and penalties thereon (A) if and to the extent that any such Contested Matter shall be determined adverse to Mortgagor (subject to Mortgagor's right to appeal in accordance with the other provisions of this Section 24), or (B) forthwith upon demand by Mortgagee if, in the reasonable opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; *provided*, if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Amounts and interest and penalties thereon and such other sums as may be necessary in the reasonable judgment of Mortgagee to obtain the release and discharge of any Contested Liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and, *provided further*, that Mortgagee may in such case use and apply



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monies deposited as provided in subsection (ii) of this Section 24 and may demand payment upon any bond or title indemnity furnished as aforesaid.

25. Expenses Relating to the Note and Mortgage.

(a) Mortgagor will pay all costs, expenses, and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loans Documents, including without limitation, Mortgagee's reasonable attorneys' costs, expenses, and fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording costs, expenses, and fees, all other costs, expenses, and fees incident to the execution and acknowledgment of this Mortgage and all Taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage.

(b) Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

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

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

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

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

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

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

(c) All expenses, charges, costs, and fees, including without limitation Mortgagee's reasonable attorneys' fees and expenses, described in this Section 25 shall be so much additional Indebtedness, shall bear interest beginning 5 calendar days after the date of demand until paid at the Default Rate, and shall be paid, together with said interest, by Mortgagor within 5 calendar days after the date of demand.

26. Statement of Indebtedness. Mortgagor, within 7 calendar days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt



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secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

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

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

29. Indemnification of Covered Persons. Section 5.12 of the Credit Agreement is incorporated herein by reference and made a part hereof.

30. Subordination of Property Manager's Lien. Any property management agreement for the Premises entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Premises shall be subject and subordinate to the lien of this Mortgage and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the Recorder of Deeds or other applicable real property records of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof, if any, does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

31. Compliance with Environmental Laws. Pursuant to the Environmental Indemnity, Mortgagor and Guarantor have fully indemnified Mortgagee for certain environmental matters concerning the Premises, as more particularly described therein. All of the terms, conditions, obligations, and agreements set forth in the Environmental Indemnity are incorporated herein by reference and made a part hereof and this Mortgage shall secure the obligations of Mortgagor and Guarantor thereunder. Mortgagor agrees to abide by all of the terms, conditions, obligations, and agreements set forth in the Environmental Indemnity.

32. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.

(a) THE VALIDITY OF THIS MORTGAGE, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF MORTGAGOR AND MORTGAGEE WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

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(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND MORTGAGEE (BY ACCEPTING THIS MORTGAGE) HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE CITY OF CHICAGO, STATE OF ILLINOIS. MORTGAGOR AND MORTGAGEE (BY ACCEPTING THIS MORTGAGE) HEREBY WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 32(b).

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND MORTGAGEE (BY ACCEPTING THIS MORTGAGE) HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS MORTGAGE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND MORTGAGEE (BY ACCEPTING THIS MORTGAGE) HEREBY (i) CERTIFY THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF MORTGAGOR OR MORTGAGEE HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGE THAT MORTGAGOR HAS BEEN INDUCED TO ENTER INTO, AND MORTGAGEE HAS BEEN INDUCED TO ACCEPT, THIS MORTGAGE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 32(c).

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND MORTGAGEE (BY ACCEPTING THIS MORTGAGE) HEREBY AGREE THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY ACTION OR PROCEEDING MAY BE SERVED UPON EACH PERSON BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF SUCH PERSON, WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST MORTGAGEE OR MORTGAGEE'S AFFILIATES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS MORTGAGE OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(f) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR HEREBY WAIVES THE BENEFITS OF ALL VALUATION, APPRAISEMENT, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS, NOW IN FORCE OR WHICH MAY HEREAFTER BECOME LAWS.

33. Enforcement Costs. Notwithstanding anything to the contrary herein, in the event of any action at law or in equity to enforce the provisions of this Mortgage or to secure relief or damages for the breach of

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this Mortgage, the prevailing party shall be entitled to payment or reimbursement, as applicable, of its costs, expenses and fees (including without limitation reasonable attorneys', accountants', experts', and consultants' costs, expenses and fees, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party.

34. [Intentionally Omitted.]

35. [Intentionally Omitted.]

36. Single Asset Entity. Mortgagor shall not hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than the Premises, or become a shareholder of or a member or partner in any entity which acquires any property other than the Premises, until such time as the Indebtedness has been fully repaid.

37. Patriot Act Representations and Covenants. Section 4.11 of the Credit Agreement is incorporated herein by reference and made a part hereof.

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

39. Miscellaneous.

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

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

(c) Municipal Requirements. Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee, as security for the Indebtedness, any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any

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interest therein to fulfill any governmental or municipal requirement. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section 39(c) shall be void.

(d) Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Option of Mortgagee to Subordinate. At the sole and absolute discretion of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any Lease upon the execution by Mortgagee of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds or other applicable real property records in and for the county wherein the Premises are situated.

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

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

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

(i) No Merger. Mortgagor and Mortgagee intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Premises, and if Mortgagee acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) Section References. References in this Agreement to Sections are intended to refer to Sections of this Mortgage, unless otherwise specifically stated.

(k) Complete Agreement. This Mortgage (including the Recitals, Schedule A, and Exhibit A hereto, all of which are incorporated herein by reference and made a part hereof) constitutes the complete agreement between the Mortgagor and Mortgagee with respect to the subject matter hereof and this Mortgage may not be modified, altered or amended except by an agreement in writing signed by both Mortgagor and Mortgagee.

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[REMAINDER OF PAGE BLANK; SIGNATURE & NOTARY PAGES TO FOLLOW.]

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing on the Effective Date.

WITNESSES:

  
\_\_\_\_\_  
Print Name: Sean Tracy

  
\_\_\_\_\_  
Print Name: Ana Salazar

MORTGAGOR:

2056 WALNUT, L.L.C., an Illinois limited liability company

By:   
\_\_\_\_\_  
Name: Steve Gueh  
Title: President

PROPERTY OF COOK COUNTY CLERK'S OFFICE

# UNOFFICIAL COPY

[NOTARY PAGE TO MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING]

STATE OF ILLINOIS )  
COUNTY OF Cook )

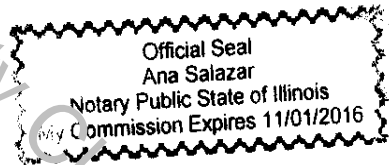
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Steve Gorklik, the President (Title of Officer) of QC Walnut LLC, a LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said LLC, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 03 day of September 2014.

Ana Salazar  
NOTARY PUBLIC

My Commission Expires: 11/01/2016

(SEAL)



**UNOFFICIAL COPY****SCHEDULE A****Notice Addresses of Parties**

- (1) If to Mortgagor: 2056 Walnut, L.L.C.  
2056 West Walnut Street  
Chicago, Illinois 60612  
Attn: Sean Story  
Facsimile: 312-455-1954  
Email: sean@chicagolandbeverage.com
- And copies to: The addresses set forth under (3) below.
- (2) If to Mortgagee: VAF SUB-CDE XXVI, LLC  
c/o The Illinois Valued Advisor Fund, LLC  
205 North Michigan Avenue, 28<sup>th</sup> Floor  
Chicago, Illinois 60601  
Attention: Michael Fitzpatrick  
Email: michael.fitzpatrick@bakertilly.com
- With a copy to: Polsinelli PC  
100 S. Fourth Street, Suite 1000  
St. Louis, Missouri 63102  
Attention: Jared Minkoff, Esq.  
Facsimile: 314-231-1776  
Email: jminkoff@polsinelli.com
- And copies to: The addresses set forth under (3) below.
- (3) Copy Parties: MB Financial Community Development Corporation  
800 W. Madison Street  
Chicago, IL 60607  
Attention: Lisa Herrera  
Email: lherrera@mbfinancial.com
- With a copy to: MB Financial Bank, N.A.  
800 W. Madison Street  
Chicago, IL 60607  
Attention: Kenneth Holub  
Facsimile: 312-279-0175  
Email: kholub@mbfinancial.com

***[CONTINUED ON FOLLOWING PAGE]***

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SCHEDULE A (CONT'D)

Notice Addresses of Parties

And a copy to: Jones Day  
77 West Wacker  
Chicago, IL 60601  
Attention: Sameer Patel, Esq.  
Facsimile: 312-782-8585  
Email: spatel@jonesday.com

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A large, dense, black scribble consisting of multiple overlapping, curved lines, obscuring the text of the Cook County Clerk's Office watermark.

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## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES

PARCEL 1:

LOTS 23, 24, 25, 26, AND 27 IN THOMAS STENSON'S SUBDIVISION OF BLOCK 44 OF CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 21 AND 22 IN THOMAS STENSON'S SUBDIVISION OF BLOCK 44 OF CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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Items: 17-07-311-008 to 013

PA: 2056 W. Walnut

Chicago, IL 60612