

Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Doc#: 1429019112 Fee: \$106.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 10/17/2014 12:59 PM Pg: 1 of 35

Report Mortgage Fraud  
800-532-8785

The property identified as: **PIN:** 17-09-111-009-0000

**Address:**

**Street:** 600 W. Grand Ave., 600 W. Kinzie, 448-452 N.

**Street line 2:** Jefferson St. & 604-614 W. Hubbard St.

**City:** Chicago

**State:** IL

**ZIP Code:** 60654

**Lender:** Everbank

**Borrower:** Blommer Chocolate Company, a Delaware corporation

**Loan / Mortgage Amount:** \$9,900,000.00

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:** 61961145-0C4A-4630-98C2-2208D8E266F2

**Execution date:** 10/13/2014

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This Instrument was prepared by:

George C. Dunlap, Jr., Esq.  
Gardere Wynne Sewell, LLP  
3000 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201

Recording requested by,  
and after recording, return to:

EverBank  
Attn: Risk Department  
6464 185th Avenue NE, Suite 200  
Redmond, Washington 98052

Loan Number: 6326682-001

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

THIS MORTGAGE (herein "Instrument"), made as of October <sup>15<sup>th</sup></sup> 2014, by the mortgagor, BLOMMER CHOCOLATE COMPANY, a Delaware corporation, whose address is 600 West Kinzie Street, Chicago, Illinois 60610 (herein "Borrower"), in favor of the Mortgagee, EVERBANK, whose address is 6464 185th Avenue NE, Suite 200, Redmond, Washington 98052, Attention: Risk Department (herein "Lender" or "Mortgagee"),

**WITNESSETH:**

WHEREAS, Borrower is justly indebted to Mortgagee in the principal sum of \$9,900,000.00, pursuant to a certain Promissory Note of even date herewith, more particularly described below,

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NOW, THEREFORE, in consideration of the indebtedness herein recited, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower irrevocably gives, grants, sells, conveys, warrants, assigns, pledges, sets over, and mortgages unto Mortgagee all of Borrower's right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in the real property located in Cook County, Illinois, which is described on Exhibit A attached hereto and incorporated herein including all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property (collectively "Premises");

TOGETHER with all of Borrower's estate, right, title and interest, now owned or hereafter acquired, in, under and to:

(a) all buildings, structures, improvements, parking areas, landscaping, equipment, fixtures and articles of property now or hereafter erected on, attached to, or used or adapted for use in the operation of the Premises; including but without being limited to, all heating, air conditioning and incinerating apparatus and equipment; all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, water heaters, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, freezers, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, floor coverings, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, draperies, screens, storm sash, awnings, signs, and shrubbery and plants, and including also all interest of any owner of the Premises in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this clause (a) shall be deemed part of the realty covered by this instrument and not severable wholly or in part without material injury to the freehold of the Premises (all of the foregoing together with replacements and additions thereto are referred to herein as "Improvements"); and

(b) all compensation, awards, damages, rights of action and proceeds, including interest thereon and/or the proceeds of any policies of insurance therefor, arising out of or relating to (i) a taking or damaging of the Premises or Improvements thereon by reason of any public or private improvement, condemnation proceeding (including change of grade), sale or transfer in lieu of condemnation, or fire, earthquake or other casualty, or (ii) any injury to or decrease in the value of the Premises or the Improvements for any reason whatsoever;

(c) return premiums or other payments upon any insurance any time provided with respect to the Premises, Improvements, and other collateral described herein for the benefit of or naming Mortgagee, and refunds or rebates of taxes or assessments on the Premises;

(d) all written and oral leases and rental agreements (including extensions, renewals and subleases; all of the foregoing being referred to collectively herein as the "Leases") now or hereafter affecting the Premises, including, without limitation, all rents, issues, income, profits and other revenues and income therefrom and from the renting, leasing or bailment of Improvements ("Rents"), all guaranties of tenants' performance under the Leases (including but not limited to rights under any letter of credit given as security for such tenant's obligations), and all rights and claims of any kind that Borrower may have against any tenant under the Leases or in connection with the termination or rejection of the Leases in a bankruptcy or insolvency proceeding;

(e) plans, specifications, contracts and agreements relating to the design or construction of the Improvements; Borrower's rights under any payment, performance, or other bond in connection with the design or construction of the Improvements; all landscaping and construction materials, supplies, and equipment used or to be used or consumed in connection with construction of the Improvements, whether stored on the Premises or at some other location; and contracts, agreements, and purchase orders with contractors, subcontractors, suppliers, and materialmen incidental to the design or construction of the Improvements;

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(f) all contracts, rights, claims or causes of action pertaining to or affecting the Premises or the Improvements, all options or contracts to acquire other property for use in connection with operation or development of the Premises or Improvements, management contracts, service or supply contracts, permits, licenses, franchises and certificates, and all commitments or agreements, now or hereafter in existence, intended by the obligor thereof to provide Borrower with proceeds to satisfy the loan evidenced hereby or improve the Premises or Improvements, and the right to receive all proceeds due under such commitments or agreements including refundable deposits and fees;

(g) all books, records, surveys, reports and other documents related to the Premises, the Improvements, the Leases, or other items of collateral described herein; and

(h) all additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein, including but not limited to lease and real-estate proceeds and other amounts relating to the use, disposition, or sale of the collateral described herein which proceeds or other amounts are characterized as general intangibles.

All of the foregoing described collateral is exclusive of (i) any furniture, furnishings or trade fixtures owned and supplied by tenants of the Premises, (ii) any equipment (regardless of whether or not attached to the Premises), trade fixtures or other personal property used by Borrower in connection with cocoa processing or chocolate manufacturing processing or otherwise used by Borrower to operate its business at the Premises, and (iii) any products or proceeds of the items described in (i) and (ii). The Premises, the Improvements, the Lease; and all of the rest of the foregoing property are herein referred to as the "Property."

TO HAVE AND TO HOLD the Property and all parts, rights, members and appurtenances thereof to the use, benefit and behoof of Mortgagee and its successors and assigns in fee simple forever.

TO SECURE TO Mortgagee (a) the repayment of the indebtedness evidenced by Borrower's Promissory Note dated of even date herewith in the principal sum of NINE MILLION NINE HUNDRED THOUSAND AND/NO 100 DOLLARS (\$9,900,000.00), with interest thereon as set forth therein, and having a maturity date of November 1, 2029, and all renewals, extensions and modifications thereof (herein "Note"); (b) the repayment of any future advances, with interest thereon, made by Mortgagee to Borrower pursuant to Section 28 hereof (herein "Future Advances"); (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument or to fulfill any of Borrower's obligations hereunder or under the other Loan Documents (as defined below); (d) the performance of the covenants and agreements of Borrower contained herein or in the other Loan Documents; and (e) the repayment of all sums now or hereafter owing to Mortgagee by Borrower pursuant to any instrument which recites that it is secured hereby. The indebtedness and obligations described in clauses (a)-(e) above are collectively referred to herein as the "Indebtedness." The Note, this Instrument, and all other documents evidencing, securing or guaranteeing the Indebtedness (except the Environmental Indemnity Agreement Regarding Hazardous Substances ("Indemnity")), as the same may be modified or amended from time to time, are referred to herein as the "Loan Documents." The terms of the Note secured hereby may provide that the interest rate or payment terms or balance due may be indexed, adjusted, renewed, or renegotiated from time to time, and this Instrument shall continue to secure the Note notwithstanding any such indexing, adjustment, renewal or renegotiation.

PROVIDED, ALWAYS, that if Borrower shall pay unto Mortgagee the Indebtedness and if Borrower shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every of the stipulations, agreements, conditions and covenants of the Note and this Instrument, then this Instrument and all assignments contained herein and liens created hereby shall cease and be null and void; otherwise to remain in full force and effect.

Borrower represents and warrants that Borrower has good, marketable and insurable title to, and has the right to mortgage an indefeasible fee simple estate in, the Premises, Improvements,

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Rents, and Leases, and the right to convey the other Property, that the Property is unencumbered except as disclosed in writing to and approved by Mortgagee prior to the date hereof, and that Borrower will warrant and forever defend the title to the Property against all claims and demands, subject only to the exceptions approved by Mortgagee in Mortgagee's final title insurance policy ("Permitted Exceptions"). This Instrument is subject and subordinate to the lien and provisions of that certain Commercial Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated August 14, 2003, executed by Borrower and recorded against the Property on August 20, 2003 as Document No. 0323219069 of the Official Records of Cook County, Illinois (the "First Mortgage"), but only to the extent the First Mortgage encumbers the Property. The First Mortgage secures a promissory note dated August 13, 2003 in the original principal amount of \$17,900,000.00 (the "First Note"). The First Note, the First Mortgage and all other documents which, by their terms, secure Borrower's obligations with respect to the loan evidenced by the First Note, are collectively called the "First Loan Documents." Mortgagee is the holder and owner of the First Loan Documents.

Borrower represents, warrants, covenants and agrees for the benefit of Mortgagee as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the Indebtedness, any prepayment and other charges provided in the Loan Documents and all other sums secured by this Instrument.

2. FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES. Except as is hereinafter provided with respect to the impounding of such payments by Mortgagee following the occurrence of an Event of Default, Borrower shall pay or cause to be paid when due, prior to delinquency, all annual real estate taxes, insurance premiums, assessments, water and sewer rates, ground rents and other charges (herein "Impositions") payable with respect to the Property. Upon the occurrence of an Event of Default (hereinafter defined), and at Mortgagee's sole option at any time thereafter, Borrower shall pay in addition to each monthly payment on the Note, one-twelfth of the annual Impositions (as estimated by Mortgagee in its sole discretion), to be held by Mortgagee without interest to Borrower, for the payment of such Impositions (such payments being referred to herein as "Impounds"). Notwithstanding the foregoing, if the Event of Default which causes Mortgagee to require monthly payment of the Impounds pursuant to this Section 2 does not arise under either Section 25(a) or 25(b) of this Instrument, then in the event Borrower subsequently cures such Event of Default to the satisfaction of Mortgagee, Mortgagee shall not thereafter require the monthly payment of the Impounds in accordance with this Section 2 unless and until any subsequent Event of Default occurs.

Annually during the term of this Instrument, if Mortgagee shall have required Impounds following an Event of Default, Mortgagee shall compare the Impounds collected to the Impositions paid or to be paid. If the amount of such Impounds held by Mortgagee at such time shall exceed the amount deemed necessary by Mortgagee to provide for the payment of Impositions as they fall due, if no Event of Default shall have occurred and be continuing, such excess shall be at Borrower's option, either repaid to Borrower or credited to Borrower on the next monthly installment or installments of Impounds due. If at any time the amount of the Impounds held by Mortgagee shall be less than the amount deemed necessary by Mortgagee to pay Impositions as they fall due, Borrower shall pay to Mortgagee any amount necessary to make up the deficiency within thirty (30) days after notice from Mortgagee to Borrower requesting payment thereof. If an Event of Default shall have occurred and be continuing, Mortgagee may apply, in any amount and in any order as Mortgagee shall determine in Mortgagee's sole discretion, any Impounds held by Mortgagee at the time of application (i) to pay Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Mortgagee shall refund to Borrower any Impounds then held by Mortgagee.

If requested by Mortgagee, Borrower shall promptly furnish to Mortgagee all notices of Impositions which become due, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Mortgagee receipts evidencing such payments.



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3. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, each complete installment payment received by Mortgagee from Borrower under the Note or this Instrument shall be applied by Mortgagee first in payment of amounts payable to Mortgagee by Borrower under Section 2 hereof, then to interest payable on the Note, then to principal of the Note, and then to interest and principal on any Future Advances in such order as Mortgagee, at Mortgagee's sole discretion, shall determine. If an Event of Default shall have occurred and be continuing, Mortgagee may apply, in any amount and in any order as Mortgagee shall determine in Mortgagee's sole discretion, any payments received by Mortgagee under the Note or this Instrument. Any partial payment received by Mortgagee shall, at Mortgagee's option, be held in a non-interest bearing account until Mortgagee receives funds sufficient to equal a complete installment payment.

4. CHARGES, LIENS. Borrower shall promptly discharge or bond off any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Mortgagee's prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property. If any lien other than this Instrument and the First Mortgage is filed against the Property without Mortgagee's prior written permission and without the consent of Borrower, Borrower shall, within thirty (30) days after receiving notice of the filing of such lien, cause such lien to be released of record or bonded off and deliver evidence of such release or bonding to Mortgagee. Borrower may contest any such lien by appropriate proceedings in good faith, timely filed, provided that enforcement of the lien is stayed pending such contest. Mortgagee may require that Borrower post security for payment of such lien.

5. INSURANCE. Borrower shall obtain and maintain the following types of insurance upon and relating to the Property:

(a) "Special Form" property and fire insurance (with extended coverage endorsement including malicious mischief and vandalism) in an amount not less than the full replacement value of the Property (with a deductible not to exceed \$10,000), naming Mortgagee as mortgagee under the policy and as loss payee under a Mortgagee's loss payable endorsement and including agreed amount, inflation guard, replacement cost and waiver of subrogation endorsements;

(b) Commercial general liability insurance in an amount not less than \$2,000,000 per occurrence and on an occurrence basis, insuring against personal injury, death and property damage and naming Mortgagee as additional insured;

(c) Business interruption insurance or rent-loss insurance, as applicable, covering loss of rental or other income (including all expenses payable by tenants) for up to twelve (12) months;

(d) Flood hazard insurance with respect to the Property with a deductible not to exceed \$10,000 and coverage in amounts not less than the maximum limit of coverage then available with respect to the Property or the amount of the Indebtedness, whichever is less, if the Property is located in an area designated by the Federal Emergency Management Act ("FEMA") as an area having special flood hazards. If the Property is hereafter designated or identified as an area having special flood hazards by FEMA, the Department of Housing and Urban Development or such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to any national or state program of flood insurance, Borrower shall provide such flood hazard insurance within 45 days following written notice from Mortgagee to Borrower; and

(e) Such other types of insurance or endorsements to existing insurance as may be required from time to time by Mortgagee in accordance with its standard commercial lending practices for similar properties and transactions.

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Upon the request of Mortgagee, Borrower shall increase the coverages under any of the insurance policies required to be maintained hereunder or otherwise modify such policies in accordance with Mortgagee's standard commercial lending practices for similar properties and transactions. All of the insurance policies required hereunder shall be issued by corporate insurers licensed to do business in the state in which the Property is located and having a Best's Rating-Financial Size Rating of A:VIII or better as determined and published by A.M. Best Company, and shall be in form acceptable to Mortgagee. Certificates of all insurance required to be maintained hereunder shall be delivered to Mortgagee (which may include the requirement of an Acond 28 "Evidence of Property Insurance" form as to property insurance) prior to or contemporaneously with Borrower's execution of this Instrument. All such certificates shall be in form acceptable to Mortgagee and shall require the insurance company to give to Mortgagee at least thirty (30) days prior written notice before canceling the policy for any reason or materially amending it. If Mortgagee shall so request in writing, upon reasonable notice, Borrower shall furnish to Mortgagee a copy of any policy required to be carried hereunder. Certificates evidencing all renewal and substitute policies of insurance shall be delivered to Mortgagee at least fifteen (15) days before termination of the policies being renewed or substituted. If any loss shall occur at any time while an Event of Default shall have occurred and shall be continuing hereunder, Mortgagee shall be entitled to the benefit of all insurance policies held or maintained by Borrower with respect to the Property, to the same extent as if same had been made payable to Mortgagee, and upon foreclosure hereunder, Mortgagee shall become the owner thereof. Mortgagee shall have the right, but not the obligation, to make premium payments, at Borrower's expense, to prevent any cancellation, endorsement, alteration or reissuance of any policy of insurance maintained by Borrower, and such payments shall be accepted by the insurer to prevent same. Without limiting the foregoing, if Borrower fails to procure and maintain any insurance required under this Instrument, Mortgagee may (but shall not be obligated to) procure and maintain such insurance, at Borrower's expense, in the amounts provided above or in such lesser amounts as Mortgagee may deem appropriate, in order to protect Mortgagee's interest in the Property. Such insurance purchased by Mortgagee may, but need not, protect Borrower's interest in the Property. Such insurance purchased by Mortgagee may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence acceptable to Mortgagee that Borrower has obtained and paid for such insurance as required under this Instrument. If Mortgagee procures and maintains such insurance, Borrower shall be responsible for the costs of such insurance, including interest as described in Section 8 below and any other charges that Mortgagee may impose in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. All such costs, interest and charges shall become immediately due and payable by Borrower and shall be secured by this Instrument. Such costs may be more than the cost of insurance Borrower may be able to obtain on its own. Mortgagee shall have the right, in its sole and absolute discretion, upon written notice, to require Borrower furnish to Mortgagee a copy of any insurance policy required to be carried hereunder (including endorsements), and Borrower shall furnish the requested policy or policies and all applicable endorsements within thirty (30) days of such request.

If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or destruction of the Property (such event being called a "Loss"), Borrower will give prompt written notice thereof to Mortgagee. If no Event of Default has occurred hereunder and is continuing, Mortgagee shall apply all such insurance proceeds to the restoration, replacement and rebuilding of the damaged portion of the Property, and such restoration, replacement and rebuilding shall be accomplished, upon satisfaction of each and all of the following conditions: (i) except as provided in (ii) below, Mortgagee shall be satisfied that by the expenditure of such insurance proceeds the Property will be fully restored within a reasonable period of time to its value immediately preceding the loss or damage, free and clear of all liens, except the lien of this Instrument, the Permitted Exceptions and such other liens as are specifically approved by Mortgagee in writing under this Instrument; (ii) in the event such proceeds shall be insufficient to restore or rebuild the Property, Borrower shall deposit promptly with Mortgagee funds which, together with the insurance proceeds, shall be sufficient in Mortgagee's reasonable judgment to restore and rebuild the Property; (iii) Borrower shall make reasonable efforts to obtain a waiver of the right of subrogation from any insurer under such policies of insurance who, at that time, claims that no liability exists as to Borrower or the then owner or the assured under such policies; (iv) if an Event of Default has occurred which is continuing, the excess of

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such insurance proceeds above the amount necessary to complete such restoration and compensate Borrower for all other insured losses shall be applied on account of the Indebtedness (first to interest, then to expenses reimbursable to Mortgagee and then to principal amounts falling due under the Note without Prepayment Fee (as defined in the Note)), but if no Event of Default has occurred which is continuing such excess shall be disbursed to Borrower; (v) Mortgagee reviews and approves in writing the plans and specifications for the restoration work and Mortgagee receives written evidence satisfactory to Mortgagee that the same have been approved by all governmental authorities having jurisdiction; (vi) Borrower shall have furnished to Mortgagee, for Mortgagee's approval, a detailed budget and cost breakdown for said restoration work signed by Borrower and describing the nature and type of expenses and amounts thereof estimated by Borrower for said restoration work including, but not limited to, the cost of material and supplies, architect and designer fees, general contractor's fees, and the anticipated monthly disbursement schedule, and Mortgagee shall have given to Borrower written approval of such budget and cost breakdown (if Borrower determines at any time that its actual expenses differ or will differ from its estimated budget, it will so advise Mortgagee promptly); (vii) Borrower has delivered to Mortgagee evidence satisfactory to Mortgagee that all Leases existing at the time of the Loss will remain in full force and effect subject only to abatement of rent in accordance with the terms of the Leases until completion of such repair and restoration; and (viii) in Mortgagee's reasonable judgment, such restoration work can be completed at least six (6) months prior to the maturity of the Note.

In the event any of such conditions are not or cannot be satisfied, then all of the insurance proceeds payable with respect to such Loss will be applied to the payment of the Indebtedness in such order as Mortgagee may elect.

Under no circumstances shall Mortgagee become obligated to take any action to restore the Property; all proceeds released or applied by Mortgagee to the restoration of the Property pursuant to the provisions of this Section 5 shall be released and/or applied to the cost of restoration (including within the term "restoration" any repair, reconstruction or alteration) as such restoration progresses, in amounts which shall equal ninety percent (90%) of the amount's from time to time certified by an architect approved by Mortgagee to have been incurred in such restoration of any and all of the Property (i.e., 90% of the total amount expended by the contractor for the project under a contract approved by Mortgagee and billed by the contractor to Borrower) and performed by a contractor reasonably satisfactory to Mortgagee and who shall furnish such corporate surety bond, if any, as may be reasonably required by Mortgagee in accordance with the plans and specifications therefor approved by Mortgagee and the remaining ten percent (10%) upon completion of such restoration and delivery to Mortgagee of evidence reasonably satisfactory to Mortgagee that no mechanics' lien exists with respect to the work of such restoration; that the restoration work has been completed and fully paid for in accordance with plans and specifications for said work approved by Mortgagee; and that all Leases existing at the time the Loss occurred are in full force and effect with all tenants in possession and paying full Lease rental; and that all governmental approvals required for the completion of said restoration work and occupancy of the Property have been obtained and the same are in form and substance satisfactory to Mortgagee.

If within a reasonable period of time after the occurrence of any Loss, Borrower shall not have submitted to Mortgagee and received Mortgagee's approval of plans and specifications for the repair, restoration or rebuilding of such Loss or shall not have obtained approval of such plans and specifications from all governmental authorities whose approval is required, or if, after such plans and specifications are approved by Mortgagee and by all such governmental authorities, Borrower shall fail to commence promptly such repair, restoration or rebuilding, or if thereafter Borrower fails to carry out diligently such repair, restoration or rebuilding or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with such work, or if any other condition of this Section 5 is not satisfied within a reasonable period of time after the occurrence of any such Loss, then Mortgagee may, in addition to all other rights herein set forth, at Mortgagee's option, (A) declare that an Event of Default has occurred and/or apply all of the insurance proceeds payable with respect to such Loss to the payment of the Indebtedness in such order as Mortgagee may elect, and/or (B) Mortgagee, or any lawfully appointed receiver of the Property may at their respective options, perform or cause to be performed such repair, restoration or rebuilding, and may take such other steps as they deem advisable to carry out such repair, restoration or rebuilding, and may enter upon the Property for any of the



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foregoing purposes, and Borrower hereby waives, for itself and all others holding under it, any claim against Mortgagee and such receiver (other than a claim based upon the alleged gross negligence or intentional misconduct of Mortgagee or any such receiver) arising out of anything done by them or any of them pursuant to this Section 5 and Mortgagee may in its discretion apply any proceeds held by it to reimburse itself and/or such receiver for all amounts expended or incurred by it in connection with the performance of such work, including attorneys' fees, and any excess costs shall be paid by Borrower to Mortgagee and Borrower's obligation to pay such excess costs shall be secured by the lien of this Instrument and shall bear interest at the Default Rate set forth in the Note, until paid.

Nothing herein, and no authority given to Borrower to repair, rebuild or restore the Property or any portion thereof, shall be deemed to constitute Borrower the agent of Mortgagee for any purpose, or to create, either expressly or by implication, any liens or claims or rights on behalf of laborers, mechanics, materialmen or other lien holders which could in any way be superior to the lien or claim of Mortgagee, or which could be construed as creating any third party rights of any kind or nature to the insurance funds. At reasonable times during the work of restoration, and upon reasonable notice, Mortgagee, either personally or by duly authorized agents, shall have the right to enter upon the Property for inspection of the work. Borrower expressly assumes all risk of loss, including a decrease in the use, enjoyment or value of the Property from any casualty whatsoever, whether or not insurable or insured against.

Borrower waives any and all right to claim or recover against Mortgagee or its officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against under this Section 5.

6. PRESERVATION AND MAINTENANCE OF PROPERTY; COMPLIANCE WITH LAWS. Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (c) shall keep the Property, including all improvements, fixtures, equipment, machinery and appliances thereon, in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, and (d) shall comply with all laws, ordinances, rules, regulations and requirements applicable to Borrower and/or the Property. Without limitation of the foregoing, Borrower shall comply, and shall cause each owner of equity interests in Borrower to comply, with the USA PATRIOT ACT and all laws, rules and regulations relating to import or export controls, anti money laundering and terrorist financing (collectively, the "Anti-Terror Laws"). If Borrower and/or any of the owners of equity interests in Borrower fail to comply with any of the Anti-Terror Laws, Borrower hereby authorizes Mortgagee to take such actions as may be required by the Anti-Terror Laws including, without limitation, refusing to accept payments from Borrower.

Borrower represents, warrants and covenants that the Property is and shall be in substantial compliance with the Americans with Disabilities Act of 1990 and all of the regulations promulgated thereunder, as the same may be amended from time to time.

7. USE OF PROPERTY. Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not, without Mortgagee's prior written consent, (i) initiate or acquiesce in a change in the zoning classification (including any variance under any existing zoning ordinance applicable to the Property), (ii) permit the use of the Property to become a non-conforming use under applicable zoning ordinances, (iii) file any subdivision or parcel map affecting the Property, or (iv) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Property.

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8. PROTECTION OF MORTGAGEE'S SECURITY. If an Event of Default shall have occurred and be continuing, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Mortgagee therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option may make such appearances, disburse such sums and take such action as Mortgagee deems necessary, in its sole discretion, to protect Mortgagee's interest, including, but not limited to, (i) disbursement of attorneys' fees, (ii) entry upon the Property to make repairs, and (iii) procurement of satisfactory insurance as provided in Section 5 hereof.

Any amounts disbursed by Mortgagee pursuant to this Section 8, with interest thereon, shall become additional Indebtedness of Borrower secured by this Instrument. Unless Borrower and Mortgagee agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate (as defined in the Note) until paid. Borrower hereby covenants and agrees that Mortgagee shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Indebtedness. Nothing contained in this Section 8 shall require Mortgagee to incur any expense or take any action hereunder.

9. INSPECTION. Mortgagee may make or cause to be made reasonable entries upon the Property to inspect the interior and exterior thereof. Except in case of emergency, such inspection shall be with reasonable prior notice and shall in any case be with due regard to rights of tenants.

10. FINANCIAL DATA. Borrower will furnish to Mortgagee, and will cause any guarantor of the Indebtedness to furnish to Mortgagee, within one hundred twenty (120) days after the close of its fiscal year (i) annual balance sheet and profit and loss statements prepared in accordance with generally accepted accounting principles and practices consistently applied and (unless Mortgagee shall have otherwise agreed in writing), accompanied by the annual audit report of an independent certified public accountant reasonably acceptable to Mortgagee, (ii) an annual operating statement, together with a complete rent roll and other supporting data reflecting all material information with respect to the operation of the Property and Improvements, and (iii) all other financial information and reports that Mortgagee may from time to time reasonably request, including, if Mortgagee so requires, income tax returns of Borrower and any guarantor of any portion of the indebtedness and evidence of Borrower's compliance with the financial covenants set forth in the Credit Agreement (as defined in Section 47 below). In addition, within one hundred twenty (120) days after the close of such tenant's fiscal year, Borrower shall furnish to Mortgagee the financial statements of all tenants of the Property (and lease guarantors, if applicable) on whose credit Mortgagee has relied in connection with the Loan, unless such tenant (or lease guarantor) shall be a publicly reporting company under the Securities Exchange Act of 1934, as amended.

11. CONDEMNATION. If the Property, or any part thereof, shall be condemned for any reason, including without limitation fire or earthquake damage, or otherwise taken for public or quasi public use under the power of eminent domain, or be transferred in lieu thereof, (such event being called a "Taking") and if an Event of Default has not occurred hereunder and is not continuing, Mortgagee shall apply all such proceeds to the restoration, replacement and rebuilding of the Property, and such restoration, replacement and rebuilding shall be accomplished, upon satisfaction of each and all of the following conditions: (i) except as provided in (ii) below, Mortgagee shall be satisfied that by the expenditure of such proceeds the Property will be fully restored within a reasonable period of time to its value immediately preceding the Taking, free and clear of all liens, except the lien of this Instrument, the Permitted Exceptions and such other liens as are specifically approved by Mortgagee in writing under this Instrument; (ii) in the event such proceeds shall be insufficient to restore or rebuild the Property, Borrower shall deposit promptly with Mortgagee funds which, together with the proceeds, shall be sufficient in Mortgagee's reasonable judgment to restore and rebuild the Property; (iii) the excess of such proceeds above the amount necessary to complete such restoration and compensate Borrower for all other losses shall be applied on account of the Indebtedness (first to interest, then to expenses reimbursable to Mortgagee and then to principal amounts falling due under the Note without Prepayment Fee); (iv) Mortgagee reviews and approves in writing the plans and specifications for the restoration work and

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Mortgagee receives written evidence satisfactory to Mortgagee that the same have been approved by all governmental authorities having jurisdiction; (v) Borrower shall have furnished to Mortgagee, for Mortgagee's approval, a detailed budget and cost breakdown for said restoration work signed by Borrower and describing the nature and type of expenses and amounts thereof estimated by Borrower for said restoration work including, but not limited to, the cost of material and supplies, architect and designer fees, general contractor's fees, and the anticipated monthly disbursement schedule, and Mortgagee shall have given to Borrower written approval of such budget and cost breakdown (if Borrower determines at any time that its actual expenses differ or will differ from its estimated budget, it will so advise Mortgagee promptly); (vi) Borrower has delivered to Mortgagee evidence satisfactory to Mortgagee that all Leases existing at the time of the Taking will remain in full force and effect subject only to abatement of rent in accordance with the terms of the Leases until completion of such repair and restoration; and (vii) in Mortgagee's reasonable judgment, such restoration work can be completed at least six (6) months prior to the maturity of the Note.

In the event any of such conditions are not or cannot be satisfied, then all of the proceeds payable with respect to such Taking will be applied to the payment of the Indebtedness in such order as Mortgagee may elect.

Under no circumstances shall Mortgagee become obligated to take any action to restore the Property; all proceeds released or applied by Mortgagee to the restoration of the Property pursuant to the provisions of this Section 11 shall be released and/or applied on the cost of restoration (including within the term "restoration" any repair, reconstruction or alteration) as such restoration progresses, in amounts which shall equal ninety percent (90%) of the amounts from time to time certified by an architect approved by Mortgagee to have been incurred in such restoration of any and all of the Property (i.e., 90% of the total amount expended by the contractor for the project under a contract approved by Mortgagee and billed by the contractor to Borrower) and performed by a contractor reasonably satisfactory to Mortgagee and who shall furnish such corporate surety bond, if any, as may be reasonably required by Mortgagee in accordance with the plans and specifications therefor approved by Mortgagee and the remaining ten percent (10%) upon completion of such restoration and delivery to Mortgagee of evidence reasonably satisfactory to Mortgagee that no mechanics lien exists with respect to the work of such restoration; that the restoration work has been completed and fully paid for in accordance with plans and specifications for said work approved by Mortgagee; and that all Leases existing at the time the Taking occurred are in full force and effect with all tenants in possession and paying full Lease rental; and that all governmental approvals required for the completion of said restoration work and occupancy of the Property have been obtained and the same are in form and substance satisfactory to Mortgagee.

If within a reasonable period of time after the occurrence of any Taking, Borrower shall not have submitted to Mortgagee and received Mortgagee's approval of plans and specifications for the repair, restoration or rebuilding of the Property or shall not have obtained approval of such plans and specifications from all governmental authorities whose approval is required, or if, after such plans and specifications are approved by Mortgagee and by all such governmental authorities, Borrower shall fail to commence promptly such repair, restoration or rebuilding, or if thereafter Borrower fails to carry out diligently such repair, restoration or rebuilding or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with such work, or if any other condition of this Section 11 is not satisfied within a reasonable period of time after the occurrence of any such Taking, then Mortgagee may, in addition to all other rights herein set forth, at Mortgagee's option, (A) declare that an Event of Default has occurred and/or apply all of the proceeds of the Taking to the payment of the Indebtedness in such order as Mortgagee may elect, and/or (B) Mortgagee, or any lawfully appointed receiver of the Property may at their respective options, perform or cause to be performed such repair, restoration or rebuilding, and may take such other steps as they deem advisable to carry out such repair, restoration or rebuilding, and may enter upon the Property for any of the foregoing purposes, and Borrower hereby waives, for itself and all others holding under it, any claim against Mortgagee and such receiver (other than a claim based upon the alleged gross negligence or intentional misconduct of Mortgagee or any such receiver) arising out of anything done by them or any of them pursuant to this Section 11 and Mortgagee may in its discretion apply any proceeds held by it to reimburse itself and/or such receiver for all amounts expended or incurred by it in connection with the performance of such work, including



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attorneys' fees, and any excess costs shall be paid by Borrower to Mortgagee and Borrower's obligation to pay such excess costs shall be secured by the lien of this Instrument and shall bear interest at the Default Rate set forth in the Note, until paid.

Nothing herein, and no authority given to Borrower to repair, rebuild or restore the Property or any portion thereof, shall be deemed to constitute Borrower the agent of Mortgagee for any purpose, or to create, either expressly or by implication, any liens or claims or rights on behalf of laborers, mechanics, materialmen or other lien holders which could in any way be superior to the lien or claim of Mortgagee, or which could be construed as creating any third party rights of any kind or nature to the proceeds. At reasonable times during the work of restoration, and upon reasonable notice, Mortgagee, either personally or by duly authorized agents, shall have the right to enter upon the Property for inspection of the work. Borrower expressly assumes all risk of loss, including a decrease in the use, enjoyment or value of the Property from any casualty whatsoever, whether or not insurable or insured against.

12. BORROWER AND LIEN NOT RELEASED. From time to time, Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Mortgagee's part and notwithstanding the occurrence of an Event of Default, extend the time for payment of the Indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of the Indebtedness (including but not limited to any guarantor), accept an extension or modification or renewal note or notes therefor, modify the terms and time of payment of the Indebtedness, enter into a loan modification agreement with Borrower, release from the lien of this Instrument any part of the Property, accept or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Mortgagee pursuant to the terms of this Section 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the Indebtedness, and shall not affect the lien or priority of the lien hereof on the Property. Borrower shall pay Mortgagee a service charge (based on Mortgagee's then-current fee schedule for each matters), together with such title insurance premiums and attorneys' fees as may be incurred at Mortgagee's option, for any such action if taken at Borrower's request or for other servicing requests, including but not limited to name changes, prepayments of the Indebtedness, and loan pay off statement requests. Such service charge is exclusive of any legal fees which may be incurred by Mortgagee in connection with Borrower's request.

13. FORBEARANCE BY MORTGAGEE NOT A WAIVER. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Mortgagee of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Mortgagee's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the Indebtedness secured by this Instrument, nor shall Mortgagee's receipt of any awards, proceeds or damages under Sections 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

14. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants and conveys to Mortgagee a first and prior security interest in all of the Property that constitutes personal property ("Collateral", for purposes of this Section 14), whether now owned or hereafter acquired. Borrower agrees that Mortgagee may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as



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a financing statement for any of the items specified above as part of the Collateral. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Mortgagee may submit for filing any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Mortgagee may deem appropriate to perfect a security interest with respect to the foregoing items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements Mortgagee may require.

Borrower expressly warrants and covenants:

(a) Except for the security interest granted hereby and the Permitted Exceptions, Borrower is the owner of the Collateral free from any lien, security interest or encumbrance. Borrower understands that any further encumbrance of the Collateral is prohibited. Borrower shall defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

(b) The Collateral is used or bought primarily for use in the business of Borrower and not for consumer purposes.

(c) Borrower's business address is as stated above. The Collateral is located at or on or is used or owned for or in connection with the Premises and other Property.

(d) Borrower shall promptly notify Mortgagee of any change in the location of the Collateral or any change in Borrower's principal place of business.

(e) Borrower shall pay when due, prior to delinquency, all taxes and assessments of every nature which may be levied or assessed against the Collateral.

(f) Except for liens in favor of Mortgagee and the Permitted Exceptions, without Mortgagee's prior written consent, Borrower shall not permit or allow any lien, security interest or encumbrance whatsoever upon the Collateral and shall not permit the Collateral to be attached or replevied. Mortgagee's consent to a junior lien by an entity owned by, or under common control with, Mortgagee shall not be unreasonably withheld.

(g) The Collateral is in good condition and Borrower shall keep the Collateral in good condition (reasonable wear and tear excepted) and from time to time, forthwith, replace and repair all such parts of the Collateral as may be broken, worn out, or damaged without allowing any lien to be created upon the Collateral on account of such replacement or repairs. Mortgagee may examine and inspect the Collateral at any time, wherever located, subject to reasonable prior notice.

(h) Borrower will not use the Collateral in violation of any applicable statutes, regulations or ordinances.

Until the occurrence of an Event of Default, Borrower may have possession of the Collateral and use it in any lawful manner. If an Event of Default shall have occurred and be continuing, Mortgagee shall have the immediate right to the possession of the Collateral.

If an Event of Default shall have occurred and be continuing, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code, and Mortgagee may also invoke the remedies provided in Section 26 of this Instrument as to such items. In exercising any of said remedies Mortgagee may proceed against the items of real property and any items of Collateral specified above separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Uniform Commercial Code or of the remedies provided in Section 26 of

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this Instrument. Within ten (10) days following any request therefor by Mortgagee, Borrower shall prepare and deliver to Mortgagee a written inventory specifically listing all of the Collateral covered by the security interest herein granted, which inventory shall be certified by Borrower as being true, correct, and complete.

Addresses and Other Information for Fixture Filing. The following information is provided in order that this Instrument shall comply with the requirements of the Uniform Commercial Code, as enacted in the State where the Premises are located, for instruments to be filed as financing statements and with other requirements of applicable law:

- |     |  |  |
|-----|--|--|
| (a) | Name of Borrower (Debtor):                                 | BLOMMER CHOCOLATE COMPANY, a Delaware corporation  |
|     | Address of Borrower:                                       | 600 West Kinzie Street, Chicago, Illinois 60610  |
|     | Type of Organization:                                      | corporation  |
|     | Jurisdiction of Borrower's Organization                    | Delaware   |
|     | Borrower's Organization ID No.:                            | 0831474  |
| (b) | Name of Mortgagee (Secured Party):                         | EverBank   |
|     | Address of Mortgagee:                                      | 6464 185th Avenue NE, Suite 200<br>Redmond, Washington 98052<br>Attention: Risk Department |
| (c) | Record Owner of Real Estate Described on Exhibit A hereto: | Borrower   |

15. LEASES OF THE PROPERTY. As used in this Section 15, the word "Lease" shall include subleases. Borrower shall comply with and observe Borrower's obligations as landlord under all Leases of the Property or any part thereof. All Leases now or hereafter entered into will be in form and substance subject to the approval of Mortgagee. Borrower shall pay all attorneys' fees incurred by Mortgagee in reviewing any Lease or proposed Lease. All Leases of the Property shall specifically provide that such Leases are subordinate to this Instrument; that the tenant attorns to Mortgagee, such attornment to be effective upon Mortgagee's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Mortgagee may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; and that Mortgagee may, at Mortgagee's option, accept or reject such attornments (except as to third-party credit tenants unrelated to Borrower, as to which Mortgagee shall grant a non-disturbance provision). Borrower shall not, without Mortgagee's written consent, request or consent to the subordination of any Lease of all or any part of the Property to any lien subordinate to this Instrument. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) immediately notify Mortgagee thereof in writing and of the amount of said set-offs, and (iii) within ten (10) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such setoff and as shall assure that Rents thereafter due shall continue to be payable without set-off or deduction. Upon Mortgagee's receipt of notice of the occurrence of any default or violation by Borrower of any of its obligations under the Leases beyond applicable periods for notice and cure, Mortgagee shall have the immediate right (subject to applicable law), but not the duty or obligation, without prior written notice to Borrower or to any third party (but with due regard for rights of tenants under Leases), to enter upon the Property and to take such actions as Mortgagee may

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deem necessary to cure the default or violation by Borrower under the Leases. The costs incurred by Mortgagee in taking any such actions pursuant to this paragraph shall become part of the Indebtedness, shall bear interest at the rate provided in the Note, and shall be payable by Borrower to Mortgagee on demand. Mortgagee shall have no liability to Borrower or to any third party for any actions taken by Mortgagee or not taken pursuant to this paragraph.

16. REMEDIES CUMULATIVE. Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

17. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER; SUBORDINATE FINANCING PROHIBITED; ASSUMPTION. Mortgagee may, at its option, declare all sums secured by this Instrument to be immediately due and payable, and Mortgagee may invoke any remedies permitted by Section 26 of this Instrument, if title to the Property is changed without the prior written consent of Mortgagee, which consent shall be at Mortgagee's sole discretion. Any transfer of any interest in the Property or in the income therefrom, by sale, lease (except for Leases to tenants in the ordinary course of managing income property which are approved by Mortgagee pursuant to Section 15 of this Instrument), contract, mortgage, deed of trust, further encumbrance or otherwise (including any such transfers as security for additional financing of the Property), and any change in the ownership interests in Borrower (including any transfer, pledge, assignment, or hypothecation of, or other change in, the ownership interests in Borrower or any legal entities which comprise or control Borrower), shall be considered a change of title, except Permitted Transfers (as defined below). Leasehold mortgages and collateral assignments of any Lease of the Property given by tenants of the Property are prohibited without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion. Notwithstanding the foregoing, additional but subordinate mortgages may be granted to Mortgagee and, subject to the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion, may be granted to entities owned by or under common control with Mortgagee.

Except as is specified below with respect to Permitted Transfers, Mortgagee shall have the right to condition its consent to any proposed sale or transfer described in this Section 17 upon (other than Permitted Transfers), among other things, Mortgagee's approval of the transferee's creditworthiness and management ability, based on Mortgagee's then-current underwriting criteria for similar properties and transactions. If required by Mortgagee, any sale or transfer shall be subject to the imposition of an assumption fee of one percent (1%) of the then outstanding balance of the indebtedness, except that the assumption fee shall be \$2,000, in the case of Permitted Transfers.

Subject to the conditions set forth below, Mortgagee will approve the following "Permitted Transfers": (a) changes in ownership interests in Borrower and the entities which comprise or control Borrower resulting from transfers to the parents, spouses, siblings, and/or lineal descendants of the current owner of such interests upon the death of the current owner; (b) transfers of direct or indirect interests in Borrower among the current owners of any such interests and to the parents, spouses, or lineal descendants of the current owners of such interests or into trusts established for the benefit of any of the foregoing, for bona-fide estate-planning or tax-planning purposes; and (c) transfers of the Property or an interest in the Property to any of the persons described in the clause (b). Requests for Permitted Transfers shall be made in writing. Approval shall be subject to Mortgagee's receipt and review of the following: (i) the transferee's organizational documents, confirmation of the transferee's authorized signatories, and transaction approval of the transferee; (ii) copies of valid driver's licenses or other acceptable photo identification for all transferees who are natural persons and for the principals and signatories of transferees who are not natural persons; (iii) the transferee's financial statements, W-9 forms, tax returns, credit and background checks on transferee and other customary due diligence (including but not limited to review of source of funds, Equifax and other credit reports) acceptable to Mortgagee and as may be needed to determine credit status and compliance with anti-money laundering and anti-terrorism laws, regulations and orders.

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Borrower and the transferee shall be required, prior to any sale or transfer of the Property, to execute a written assignment and assumption agreement containing such terms as Mortgagee may require. Consent by Mortgagee to one transfer of the Property shall not constitute consent to subsequent transfers or waiver of the provisions of this Section 17. No transfer by Borrower shall relieve Borrower of liability for payment of the Indebtedness, unless Mortgagee shall otherwise agree in writing at the time of such transfer. Borrower shall pay any recording tax, recording cost, title insurance premium, attorneys' fees, or other third-party expenses incurred by Mortgagee in connection with any transfer, including Permitted Transfers.

The transfer to and assumption by an approved transferee of the Borrower's obligations under the Loan shall not constitute a "prepayment" of the Loan requiring payment of a "Prepayment Fee" (as defined in the Note).

18. NOTICE. Except for any notice required under applicable law to be given in another manner, any and all notices, elections, demands, or requests permitted or required to be made under this Instrument or under the Note shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar nationally recognized overnight delivery service requiring a receipt, to the other party at the address stated above, or to such other party and at such other address within the United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) business days after the date of mailing by registered or certified mail, (iii) one (1) business day after the date of sending via overnight delivery by Express Mail, Federal Express, or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal upon presentation for delivery).

19. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, successors and assigns of Mortgagee and Borrower, subject to the provisions of Section 17 hereof. Mortgagee may assign, sell, or transfer in whole or in part its interests in the Loan, or any of its rights under any of the Loan Documents, including servicing rights, whether as part of a securitization transaction or by participation, assignment, sale or other transfer (in each case, a "Mortgagee Transfer"). Upon a Mortgagee Transfer of Mortgagee's entire right and interest under the Loan Documents, Mortgagee shall automatically be relieved from and after the date of such assignment, of liability for the performance of any obligation of Mortgagee contained in the Loan Documents. If more than one person or entity is the "Borrower" under the Note, whether as individuals, partners, partnerships, limited liability companies, or corporations, each such person or entity shall be jointly and severally liable for Borrower's obligations hereunder. In exercising any rights hereunder or taking any actions provided for herein, Mortgagee may act through its employees, agents or independent contractors as authorized by Mortgagee. The captions and headings of the sections of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

20. WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable law, Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

21. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Mortgagee shall have the right to determine the order in which any or all portions of the Indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.



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22. HAZARDOUS WASTE. Mortgagee has obtained, and Borrower has reviewed, a Phase I Environmental Site Assessment dated May 7, 2014, prepared by IVI Assessment Services, Inc. (the "Report"). Except as disclosed to Mortgagee in the Report, Borrower has received no notification and has no actual knowledge of any kind suggesting that the Property or any adjacent property is or may be contaminated with any hazardous waste or materials or is or may be required to be cleaned up in accordance with any applicable law or regulation; and Borrower further represents and warrants that, except as previously disclosed to Mortgagee in writing, to the best of its knowledge as of the date hereof, there are no hazardous waste or materials located in, on or under the Property or any adjacent property, or incorporated in any Improvements, nor has the Property or any adjacent property ever been used as a landfill or a waste disposal site, or a manufacturing, handling, storage, distribution or disposal facility for hazardous waste or materials, except for reasonable quantities of ordinary office supplies, cleaning supplies, insecticides, pesticides, and paint used in the normal operation and maintenance of the Property, provided that the same are used, stored, handled, and disposed of in accordance with applicable laws ("Permitted Substances"). As used herein, the term "hazardous waste or materials" includes any substance or material defined in or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any federal, state or local statute, regulation or ordinance now or hereafter in effect. Borrower shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of hazardous waste or materials in, on or under the Property or any adjacent property, or incorporated in any Improvements, at Borrower's expense. In the event that Mortgagee at any time has reason to believe that the Property is not free of all hazardous waste or materials other than Permitted Substances or that Borrower has violated any applicable environmental law with respect to the Property, then immediately upon request by Mortgagee, Borrower shall promptly order, diligently pursue obtaining and furnish to Mortgagee, at Borrower's sole cost and expense, an environmental audit and inspection of the Property from an expert satisfactory to Mortgagee. In the event that Borrower fails to immediately obtain such audit or inspection, Mortgagee or its agents may perform or obtain such audit or inspection at Borrower's sole cost and expense. Mortgagee may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in the Property; and whether or not Borrower has actual knowledge of the existence of hazardous waste or materials on the Property or any adjacent property as of the date hereof, Borrower shall reimburse Mortgagee as provided in Section 23 below for the full amount of all costs and expenses incurred by Mortgagee prior to Mortgagee acquiring title to the Property through foreclosure or acceptance of a deed in lieu of foreclosure, in connection with such compliance activities. Neither this provision nor any of the other Loan Documents shall operate to put Mortgagee in the position of an owner of the Property prior to any acquisition of the Property by Mortgagee. The rights granted to Mortgagee herein and in the other Loan Documents are granted solely for the protection of Mortgagee's lien and security interest covering the Property, and do not grant to Mortgagee the right to control Borrower's actions, decisions or policies regarding hazardous waste or materials.

23. ADVANCES, COSTS AND EXPENSES. Borrower shall pay within ten (10) days after written demand from Mortgagee all sums advanced by Mortgagee and all out-of-pocket costs and expenses incurred by Mortgagee in taking any actions pursuant to the Loan Documents including reasonable attorneys' fees and disbursements, accountants' fees, appraisal and inspection fees and the costs for title reports and guaranties, together with interest thereon at the rate applicable under the Note after an Event of Default from the date such costs were advanced or incurred. All such costs and expenses incurred by Mortgagee, and advances made, shall constitute advances under this Instrument to protect the Property and shall be secured by and have the same priority as the lien of this Instrument. If Borrower fails to pay any such advances, costs and expenses and interest thereon, Mortgagee may apply any undisbursed loan proceeds to pay the same, and, without foreclosing the lien of this Instrument, may at its option commence an independent action against Borrower for the recovery of the costs, expenses and/or advances, with interest, together with costs of suit, costs of title reports and guaranty of title, disbursements of counsel and reasonable attorneys' fees incurred therein or in any appeal therefrom. If any check delivered by or on behalf of Borrower in payment of any monthly installment due on the Indebtedness or any other payment due hereunder shall be returned on account of insufficient funds, or if Mortgagee is unable to debit Borrower's account for such payment in accordance with previously agreed

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automated funds withdrawal mechanism, Borrower shall pay a service charge in accordance with Mortgagee's then-current fee schedule.

24. ASSIGNMENT OF LEASES AND RENTS. Borrower, for good and valuable consideration, the receipt of which is hereby acknowledged, to secure the Indebtedness, does hereby absolutely and unconditionally grant, bargain, sell, transfer, pledge, warrant, assign, convey, set over and deliver unto Mortgagee all right, title and interest of Borrower in, to and under the Leases of the Property, whether now in existence or hereafter entered into, and all guaranties, amendments, extensions and renewals of said Leases and any of them, and all Rents which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Property.

Borrower represents, warrants, covenants and agrees with Mortgagee as follows:

(a) The sole ownership of the entire lessor's interest in the Leases is vested in Borrower, and Borrower has not, and shall not, perform any acts or execute any other instruments which might prevent Mortgagee from fully exercising its rights with respect to the Leases under any of the terms, covenants and conditions of this Instrument.

(b) The Leases shall not be altered, modified, amended, terminated, canceled, renewed or surrendered except as approved in writing by Mortgagee, which approval shall not be unreasonably withheld or delayed, subject to Mortgagee's then-current underwriting criteria for similar properties and transactions. The terms and conditions of the Leases shall not be waived in any manner whatsoever except as approved in writing by Mortgagee, which approval shall not be unreasonably withheld or delayed, subject to Mortgagee's then-current underwriting criteria for similar properties and transactions.

(c) Without limiting the foregoing, Borrower shall not decrease the term or the amount of rent payable under any Lease or amend the provisions in the Lease regarding assignment or subletting without prior written notice to Mortgagee and Mortgagee's consent.

(d) There are no defaults now existing under any of the Leases and, to the best of Borrower's knowledge, there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases.

(e) Borrower shall give prompt written notice to Mortgagee of any notice received by Borrower claiming that a default has occurred under any of the Leases on the part of Borrower, together with a complete copy of any such notice.

(f) Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of lessor and any lessee under any of the Leases.

(g) Borrower will not permit any Lease to become subordinate to any lien other than the lien of this Instrument.

(h) Borrower shall not permit the assignment of the lessee's interest under any Lease without Mortgagee's prior written consent, which consent shall not be unreasonably withheld or delayed, subject to Mortgagee's then-current underwriting criteria for similar properties and transactions.

The assignment made hereunder is an absolute, present assignment from Borrower to Mortgagee, effective immediately, and is not merely an assignment for security purposes but is irrevocable by Borrower so long as the Indebtedness remains outstanding. Notwithstanding the foregoing, until a notice is sent to the Borrower in writing that an Event of Default (as defined below) has occurred under the terms and conditions of the Note or any instrument constituting security for the Note

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(which notice is hereafter called a "Notice"), Borrower is granted a license to receive, collect and enjoy the Rents accruing from the Property.

If an Event of Default shall occur, Mortgagee may, at its option, after service of a Notice (but subject to applicable law), receive and collect all such Rents as they become due, from the Property. Mortgagee shall thereafter continue to receive and collect all such Rents, until Mortgagee shall otherwise agree in writing. All sums received by Borrower after service of such Notice shall be deemed received in trust and shall be immediately turned over to Mortgagee.

If Mortgagee shall have sent a Notice and shall be collecting Rents under this Section 24, Mortgagee shall apply the Rents received from Borrower's lessees to accrued interest and principal under the Note. If no Event of Default remains uncured, amounts received in excess of the aggregate monthly payment due under the Note shall be remitted to Borrower in a timely manner. Nothing contained herein shall be construed to constitute Mortgagee as a mortgagee-in-possession in absence of its physically taking possession of the Property.

Borrower hereby irrevocably appoints Mortgagee its true and lawful attorney in fact with power of substitution and with full power for Mortgagee in its own name and capacity or in the name and capacity of Borrower, from and after service of Notice, to demand, collect, receive and give complete acquittances for any and all Rents accruing from the Property, either in its own name or in the name of Borrower or otherwise, which Mortgagee may deem necessary or desirable in order to collect and enforce the payment of the Rents and to demand, collect, receive, endorse, and deposit all checks, drafts, money orders or notes given in payment of such Rents. Such appointment is coupled with an interest and is irrevocable. Mortgagee shall not be liable for or prejudiced by any loss of any note, checks, drafts, etc., unless such loss shall have been found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of Mortgagee.

Borrower also hereby irrevocably appoints Mortgagee from and after service of notice as its true and lawful attorney-in-fact to appear in any state or federal bankruptcy, insolvency, or reorganization proceeding in any state or federal court involving any of the tenants of the Leases. Lessees of the Property are hereby expressly authorized and directed, from and after service of a Notice to pay any and all amounts due Borrower pursuant to the Leases to Mortgagee or such nominee as Mortgagee may designate in writing delivered to and received by such Lessees who are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made.

If an Event of Default shall occur, Mortgagee is hereby vested with full power from and after service of a Notice to use all measures, legal and equitable, deemed by it necessary or proper to enforce the assignment granted hereunder and to collect the Rents assigned hereunder, including the right of Mortgagee or its designee, to enter upon the Property, or any part thereof, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Borrower relating thereto, and may exclude the Borrower, its agents and servants, wholly therefrom. Borrower hereby grants full power and authority to Mortgagee to exercise all rights, privileges and powers herein granted at any and all times after service of a Notice, with full power to use and apply all of the Rents and other income herein assigned to the payment of the costs of managing and operating the Property and of any indebtedness or liability of Borrower to Mortgagee, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the Improvements on the Premises or of making the same rentable, reasonable attorneys' fees incurred in connection with the enforcement of the assignment granted hereunder, and of principal and interest payments due from Borrower to Mortgagee on the Note and this Instrument, all in such order as Mortgagee may determine. Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Borrower in the Leases. It is further understood that the assignment granted hereunder shall not operate to place responsibility for the control, care, management or repair of the Property, or parts thereof, upon Mortgagee, nor shall it operate to make Mortgagee liable for the performance of any of the



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terms and conditions of any of the Leases, or for any waste of the Property by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger, unless the same shall have been found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of Mortgagee.

25. DEFAULT. The following shall each constitute an event of default ("Event of Default"):

- (a) The occurrence of an "Event of Default" under the Note.
- (b) Failure of Borrower within the time required by this Instrument to make any payment for taxes, insurance or for reserves for such payments, or any other payment necessary to prevent filing of or discharge of any lien, and such failure shall continue for a period of ten (10) days after written notice is given to Borrower by Mortgagee specifying such failure.
- (c) Failure by Borrower or any guarantor of the Loan to observe or perform its obligations to Mortgagee on or with respect to any transactions, debts, undertakings or agreements other than the transaction evidenced by the Note, following the giving of any notice required thereunder and/or the expiration of any applicable period of grace provided thereby.
- (d) Failure of Borrower to make any payment or perform any obligation under any superior liens or encumbrances on the Property, within the time required thereunder, or commencement of any suit or other action to foreclose any superior liens or encumbrances.
- (e) Failure by Borrower to observe or perform any of its obligations under any of the Leases, following the giving of any notice required thereunder and/or the expiration of any applicable period of grace provided thereby.
- (f) The Property is transferred or any agreement to transfer any part or interest in the Property in any manner whatsoever (other than an agreement that contemplates payment of the Indebtedness in full upon consummation of such agreement) is made or entered into without the prior written consent of Mortgagee, except as specifically allowed under this Instrument, including without limitation creating or allowing any subordinate liens on the Property or leasing any portion of the Property.
- (g) Filing by Borrower of a voluntary petition in bankruptcy or filing by Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the seeking, consenting to, or acquiescing by Borrower in the appointment of any trustee, receiver, custodian, conservator or liquidator for Borrower, any part of the Property, or any of the Rents of the Property, or the making by Borrower of any general assignment for the benefit of creditors, or the inability of or failure by Borrower to pay its debts generally as they become due, or the insolvency on a balance sheet basis or business failure of Borrower, or the making or suffering of a preference within the meaning of federal bankruptcy law or the making of a fraudulent transfer under applicable federal or state law, or concealment by Borrower of any of its property in fraud of creditors, or the imposition of a lien upon any of the property of Borrower which is not discharged in the manner permitted by Section 4 of this Instrument, or the giving of notice by Borrower to any governmental body of insolvency or suspension of operations.
- (h) Filing of a petition against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debts, or the appointment of any trustee, receiver, custodian, conservator or liquidator of Borrower, of



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any part of the Property or of any of the Rents of the Property, unless such petition shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition.

(i) The institution of any proceeding for the dissolution or termination of Borrower voluntarily, involuntarily, or by operation of law, unless such proceeding shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree for relief, or the death or legal adjudication of incompetence of Borrower.

(j) Intentionally Deleted.

(k) Any warranty, representation or statement furnished to Mortgagee by or on behalf of Borrower under the Note, this Instrument, any of the other Loan Documents or the Indemnity, shall prove to have been false or misleading in any material respect when made.

(l) Failure of Borrower to observe or perform any other covenant or condition contained herein and such default shall continue for thirty (30) days after notice is given to Borrower specifying the nature of the failure, or if the default cannot be cured within such applicable cure period, Borrower fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions; provided, however, that no notice of default and no opportunity to cure shall be required with respect to defaults under Section 17 hereof or if during the prior twelve (12) months Mortgagee has already sent more than one (1) notice to Borrower concerning default in performance of the same obligation.

(m) Failure of Borrower to observe or perform any other obligation under any other Loan Document or the Indemnity when such observance or performance is due, and such failure shall continue beyond the applicable cure period set forth in such Loan Document, or if the default cannot be cured within such applicable cure period, Borrower fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions. No notice of default and no opportunity to cure shall be required if during the prior twelve (12) months Mortgagee has already sent more than one (1) notice to Borrower concerning default in performance of the same obligation.

(n) Borrower's abandonment of the Property.

(o) Any of the events specified in (g) - (i) above shall occur with respect to any guarantor of any of Borrower's obligations in connection with the indebtedness or such guarantor dies or is declared legally incompetent.

(p) The occurrence of any event of default under the First Loan Documents.

## 26. RIGHTS AND REMEDIES ON DEFAULT.

26.1. Remedies. Upon the occurrence of any Event of Default and at any time thereafter, Mortgagee may exercise any one or more of the following rights and remedies:

(a) Mortgagee may declare all sums secured by this Instrument immediately due and payable, including any Prepayment Fee which Borrower would be required to pay.

(b) Mortgagee shall have the right to foreclose this Instrument in accordance with applicable law.

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(c) Mortgagee may foreclose the lien hereof in accordance with the laws of the State of Illinois and:

(i) in any suit or proceeding 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 attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title or to the value of the Property; and

(ii) all expenditures and expenses of the nature mentioned in this subparagraph c, and such expenses and fees as may be incurred in the protection of the Property in the maintenance of the lien of this Instrument, including the fees of any attorney employed by Mortgagee in any litigation and proceedings affecting this Instrument, the Note or the Property or the rights of Mortgagee hereunder or as to which Mortgagee may be made a party by virtue of its interest in the Property pursuant to this Instrument or otherwise, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall constitute so much additional indebtedness, and shall be immediately due and payable by Borrower, with interest thereon at the default rate as indicated in the Note.

Borrower hereby expressly waives any and all rights of redemption from sale, if any, under any order or decree of foreclosure of this Instrument, on its own behalf and on behalf of each and every person, it being the intent herein that any and all such rights of redemption of Borrower and all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of 735 ILCS 5/15-1601 or other applicable law or replacement statutes. Borrower hereby agrees that it shall not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or 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 if Borrower is a trustee, Borrower represents that the provisions of this Section (including the waiver of redemption rights) are made at the express direction of Borrower's beneficiaries and the persons having the power of direction over Borrower, and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well as all other persons mentioned above.

(d) In the event of any foreclosure, to the extent permitted by applicable law, Mortgagee will be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for any amount by which the unpaid balance of the obligations secured by this Instrument exceeds the net sale proceeds payable to Mortgagee.

(e) With respect to all or any part of the Property that constitutes personal property, Mortgagee shall have all rights and remedies of secured party under the Uniform Commercial Code.

(f) Mortgagee shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to

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operate the Property preceding foreclosure or sale, to collect all the Rents from the Property and apply the proceeds, over and above cost of the receivership, against the sums due under this Instrument, and to exercise all of the rights with respect to the Property described in Section 24 above. The receiver may serve without bond if permitted by law. To the extent permitted by law, Mortgagee's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the sums due under this Instrument by a substantial amount. Employment by Mortgagee shall not disqualify a person from serving as a receiver.

(g) In the event Borrower remains in possession of the Property after the Property is sold as provided above or Mortgagee otherwise becomes entitled to possession of the Property upon default of Borrower, Borrower shall become a tenant at will of Mortgagee or the purchaser of the Property and shall pay a reasonable rental for use of the Property while in Borrower's possession.

(h) Mortgagee shall have any other right or remedy provided in this Instrument, the Note, or any other Loan Document or instrument delivered by Borrower in connection therewith, or available at law, in equity or otherwise.

(i) Mortgagee shall have all the rights and remedies set forth in Sections 23 and 24.

26.2. Sale of the Property. In exercising its rights and remedies, Mortgagee may, at Mortgagee's sole discretion (but subject to compliance with applicable law), cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the Property may be sold without selling other portions. Mortgagee may bid at any public sale on all or any portion of the Property.

26.3. Notice of Sale. Mortgagee shall give Borrower reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of the personal property is to be made. Reasonable notice shall mean notice given in accordance with applicable law, including notices given in the manner and at the times required for notices in a nonjudicial foreclosure.

26.4. Waiver, Election of Remedies. A waiver by either party of a breach of a provision of this Instrument shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Mortgagee to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Mortgagee under this Instrument are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Borrower shall not affect Mortgagee's right to declare a default and exercise its remedies under this Instrument.

27. SATISFACTION OF MORTGAGE. Upon payment of all sums secured by this Instrument, Mortgagee shall execute a satisfaction or cancellation of this Instrument and shall surrender this Instrument and all notes evidencing Indebtedness secured by this Instrument to the person or persons legally entitled thereto. Such person or persons shall pay Mortgagee's costs incurred in connection with satisfaction or cancellation of this Instrument.

Notwithstanding the foregoing, upon Borrower's written request and upon payment in full of the Indebtedness (including any Prepayment Fee due under the Note), Mortgagee agrees to assign this Instrument to any Mortgagee providing mortgage financing to Borrower for the Property, provided (i) the assignment documents are without recourse to Mortgagee and without representation or warranty by Mortgagee; and (ii) are acceptable in form and content to Mortgagee and its counsel, in their sole and absolute discretion; and (iii) Borrower pays Mortgagee's attorneys' fees and costs incurred in connection with the assignment of this Instrument and an assignment fee in accordance with Mortgagee's then-current schedule of fees for servicing requests.

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28. FUTURE ADVANCES. Upon request of Borrower, Mortgagee, at Mortgagee's option so long as this Instrument secures Indebtedness held by Mortgagee, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured hereby.

29. USE OF PROPERTY. The Property is not currently used for agricultural, farming, timber or grazing purposes. Borrower warrants that this Instrument is and will at all times constitute a commercial mortgage, as defined under appropriate state law.

30. IMPOSITION OF TAX BY STATE.

31.1. State Taxes Covered. The following constitute state taxes to which this Section applies:

(a) A specific tax upon mortgages or upon all or any part of the indebtedness secured by a mortgage.

(b) A specific tax on a mortgagor which the taxpayer is authorized or required to deduct from payments on the indebtedness secured by a mortgage.

(c) A tax on a mortgage chargeable against the mortgagee or the holder of the note secured.

(d) A specific tax on all or any portion of the indebtedness or on payments of principal and interest made by a mortgagor.

31.2. Remedies. If any state tax to which this Section applies is enacted subsequent to the date of this Instrument, this shall have the same effect as an Event of Default, and Mortgagee may exercise any or all of the remedies available to it unless the following conditions are met:

(a) Borrower may lawfully pay the tax or charge imposed by state tax, and

(b) Borrower pays the tax or charge within thirty (30) days after notice from Mortgagee that the tax has been levied.

31. ATTORNEYS' FEES. In the event suit or action is instituted to enforce or interpret any of the terms of this Instrument (including without limitation efforts to modify or vacate any automatic stay or injunction), the prevailing party shall be entitled to recover all expenses reasonably incurred at, before and after trial and on appeal whether or not taxable as costs, or in any bankruptcy proceeding including, without limitation, attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses. Whether or not any court action is involved, all reasonable expenses, including but not limited to the costs of searching records, obtaining title reports, surveyor reports, and title insurance, incurred by Mortgagee that are necessary at any time in Mortgagee's opinion for the protection of its interest or enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the interest rate as provided in the Note. The term "attorneys' fees" as used in the Loan Documents shall be deemed to mean such fees as are reasonable and are actually incurred.

32. GOVERNING LAW; SEVERABILITY. This Instrument shall be governed by the law of the State of Illinois applicable to contracts made and to be performed therein (excluding choice-of-law principles). In the event that any provision or clause of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Instrument and the Note are declared to be severable.



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33. TIME OF ESSENCE. Time is of the essence of this Instrument.

34. CHANGES IN WRITING. This Instrument and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Borrower or Mortgagee relating to this Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.

35. NO OFFSET. Borrower's obligation to make payments and perform all obligations, covenants and warranties under this Instrument and under the Note shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or other right that Borrower or any guarantor may have or claim against Mortgagee or any entity participating in making the loan secured hereby. The foregoing provisions of this section, however, do not constitute a waiver of any claim or demand which Borrower or any guarantor may have in damages or otherwise against Mortgagee or any other person, or preclude Borrower from maintaining a separate action thereon; provided, however, that Borrower waives any right it may have at law or in equity to consolidate such separate action with any action or proceeding brought by Mortgagee.

36. WAIVER OF JURY TRIAL. **BORROWER AND MORTGAGEE EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS INSTRUMENT, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY OTHER STATEMENTS OR ACTIONS OF BORROWER OR MORTGAGEE. BORROWER AND MORTGAGEE EACH ACKNOWLEDGE THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. BORROWER AND MORTGAGEE EACH FURTHER ACKNOWLEDGE THAT (I) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (II) THIS WAIVER HAS BEEN REVIEWED BY BORROWER AND MORTGAGEE AND BORROWER'S COUNSEL AND MORTGAGEE'S COUNSEL AND IS A MATERIAL INDUCEMENT FOR BORROWER AND MORTGAGEE TO ENTER INTO THE INSTRUMENT AND THE OTHER LOAN DOCUMENTS (III) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.**

37. FURTHER ASSURANCES AND CORRECTIONS. From time to time, at the request of Lender, Borrower shall (a) promptly correct any defect, error, or omission which may be discovered in the contents of this Instrument or in any of the Loan Documents or in the execution or acknowledgement thereof, and (b) execute, acknowledge, deliver, record, and/or file such further instruments (including, without limitation, further deeds of trust, pledges, mortgages, lien instruments, security agreements, consents, acknowledgements, subordinations, financing statements, continuation statements, and assignments of leases and rents) and perform such further acts and provide such further assurances as may be reasonably necessary, desirable or proper, in Lender's judgment, to carry out more effectively the purposes of this Instrument and the Loan Documents.

38. MAXIMUM INTEREST CHARGES. In accordance with applicable provisions of the Note, Borrower and Mortgagee intend to comply with the applicable law governing the highest lawful rate and the maximum amount of interest payable on or in connection with the Loan. Such provisions of the Note shall be controlling with respect to all Loan Documents between Borrower and Mortgagee in order to ensure compliance with applicable laws. By execution of this Instrument, Borrower acknowledges that it believes the Loan to be nonusurious and agrees that if, at any time, Borrower should have reason to believe that the Loan is in fact usurious, it will give Mortgagee written notice of its belief and the reasons why Borrower believes the Loan to be usurious, and Borrower agrees that Mortgagee shall have ninety (90) days following its receipt of such written notice in which to make appropriate refund or other adjustment in order to correct such condition if it in fact exists.

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39. INFORMATION SHARING. Borrower and each of Borrower's affiliates hereby authorize Mortgagee to disclose information about the Property, Borrower or Borrower's affiliates that Mortgagee may at any time possess to any subsidiary or affiliate of Mortgagee, whether such information was supplied by Borrower to Mortgagee or otherwise obtained by Mortgagee.

40. APPRAISAL. Mortgagee must receive an appraisal of the Property that is compliant with the Financial Institutions Reform Recovery and Enforcement Act of 1989, as amended ("FIRREA"), performed by state certified appraisers. If at any time Mortgagee shall determine in good faith that an appraisal of the Property is required as a result of (a) any law, regulation or guideline or any change or interpretation thereof; (b) any central bank or other fiscal, monetary or other governmental authority having jurisdiction over Mortgagee or the activities of Mortgagee requesting, directing or imposing a condition upon Mortgagee (whether or not such request, direction or condition shall have the force of law); or (c) Mortgagee, in its sole discretion deems an appraisal appropriate or necessary, then Mortgagee may require that Borrower provide, at Borrower's sole cost and expense within 45 days after Mortgagee's request (but not more than once during each calendar year), an update or supplement to the previously furnished appraisal for the Property indicating the present appraised fair market value of the Property, with such update or supplement being prepared by a state certified appraiser in compliance with FIRREA.

41. BORROWER'S FUNDS. Borrower represents, warrants and covenants to Mortgagee that:

(a) It has taken, and shall continue to take until after the Loan is fully repaid, such measures as are required by law to verify that the funds invested in the Borrower are derived (i) from transactions that do not violate U.S. law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under U.S. law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.

(b) To the best of its knowledge, neither Borrower, nor any holder of a direct interest in Borrower, nor any Person providing funds to Borrower (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws; (ii) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; and (iii) has had any of its/his/her funds seized or forfeited in any action under any Anti-Money Laundering Laws.

(c) Borrower shall make payments on the Loan solely from funds invested in Borrower, operating revenues or insurance proceeds unless otherwise agreed to by Mortgagee.

(d) To the best of Borrower's knowledge, as of the date hereof and at all times during the term of the Loan, all operating revenues are and will be derived from lawful business activities of Property tenants or other permissible sources under U.S. law.

(e) On the Maturity Date, Borrower will take reasonable steps to verify that funds used to repay the Loan in full (whether in connection with a refinancing, asset sale or otherwise) are from sources permissible under U.S. law and to the extent such funds originate outside the United States, permissible under the laws of the jurisdiction in which they originated.

42. COMPLIANCE WITH ANTI-TERRORISM AND ANTI-MONEY LAUNDERING LAWS. Borrower represents, warrants, covenants and agrees, as of the Closing Date and continuing throughout the term of this Agreement, that:

(a) It is and at all times shall be in compliance with the Office of Foreign Assets Control sanctions and regulations promulgated under the authority granted by the Trading with the Enemy Act ("TWEA"), 50 U.S.C. App. Section 1 et seq., and the International Emergency

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Economic Powers Act ("IEEPA"), 50 U.S.C. Section 1701 et seq., as the TWEA and the IEEPA may apply to Borrower's activities;

(b) It is and at all times shall be in compliance with the Patriot Act and all rules and regulations promulgated under the Patriot Act applicable to Borrower; and

(c) It (i) is not now, nor has ever been under investigation by any governmental authority for, nor has been charged with or convicted for a crime under, 18 U.S.C. Sections 1956 or 1957 or any predicate offense thereunder, or a violation of the Bank Secrecy Act; (ii) has never been assessed a civil penalty under any anti-money laundering laws or predicate offenses thereunder; (iii) has not had any of its funds seized, frozen or forfeited in any action relating to any anti-money laundering laws or predicate offenses thereunder; (iv) has taken such steps and implemented such policies as are reasonably necessary to ensure that Borrower is not promoting, facilitating or otherwise furthering, intentionally or unintentionally, the transfer, deposit or withdrawal of criminally-derived property, or of money or monetary instruments which are (or which Borrower suspects or has reason to believe are) the proceeds of any illegal activity or which are intended to be used to promote or further any illegal activity; and (v) has taken such steps and implemented such policies as are reasonably necessary to ensure that Borrower is in compliance with all laws and regulations applicable to its business for the prevention of money laundering and with anti-terrorism laws and regulations, with respect both to the source of funds from its investors and from its operations, and that such steps include the development and implementation of an anti-money laundering compliance program within the meaning of Section 352 of the Patriot Act, to the extent Borrower is required to develop such a program under the rules and regulations promulgated pursuant to Section 352 of the Patriot Act.

43. INTEGRATION. This Instrument, the other Loan Documents and Indemnity constitute the entire agreement among Lender and Borrower concerning the Loan and supersede all prior agreements, including any loan commitment letter and any loan proposals. There are no understandings, agreements, representations or warranties, express or implied, not specified in such documents regarding Loan.

44. BUSINESS LOAN. Borrower represents and agrees that the loan evidenced by the Note and secured by this Instrument is a business loan and a loan secured by a mortgage on real estate within the purview and intent of 815 ILCS 205/4 (or any substitute, amended or replacement statutes).

45. OTHER ILLINOIS LAW PROVISIONS.

45.1. Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Section 45 and the other terms and conditions of this Instrument, the terms and conditions of this Section 45 shall control and be binding.

45.2. Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Instrument shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101, et seq., herein called the "IMFL"), the provisions of the IMFL shall take precedence over the provisions of this Instrument, but shall not invalidate or render unenforceable any other provision of this Instrument that can be construed in a manner consistent with the IMFL. To the extent Mortgagee's rights hereunder are more limited than the rights statutorily mandated to inure to the benefit of Mortgagee pursuant to the IMFL, the IMFL shall control.

(b) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee upon the occurrence and during the continuation of an Event of Default to the

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extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Instrument, shall be added to the obligations secured hereby.

45.3. Waiver of Statutory Rights. Borrower agrees, to the full extent permitted by law, that in case of an Event of Default, neither Borrower nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisement, valuation, stay or extension laws now or hereafter in force, or take any other action that would prevent or hinder the enforcement or foreclosure of this Instrument or the absolute sale of the Property, or the final and absolute delivery of possession thereof, immediately after such foreclosure sale, of the purchaser thereat. Borrower, for itself and all who may, at any time, claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all rights to have the assets comprising the Property marshaled upon any foreclosure of the lien hereof, and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Property in part or as an entirety. Borrower acknowledges that the transaction of which this Instrument is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the IMFL or residential real estate (as defined in Section 15-1219 of the IMFL). On behalf of Borrower, and each and every person acquiring any interest in, or title to, the Mortgaged Property subsequent to the date of this Mortgage, and on behalf of all other persons, to the maximum extent permitted by applicable law, Borrower hereby waives any and all rights: (x) of redemption from any foreclosure, or other disposition of any kind or nature, of the Mortgaged Property, or any part thereof, or interest therein, under or pursuant to rights herein granted to Mortgagee; and (y) to reinstatement of the indebtedness hereby secured, including, without limitation, any right to reverse any acceleration of such indebtedness pursuant to 735 ILCS 5/15-1602. All waivers by Borrower in this Mortgage have been made voluntarily, intelligently and knowingly by Borrower, after Borrower has been afforded an opportunity to be informed by counsel of Borrower's choice as to possible alternative rights. Borrower's execution of this Mortgage shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

45.4. Illinois Collateral Protection Act. The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless Borrower provides Mortgagee with evidence of the insurance coverage required by this instrument, Mortgagee may purchase insurance at Borrower's expense to protect Mortgagee's interests in the Property. This insurance may, but need not, protect Borrower's interest. The coverage that Mortgagee purchases may not pay any claim that Borrower may make or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Borrower has obtained insurance as required by this Instrument. If Mortgagee purchases insurance for the Property, Borrower will be responsible for the costs of such insurance, including interest and any other charges that may be imposed in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Instrument, the cost of such insurance shall be added to the indebtedness secured hereby. The cost of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

#### 45.5. Mortgagee in Possession.

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



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(b) Notwithstanding any term to the contrary herein, Mortgagee will not become a mortgagee in possession so long as it does not enter or take actual possession of the Premises. In addition, Mortgagee shall not be responsible or liable for performing any of the obligations of the landlord under any Lease, for any waste by any tenant or others, for any dangerous or defective conditions of any of the Premises or other Property, for negligence in the management, upkeep, repair or control of any of the Premises or other Property or for any other act or omission by any other person.

45.6. Use of Proceeds. Borrower covenants and agrees that all of the proceeds of the obligations secured by this Instrument will be used solely for business purposes and in furtherance of the regular business affairs of Borrower, and the entire principal obligation secured hereby constitutes: (i) a "business loan," as that term is used in, and for all purposes of, the Illinois Interest Act, 815 ILCS 205/0.01, et seq., including Section 4(1)(c) thereof; and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of Section 205/4(1)(f) thereof.

45.7. Future Advances. Borrower acknowledges and intends that all advances made by Mortgagee pursuant to the Loan Documents, including future advances whenever hereafter made, shall be secured by the lien of this Instrument, as provided in Section 15-1302(b)(1) of the IMFL. Borrower covenants and agrees that this Instrument shall secure the payment of all loans and advances made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Instrument and although there may be no advances made at the time of the execution of this Instrument and although there may be no other indebtedness outstanding under the Loan Documents at the time any advance is made. The lien of this Instrument shall be valid as to all such obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Property is located. The total amount of the obligations secured hereby may increase or decrease from time to time, but the total unpaid principal balance so secured at one time shall not exceed five (5) times the face amount of the Note, plus both interest thereon and any disbursements made for the payment of taxes, levies or insurance on the property encumbered by this Instrument, with interest on such disbursements at the Default Rate. The provisions of this paragraph shall not be construed to imply any obligation on Mortgagee to make any future advances, it being the intention of the parties that any future advances shall be solely at the discretion and option of the Mortgagee. This Instrument shall be valid and shall have priority over all subsequent liens and encumbrances, including any statutory liens except taxes and assessments levied on the Property or such other liens that shall have priority by operation of law, to the extent of the maximum amount secured hereby.

45.8. Protective Advances. All advances, disbursements and expenditures made by Mortgagee in accordance with the terms of this Instrument and the other Loan Documents, whether before and during a foreclosure of this Instrument, and before and after judgment of foreclosure therein, and at any time prior to sale of the Premises and other Property, and, where applicable, after sale of the Premises and other Property, and during the pendency of any related proceedings, in addition to those otherwise authorized by the IMFL, shall have the benefit of all applicable provisions of the IMFL, including without limitation advances, disbursements and expenditures for the following purposes:

(a) all advances by Mortgagee in accordance with the terms of the Instrument or the other Loan Documents to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Premises; (ii) preserve the lien of the Instrument or the priority thereof; or (iii) enforce the Instrument, as referred to in Section 15-1302(b)(5) of the IMFL;

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(b) payments by Mortgagee of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance, (ii) real estate taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or other Property or any part thereof, (iii) other obligations authorized by the Instrument, or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the IMFL;

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

(d) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Instrument as referred to in Sections 15-1504(d)(2) and 15-1510 of the IMFL; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of the Instrument or arising from the interest of Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Instrument or the Premises and other Property;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the IMFL;

(f) expenses deductible from proceeds of sale as referred to in Sections 15-1512(a) and (b) of the IMFL; and

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Borrower's interest in the Premises or other Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Premises or other Property imposed by Section 15-1704(c)(1) of the IMFL; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the Premises or other Property or required to be made by the owner of the Premises or other Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises or other Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vii) if any portion of the credit facilities secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable Loan Documents; (viii) payments required to be paid by Borrower or Mortgagee pursuant to any lease or other agreement for occupancy or use of the Premises or other Property; and (ix) if the Instrument is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.

45.9 Application of Proceeds. Notwithstanding anything contained in this Instrument to the contrary, the proceeds of any foreclosure sale of the Premises and other Property shall be distributed and applied in accordance with Section 15-1512 of the IMFL.

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45.10 Receiver. If an Event of Default shall have occurred, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled, as a matter of strict right, without notice and without regard to the occupancy or value of any security for the indebtedness, or the insolvency of any party bound for its payment, to the appointment of a receiver to take possession of, and to operate, the Property, and to collect and apply the rents, issues, profits, revenues, awards and other benefits thereof. The receiver shall have all rights and powers to the fullest extent permitted by law. Borrower shall pay to Mortgagee, upon demand, all of Mortgagee's costs and expenses, including, without limitation, receiver's fees and expenses and attorneys' fees and expenses, incurred pursuant to this Section, plus interest thereon at the Default Rate, and all such amounts shall be additional indebtedness secured hereby.

46. CREDIT AGREEMENT. Borrower is a party to that certain Credit Agreement dated September 30, 2009, by and between Borrower and Bank of Montreal, Standard Bank and Wells Fargo Bank, N.A., each acting in various capacities (the "Credit Agreement"). If Borrower fails to comply with the terms of the Credit Agreement and the lender thereunder thereafter elects as a result thereof to accelerate the maturity date of the indebtedness evidenced by the Credit Agreement, such election shall constitute an Event of Default.

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**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS INSTRUMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed under seal as of the day and year first written above.

BORROWER:

**BLOMMER CHOCOLATE COMPANY,**  
a Delaware corporation

By: *Neal E. Murphy*  
Name: ~~VP & CFO~~ Neal E. Murphy  
Title: VP & CFO

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THE STATE OF Pennsylvania §  
  §  
COUNTY OF Bucks §

This instrument was acknowledged before me on the 13<sup>th</sup> day of October, 2014, by Neal E. Murphy, as VP & CFO of **BLOMMER CHOCOLATE COMPANY**, a Delaware corporation, on behalf of said corporation

Jessica M. Green  
Notary Public in and for the State of ~~Illinois~~ Pennsylvania  
Printed Name of Notary Public: Jessica M. Green

My Commission Expires: 11/16/14

Exhibits:

Exhibit A - Description of Property

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Jessica M. Green, Notary Public  
Richland Twp., Bucks County  
My Commission Expires Nov. 16, 2014  
Member, Pennsylvania Association of Notaries

Property of Cook County Clerk's Office

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Loan No.: 6326682-001

**EXHIBIT A**Legal Description**West Kenzie St., Chicago IL**

## PARCEL 1:

SUB-LOTS 1, 2, 3, 4, 5, 6 AND 7 IN SMITH'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 59 IN RUSSELL MATHER AND ROBERT'S ADDITION TO CHICAGO, AND THE NORTH 8 FEET OF LOT 7 IN BLOCK 59 IN RUSSELL MATHER AND ROBERT'S ADDITION TO CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, TOGETHER WITH THE VACATED ALLEYS LYING ADJACENT TO AND ABUTTING SAID LOTS.

## PARCEL 2:

LOTS 5, 6, 13, 14, 15, 16, THE SOUTHERLY 32 FEET OF LOT 12, THE SOUTHERLY 22 FEET OF THE EASTERLY 55 FEET AND THE WESTERLY 95 FEET OF LOT 4, ALL IN BLOCK 59 OF RUSSELL, MATHER AND ROBERT'S ADDITION TO CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, TOGETHER WITH THE VACATED ALLEYS LYING ADJACENT TO AND ABUTTING SAID LOTS.

## PARCEL 3:

LOTS 5, 6, 7, AND 8, IN BLOCK 60 IN RUSSELL, MATHER & ROBERT'S ADDITION TO CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFORE CONVEYED TO CHICAGO AND NORTHWESTERN RAILWAY COMPANY AND DESCRIBED AS FOLLOWS: COMMENCING ON THE SOUTH LINE OF SAID LOT 8 AT A POINT 20 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 8; THENCE NORTH 9.25 FEET ON A LINE PARALLEL WITH THE WEST LINE OF LOT 8; THENCE SOUTHEASTERLY TO A POINT ON A SOUTH LINE OF SAID LOT 8, A DISTANCE OF 45.89 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 8; THENCE WEST ALONG SAID SOUTH LINE OF SAID LOT 8 TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

448-452 N. Jefferson St. Chicago IL 60654

PIN 17-09-107-007-0000 PIN 17-09-107-008-0000

604-614 West Hubbard St. Chicago IL 60654

PIN 17-09-107-009-0000 PIN 17-09-107-010-0000

600 W. Kenzie St. Chicago, IL 60654

PIN 17-09-111-008-0000 PIN 17-09-111-009-0000

PIN 17-09-111-015-0000 PIN 17-09-111-016-0000

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## West Grand Avenue, Chicago, IL

### Parcel 1:

That part of the South 1/2 of the Northwest 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, bounded and described as follows:

Commencing at a point on the East line of North Jefferson Street, a distance of 25 feet Southwesterly, measured at right angles from the center line of the main track of the Chicago and Northwestern Transportation Company extending across said Jefferson Street at a point thereon near the intersection thereof with Grand Avenue, as said main tract is now located; Thence Southeasterly parallel with said main track center line a distance of 171.88 feet, more or less, to a point on the Northeasterly extension of the Easterly face of a bridge pier or support; Thence Southerly along said Easterly face extended, a distance of 121.56 feet, more or less to a point a distance of 35 feet Northerly from the Northeast corner of said bridge support, for the point of beginning of the Parcel of land herein described; Thence Northwesterly along a straight line hereinafter designated line "A" a distance of 114.54 feet, more or less, to a point on the Northerly extension of the Easterly face of a bridge pier or support near the East line of said Jefferson Street, and distant 35 feet Northerly from the Northeast corner of said (last described) bridge support; Thence continuing Northwesterly along said last described course, extended, a distance of 3.81 feet, more or less, to a point on the East line of said North Jefferson street; Thence Southerly along said East line of North Jefferson street a distance of 35 feet, more or less, to a point on a line drawn parallel with said above described line "A" through the Northeast corner of the First described bridge pier or support; Thence Southeasterly along said last described parallel line a distance of 118.35 feet, more or less, to the Northeast corner of said first above described pier or support; Thence Northerly along the Northerly extension of the East line of said last described pier or support a distance of 35 feet to the point of beginning (excepting therefrom that part occupied by the center pier or support lying midway between the above described Piers) in Cook County, Illinois.

### Parcel 2:

That part of the South 1/2 of the Northwest 1/4 of Section 9, Township 39 North, Range 14, East of the Third principal meridian, bounded and described as follows:

Beginning at a point on the east line of North Jefferson Street, distant 25 feet Southwesterly, measured at Right angles, from the center line of the main track of the Chicago and Northwestern Transportation Company, extending across said Jefferson Street at a point thereon near the intersection thereof with Grand Avenue, as said main track is now located; thence Southeasterly parallel with said main track center line a distance of 171.88 feet, more or less, to a point on the Northeasterly extension of the Easterly face of a bridge pier or support; Thence Southerly along said Easterly face, extended, a distance of 121.56 feet, more or less, to a point distant 35 feet Northerly from the Northeast corner of said bridge support; Thence

Northwesterly, along a straight line a distance of 114.54 feet, more or less, to a point on the Northerly extension of the Easterly face of bridge pier or support at or near the East line of said Jefferson Street, and distant 35 feet Northerly from the Northeast corner of said (last described) bridge support; Thence continuing Northwesterly along said last described course, extended, a distance of 3.81 feet, more or less, to a point on the East line of said North Jefferson street, thence Northerly along said East line a distance of 210.56 feet, more or less to the point of beginning, in Cook County, Illinois.

*600 W. Grand Ave, Chicago, IL 60654*  
*PIN 17-09-112-015-0000 PIN 17-09-112-020-0000*