



Doc#: 1527115035 Fee: \$68.00
RHSP Fee:\$9.00 RPRF Fee: \$1.00
Karen A.Yarbrough
Cook County Recorder of Deeds
Date: 09/28/2015 10:54 AM Pg: 1 of 16

Prepared by and after recording return to:

Lowell D. Salesin, Esq.
Honigman Miller Schwartz and Cohn LLP
39400 Woodward Avenue, Suite 101
Bloomfield Hills, Michigan 48304
248.566.8540

[Space Above This Line is for Recording Information]

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING
(ENVESTR CAPITAL LLC)

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage") is made as of September 11, 2015 but effective as of August 26, 2015, by ENVESTR CAPITAL LLC, an Illinois limited liability company, whose address is 12025 West Edgewood Drive, Homer Glen, Illinois 60491 ("Mortgagor"), in favor of BC29, LLC, a Michigan limited liability company, of 280 North Old Woodward Avenue, Suite 104, Birmingham, Michigan 48009 ("Lender").

THIS MORTGAGE SECURES ONE OR MORE PROMISSORY NOTES THAT DO OR MAY PROVIDE FOR A VARIABLE RATE OF INTEREST.

GRANTING CLAUSE

To secure the Indebtedness (as hereinafter defined) and as security for the purposes stated elsewhere in this Mortgage, the Mortgagor irrevocably MORTGAGES AND WARRANTS, grants, conveys, assigns, transfers and hypothecates to the Lender, its successors and assigns, the following described properties, rights, interests and privileges (collectively, the "Mortgaged Property"):

- A. The parcel(s) of real estate commonly known as 2 Erin Lane, located in Cook County, Burr Ridge, Illinois 60527, as more particularly described in Schedule A attached to this Mortgage ("Real Estate");
- B. All buildings, structures, fixtures and improvements now located, or subsequently constructed or placed upon the Real Estate, including, without limit, all building materials and building equipment located on the Real Estate;
- C. All machinery, apparatus, equipment, utility systems, appliances, fittings, fixtures, supplies, goods, and articles of personal property of every kind and nature located or subsequently located on the Real Estate and all attachments, accessions and replacements (individually and collectively, "Equipment"), and all of the right, title and interest of the Mortgagor in and to any Equipment which may be subjected to any title retention or security agreement superior in lien to the lien of this Mortgage. All Equipment being part and parcel of the Mortgaged Property and appropriated to the use of the Real Estate and, whether affixed or not, unless the Lender shall otherwise elect, deemed to be real estate and mortgaged under this Mortgage;
- D. All easements, rights-of-way, licenses, privileges and appurtenances relating to the Real Estate;

5 Y
16
M
N
Y
Y
g

70489mz

UNOFFICIAL COPY

E. All rents, issues, profits, revenues, proceeds, accounts and general intangibles arising from the Real Estate or relating to any business conducted by the Mortgagor on the Real Estate, or under present or future leases, reservation and/or purchase agreements, land contracts, licenses or otherwise, all of which are specifically assigned and transferred to the Lender;

F. All right, title and interest of the Mortgagor in and to the land lying in the bed of any street, road, avenue, alley or walkway, opened or proposed or vacated, adjoining the Real Estate; and

G. Any and all awards or payments, including, without limit, interest on any awards or payments, and the right to receive them, which may be made with respect to the Mortgaged Property as a result of: the exercise of the right of eminent domain; the alteration of the grade of any street; any loss of or damage to any building or other improvement on the Real Estate; any other injury to or decrease in the value of the Mortgaged Property; any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the Mortgaged Property; or any refund of utility deposits or right to any tenant deposit.

INDEBTEDNESS SECURED BY THIS MORTGAGE

This Mortgage is made to secure all of the following (individually and collectively, the "Indebtedness"):

I. Payment of Eighteen Million Eight Hundred Fifty-Five Thousand Three Hundred Twenty and 00/100 (\$18,855,320.00) Dollars, together with interest, costs and all other sums payable on that amount, to be paid according to the \$18,855,320.00 Second Amended and Restated Term Note dated as of even date made by **Mortgagor RMWM Investors LLC, a Delaware limited liability company, SJI Partners LLC, an Illinois limited liability company, 5629 Cermak LLC, an Illinois limited liability company and 6000 Touhy Partners LLC and 111 Busse Partners LLC, an Illinois limited liability company** (each a "Co-Borrower") payable to Lender and all extensions, renewals, modifications, substitutions or replacements (collectively, the "Note") and the First Amended and Restated Loan Agreement dated as of even date made by and among Mortgagor, Co-Borrowers and Lender and all amendments, modifications, renewals, substitutions or replacements thereof (collectively, the "Loan Agreement") and any other note(s), guaranty(ies), loan agreement(s), indemnity agreement(s) or other evidence(s) of indebtedness to Lender made as of the date of this Mortgage by the Mortgagor and/or Co-Borrower and any and all extensions, renewals, modifications, substitutions or replacements thereof. This reference to a particular dollar amount does not in any way limit the dollar amount secured by this Mortgage.

II. The payment of any and all amounts of any kind now owing or later to become due to the Lender from the Mortgagor and/or Co-Borrower during the term of this Mortgage, however created or arising, whether under the obligations specified above or under any other existing or future instrument or agreement between the Mortgagor and/or Co-Borrowers and the Lender, or otherwise, and whether direct, indirect, primary, secondary, fixed, contingent, joint or several, due or to become due, together with interest, costs and all other sums on that amount and including, without limit, all present and future indebtedness or obligations of third parties to the Lender which is guaranteed by the Mortgagor and/or Co-Borrower, and the present or future indebtedness originally owing by the Mortgagor and/or Co-Borrower to third parties and assigned by third parties to the Lender, and any and all renewals, extensions, modifications, substitutions or replacements of any of them.

III. The performance of the covenants and obligations of Mortgagor and/or Co-Borrower due or to become due to the Lender, including, without limit, those due under this Mortgage, and the repayment of all sums expended by the Lender in connection with performance of those covenants and obligations and the enforcement of this Mortgage.

This Mortgage secures the payment of the entire Indebtedness secured hereby; provided, however, that the total amount secured by this Mortgage (excluding interest, costs, expenses, charges, fees, protective advances and indemnification obligations, all of any type or nature) shall not exceed an amount equal to 200% of the face amount of the Note(s).

COVENANTS AND AGREEMENTS

1. **COVENANTS AND WARRANTIES.** The Mortgagor covenants and warrants to the Lender, as long as the Indebtedness remains outstanding, as follows:

1.1 **Authority; No Conflict.** The Mortgagor has the power and authority to execute, deliver and perform its obligations under this Mortgage. The execution, delivery and performance of this Mortgage by the Mortgagor does not, and will not violate or conflict with any provision of its organizational or charter documents or any agreement, court order or consent decree to which the Mortgagor is a party or by which the Mortgagor may be bound.

UNOFFICIAL COPY

1.2 **Title to Mortgaged Property.** The Mortgagor is the owner and is lawfully seized and possessed of the Mortgaged Property. The Mortgagor has good right, full power and authority to mortgage the Mortgaged Property to Lender in accordance with the terms of this Mortgage. The Mortgaged Property is and shall remain free and clear of any liens and encumbrances save and except as may be set forth on Schedule B-II in that certain marked up commitment for title insurance which shall be issued by First American Title Insurance Company, and delivered to Lender concurrent with the execution hereof subject to Section 12 of the Loan Agreement. The Mortgagor shall pay when due all obligations which, if unpaid, may become a lien on the Mortgaged Property or which are secured by a lien on the Mortgaged Property with the Lender's consent.

1.3 **Payment of Indebtedness.** The Mortgagor will pay and perform the Indebtedness when due, whether by maturity, acceleration or otherwise.

1.4 **Maintenance of Mortgaged Property; Maintenance Reserve Account; and Waste.**

1.4.1 The Mortgagor shall preserve and maintain the Mortgaged Property in good repair, working order and condition, excepting ordinary wear and tear, shall replace any Equipment which requires replacement, shall procure all necessary utility services, and shall not commit or permit the commission of waste against the Mortgaged Property. The Mortgagor shall promptly protect, repair, replace or rebuild any part of the Mortgaged Property that is damaged or destroyed by fire or other casualty, or that may be affected by any eminent domain or condemnation proceedings.

1.4.2 In addition to reserve requirements, if any, set forth in the Loan Agreement, in this Mortgage or any other document entered into in connection herewith, if the Lender determines that the Mortgagor is not maintaining the Mortgaged Property as required herein, in addition to all of the Lender's other remedies, the Lender may require the Mortgagor to pay into a non-interest bearing reserve account ("Maintenance Reserve Account") an amount estimated by the Lender to be sufficient to enable the Mortgagor to maintain the Mortgaged Property. If required by the Lender, such amount shall be payable in monthly installments (payable in addition to any other sums due under the Indebtedness) subject to adjustment, up or down, annually on the anniversary of the date hereof by the Lender at the Lender's sole discretion. The Maintenance Reserve Account shall be under the Lender's sole control and shall be additional security for the Indebtedness. The Lender shall make disbursements from the Maintenance Reserve Account for maintenance of the Mortgaged Property, or as otherwise provided by this Mortgage, at the Lender's sole discretion.

1.4.3 Failure, refusal or neglect of the Mortgagor to comply with subsection 1.4.1 or to pay any taxes or assessment or any utility rates levied, assessed or imposed upon the Mortgaged Property, and/or nonpayment of any premiums for insurance, shall constitute waste, and shall entitle the Lender to exercise the remedies provided in this Mortgage, as well as those afforded by law.

1.5 **Payment of Taxes; Discharge of Liens.** The Mortgagor shall pay to the Lender, in advance on the tenth day of each month, a pro rata portion (as determined by the Lender in accordance with the terms of the Loan Agreement and this Mortgage) of all Imposition(s) levied, assessed or existing on the Mortgaged Property. In the event that sufficient funds have been deposited with the Lender to cover the amount of these Imposition(s) when they become due and payable, the Lender shall pay them. In the event that sufficient funds have not been deposited to cover the amount of these Imposition(s) at least thirty (30) days prior to the time when they become due and payable, the Mortgagor shall immediately pay the amount of the deficiency to the Lender. The Lender shall not be required to keep a separate account or to pay the Mortgagor any interest on the funds held by the Lender for the payment of the Imposition(s) pursuant to this Section 1.5 or for the payment of insurance premiums under Section 1.7 below, or on any other funds deposited with the Lender in connection with this Mortgage. The funds on deposit with the Lender are further security for the Indebtedness and if an Event of Default occurs under this Mortgage, any funds remaining on deposit with the Lender may be applied against the Indebtedness at any time after the Event of Default occurs, and without notice to the Mortgagor.

1.6 **Sale or Transfer of Mortgaged Property.** Without the prior written consent of the Lender, except as permitted under the Special Provisions section below, the Mortgagor will not (i) sell, assign, transfer or encumber all or any interest in the Mortgaged Property or (ii) enter into any agreement or grant an option for such purpose, or (iii) permit or suffer any change in the ownership of the Mortgaged Property. In the event ownership of the Mortgaged Property, or any part, becomes vested in any person(s) other than the Mortgagor, the Lender may deal with and may enter into any contract or agreement with the

UNOFFICIAL COPY

successor(s) in interest with reference to this Mortgage in the same manner as with the Mortgagor, without discharging or otherwise affecting the lien of this Mortgage or the Mortgagor's obligations under this Mortgage.

1.7 Insurance.

1.7.1 The Mortgagor shall keep the buildings and all other improvements on the Mortgaged Property insured for the benefit of the Lender against fire and other hazards and risks, including, without limit, vandalism and malicious mischief, as the Lender may require and shall further provide flood insurance (if the Mortgaged Property is situated in an area which is considered a flood risk area by the United States Department of Housing and Urban Development, and for which flood insurance is available under the National Flood Insurance Act of 1968, as amended), loss of rents insurance, public liability and product liability insurance and any other insurance as the Lender may reasonably require from time to time. All insurance shall be in amounts and in forms and with companies satisfactory to the Lender, and in the case of fire and extended coverage (or builder's risk) insurance shall not be for less than 100% of the full insurable value of the Mortgaged Property. The Mortgagor shall deliver to the Lender the policies evidencing the required insurance with premiums fully paid for one year in advance, and with standard mortgagee clauses (making all losses payable to the Lender). Renewals of the required insurance (together with evidence of premium prepayment for one (1) year in advance) shall be delivered to the Lender at least thirty (30) days before the expiration of any existing policies. All policies and renewals shall provide that they may not be canceled or amended without giving the Lender thirty (30) days prior written notice of cancellation or amendment. The foregoing insurance requirements are in addition to those contained in the Loan Agreement and in the event of any conflict or inconsistency in the insurance requirements herein or in the Loan Agreement, the requirements more favorable to the Lender, as determined by the Lender, in its sole and absolute discretion, shall apply.

1.7.2 Should the Mortgagor fail to insure or fail to pay the premiums on any required insurance or fail to deliver the policies or renewals as provided above, the Lender may have the insurance issued or renewed (and pay the premiums on it for the account of the Mortgagor) in amounts and with companies and at premiums as the Lender deems appropriate. If the Lender elects to have insurance issued or renewed to insure the Lender's interest, the Lender shall have no duty or obligation of any kind to also insure the Mortgagor's interest or to notify the Mortgagor of the Lender's actions. Any sums paid by the Lender for insurance, as provided above, shall be a lien upon the Mortgaged Property, added to the amount secured by this Mortgage, and payable immediately by the Mortgagor to the Lender, with interest on those sums at the highest rate charged by the Lender on any of the Indebtedness (but not to exceed the maximum interest rate permitted by law).

1.7.3 In the event of loss or damage, the proceeds of all required insurance shall be paid to the Lender. No loss or damage shall itself reduce the Indebtedness. The Lender or any of its employees is each irrevocably appointed attorney-in-fact for the Mortgagor and is authorized to adjust and compromise each loss without the consent of the Mortgagor, to collect, receive and receipt for the insurance proceeds in the name of the Lender and the Mortgagor and to endorse the Mortgagor's name upon any check in payment of the loss. The proceeds shall be applied first toward reimbursement of all costs and expenses of the Lender in collecting the proceeds (including, without limit, court costs and reasonable attorneys' fees), and then toward payment of the Indebtedness or any portion of it, whether or not then due or payable and in whatever order of maturity as the Lender may elect, or the Lender, at its option, may consent to the application of the insurance proceeds, or any part of them, to the repair or rebuilding of the Mortgaged Property. If the Lender elects to allow the use of insurance proceeds to restore or repair the Mortgaged Property, the Mortgagor and the Lender shall enter into a written agreement satisfactory to the Lender providing for the terms under which the insurance proceeds shall be released. Application of proceeds by the Lender toward later maturing installments of the Indebtedness shall not excuse the Mortgagor from making the regularly scheduled installment payments nor shall such application extend or reduce the amount of any of these payments.

1.7.4 In the event of a foreclosure of this Mortgage, or the giving of a deed in lieu of foreclosure, the purchaser or grantee of the Mortgaged Property shall succeed to all of the rights of the Mortgagor under the insurance policies including, without limit, any right to unearned premiums and to receive the proceeds.

1.7.5 The Mortgagor shall pay to the Lender, in advance on the tenth day of each month, a pro rata portion of the annual premiums due (as estimated by the Lender in accordance with the terms of the Loan Agreement and this Mortgage) on the required insurance. In the event that sufficient funds have been deposited with the Lender to cover the amount of the insurance premiums when the premiums become due and payable, the Lender shall pay the premiums. In the event that sufficient funds have not been deposited with the Lender to pay the insurance premiums at least thirty (30) days prior to the time when they become due and payable, the Mortgagor shall immediately pay the amount of the deficiency to the Lender.

UNOFFICIAL COPY

1.7.6 The foregoing requirements regarding insurance are in addition to any other similar requirements in any other document entered into by Mortgagor in connection with the Indebtedness and in the event of any conflict in such requirements the requirement(s) more favorable to Lender (determined by Lender in its sole and absolute discretion) shall govern and be applicable.

1.8 **Compliance With Law and Other Matters.** The Mortgagor will comply with all federal, state and local laws, ordinances, rules, regulations and restrictions relating to the ownership, use, occupancy and operation of the Mortgaged Property and will not permit the use of the Mortgaged Property for unlawful purposes. Further, the Mortgagor will comply with, perform the Mortgagor's obligations under, and enforce the obligations of all other parties to all building and use restrictions, ground leases, leases, reservation and/or purchase agreements, condominium documents and/or other instruments, as applicable, affecting or relating to the use and/or occupancy of the Mortgaged Property.

1.9 **No Removal of Improvements.** Without the prior written consent of the Lender, the Mortgagor will not remove, demolish or materially alter or add to any building, structure or other improvement forming part of the Mortgaged Property nor otherwise reduce the value or usefulness of the Mortgaged Property, except for replacement, maintenance and renovation in the ordinary course of business.

1.10 **Recording.** The Mortgagor will cause this Mortgage, any supplemental mortgage and any financing and continuation statements required by the applicable Uniform Commercial Code to be recorded and filed at the Mortgagor's expense in such manner and in such place as may, in the Lender's opinion, be necessary or proper.

1.11 **Additional Assurances.** The Mortgagor will execute and deliver additional instruments and take additional actions as Lender may reasonably request to carry out the terms and conditions of this Mortgage.

1.12 **Books and Records; Inspection Rights.** The Mortgagor will at all times maintain accurate and complete books and records, and copies of all building and use restrictions, ground leases, leases, reservation and/or purchase agreements, condominium documents, contracts and/or other instruments with respect to the Mortgaged Property. The Lender may inspect and make copies of those books and records and any other data relating to the Mortgaged Property. The Lender may inspect and test the Mortgaged Property at such reasonable times as Lender shall determine, and the Mortgagor will permit the Lender and its representatives and inspectors all necessary access to the Mortgaged Property. The Mortgagor will promptly provide to the Lender reports concerning the income, expenses and financial and other conditions of the Mortgaged Property as may be required from time to time by the Lender as more particularly set forth in the Loan Agreement.

1.13 **Environmental Representation, Warranty and Indemnification.** Notwithstanding anything in this Mortgage to the contrary, the Mortgagor represents, covenants and warrants to the Lender as follows:

1.13.1 For the purpose of this Section the following terms shall have the given meanings:

1.13.1.1 "Relevant Environmental Laws" shall mean all applicable federal, state and local laws, rules, regulations, orders, judicial determinations and decisions or determinations by any judicial, legislative or executive body of any governmental or quasi-governmental entity, whether in the past, the present or the future, with respect to: (i) the installation, existence or removal of, or exposure to, Asbestos on the Mortgaged Property; (ii) the existence on, discharge from, or removal from the Mortgaged Property of Hazardous Materials; and/or (iii) the effects on the environment of the Mortgaged Property or of any activity now, previously, or hereafter conducted on the Mortgaged Property.

1.13.1.2 "Asbestos" shall have the meanings provided under the Relevant Environmental Laws, and shall include, without limited, asbestos fibers and friable asbestos, as such terms are defined under the Relevant Environmental Laws.

1.13.1.3 "Hazardous Materials" shall mean any of the following (as defined by the Relevant Environmental Laws): solid wastes; toxic or hazardous substances, wastes, or contaminants, including, without limit, polychlorinated biphenyls, paint containing lead, and urea formaldehyde foam insulation; and discharges of sewage or effluent.

1.13.2 At all times since Mortgagor has acquired any interest or rights in the Mortgaged Property, whether through lease, land contract, deed or otherwise and, to Mortgagor's knowledge, after due inquiry, at all times prior to Mortgagor's acquisition of such interest or rights in the Mortgaged Property: there are no and have been no violations of the Relevant Environmental Laws at the Mortgaged Property and no consent orders have been entered with respect to the Mortgaged Property; there are no and have been no Hazardous Materials or Asbestos either at, upon, under or within, or released, discharged or emitted at or from, the Mortgaged Property; no Hazardous Materials or Asbestos

UNOFFICIAL COPY

have released, emitted or otherwise become present at the Mortgaged Property from neighboring land; and no Hazardous Materials or Asbestos have been removed from the Mortgaged Property, except in compliance with the Relevant Environmental Laws.

1.13.3 The Mortgagor, after due inquiry, is not aware of any claims of litigation, and has not received any communication, concerning the presence or possible presence of Hazardous Materials or Asbestos at the Mortgaged Property or concerning any violation or alleged violation of the Relevant Environmental Laws respecting the Mortgaged Property. The Mortgagor shall promptly notify the Lender of any such claims and shall furnish the Lender with a copy of any such communications received after the date of this Mortgage.

1.13.4 The Mortgagor shall ensure that the Mortgaged Property complies in all respects with the Relevant Environmental Laws, shall notify Lender promptly and in reasonable detail in the event that the Mortgagor becomes aware of the presence of Hazardous Materials or Asbestos or a violation of the Relevant Environmental Laws at the Mortgaged Property, and shall conduct all required clean-up, closure or other remediation of any condition necessary to maintain compliance with the Relevant Environmental Laws.

1.13.5 Should the Mortgagor use or permit the Mortgaged Property to be used or maintained so as to subject the Mortgagor, the Lender or the use of the Mortgaged Property to a claim of violation of the Relevant Environmental Law, (unless contested in good faith by appropriate proceedings satisfactory to the Lender), the Mortgagor shall immediately remedy and fully cure, at its own cost and expense, any conditions arising therefrom.

1.13.6 The Mortgagor shall pay immediately when due the cost of compliance with the Relevant Environmental Laws. Further, the Mortgagor shall keep the Mortgaged Property free of any lien imposed pursuant to the Relevant Environmental Laws.

1.13.7 In the event that the Mortgagor fails to comply with any of the requirements of this Section 1.13, after notice to the Mortgagor and the earlier of the expiration of any applicable cure period under this Mortgage or the expiration of the cure period permitted under the Relevant Environmental Laws, if any, the Lender may exercise its right to do one or more of the following: (i) effect that such failure constitutes a default under this Mortgage; and/or (ii) take any and all actions, at the Mortgagor's expense, that the Lender deems necessary or desirable to cure such failure of compliance. Any costs incurred by the Lender pursuant to this Section 1.13, shall become immediately due and payable without notice and with interest thereon at a rate equal to the highest interest rate charged on the Indebtedness (but not to exceed the maximum interest rate permitted by law), and such amount, including interest, shall, if incurred prior to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, be added to amounts owing under the Indebtedness and shall be secured by this Mortgage.

1.13.8 The Lender shall not be liable for and the Mortgagor shall immediately pay to and indemnify, defend and hold the Lender harmless from and against, all loss, cost, liability, damage and expense (including, without limit, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that the Lender may suffer or incur (as holder of this Mortgage, as mortgagee in possession or as successor in interest to the Mortgagor as owner of the Mortgaged Property by virtue of foreclosure or acceptance of a deed in lieu of foreclosure) as a result of or in connection in any way with the Mortgagor's failure to comply with the terms and provisions of this Section 1.13.

1.13.9 The provisions of this Section 1.13 shall survive the repayment of the Indebtedness and the performance of all duties and obligations related thereto, the foreclosure of this Mortgage, the delivery of a deed in lieu of foreclosure and/or the discharge of this Mortgage.

1.13.10 The provisions of this Section 1.13 are in addition to any similar provisions in any other documentation evidencing, securing or governing the Indebtedness, including, but not limited to, any environmental indemnification agreement executed in connection with the Indebtedness ("Indemnity"), and in the event of any conflict or inconsistency between the terms and conditions hereof and the Indemnity, the document containing the terms and conditions more favorable to Lender, as determined by Lender, in its sole and absolute discretion, shall be given priority and shall apply.

1.14 **Reporting Requirements.** The Mortgagor shall certify and furnish to the Lender, in form and detail satisfactory to the Lender those financial reports of the Mortgagor as required pursuant to the Loan Agreement.

2. **APPLICATION OF CONDEMNATION AWARDS.**

2.1 **Condemnation Award.** Any eminent domain or condemnation proceeds shall be paid directly to the Lender and applied toward reimbursement of all the Lender's costs and expenses incurred in connection with collecting the award

UNOFFICIAL COPY

(including, without limit, court costs and reasonable attorneys' fees), and the balance applied upon the Indebtedness whether or not then due or payable in whatever manner the Lender deems advisable. Application by the Lender of any condemnation award or portion of it toward the last maturing installments of the Indebtedness shall not excuse the Mortgagor from making the regularly scheduled payments nor extend or reduce the amount of these payments.

2.2 **Appointment of Lender.** The Lender or any of its employees is each irrevocably appointed attorney-in-fact for the Mortgagor and is authorized to receive, receipt for, discharge and satisfy any condemnation award or judgment, whether joint or several, on behalf of the Mortgagor, the Mortgagor's legal representatives, successors and assigns; provided, however, that the Lender shall not be liable for failure to collect any condemnation award.

3. **ADDITIONAL SECURITY.**

3.1 **Security Interest in Personal Property.** The Mortgagor grants the Lender a security interest in any present and future Equipment, fixtures, accounts, general intangibles, instruments, and other personal property included within the definition of Mortgaged Property. The Mortgagor agrees, upon request of the Lender, to promptly furnish a list of personal property owned by the Mortgagor and subject to this Mortgage and, upon request by the Lender, to immediately execute, deliver and/or file any mortgage and any amendments to this Mortgage, any separate security agreement and any financing statements to include specifically this list of personal property. The Lender or any of its employees is each irrevocably appointed attorney-in-fact and is authorized to execute, deliver and/or file any mortgage and any amendments to this Mortgage, any separate security agreement and any financing statements to include specifically the personal property described above.

3.2 **Licenses and Permits.** As additional security for the Indebtedness, the Mortgagor assigns to the Lender all of the Mortgagor's rights and interest in all licenses or permits affecting the Mortgaged Property. This assignment shall not impose upon the Lender any obligations with respect to any license or permit. The Mortgagor shall not cancel or amend any of the licenses or permits assigned (nor permit any of them to terminate if they are necessary or desirable for the operation of the Mortgaged Property) without first obtaining the written approval of the Lender.

3.3 **Contracts.** As additional security for payment of the Indebtedness, the Mortgagor assigns to and grants the Lender a security interest in all existing and future agreements and contracts for the design, development, improvement, construction, maintenance, alteration, repair, testing, operation and management of the Mortgaged Property.

3.4 **Deposits and Accounts.** As additional security for the payment of the Indebtedness and performance of this Mortgage, the Mortgagor grants a security interest to the Lender in all deposits or other accounts with the Lender.

3.5 **Assignment of Rents and Leases**

3.5.1 As additional security for the payment of the indebtedness and performance of this Mortgage, the Mortgagor assigns to the Lender all of the Mortgagor's right, title and interest in and to all existing and future written and oral leases and occupancy agreements covering the Mortgaged Property or any part of it (collectively, the "Leases") (but without an assumption by the Lender of liabilities of the Mortgagor under any of these Leases or occupancy agreements by virtue of this assignment), and the Mortgagor assigns to the Lender the leases, rents, issues and profits of the Mortgaged Property and any guaranties of any of the Leases. This is a present and absolute assignment, not an assignment for security purposes only, and Lender's right to the Leases, rents, issues and profits is not contingent, upon and may be exercised without, possession of the Mortgaged Property.

3.5.2 At least annually, and more frequently if requested by the Lender or required by the terms of the Loan Agreement, the Mortgagor shall provide the Lender with a certified rent roll and such other information regarding the Leases as the Lender may reasonably require.

3.5.3 Subject to the license granted in the Assignment (hereinafter defined) to Mortgagor ("License") to collect and retain the rents, issues and profits as they become due and payable, upon an Event of Default, such License shall be automatically revoked and Lender may receive and collect the rents, issues and profits personally, or through a receiver, so long as the Event of Default exists and during the pendency of any foreclosure proceedings and during any redemption period. The Mortgagor consents to the appointment of a receiver.

3.5.4 The Lender shall at no time have any obligation whatever to attempt to collect rents or other amounts from any tenant of the Mortgaged Property. Further, the Lender shall have no obligation to enforce any other obligations owed by any tenant of the Mortgaged Property. No action taken by the Lender under this Mortgage shall make the Lender a "mortgagee in possession."

UNOFFICIAL COPY

3.5.5 The Mortgagor shall not collect advance rent under any of the Leases in excess of one month (other than as a security deposit) and the Lender shall not be bound by any prepayment made or received in violation of this prohibition.

3.5.6 At the option of the Lender, this Mortgage shall become subordinate, in whole or in part (but not with respect to priority as to insurance proceeds or any condemnation award) to any or all Leases upon the execution and recording by the Lender of an affidavit to that effect.

3.5.7 The Mortgagor shall timely perform the obligations under the Leases and not permit or suffer any event or condition which gives any tenant a right to cancel, terminate, or assert any defense or offset under any of the Leases. Mortgagor shall cause each tenant under the Lease to deliver estoppel certificates and subordination agreements in form satisfactory to Lender.

3.5.8 Without the Lender's prior written consent, the Mortgagor shall not modify or amend or enter into any Leases.

3.5.9 The provisions of this Section 3.5 are in addition to any similar provisions in any documentation evidencing, securing or governing the Indebtedness, including, but not limited to, that certain Assignment of Leases and Rents executed by Mortgagor in favor of Lender concurrently herewith (the "Assignment"), and in the event of any conflict or inconsistency between the terms and conditions hereof and the Assignment, the document containing the terms and conditions more favorable to Lender, as determined by Lender, in its sole and absolute discretion, shall be given priority and shall apply.

3.5.10 The foregoing assignment shall not cause Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Mortgaged Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Mortgaged Property by the tenants under any of the Leases or any other parties, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; (d) responsible for or under any duty to produce rents or profits; or (e) directly or indirectly liable to Mortgagor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies or powers granted to Lender hereunder or to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

3.5.11 So long as the License is in effect, Mortgagor shall indemnify and hold Lender harmless from and against any and all liability, loss, cost, damage or expense which Lender incurs under or by reason of the foregoing assignment, or for any action taken by Lender hereunder in accordance with the terms hereof, or by reason of or in defense of any and all claims and demands whatsoever which are asserted against Lender arising out of the Leases. In the event Lender incurs any such liability, loss, cost, damage or expense, the amount thereof together with all attorneys' fees and interest thereon at the Default Rate (as such is defined in the Note) shall be payable by Mortgagor to Lender, within 10 days after demand by Lender, and shall be secured by this Mortgage, provided that Mortgagor shall have no duty or liability hereunder to indemnify and hold Lender harmless from matters resulting from the willful misconduct or gross negligence of Lender.

4. EVENTS OF DEFAULT AND REMEDIES.

4.1 Events of Default. Any of the following events shall, for purposes of this Mortgage, constitute an "Event of Default":

4.1.1 Any amount owing on part of the Indebtedness is not paid when due whether by maturity, acceleration or otherwise.

4.1.2 Any failure to comply with, or breach of, any of the terms, provisions, warranties or covenants of this Mortgage, or any other agreement or instrument which is part of the Indebtedness, any guaranty of any of the Indebtedness, or any other agreement or commitment between the Mortgagor or any guarantor and the Lender.

4.1.3 The occurrence of an Event of Default, as such term is defined in the Loan Agreement.

4.2 Remedies Upon Event of Default. Upon the occurrence of any Event of Default, the Lender shall have the following rights, power and authority:

4.2.1 With or without notice, declare all or part of the Indebtedness immediately due and payable.

UNOFFICIAL COPY

4.2.2 Demand that the Mortgagor immediately surrender the possession of the Mortgaged Property to the Lender and the Mortgagor consents to the Lender taking possession of the Mortgaged Property and the books and records relating to the Mortgaged Property.

4.2.3 Commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Mortgage or to obtain specific enforcement of the covenants of Mortgage hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations. Commencement of such an action shall be deemed a declaration of acceleration pursuant to clause 4.2.1 above.

4.2.4 Enter upon, possess, manage and operate the Property or any part thereof.

4.2.5 Collect and receive all payments, rents, profits and other amounts that are due or shall subsequently become due under the terms of any leases, land contract, or other agreements by which the Mortgagor is leasing or selling the Mortgaged Property or any interest in the Mortgaged Property. The Lender may also exercise any other rights or remedy of the Mortgagor under any or any lease, land contract or other agreement, and the costs and expenses thereof shall be for the account and expense of the Mortgagor. However, the Lender shall have no obligation to make any demand or inquiry as to the nature of sufficiency of any payment received or to present or file any claim or take any other action to collect or enforce the payment of any amounts to which the Lender may become entitled under this Mortgage. Similarly, the Lender shall not be liable for any of the Mortgagor's obligations under any such lease, land contract or other agreement.

4.2.6 Exercise all rights, remedies and privileges afforded a "secured party" under Article 9 of the Illinois Uniform Commercial Code. Require the Mortgagor to assemble the personal property subject to this Mortgage and make it available to the Lender at a place to be designated by the Lender which is reasonably convenient to both parties. Collect all accounts receivable, take possession of the personal property with or without demand and with or without process of law, and sell and dispose of it and distribute the proceeds according to law. For these purposes, the Mortgagor agrees that any requirement of reasonable notice, if any, shall be met if the Lender sends notice to the Mortgagor at least five (5) days prior to the date of sale, disposition or other event giving rise to the required notice.

4.2.7 With or without notice, and without releasing Mortgagor from the Indebtedness, and without becoming a mortgagee in possession, cure any breach or Event of Default of Mortgagor and, in connection therewith, to enter upon the Mortgaged Property and do such acts and things as Lender deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Lender under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Lender, is or may be senior in priority to this Mortgage, the judgment of Lender being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; (iv) to employ counsel, accountants, contractors and other appropriate; (iv) to inspect, repair, protect or preserve the Mortgaged Property; (v) to investigate or test for the presence of any Hazardous Materials; and/or (vi) to appraise the Mortgaged Property. All of the Lender's expenditures for these purposes shall be part of the Indebtedness and shall bear interest at the highest rate applicable to any of the Indebtedness.

4.2.8 Pursue any other available remedy at law or equity to enforce the payment of the Indebtedness.

Upon sale of the Mortgaged Property at any foreclosure, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Indebtedness. In determining such credit bid, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Mortgaged Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Mortgaged Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Mortgaged Property after foreclosure, but prior to resale, including, without limitation, the costs of any structural reports, hazardous waste reports or any remediation costs related thereto; (iv) anticipated discounts upon resale of the Mortgaged Property as a distressed or foreclosed property; and (v) such other factors or matters that Lender deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this paragraph does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios

UNOFFICIAL COPY

specified in the Loan Documents or previously discussed between Mortgagor and Lender; and (z) Lender's credit bid may be higher or lower than any appraised value of the Mortgaged Property.

4.3 **Remedies Generally.**

4.3.1 All remedies provided for in Section 4.2 shall be available to the extent not prohibited by law. Each remedy shall be cumulative and additional to any other remedy of the Lender at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of, or acquiescence in, any such default or Event of Default.

4.3.2 The Lender may waive any Event of Default and may rescind any declaration of maturity of payments on the Indebtedness. In case of such waiver or rescission the Mortgagor and the Lender shall be restored to their respective former positions and rights under this Mortgage. Any waiver by the Lender of any default or Event of Default shall be in writing and shall be limited to the particular default waived and shall not be deemed to waive any other default.

4.3.3 The Lender may release the obligation of any person liable for any of the Indebtedness and may extend time for payment or otherwise modify any terms of any of the Indebtedness without notice to or consent of the Mortgagor or any other person and without impairing the lien or priority of lien of this Mortgage.

4.4 **Receivers.** Upon an Event of Default and commencement of foreclosure proceedings to enforce the rights of the Lender under this Mortgage, the Lender shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property and of the rents, issues and profits of the Mortgaged Property, pending such proceedings.

4.5 **Application of Proceeds.** Any proceeds received by the Lender from the exercise of remedies pursuant to Section 4.2 of this Mortgage shall be applied as follows:

4.5.1 First, to pay all costs and expenses incidental to the leasing, foreclosure, sale or other disposition of the Mortgaged Property. These costs and expenses shall include, without limit, reasonable compensation to the Lender, its agents and attorneys and any taxes and assessments or other liens and encumbrances prior to the lien of this Mortgage.

4.5.2 Second, to all sums expended or incurred by the Lender directly or indirectly in carrying out any term, covenant or agreement under this Mortgage or any related document, together with interest as provided in this Mortgage.

4.5.3 Third, to the payment of the Indebtedness. If the proceeds are insufficient to fully pay the Indebtedness, then application shall be made first to late charges and interest accrued and unpaid, then to any applicable prepayment premiums, then to unpaid fees and other charges, and then to the outstanding principal balance.

4.5.4 Fourth, any surplus remaining shall be paid to the Mortgagor or to whomsoever may be lawfully entitled.

4.6 **Marshaling.** In the event of foreclosure of this Mortgage or the enforcement by the Lender of any other rights and remedies under this Mortgage, the Mortgagor waives any right in respect to marshaling of assets which secure the Indebtedness or to require the Lender to pursue its remedies against any other assets or any other party which may be liable for any of the Indebtedness.

4.7 **Further Actions.** Promptly upon the request of the Lender, the Mortgagor shall execute, acknowledge and deliver any and all further conveyances, documents, mortgages and assurances, and do or cause to be done all further acts as the Lender may require to confirm and protect the lien of this Mortgage or otherwise to accomplish the purposes of this Mortgage.

4.8 **Attorneys Fees.** Any reference in this Mortgage to attorneys' fees shall refer to fees, charges, costs and expenses of in-house and outside attorneys and paralegals, whether or not a suit or proceeding is instituted, and whether incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding, in consultation with counsel, or otherwise. All costs, expenses and fees of any nature for which the Mortgagor is obligated to reimburse or indemnify the Lender are part of the Indebtedness secured by this Mortgage and are payable upon demand, unless expressly provided otherwise, with interest until repaid at the highest rate charged on any of the Indebtedness (but not to exceed the maximum rate permitted by law).

UNOFFICIAL COPY

4.9 Mortgagor Waivers.

4.9.1 Except to the extent contrary to law, Mortgagor agrees that upon the occurrence and during the continuation of an Event of Default, Mortgagor will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Mortgagor, for Mortgagor and all who may claim through or under Mortgagor, so far as Mortgagor or those claiming through or under Mortgagor now or hereafter lawfully may, hereby waives upon the occurrence and during the continuation of an Event of Default the benefit of all such laws. If any law now or hereafter in force referred to in this paragraph of which the parties or their successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph, to the extent not prohibited by law.

4.9.2 In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of Mortgagor, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage: to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Mortgaged Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

4.10 Illinois Mortgage Foreclosure Law. It is the intention of Mortgagor and Lender that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgagor agrees and covenants that:

4.10.1 Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to this Article 4 any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Mortgage, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.

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

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

UNOFFICIAL COPY

4.10.4 Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

4.10.5 Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes. Mortgagor hereby expressly waives, to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

4.10.6 All advances, disbursements and expenditures made by Lender in accordance with the terms of this Mortgage or the other Loan Documents, either before and during a foreclosure, and before and after judgment of foreclosure therein, and at any time prior to sale of the Mortgaged Property, and, where applicable, after sale of the Mortgaged Property, and during the pendency of any related proceedings, in addition to those otherwise authorized by the Act, shall have the benefit of all applicable provisions of the Act.

5. MISCELLANEOUS.

5.1 **Governing Law** This Mortgage shall be construed in accordance with the laws of the State of Illinois without regard to conflict of law principles, provided that the laws of the state in which the Mortgaged Property is located shall govern as to creation, priority and enforcement of liens and security interests in such Mortgaged Property as located in such state.

5.2 **Successors and Assigns** This Mortgage shall be binding upon the successors and assigns of the Mortgagor including, without limit, any debtor in possession or trustee in bankruptcy for the Mortgagor, and the rights and privileges of the Lender under this Mortgage shall inure to the benefit of its successors and assigns. This shall not be deemed a consent by the Lender to a conveyance by the Mortgagor of all or any part of the Mortgaged Property or of any ownership interest in the Mortgagor.

5.3 **Notices** Notice from one party to another relating to this Mortgage shall be deemed effective if made in accordance with the notice requirements set forth in the Loan Agreement.

5.4 **Entire Agreement; Amendments** This Mortgage and any agreement to which it refers state all rights and obligations of the parties and supersede all other agreements (oral or written) with respect to the lien granted by this Mortgage. Any amendment of this Mortgage shall be in writing and shall require the signature of the Mortgagor and the Lender. Any waiver or consent to departure from strict compliance with this Mortgage must be in writing and signed by the Lender.

5.5 **Partial Invalidity** The invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of the remaining provisions of this Mortgage.

5.6 **Inspections** Any inspection, audit, appraisal or examination by the Lender or its agents of the Mortgaged Property or of information or documents pertaining to the Mortgaged Property is for the sole purpose of protecting the Lender's interests under this Mortgage and is not for the benefit or protection of the Mortgagor or any third party.

5.7 **Joint and Several Liability** In the event that more than one person or entity executes this Mortgage, the obligations of each person or entity shall be joint and several.

5.8 **Automatic Reinstatement** Notwithstanding any prior revocation, termination, surrender or discharge of this Mortgage, the effectiveness of this Mortgage shall automatically continue or be reinstated, as the case may be, in the event that:

5.8.1 Any payment received or credit given by the Lender in respect of the Indebtedness is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of trust funds, or otherwise under any applicable state or federal law, including, without limit, laws pertaining to bankruptcy or insolvency, in which case this Mortgage shall be enforceable as if the returned, disgorged or rescinded payment or credit had not been received or given, whether or not the Lender relied upon this payment or credit or changed its position as a consequence of it.

UNOFFICIAL COPY

5.8.2 Any liability is imposed, or sought to be imposed, against the Lender relating to the environmental condition of, or the presence of Hazardous Materials on, in or about the Real Estate, whether this condition is known or unknown, now exists or subsequently arises (excluding only conditions which arise after any acquisition by the Lender of any such property, by foreclosure, in lieu of foreclosure or otherwise, to the extent due to the wrongful acts or omissions of the Lender), in which case this Mortgage shall be enforceable to the extent of all liability, costs and expenses (including without limit reasonable attorneys' fees) incurred by the Lender as the direct or indirect result of any environmental condition or Hazardous Materials.

5.8.3 In the event of continuation or reinstatement of this Mortgage, Mortgagor agrees upon demand by the Lender to execute and deliver to the Lender those documents which the Lender determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of the Mortgagor to do so shall not affect in any way the reinstatement or continuation. If Mortgagor does not execute and deliver to the Lender upon demand such documents, the Lender and each officer of the Mortgage is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of the Mortgagor (with full power of substitution) to execute and deliver such documents in the name and on behalf of the Mortgagor.

5.9 **WAIVER OF JURY TRIAL.** MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS MORTGAGE, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION HEREOF OR THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF MORTGAGOR AND LENDER OR ANY OF THEM WITH RESPECT TO THIS MORTGAGE (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND MORTGAGOR HEREBY AGREES AND CONSENTS THAT LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF MORTGAGOR TO THE WAIVER OF ANY RIGHT MORTGAGOR MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

5.10 **Utilities.** Mortgagor shall pay or cause to be paid when due any and all charges for utilities, whether public or private, with respect to the Mortgaged Property or any part thereof, and all license fees, rents or other charges for the use of any appurtenance to the Mortgaged Property.

5.11 **Liens.** Other than Permitted Encumbrances (as defined in the Loan Agreement) the Mortgaged Property shall be kept free and clear of all liens and encumbrances of every nature or description, including, without limitation, liens and encumbrances arising from past due taxes or assessments and from charges for labor, materials, supplies or services.

6. **SPECIAL PROVISIONS.** In the event of any inconsistencies between the terms and conditions of this Article 6 and the terms and conditions of this Mortgage, the terms and conditions of this Article 6 shall control and be binding.

6.1 **Collateral Protection Act.** Pursuant to the terms of the Illinois Collateral Protection Act, 815 ILCS 180/1 et seq., Mortgagor acknowledges that is hereby notified that unless Mortgagor provides Lender with evidence of the insurance coverage required by the Loan Documents, Lender may purchase insurance at Mortgagor's expense to protect Lender's interests in the Real Estate or any portion thereof, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Lender may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Real Estate or any portion thereof. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained the insurance as required hereunder. If Lender purchases insurance, Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total obligation secured by this Mortgage. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

6.2 **Subordination of Property Manager's Lien.** Any property management agreement for the Real Estate or any portion thereof entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all lien rights, including without limitation mechanics lien rights, that the property manager or anyone claiming by, through or under the property manager may have in the Real Estate or any portion thereof shall be subject and subordinate to the lien of this Mortgage and shall provide that Lender may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at Lender's request, shall be recorded with the County Recorder of the county where the applicable Real Estate is located. In addition, if

MORTGAGE

UNOFFICIAL COPY

the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Lender, in recordable form and otherwise acceptable to Lender, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

6.3 **Merger.** No merger shall occur as a result of Lender's acquiring any other estate in, or any other lien on, the Real Estate unless Lender consents to a merger in writing.

6.4 **No Commencement.** As of the date of this Mortgage, Mortgagor represents and warrants that no steps to commence new construction on the Real Estate, including steps to clear or otherwise prepare the Real Estate for construction thereon or the delivery of material for use in construction of the Improvements, have been taken. No contract for services or materials for improvements to any portion of the Real Estate shall be entered into prior to the recording of this Mortgage.

6.5 **Fixture Filing.** This Mortgage constitutes a "fixture filing" for the purposes of Chapter 9 of the Illinois Uniform Commercial Code. This Mortgage shall also be effective as a financing statement covering as-extracted collateral and is to be filed for record in the real estate records of the county where the Property is situated. All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest herein granted may be obtained at the addresses set forth on the first page hereof. For purposes of the security interest herein granted, the address of Debtor (Mortgagor) and of the Secured Party (Lender) are set forth in this Mortgage. A description of the land which relates to the fixtures is set forth in Schedule A attached hereto. Mortgagor is the record owner of such land.

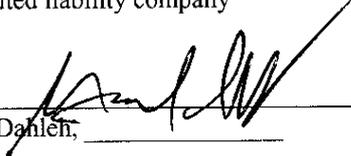
[SIGNATURE PAGE FOLLOWS]

UNOFFICIAL COPY

This Mortgage is dated and effective on the date stated above.

MORTGAGOR:

ENVESTR CAPITAL LLC,
an Illinois limited liability company

By: 
Gus Dahleh,

STATE OF ILLINOIS)
)ss.
COUNTY OF LAKE)

This instrument was acknowledged before me on Sept 2, 2015, by Gus Dahleh, the _____ of ENVESTR CAPITAL, LLC, an Illinois limited liability company, who appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2nd day of Sept, 2015.

[SEAL]



Notary Public



UNOFFICIAL COPY

SCHEDULE A

THIS ADDENDUM IS ATTACHED TO AND MADE A PART OF THE CERTAIN MORTGAGE, EXECUTED BY ENVESTR CAPITAL LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, IN FAVOR OF BC29, LLC, A MICHIGAN LIMITED LIABILITY COMPANY.

LEGAL DESCRIPTION

Real property located in Cook County, State of Illinois more particularly described as:

LOT 5 IN LONGFIELD HILL SUBDIVISION, BEING A SUBDIVISION OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 1986 AS DOCUMENT NUMBER 86579889, IN COOK COUNTY, ILLINOIS.

The Real Property is commonly known as 2 Erin Lane, Burr Ridge, IL 60527-8903. The Real Property tax identification number is 18-19-100-014-0000.

Property of Cook County Clerk's Office