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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc# 1629534006 Fee \$98.00

RHSP FEE:\$9.00RPRF FEE \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 10/21/2016 09:44 AM PG: 1 OF 31

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 24-22-412-010-0000

Address:

Street: 11732-11758 S. Pulaski Road

Street line 2:

City: Alsip

State: IL

ZIP Code: 60803

Lender: Wells Fargo Bank, N.A., a national banking association

Borrower: Sundance, Inc., a Michigan corporation

Loan / Mortgage Amount: \$350,000,000.00

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

FIDELITY NATIONAL TITLE

994012837

(1 of 2)

Certificate number: 6FF91746-7D42-406D-8BDC-B4E0504C4FDE

Execution date: 10/14/2016

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WHEN RECORDED RETURN TO:

Frederick C.C. Boyd, III, Esq.
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road NE
Atlanta, Georgia 30326
CID No.: 000012785

DO NOT REMOVE THIS COVER SHEET. IT IS NOW PART OF THE RECORDED DOCUMENT.

DOCUMENT TO BE RECORDED: MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

Address or Real Estate: Store No. TBD
11732-11758 S. Pulaski Road
Alsip, Illinois 60803
Cook County

Parcel Nos. 24-22-412-010-0000, 24-22-412-011-0000 and 24-22-412-012-0000

Document Prepared by:
Frederick C.C. Boyd, III, Esq.
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road NE
Atlanta, Georgia 30326

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Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road NE
Atlanta, Georgia 30326
CID No.: 000012785

Re: Store # TBD - 11732-11758 S. Pulaski Road, Alsip, IL 60803 (Cook County)

[SPACE ABOVE FOR RECORDER'S USE ONLY]

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

This Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement (this "Mortgage") dated as of October 14, 2016 by **SUNDANCE, INC.**, a Michigan corporation, having an address at 7915 Kensington Court, Brighton, Michigan 48116 (hereinafter, together with its successors and assigns, "Mortgagor"), to **WELLS FARGO BANK, N.A.**, a national banking association, having an address at 1808 Aston Avenue, Suite 250, Carlsbad, California 92008, as administrative agent (hereinafter, in such capacity, "Administrative Agent" or "Mortgagee") for itself and the other lending institutions (hereinafter, collectively, "Lenders") which are or may become parties to the Credit Agreement (as hereinafter defined).

RECITALS

A. Mortgagor has, together with Old West Properties, L.L.C., a Michigan limited liability company (together with Mortgagor, are hereinafter collectively referred to as "Borrowers"), entered into that certain Third Amended and Restated Credit Agreement dated as of May 31, 2016, as amended by that certain First Modification to Third Amended and Restated Credit Agreement dated as of the date hereof with Lenders and Administrative Agent (said Third Amended and Restated Credit Agreement, as it may hereafter be amended, amended and restated, supplemented, extended, renewed, replaced or otherwise modified from time to time, being the "Credit Agreement"; the terms defined in the Credit Agreement and not otherwise defined herein being used herein as defined in the Credit Agreement).

B. Pursuant to the Credit Agreement and subject to the terms and conditions set forth therein, Lenders have agreed to make certain Facilities to Borrowers to assist Borrowers in financing certain of its activities in connection with one or more Restaurants.

C. The aggregate principal amount of the Facilities outstanding from time to time under the Credit Agreement may not exceed \$350,000,000.00, excluding advances made to

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protect the lien and security of this Mortgage.

D. To evidence and secure such indebtedness, Borrowers have executed and delivered the Credit Agreement, one or more promissory notes (collectively, the “Notes”) and certain other Loan Documents.

E. Lenders, Administrative Agent and Mortgagor have agreed that as a condition precedent to the making of the Facilities, Mortgagor will further secure such indebtedness by the execution and delivery of this Mortgage.

F. As used in this Mortgage, the term “Obligations” means and includes all of the following in any order of priority that Mortgagee may choose: (i) all performance and payment obligations of Borrowers and Mortgagor under or in connection with the Credit Agreement, the Notes, this Mortgage and all of the other Loan Documents; *provided, however*, that this Mortgage does not secure any Loan Document or other document or any provision of any Loan Document or other document, that is expressly stated to be unsecured; and (ii) all other obligations of Borrowers and Mortgagor to Mortgagee, in each case howsoever created, arising or evidenced, whether direct or indirect, joint or several, absolute or contingent, or now or hereafter existing, or due or to become due, including, without limitation, those obligations arising out of or in connection with the Credit Agreement, the Notes, this Mortgage, any Secured Cash Management Agreement, any Secured Hedge Agreement, or any of the other Loan Documents, including, without limitation, any and all advances, costs or expenses paid or incurred by Mortgagee or Lenders, including, without limitation, such advances as may be made from time to time to protect any or all of the Collateral (as hereinafter defined) and other collateral under the Loan Documents, to perform any obligation of Borrowers or Mortgagor hereunder or under any of the other Loan Documents or to collect any amount owing to Mortgagee or Lenders which is secured hereby or under the other Loan Documents; and (iii) payment and performance of all future advances and other obligations that Borrowers or Mortgagor, or any successor in interest to Borrowers or Mortgagor, and/or any other obligor (if different than Borrowers or Mortgagor), or any successor in ownership of all or part of the Collateral, may agree to pay and/or perform (whether as principal, surety, or guarantor) for the benefit of Mortgagee, when a writing evidences the parties’ agreement that the advance or obligation be secured by this Mortgage; and (iv) payment and performance or all modifications, amendments, extensions, and renewals, however evidenced, of any of the Obligations, including any successor agreements or instruments which restate and supersede any agreements or instruments evidencing the Obligations; and (v) interest on all of the foregoing; and (vi) all costs of enforcement and collection of the Obligations.

G. For purposes of this Mortgage, the term “Collateral” and all other terms defined in this Recital G, mean and include all the right, title and interest Mortgagor now has or may later acquire in and to all of the following:

(i) All of the land described on Exhibit A attached hereto (the “Land”), together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise appertaining to the Land (including, without limitation, all rights relating to

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storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Land; all estate, claim, demand, right, title or interest of Mortgagor in and to any street, road, highway, or alley (vacated or otherwise) adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing (all of the foregoing are herein referred to collectively as the “Real Estate”);

(ii) All buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate and owned or purported to be owned by Mortgagor, together with all building or construction materials, equipment, appliances, machinery, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Real Estate and owned or purported to be owned by Mortgagor, including, without limitation, all trees, shrubs and landscaping materials, reels, and all heating, venting, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment (all of the foregoing are herein referred to collectively as the “Improvements”);

(iii) All furniture, furnishings, equipment (including, without limitation, telephone and other communications equipment, office and record keeping equipment, window cleaning, building cleaning, signs, monitoring, garbage, air conditioning, computers, point of sale devices, drive-through equipment and other equipment), inventory and goods and all other tangible property of any kind or character now or hereafter owned or purported to be owned by Mortgagor and used or useful in connection with the Real Estate, regardless of whether located on the Real Estate or located elsewhere including, without limitation, all rights of Mortgagor under any lease to equipment, furniture, furnishings, fixtures and other items of personal property at any time during the term of such lease (all of the foregoing are herein referred to collectively as the “Goods”);

(iv) All goodwill, trademarks, trade names, franchise rights, franchise agreements, option rights, purchase contracts, condemnation claims, demands, awards and settlement payments, insurance contracts, insurance payments and proceeds, unearned insurance premiums, warranties, guaranties, utility deposits, books and records and general intangibles of Mortgagor relating to the Real Estate or the Improvements and all accounts, contract rights, instruments, chattel paper and other rights of Mortgagor for payment of money to it for property sold or lent by it, for services rendered by it, for money lent by it, or for advances or deposits made by it (including, without limitation, any deposits made by Mortgagor pursuant to Section 1.18 hereof), and any other intangible property of Mortgagor related to the Real Estate or the Improvements, to the extent Mortgagor’s right to mortgage, pledge or encumber any such items is not prohibited or limited by Franchisor under the Franchise Agreements (all of the foregoing are herein referred to collectively as the “Intangibles”);

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(v) All rents, issues, profits, royalties, avails, income and other benefits derived or owned by Mortgagor directly or indirectly from the Real Estate or the Improvements (all of the foregoing are herein referred to collectively as the "Rents");

(vi) All rights of Mortgagor under all leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any Person agrees to pay money to Mortgagor or any consideration for the use, possession or occupancy of, or any estate in, the Real Estate or the Improvements or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any of the foregoing (all of the foregoing are herein referred to collectively as the "Leases");

(vii) All rights of Mortgagor, if any, to all plans and specifications, designs, drawings and other matters prepared in connection with the Real Estate or the Improvements (all of the foregoing are herein referred to collectively as the "Plans");

(viii) All rights of Mortgagor under any contracts executed by Mortgagor with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Real Estate or the Improvements, including, without limitation, any architect's contracts, construction contracts and management contracts (all of the foregoing are herein referred to collectively as the "Contracts for Construction");

(ix) All rights of Mortgagor as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which Mortgagor has, with the prior written consent of Mortgagee, obtained the agreement of any Person to pay or disburse any money for Mortgagor's sale (or borrowing on the security) of the Collateral or any part thereof (all of the foregoing are herein referred to collectively as the "Contracts for Sale");

(x) All rights of Mortgagor in any permits, approvals, consents and other authorizations in connection with the Real Estate or the Improvements (all of the foregoing are herein referred to collectively as the "Permits"); and

(xi) All other property or rights of Mortgagor of any kind or character related to the Real Estate or the Improvements, all substitutions, replacements and additions thereto, whether now existing or hereafter acquired, and all proceeds (including, without limitation, insurance and condemnation proceeds) and products of any of the foregoing. All of the Real Estate and the Improvements, and any other property which is real estate under applicable law, are sometimes herein referred to collectively as the "Premises"

GRANT

NOW THEREFORE, for and in consideration of Lenders' making any loan, advance or other financial accommodation to or for the benefit of Borrowers and Mortgagor, including sums advanced under the Credit Agreement, the Notes, this Mortgage or the other Loan Documents

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and in consideration of the various agreements contained herein, in the Credit Agreement, in the Notes and in the other Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Borrowers and Mortgagor, and in order to secure the full, timely and proper payment and performance of each and every one of the Obligations,

MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY GRANTS, MORTGAGES, WARRANTS, CONVEYS, BARGAINS, TRANSFERS AND ASSIGNS TO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER AND GRANTS TO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER A CONTINUING SECURITY INTEREST IN AND TO ALL OF THE COLLATERAL,

TO HAVE AND TO HOLD the Premises unto Mortgagee, its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the state or other jurisdiction in which the Real Estate is located providing for the exemption of homesteads from sale on execution or otherwise.

Mortgagor hereby covenants with and warrants to Mortgagee and with the purchaser at any foreclosure sale: that (i) at the execution and delivery hereof it is well seized of the Premises and of a valid fee estate therein and that it has rights in the other Collateral; (ii) the Collateral is free from all encumbrances whatsoever (and any claim of any other Person thereto) other than the Permitted Liens and any rights of the Franchisor under the Franchise Agreements which may impact the rights of Mortgagee; (iii) that it has good and lawful right to sell, mortgage and convey the Collateral; and (iv) it and its successors and assigns will forever warrant and defend the Premises and the Collateral against all claims and demands whatsoever with the exception of those arising by, through or under the Permitted Liens.

In addition to any other debt or obligation secured hereby, this Mortgage shall also secure unpaid balances of advances heretofore and hereafter made with respect to the Collateral for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Collateral.

ARTICLE I

COVENANTS AND AGREEMENTS OF MORTGAGOR

Further to secure the payment and performance of the Obligations, Mortgagor hereby covenants, warrants and agrees with Mortgagee and Lenders as follows:

1.1 Payment of Obligations. Mortgagor agrees that it will pay, timely and in the manner required in the appropriate documents or instruments, all the Obligations (including, without limitation, fees and charges). All sums payable by Mortgagor hereunder shall be paid without demand, counterclaim, offset, deduction or defense. Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

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1.2 Payment of Taxes. Mortgagor will pay or cause to be paid when due all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Collateral or any property used in connection therewith, and will pay when due any tax, and any and all penalties, interest, attorneys' fees or other charges in connection therewith on the interest or estate in lands created or represented by this Mortgage or by any of the Loan Documents, whether levied against Mortgagor or Mortgagee or otherwise, and will submit to Mortgagee all receipts showing payment of all of such taxes, assessments and charges.

1.3 Maintenance and Repair. Mortgagor will: not abandon the Premises; not do or suffer anything to be done which would depreciate or impair the use, operation or value of the Collateral or the security of this Mortgage; not remove or demolish any of the Improvements, except as required or permitted by Franchisor under the Franchise Agreements, and provided that Mortgagor replaces those Improvements with Improvements of equal or greater value; pay promptly for all labor and materials for all construction, repairs and improvements to or on the Premises; not make any changes, additions or alterations to the Premises that cost in excess of \$200,000, except as required by any applicable governmental requirement or as otherwise approved in writing by Mortgagee; maintain, preserve and keep the Goods and the Premises in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction, all as promptly as possible under the circumstances but in all cases in compliance with any time period provided under applicable requirements of governmental authorities and insurers; not commit, suffer, or permit waste of any part of the Premises; and maintain all grounds and abutting streets and sidewalks in good and neat order and repair.

1.4 Access by Mortgagee. Mortgagor will at all times, deliver to Mortgagee either all of its executed originals (in the case of chattel paper or instruments) or (in all other cases), if requested by Mortgagee, certified copies of all Leases, agreements creating or evidencing Intangibles, Plans, Contracts for Construction, Contracts for Sale, Permits, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Collateral; permit access at reasonable times by Mortgagee to Mortgagor's books and records; permit Mortgagee to inspect construction progress reports, tenant registers, sales records, insurance policies and other papers for examination and the making of copies and extracts; prepare such schedules, summaries, reports and progress schedules as Mortgagee may reasonably request; and permit Mortgagee and its agents and designees, to inspect the Premises at reasonable times.

1.5 Stamp and Other Taxes. If the federal, or any state, county, local, municipal or other, government or any subdivision of any thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any income tax on Mortgagee's receipt of interest payments on the principal portion of the Facilities), assessment or imposition upon this Mortgage, the Notes, any of the Obligations, or any of the other Loan Documents, the interest of Mortgagee in the Collateral, or any of the foregoing, or upon Mortgagee or Lenders by reason of or as holder of any of the foregoing, or shall at any time or times require revenue stamps to be affixed to this Mortgage, the Notes, or any of the other Loan Documents, Mortgagor shall pay all such taxes and

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any and all penalties, interest, attorneys' fees or other costs in connection therewith and stamps to or for Mortgagee as they become due and payable. If any law or regulation is enacted or adopted permitting, authorizing or requiring any tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits Mortgagor from paying the tax, assessment, stamp, or imposition to or for Mortgagee, and the parties cannot reach an agreement acceptable to Mortgagee which shifts the economic burden of payment of such items to Mortgagor, then all sums hereby secured shall become immediately due and payable at the option of Mortgagee. In the event of a failure by Mortgagor to pay directly or indirectly any such tax or fee or applicable penalties, interest, attorneys' fees or costs, as set forth herein, the same shall, without limitation of any other remedies herein, constitute an Event of Default under this Mortgage, and, should Mortgagee elect to pay the same, all such taxes, fees, penalties, interest, attorneys' fees or other charges, in addition to being due and owing to Mortgagee upon demand, shall be secured by the lien of this Mortgage and shall bear interest at the Default Rate from the date of advance by Mortgagee until paid by Mortgagor. Notwithstanding anything to the contrary contained in this Mortgage, the Notes or any of the Loan Documents, this Section 1.5 shall survive repayment of the Notes and satisfaction of this Mortgage.

1.6 Insurance.

(a) Mortgagor agrees, at Mortgagor's sole cost and expense, to keep the Collateral insured, at all times throughout the term of this Mortgage, in accordance with Section 6.07 of the Credit Agreement.

(b) Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

Unless Mortgagor provides Mortgagee with evidence of insurance coverage as required by the Credit Agreement, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in and to the Collateral. This insurance may, but need not, also protect Mortgagor's interest. If the Collateral becomes damaged, the coverage Mortgagee purchases may not pay any claim Mortgagor makes or any claim made against Mortgagor. Mortgagor may later cancel this coverage by providing evidence that Mortgagor obtained property coverage elsewhere

Mortgagor is responsible for the cost of any insurance purchased by Mortgagee. The cost of this insurance may be added to the Obligations. If the cost is added to the Obligations, such sums shall bear interest at the Default Rate from the date paid by Mortgagee until the date repaid by Mortgagor. The effective date of coverage may be the date Mortgagor's prior coverage lapsed or the date Mortgagor failed to provide proof of coverage.

The coverage Mortgagee purchases may be considerably more expensive than insurance Mortgagor can obtain on its own and may not

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satisfy any need for property damage coverage or any mandatory liability insurance imposed by applicable law.

1.7 Eminent Domain; Notice of Condemnation. Mortgagor, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation, taking or requisition of the Collateral or any portion thereof, shall notify Mortgagee of the pendency of such proceeding. In case the Collateral, or any part or interest in any thereof, is taken by condemnation, Mortgagor shall take all action reasonably required by Mortgagee in order to protect Mortgagor's and Mortgagee's rights with respect to any such taking, including, without limitation, the commencement of, appearance in or prosecution of any appropriate action or proceeding. So long as no Event of Default has occurred and is continuing, Mortgagor hereby empowers Mortgagee, with Mortgagor's prior written consent which shall not be unreasonably withheld, delayed or conditioned, to settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the Collateral or any portion thereof. Upon the occurrence and continuance of an Event of Default, Mortgagor hereby empowers Mortgagee, in Mortgagee's absolute discretion to settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the Collateral or any portion thereof.

1.8 Casualties and Takings. All proceeds of any property or hazard insurance or awards of damages on account of any taking or condemnation for public use of or injury to the Collateral shall be disbursed and applied by Mortgagee in the manner set forth as provided in Section 2.05(b) of the Credit Agreement, as applicable.

1.9 Governmental Requirements. Mortgagor will at all times fully comply in all material respects with, and cause the Collateral and the use and condition thereof fully to comply in all material respects with, all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate to Mortgagor or the Collateral or the use thereof (including, without limitation, those relating to land use and development, construction, access, water rights and use, noise, environmental pollution and hazardous waste and substances, including, without limitation, Hazardous Materials), and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, construction, access, water rights and use, noise, environmental pollution and hazardous waste and substances, including, without limitation, Hazardous Materials) which are applicable to Mortgagor or have been granted for the Collateral or the use thereof. Unless required by applicable law, or unless Mortgagee has otherwise first agreed in writing, Mortgagor shall not make or allow any changes to be made in the nature of the occupancy or use of the Premises or any portion thereof for which the Premises or such portion was intended at the time this Mortgage was delivered. Mortgagor shall not initiate or acquiesce in any change in any zoning or other land use classification now or hereafter in effect and affecting the Premises or any part thereof without in each case obtaining Mortgagee's prior written consent thereto, which consent shall not be unreasonably withheld, delayed or conditioned.

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1.10 No Mechanics' Liens. Mortgagor will not suffer any construction, mechanics', laborers' or materialmen's lien to be created or remain outstanding upon the Premises or any part thereof and will bond or otherwise discharge all such liens within twenty (20) days from the date of filing. Mortgagor agrees to promptly deliver to Mortgagee a copy of any notices that Mortgagor receives with respect to any pending or threatened lien or the foreclosure thereof.

1.11 Continuing Priority. Mortgagor will: pay such fees, taxes and charges, execute and record or file (at Mortgagor's expense) such deeds, conveyances, mortgages and financing statements, obtain such title opinions, title insurance policy endorsements, acknowledgments or consents, notify such obligors or providers of services and materials and do all such other acts and things as Mortgagee may from time to time request to establish and maintain a valid and perfected first and prior lien on and security interest in the Collateral; maintain its office and principal place of business at all times at the address shown below; and keep all of its books and records relating to the Collateral on the Premises or at such address; and keep all tangible Collateral on the Real Estate except as Mortgagee may otherwise consent in writing.

1.12 Utilities. Mortgagor will pay or cause to be paid all utility charges incurred in connection with the Collateral promptly when due and maintain all utility services available for use at the Premises.

1.13 Contract Maintenance; Other Agreements; Leases. Mortgagor will, for the benefit of Mortgagee and Lenders, fully and promptly keep, observe, perform and satisfy each obligation, condition, covenant, and restriction of Mortgagor affecting the Premises or imposed on it under any agreement between Mortgagor and a third party relating to the Collateral or the Obligations, including, without limitation, the Leases, the Contracts for Sale, Contracts for Construction and the Intangibles (collectively, the "Third Party Agreements"), so that there will be no default thereunder and so that the Persons (other than Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of Mortgagee; and Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such Person to avoid such performance. Without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld, delayed or conditioned), Mortgagor shall not (i) make or permit any termination or material amendment of the rights of Mortgagor under any Third Party Agreement; (ii) collect rents or the proceeds of any Leases or Intangibles more than thirty (30) days before the same shall be due and payable; (iii) enter into any new Lease; (iv) materially modify or amend any Leases, or, except where the lessee is in default, cancel or terminate the same or accept a surrender of the leased premises; (v) consent to the assignment or subletting of the whole or any portion of any lessee's interest under any Leases; or (vi) in any other manner impair Mortgagee's and Lenders' rights and interest with respect to the Rents. Mortgagor shall promptly deliver to Mortgagee copies of any demands or notices of default received by Mortgagor in connection with any Third Party Agreement and allow Mortgagee the right, but not the obligation, to cure any such default. All security or other deposits, if any, received from tenants under the Leases shall be segregated and maintained in an account satisfactory to Mortgagee and in compliance with the law of the state where the Premises are located and with an institution satisfactory to Mortgagee. Mortgagor will not cause or permit any Rents, Leases, Contracts for Sale, or other contracts relating to the Premises to be assigned, transferred, conveyed, pledged or disposed of to any party other than Mortgagee without first

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obtaining the express prior written consent of Mortgagee to any such assignment or permit any such assignment to occur by operation of law.

1.14 Environmental Matters. Mortgagor will investigate, clean up, remove or remediate any spill or release of Hazardous Materials at the Premises in accordance with the requirements of all Environmental Laws and will otherwise use, handle, store and dispose of all Hazardous Materials in accordance with the requirements of all Environmental Laws.

1.15 Assignment of Leases and Rents and Collections.

(a) All of Mortgagor's interest in and rights under the Leases now existing or hereafter entered into, and all of the Rents, whether now due, past due, or to become due, and including all prepaid rents and security deposits, and all other amounts due with respect to any of the other Collateral, are hereby absolutely, presently and unconditionally assigned and conveyed to Mortgagee to be applied by Lenders in payment of all sums due under the Notes, the other Obligations and all other sums payable under this Mortgage. Prior to the occurrence of any Default, Mortgagor shall have a license to collect and receive all Rents and other amounts, which license shall be terminated at the sole option of Mortgagee, without regard to the adequacy of its security hereunder and without notice to or demand upon Mortgagor, upon the occurrence of any Default. It is understood and agreed that neither the foregoing assignment to Mortgagee nor the exercise by Mortgagee of any of its rights or remedies under Article III hereof shall be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or any portion thereof, unless and until Mortgagee, in person or by agent, assumes actual possession thereof, nor shall appointment of a receiver for the Collateral by any court at the request of Mortgagee or by agreement with Mortgagor, or the entering into possession of any part of the Collateral by such receiver, be deemed to make Mortgagee a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or operation of all or any portion thereof. Upon the occurrence of any Default, this shall constitute a direction to and full authority to each lessee under any Leases, each guarantor of any of the Leases and any other Person obligated under any of the Collateral to pay all Rents and other amounts to Mortgagee without proof of the Default relied upon. Mortgagor hereby irrevocably authorizes each such Person to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any Rents and other amounts due or to become due.

(b) Mortgagor shall apply the Rents and other amounts to the payment of all necessary and reasonable operating costs and expenses of the Collateral, debt service on the Obligations and otherwise in compliance with the terms and provisions of the Loan Documents.

(c) Mortgagee shall have the right to assign Mortgagee's right, title and interest in any Leases to any subsequent holder of this Mortgage or any participating interest therein or to any Person acquiring title to all or any part of the Collateral through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers

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herein provided to Mortgagee. Upon the occurrence of any Default, Mortgagee shall have the right to execute new leases of any part of the Collateral, including leases that extend beyond the term of this Mortgage. Mortgagee shall have the authority, as Mortgagor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of Mortgagor and to bind Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Collateral.

1.16 Mortgagee's Performance. If Mortgagor fails to pay or perform any of its obligations herein contained (including, without limitation, payment of expenses of foreclosure and court costs), Mortgagee may (but need not), as agent or attorney-in-fact of Mortgagor, make any payment or perform (or cause to be performed) any obligation of Mortgagor hereunder, in any form and manner deemed expedient by Mortgagee, and any amount so paid or expended (plus reasonable compensation to Mortgagee for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the Default Rate shall be added to the principal debt hereby secured and shall be repaid to Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, Mortgagee may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any of the Collateral; complete construction; make repairs; collect rents; prosecute collection of the Collateral or proceeds thereof; obtain insurance and pay premiums therefor; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Premises. In making any payment or securing any performance relating to any obligation of Mortgagor hereunder, Mortgagee shall be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes a Default or an Event of Default.

1.17 Subrogation. To the extent that Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or Mortgagor or any other Person pays any such sum with the proceeds of the loan or loans secured hereby, Mortgagee shall have and be entitled to a lien or other interest on the Collateral equal in priority to the lien or other interest discharged and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee and Lenders in securing the Obligations.

1.18 Reserve for Taxes, Assessments and Insurance. Upon request by Mortgagee, following an uncured Event of Default, Mortgagor covenants and agrees to pay to Mortgagee (or Mortgagee's agent) monthly until the Facilities and all of the other Obligations have been paid in full, a sum equal to real estate taxes and assessments and insurance premiums next due upon the Premises (all as reasonably estimated by Mortgagee or its agent) divided by the number of months to elapse before one month prior to the date when such taxes, and assessments and insurance premiums will become due and payable, such sums to be held by Mortgagee without interest accruing thereon (except to the extent, if any, required by applicable law), to pay each of the said items.

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All payments described above in this Section 1.18 shall be paid by Mortgagor each month in a single payment to be applied by Mortgagee (or its agent) to the foregoing items in such order as Mortgagee shall elect in its sole but reasonable discretion. Following an uncured Event of Default, Mortgagor shall also pay to Mortgagee, upon request, at least thirty (30) days prior to the due date of any taxes, and assessments levied on, against or with respect to the Premises, or any insurance premium due with respect to the Premises, such additional amount as may be necessary to provide Mortgagee (or its agent) with sufficient funds to pay any such tax, assessment, and insurance premiums under this Section 1.18 at least thirty (30) days in advance of the due date thereof.

Mortgagee (or its agent) shall, within twenty (20) days of receipt from Mortgagor of a written request therefor together with such supporting documentation as Mortgagee (or its agent) may reasonably require (including, without limitation, official tax bills or, as applicable, statements for insurance premiums), cause proper amounts to be withdrawn from such account and paid directly to the appropriate tax collecting authority or insurer. Even though Mortgagor may have made all appropriate payments to Mortgagee (or its agent) as required by this Mortgage, Mortgagor shall nevertheless have full and sole responsibility at all times to cause all taxes, assessments and insurance premiums to be fully and timely paid, and Mortgagee (or its agent) shall have no responsibility or obligation of any kind with respect thereto except with respect to payments required to be made by Mortgagor hereunder for which Mortgagee (or its agent) has received funds to cover such payments in full and all statements, invoices, reports or other materials necessary to make such payments, all not less than thirty (30) days prior to the deadline for any such payment. If at any time the funds so held by Mortgagee (or its agent) shall be insufficient to cover the full amount of all taxes, assessments and insurance premiums then accrued (as estimated by Mortgagee or its agent) with respect to the then-current twelve (12)-month period, Mortgagor shall, within ten (10) days after receipt of notice thereof from Mortgagee (or its agent) deposit with Mortgagee (or its agent) such additional funds as may be necessary to remove the deficiency. If the Premises are sold under foreclosure or are otherwise acquired by Mortgagee, accumulations under this Section 1.18 may be applied to the Obligations in such order of application as Mortgagee may elect in its sole discretion.

1.19 Periodic Appraisals. If at any time Mortgagee shall determine in good faith that an appraisal of the Premises 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 deeming appropriate;

Mortgagee may require that Mortgagor provide at Mortgagor's sole cost and expense, within forty-five (45) days after Mortgagee's request (but not more than once during each

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calendar year), an update or supplement to the previously furnished appraisal for the Collateral indicating the present appraised fair market value of the Collateral.

1.20 Indemnity Clause. Without limiting any other rights hereunder or under applicable law, Mortgagor does and shall indemnify Lenders and Mortgagee and hold Lenders and Mortgagee harmless from and against any and all claims, losses, damages (including, without limitation, natural resources damages), liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including, without limitation, all reasonable attorneys' fees and expenses (collectively "Liabilities"), arising directly or indirectly in whole or in part, out of any spill or attributable to the presence, use, generation, disposal, discharge, storage, release or threatened release of Hazardous Materials on, from, under or affecting the Premises, or transported to or from the Premises, whether prior to or during the term of the indebtedness secured hereby, and whether by Mortgagor or any predecessor in title or any employees, agents, contractors, or subcontractors of Mortgagor or any predecessors in title, or any third persons at any time occupying or present on the Premises. The foregoing indemnity shall not apply to any Liabilities arising as a result of the gross negligence or willful misconduct of Mortgagee and any sub-agent thereof.

1.21 Reasonable Attorneys' Fees. Mortgagor and each borrower, endorser and guarantor jointly, severally and collectively agree to pay all costs, reasonable attorneys' fees, paralegal fees, and expenses incurred (whether incurred in any trial, appellate, bankruptcy, condemnation, or any other proceeding) in the event it becomes necessary for Mortgagee to protect its security and/or in the event of collection, whether suit be brought or not, and if suit is brought said parties agree to pay Mortgagee's and Lenders' costs and reasonable attorneys' fees, paralegal fees and expenses incurred therein including costs and reasonable attorneys' fees, paralegal fees and expenses incurred upon appeal, if any.

1.22 Title Warranty. Mortgagor covenants and warrants to Mortgagee and Lenders that Mortgagor holds good and marketable fee title to the Premises (subject only to the Permitted Liens).

1.23 Transfer of Premises by Mortgagor. To induce Lenders to extend credit under the Credit Agreement, Mortgagor agrees that in the event of any transfer (by sale, lease, operation of law or otherwise) of Mortgagor's interest in the Premises without the prior written consent of Mortgagee, Mortgagee shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Any transfer consented to by Mortgagee shall be made subject to this Mortgage, and any such transferee shall assume the obligations of Mortgagor hereunder, without releasing Mortgagor therefrom.

1.24 Business Loan Recital/Statutory Exemption.

(a) Mortgagor acknowledges and agrees that (A) the proceeds of the Facilities will be used in conformance with subparagraph (1) of Section 4 of the Illinois Interest Act (815 ILCS 205/0.01, et seq., including Section 4(1) thereof); (B) the Obligations secured hereby has been incurred by Mortgagor solely for business purposes of Mortgagor and for

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Mortgagor's investment or profit, as contemplated by said Section 4(1); (C) the Obligations secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4(1); and (D) the Obligations is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 *et seq.*, and has been entered into solely for business purposes of Mortgagor and Mortgagor's investment or profit, as contemplated by said section.

(b) Without limiting the generality of anything contained herein, Mortgagor acknowledges and agrees that the transaction of which this Mortgage is part is a transaction which does not include either agricultural real estate (as defined in 15-1201 of the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.* (the "Foreclosure Act") or residential real estate (as defined in 15-1219 of the Foreclosure Act).

ARTICLE II

DEFAULT

2.1 Event of Default. Mortgagor shall be in default hereunder if a Default or an Event of Default shall have occurred under the Credit Agreement or any other Loan Document.

ARTICLE III

REMEDIES

Immediately upon or any time after the occurrence of any Event of Default, Mortgagee and/or Lenders may exercise, to the extent not prohibited by applicable law, any remedy available at law or in equity, including, but not limited to, those listed below and those listed in the Credit Agreement and the other Loan Documents, in such sequence and in such combination as Mortgagee may determine in Mortgagee's sole and absolute discretion:

3.1 Acceleration. Upon the occurrence of any Event of Default, the entire indebtedness evidenced by the Notes and all other Obligations together with interest thereon at the Default Rate shall, subject to the terms of the Credit Agreement and Notes, at the option of Mortgagee, without demand or notice of any kind to Mortgagor or any other person, become immediately due and payable.

3.2 Remedies Cumulative. To the extent not prohibited by applicable law, no remedy or right of Mortgagee hereunder or under the Credit Agreement, the Notes or any of the other Loan Documents, or otherwise, or available under applicable law or in equity, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law or in equity. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature. To the extent not prohibited by applicable law, every such remedy or right may be exercised concurrently or independently, and when and as often as may

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be deemed expedient by Mortgagee. To the extent not prohibited by applicable law, all obligations of Mortgagor, and all rights, powers and remedies of Mortgagee, expressed herein shall be in addition to, and not in limitation of, those provided by law or in equity or in the Credit Agreement, the Notes or any other Loan Documents or any other written agreement or instrument relating to any of the Obligations or any security therefor.

3.3 Foreclosure; Receiver. Upon the occurrence of any Event of Default, Mortgagee shall also have the right immediately to foreclose this Mortgage or otherwise enforce the lien of this Mortgage. Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of Mortgagee or at any time thereafter, either before or after foreclosure sale, and without notice to Mortgagor or to any party claiming under Mortgagor and without regard to the solvency or insolvency at the time of such application of any Person then liable for the payment of any of the Obligations, without regard to the then value of the Premises or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without regarding any bond from the complainant in such proceedings, apply to a court of competent jurisdiction for the appointment of a receiver for the benefit of Mortgagee, with power to take possession, charge, and control of the Premises, to lease the same, to keep the buildings thereon insured and in good repair, and to collect all Rents during the pendency of such foreclosure suit, and, in case of foreclosure sale and a deficiency, during any period of redemption.

The court may, from time to time, authorize said receiver to apply the net amounts remaining in its hands, after deducting reasonable compensation for the receiver and its counsel as allowed by the court, in payment (in whole or in part) of any or all of the Obligations, including, without limitation, the following, in such order of application as Mortgagee may elect: (i) amounts due under the Notes, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Premises, (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises, (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same and (vi) all moneys advanced by Mortgagee or Lenders to cure or attempt to cure any Default by Mortgagor in the performance of any obligation or condition contained in any Loan Documents or this Mortgage or otherwise, to protect the security hereof provided herein, or in any Loan Documents, with interest on such advances at the Default Rate.

The surplus of the proceeds of sale, if any, shall then be paid to Mortgagor, upon reasonable request. This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Premises, as Mortgagee may elect, until all of the Premises have been foreclosed against and sold. As part of the foreclosure, Mortgagee in its discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Premises, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable law. Upon the completion of any such sale or sales, Mortgagee shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers the property so sold, in the manner and form as provided by applicable law, and

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Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose Mortgagee may execute and deliver, for and in the name of Mortgagor, all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof. In the case of any sale of the Premises pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Notes and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by Mortgagee and Lenders for the enforcement, protection or collection of this security, including court costs, reasonable attorneys' fees, stenographers' fees, costs of advertising, appraisals and environmental investigations, including the costs of the preparation of phase I and phase II surveys of the Premises, and costs of title insurance and any other documentary evidence of title, shall be paid by Mortgagor.

3.4 Illinois Mortgage Foreclosure Act. It is the express intention of Mortgagee and Mortgagor that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Foreclosure Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provisions in this Mortgage are deemed inconsistent with any provision in the Foreclosure Act, the provisions of the Foreclosure 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 Foreclosure Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies which are more limited than the rights that would otherwise be vested in Mortgagee under the Foreclosure Act in the absence of such provisions, Mortgagee shall be vested with rights granted in the Foreclosure Act to the full extent permitted by law.

3.5 Possession of the Premises; Remedies for Leases and Rents. Mortgagor hereby waives all right to the possession, income and rents of the Premises from and after the occurrence of any Event of Default, and Mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the Premises or any part thereof. If any Event of Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, Mortgagee shall be entitled, in its sole discretion, to do all or any of the following: (i) in accordance with applicable law, enter and take actual possession of the Premises, the Rents, the Leases and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude Mortgagor therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating thereto; (iii) as attorney-in-fact or agent of Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Leases and other Collateral relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its sole discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Leases and

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other Collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsure the Collateral for all risks incidental to Mortgagee's possession, operation and management thereof; and (viii) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as Mortgagee in its discretion may deem proper, Mortgagor hereby granting Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Event of Default without notice to Mortgagor or any other Person. Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment, in such order as Mortgagee may determine, of or on account of any one or more of the following: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include, without limitation, reasonable compensation to Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the cost of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of Mortgagee, make it readily rentable; and (c) to the payment of any Obligations. The entering upon and taking possession of the Premises, or any part thereof, and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any Event of Default theretofore or thereafter occurring or affect any notice of Default or invalidate any act done pursuant to any such Event of Default or notice, and, notwithstanding continuance in possession of the Premises or any part thereof by Mortgagee or a receiver and the collection, receipt and application of the Rents, Mortgagee, to the extent not prohibited by applicable law, shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of an Event of Default. Any of the actions referred to in this Section 3.5 may be taken by Mortgagee irrespective of whether any notice of Default has been given hereunder and without regard to the adequacy of the security for the indebtedness hereby secured. Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Foreclosure Act, to be placed in possession of the Collateral 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 Mortgage, all powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the Foreclosure Act.

3.6 Personal Property. If any Event of Default shall occur, Mortgagee may exercise from time to time any rights and remedies available to it under the Loan Documents or applicable law upon default in payment of indebtedness, including, without limitation, those available to a secured party under the Uniform Commercial Code of the state where the goods are located. Mortgagor shall, promptly upon request by Mortgagee, assemble the Collateral and make it

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available to Mortgagee at such place or places, reasonably convenient for both Mortgagee and Mortgagor, as Mortgagee shall designate. Mortgagor hereby expressly waives, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings, or process of law in connection with the exercise by Mortgagee of any of its rights and remedies after an Event of Default occurs. If any notification of intended disposition of any of the Collateral is required by law, such notification, if mailed, shall be deemed reasonably and properly given if mailed by registered or certified mail, return receipt requested, at least ten (10) days before such disposition, postage prepaid, addressed to Mortgagor either at the address shown below or at any other address of Mortgagor appearing on the records of Mortgagee. Without limiting the generality of the foregoing, whenever there exists an Event of Default, Mortgagee may, with respect to so much of the Collateral as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (i) notify any Person obligated on the Collateral to perform directly for Mortgagee its obligations thereunder, (ii) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of Mortgagor to allow collection of the Collateral, (iv) take control of any proceeds of the Collateral, (v) enter upon any premises where any of the Collateral may be located and take possession of and remove such Collateral and render all or any part of the Collateral unusable, all without being responsible for loss or damage, (vi) sell any or all of the Collateral, free of all rights and claims of Mortgagor therein and thereto, at any lawful public or private sale and on such terms as Mortgagee deems advisable, and (vii) bid for and purchase any or all of the Collateral at any such public or private sale. Any proceeds of any disposition by Mortgagee of any of the Collateral may be applied by Mortgagee to the payment of expenses in connection with the Collateral, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by Mortgagee toward the payment of such of the Obligations and in such order of application as Mortgagee may from time to time elect. Without limiting the foregoing, Mortgagee may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law. Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Notes and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by Mortgagee of any of its rights and remedies hereunder. Mortgagor hereby constitutes Mortgagee its attorney-in-fact with full power of substitution to take possession of the Collateral upon any Event of Default and, as Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by Mortgagee to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Obligations are outstanding. To the extent not prohibited by applicable law, Mortgagor shall remain liable for any deficiency resulting from the sale of the Collateral and shall pay such deficiency forthwith upon demand, and Mortgagee's right to recover such deficiency shall not be impaired by the sale or other disposition of Collateral without required notice. Expenses of retaking, holding, preparing for sale, selling or the like will first be paid from the proceeds before the balance will be applied toward any Obligations.

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3.7 No Liability on Mortgagee or Lenders. Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Premises and/or do any and all other things which it may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include, without limitation: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Credit Agreement; otherwise caring for and protecting any and all of the Premises; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted hereunder either with or without giving notice to any person. Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor, whether hereunder, under any of the Third Party Agreements or otherwise. Neither Mortgagee nor Lenders shall have responsibility for the control, care, management or repair of the Premises (including, but not limited to, use, storage, manufacture, discharge or transportation of hazardous waste or substances, including, without limitation, Hazardous Materials, by Mortgagor) or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other Person. No liability shall be enforced or asserted against Mortgagee or Lenders in its exercise of the powers granted to it under this Mortgage, and Mortgagor expressly waives and releases any such liability. Should Mortgagee or Lenders incur any such liability, loss or damage under any of the Third Party Agreements or under or by reason hereof, or in the defense of any claims or demands, Mortgagor agrees to reimburse Mortgagee or Lenders immediately upon demand for the full amount thereof, including costs, expenses and reasonable attorneys' fees. Such sums shall bear interest at the Default Rate from the date of each such expenditure by Mortgagee or Lenders and shall be paid by Mortgagor to Mortgagee forthwith upon demand by Mortgagee, and shall be secured by this Mortgage, and Mortgagee shall have, in addition to any other right or remedy of Mortgagee, the same rights and remedies in the event of non-payment of any such sums by Mortgagor as in the case of a default by Mortgagor in the payment of any installment of principal or interest due and payable under the Credit Agreement.

3.8 Protective Advances. Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure of this Mortgage, and before and after a judgment of foreclosure, and at any time prior to sale of the Collateral, and, where applicable, after sale of the Collateral and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Foreclosure Act, shall have the benefit of all applicable provisions of the Foreclosure Act, including those provisions of the Foreclosure Act referred to below (collectively, "Protective Advances"):

- (a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the

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Collateral; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5-1302 of the Foreclosure Act;

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

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

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

(e) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1512 of the Foreclosure Act;

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

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Collateral is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Collateral as imposed by subsection (c)(1) of Section 15-1704 of the Foreclosure Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Mortgagee to be for the benefit of the Collateral or required to be made by the owner of the Collateral under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating

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covenants or restrictions for the benefit of or affecting the Collateral; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Collateral is a member if in any way affecting the Collateral; (G) costs incurred by Mortgagee for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Collateral.

All Protective Advances shall form a part of the Obligations secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b) of Section 15-1302 of the Foreclosure Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Foreclosure Act, apply to and be included in: (A) determination of the amount of Obligations secured by this Mortgage at any time; (B) the amount of the Obligations found due and owing to Mortgagee in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional Obligations becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5-1693 of the Foreclosure Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Foreclosure Act; (E) applicable of income in the hands of any receiver or mortgagee in possession; and (F) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of Sections 15-1508 and 15-1511 of the Foreclosure Act.

ARTICLE IV

GENERAL

4.1 Permitted Acts. Mortgagor agrees that, without affecting or diminishing in any way the liability of Mortgagor or any other Person, except any Person expressly released in writing by Mortgagee (with the consent of any pledgee of the Obligations), for the payment or performance of any of the Obligations or for the performance of any obligation contained herein or affecting the lien hereof upon the Collateral or any part thereof, Lenders may at any time and from time to time, without notice to or the consent of any Person, release any Person liable for the payment or performance of the Notes or any of the other Obligations or any guaranty given in connection therewith; extend the time for, or agree to alter the terms of payment of, any indebtedness under the Notes or any of the other Obligations or any guaranty given in connection therewith; modify or waive any obligation; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind for repayment of the Notes or the other Obligations or any guaranty given in connection therewith; release any Collateral or other property securing any Note or the other Obligations or any guaranty given in connection therewith; make releases of any portion of the Premises; consent to the making of any map or plat of the Premises; the creation of any easements on the Premises or of any covenants restricting the use or occupancy thereof; or exercise or refrain from exercising, or waive, any right Mortgagee or Lenders may have.

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4.2 Legal Expenses. Mortgagor agrees to indemnify Mortgagee and Lenders from all loss, damage and expense, including, without limitation, reasonable attorneys' fees, incurred in connection with any suit or proceeding in or to which Mortgagee and/or Lenders may be made or become a party for the purpose of protecting the lien or priority of this Mortgage.

4.3 Security Agreement; Fixture Filing.

(a) This Mortgage, to the extent that it conveys or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the Uniform Commercial Code as in effect in the state in which the Premises are located, and this Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Premises are located with respect to any and all fixtures included within the term "Collateral" as used herein and with respect to any Goods or other personal property that may now be or hereafter become such fixtures. For purposes of the foregoing, Mortgagor is the debtor (with its address, type of organization and jurisdiction of organization as set forth above), Mortgagee is the secured party (with its address as set forth above) and Mortgagor is the record owner of the Real Estate. If any item of Collateral hereunder also constitutes collateral granted to Mortgagee under any other mortgage, agreement, document, or instrument, in the event of any conflict between the provisions of this Mortgage and the provisions of such other mortgage, agreement, document, or instrument relating to the Collateral, the provision or provisions selected by Mortgagee shall control with respect to the Collateral.

(b) This Mortgage is granted to secure, among other Obligations, future advances and loans made after this Mortgage is delivered to the County Recorder of the county in which the Premises are located for record (whether obligatory, made at the option of Mortgagee or Lenders or otherwise) from Mortgagee or Lenders to or for the benefit of Mortgagor or its successors or assigns or the Premises, as provided in the Credit Agreement, and costs and expenses of enforcing Mortgagor's obligations under this Mortgage, the Credit Agreement and the other Loan Documents. All advances, disbursements or other payments required by the Credit Agreement are obligatory advances up to the credit limits established therein and shall, to the fullest extent permitted by law, have priority over any and all construction and mechanics' liens and other liens and encumbrances arising after this Mortgage is recorded.

(c) Mortgagee may from time to time require one or more financing statements to perfect or continue the perfection of Mortgagee's security interest in any Collateral, Leases, or Rents. Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require and all other reasonable fees and costs Mortgagee or Lenders incurs in connection with perfection of its security interests. Such fees and costs shall bear interest at the Default Rate from the date paid by Mortgagee until the date repaid by Mortgagor, and such fees and costs, together with such interest, shall be part of the Obligations and shall be secured by this Mortgage.

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Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact, with full power of substitution, to file any such documents on its behalf without the necessity of signature by Mortgagor. Such power is deemed to be coupled with an interest, and is therefore irrevocable. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

(d) Everything used in connection with the Premises and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (x) any such item is physically attached to the Improvements, (y) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee or (z) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of Mortgagee's lien granted hereby or by any other recorded document. Such mention in the Financing Statement is declared to be solely for the protection of Mortgagee in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Mortgagee's priority of interest is required in order to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivisions or entity of the federal government, shall be filed in the Uniform Commercial Code records.

4.4 Defeasance. Upon full payment of all indebtedness secured hereby and satisfaction of all the Obligations in accordance with their respective terms and at the time and in the manner provided, and when Mortgagee and Lenders have no further obligation to make any advance, or extend any credit hereunder, under the Notes or any of the other Loan Documents, this conveyance shall be null and void, and thereafter, upon demand therefor, an appropriate instrument of reconveyance or release shall promptly be made by Mortgagee to Mortgagor, at the expense of Mortgagor.

4.5 Notices. All notices, demands and other communications provided for hereunder shall be given in accordance with the notice provisions of the Credit Agreement.

4.6 Successors; Mortgagor; Gender; Severability. All provisions hereof shall bind Mortgagor and Mortgagee and their respective successors, vendees and assigns and shall inure to the benefit of Mortgagee, its successors and assigns, Lenders, its successors and assigns, and Mortgagor and its permitted successors and assigns. MORTGAGOR CONSENTS TO THE

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ASSIGNMENT BY MORTGAGEE AND/OR LENDER OF ALL OR ANY PORTION OF THEIR RIGHTS UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS. MORTGAGOR ACKNOWLEDGES AND AGREES THAT ANY AND ALL RIGHTS OF MORTGAGEE AND/OR LENDER UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS MAY BE EXERCISED FROM TIME TO TIME BY ANY ASSIGNEE OR SUCCESSOR OF SUCH PARTY. Mortgagor shall not have any right to assign any of its rights hereunder. Except as limited by the preceding sentence, the word "Mortgagor" shall include all Persons claiming under or through Mortgagor and all Persons liable for the payment or performance by Mortgagor of any of the Obligations whether or not such Persons shall have executed the Notes or this Mortgage. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity only, without invalidating the remainder of such provision or the remaining provisions of this Mortgage, it being the parties' intention that this Mortgage and each provision hereof be effective and enforced to the fullest extent permitted by applicable law.

4.7 Care by Mortgagee. Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral assigned by Mortgagor to Mortgagee or in Mortgagee's possession if it takes such action for that purpose as Mortgagor requests in writing, but failure of Mortgagee to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of Mortgagee to preserve or protect any rights with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by Mortgagor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

4.8 No Waiver; Writing. No delay on the part of Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Mortgagee of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

4.9 Governing Law. This Mortgage shall be a contract made under and governed by the internal laws of the State of New York without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the State of New York, except to the extent that matters of title or creation, perfection or priority of the security interests created hereby or procedural issues of foreclosure or enforcement of remedies are required to be governed by the laws of the jurisdiction where the Premises are located.

4.10 Waiver. Mortgagor, on behalf of itself and all Persons now or hereafter interested in the Premises or the Collateral, to the fullest extent permitted by applicable law, hereby waives all rights under all appraisal, moratorium, valuation, exemption, stay, extension, and laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all Obligations secured by this Mortgage, and Mortgagor

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agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of this Collateral. Without limiting the generality of the preceding sentence, Mortgagor, on its own behalf and on behalf of each and every Person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Mortgagor, for itself and for all Persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Collateral shall be sold in the event of any sale or sales pursuant hereto and to have any of the Collateral and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness. Without limiting the generality of the foregoing, the waiver by Mortgagor of its rights of redemption and reinstatement in this Section, include the waiver of such rights as provided under Sections 15-1601 and 15-1602 of the Foreclosure Act.

4.11 JURY TRIAL. MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY LOAN DOCUMENTS TO WHICH IT IS A PARTY, OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR ANY RELATED DOCUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

4.12 No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple or leasehold title to the Premises, it is hereby understood and agreed that should Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple or leasehold title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple or leasehold title.

4.13 Time of Essence and Severability. Time is declared to be of the essence in this Mortgage, the Credit Agreement, the Notes and the other Loan Documents and of every part hereof and thereof. If Mortgagee chooses to waive any covenant, section or provision of this Mortgage, or if any covenant, section or provision of this Mortgage is construed by a court of competent jurisdiction to be invalid or unenforceable, it shall not affect the applicability, validity or enforceability of the remaining covenants, sections or provisions.

4.14 Matters to Be in Writing. This Mortgage cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought.

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4.15 Administrative Agent. To the extent that any action is to be taken, any information is to be delivered to or by Lenders, any determination is to be made, or any consent is to be given or withheld by Lenders, any such action, delivery, determination or consent shall be taken, made or given or withheld, as the case may be, by Administrative Agent or any successor agent thereto.

4.16 Sole Discretion of Mortgagee. Whenever Mortgagee's or Lenders' judgment, consent or approval is required hereunder for any matter, or Mortgagee or Lenders shall have an option or election hereunder, such judgment, the decision as to whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of such party unless expressly stated to the contrary herein.

4.17 Usury Savings Clause. It is the intention of the parties hereto to conform strictly to the usury laws governing the Loan Documents, and any interest payable under the Loan Documents shall be subject to reduction to the amount not in excess of the maximum non-usurious amount allowed under such laws as construed by the courts having jurisdiction over such matters. In the event the maturity of the Obligations is accelerated by reason of any provision of the Loan Documents or by reason of an election by Mortgagee resulting from an Event of Default, then earned interest may never include more than the maximum amount permitted by law, computed from the dates of each advance of loan proceeds under the Credit Agreement until payment; and any interest in excess of the maximum amount permitted by law shall be canceled automatically and, if theretofore paid, shall at the option of Mortgagee either be rebated to Mortgagor or be credited on the principal amount of the Obligations, or if all principal has been repaid, then the excess shall be rebated to Mortgagor. If any interest is canceled, credited against principal or rebated to Mortgagor pursuant to the provisions of the foregoing sentence, and if, thereafter, the interest payable hereunder is less than the maximum amount permitted by applicable law, the rate hereunder shall automatically be increased to the maximum extent possible to permit repayment to Lenders as soon as possible of any interest in excess of the maximum amount permitted by law which was earlier canceled, credited against principal or rebated to Lenders pursuant to the provisions of the foregoing sentence.

4.18 Maximum Secured Amount/Future Advances. This Mortgage shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby, whether such advances are obligatory or to be made at the option of the Lenders, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to any and all future obligations and Obligations arising under or in connection with this Mortgage from the time of its filing for record in the recorder's or registrar's office of the county in which the Premises is located, which future obligations and Obligations shall have the same priority as if all such future obligations and Obligations were made on the date of execution hereof. Nothing in this Section or in any other provision of this Mortgage shall be deemed an obligation on the part of Mortgagee to make any future advances of any sort. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage shall secure (in addition to any loan proceeds disbursed from time to time) the payment of any and all expenses

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and advances due to or incurred by Mortgagee in connection with the Obligations to be secured hereby and which are to be reimbursed by Mortgagor under the terms of this Mortgage; provided, however, that in no event shall the total amount of loan proceeds disbursed plus such additional amounts exceed \$350,000,000.00 (the "Maximum Secured Amount"). The total amount of indebtedness may increase or decrease from time to time, as provided in the Credit Agreement, but the total unpaid balance so secured at any one time shall not exceed the Maximum Secured Amount. This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Premises, to the extent of the Maximum Secured Amount.

4.19 Sealed Instrument. Mortgagor intends for this Mortgage to be executed and delivered by Mortgagor, and accepted by Mortgagee, as a sealed instrument.

4.20 Maturity Date. The Obligations shall be due and payable in full on or before (a) March 31, 2018, with respect to the Development Loan Facility, (b) March 31, 2020, with respect to the Term Loan Facility, (c) March 31, 2020, with respect to the Term II Loan Facility, and (d) October 28, 2016, with respect to the Term III Loan Facility.

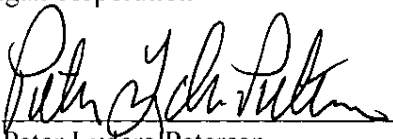
4.21 Incorporation by Reference. The terms and provisions of the Credit Agreement are hereby incorporated by reference as if more fully set forth herein.

[Remainder of page intentionally left blank.]

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IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage on the day and year first above written.

SUNDANCE, INC.,
a Michigan corporation

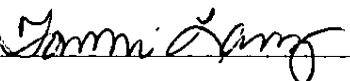
By: 
Peter Lyders-Petersen
President

ACKNOWLEDGEMENT

STATE OF Michigan)
COUNTY OF Oakland)

On October 12, 2016 before me TAMMI LANNING personally appeared Peter Lyders-Petersen, personally known to be (or proved to be on the basis of satisfactory evidence) to be the person, whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature  (Seal)

Property of Cook County Clerk's Office

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Unit:

Store No. TBD

11732-11758 S. Pulaski Road

Alsip, IL 60803

Cook County

EXHIBIT A

DESCRIPTION OF LAND

LOTS 4, 5 AND 6 IN BLOCK 25 IN ARTHUR T. MC INTOSH AND COMPANY'S 1ST ADDITION TO GARDEN HOMES SUBDIVISION, A SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 37 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 11732-11758 S. Pulaski Road, Alsip, Cook County, IL 60803

Tax Parcel Numbers: 24-22-412-010-0000, 24-22-412-011-0000 and 24-22-412-012-0000

Property of Cook County Clerk's Office