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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

Doc#: 1714615160 Fee: \$78.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/26/2017 11:43 AM Pg: 1 of 16

The property identified as: PIN: 14-30-224-036-0000

8984310 2
Buhner

Address:

Street: 2862-2928 N ASHLAND AVE

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60657

Lender: RELIANCE BANK

Borrower: TDG ASHLAND, LLC

Loan / Mortgage Amount: \$4,954,250.00

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

Certificate number: 7C90F00D-C36F-4018-888D-7C432740B270

Execution date: 5/24/2017

UNOFFICIAL COPY**RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:**

Dentons US LLP
 One Metropolitan Square
 Suite 3000
 St. Louis, MO 63102
 Attn: Jennifer A. Marler

(Space Above For Recorder's Use)

**MORTGAGE
 WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
 SECURITY AGREEMENT AND FIXTURE FILING**

Date of Document: May 24, 2017

**NAME OF BORROWER/
 MORTGAGOR(S)
 ("Mortgagor"):** TDG ASHLAND, LLC
 a Missouri limited liability company
 c/o The DESCO Group, Inc.
 25 North Brentwood
 St. Louis, Missouri 63105
 Attention: Mark J. Schnuck

**NAME OF MORTGAGEE:
 ("Mortgagee")** RELIANCE BANK
 10401 Clayton Road
 Frontenac, Missouri 63131
 Attention: Todd Smith

LEGAL DESCRIPTION: See Exhibit A attached hereto and incorporated herein by reference.

REFERENCED DOCUMENTS: Not Applicable

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

THIS MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Mortgage**"), made as of May 24, 2017, is granted by TDG ASHLAND, LLC, a Missouri limited liability company ("**Mortgagor**" or "**Borrower**") whose address is 25 North Brentwood Boulevard, St. Louis, Missouri 63105, to RELIANCE BANK, a Missouri banking corporation ("**Mortgagee**") whose address is 10401 Clayton Road, Frontenac, Missouri 63131.

ARTICLE I. GRANT

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Mortgage, Mortgagor irrevocably grants, conveys, bargains, mortgages, encumbers, assigns, transfers, hypothecates, pledges, sets over, and grants a security interest and assigns to Mortgagee, all of that real property located in the County of Cook, State of Illinois, described on Exhibit A attached hereto, together with all buildings and other improvements, fixtures and equipment now or hereafter located on the real property, all right, title, interest, and privileges of Mortgagor in and to all streets, roads, and alleys used in connection with or pertaining to such real property, all water and water rights, minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, all appurtenances, easements, rights and rights of way appurtenant or related thereto, and all air rights, development rights and credits, licenses and permits related to the real property. All interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing, are collectively referred to herein as the "**Property**." The listing of specific rights or property shall not be interpreted as a limit of general terms.
- 1.2 **WARRANTY OF TITLE; USE OF PROPERTY.** Mortgagor warrants that it is the sole owner of good and marketable unencumbered fee simple title to the Property, subject only to those exceptions approved by Mortgagee in writing. Mortgagor warrants that the Property is not used principally for agricultural or farming purposes, and that the Property is not homestead property.
- 1.3 **USE OF PROCEEDS.** Mortgagor represents and warrants to Mortgagee that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligations secured by this Mortgage constitute (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

ARTICLE II. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Mortgage for the purpose of securing: (a) the performance of the obligations contained herein and in that certain Loan Agreement dated of even date herewith to which Mortgagor and Mortgagee are parties (as subsequently amended, modified, renewed or restated, the "**Loan Agreement**"); (b) the payment of FOUR MILLION NINE HUNDRED FIFTY-FOUR THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (4,954,250.00), with interest thereon, according to the terms of: that certain promissory note made by Mortgagor to Mortgagee evidencing the loan made pursuant to the Loan Agreement (as subsequently amended, modified, renewed or restated, the "**Note**") of even date herewith, executed by Borrower, and payable to Mortgagee, as lender which Note

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matures no later than June 10, 2022, (c) payment to Mortgagee of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into between Borrower and Mortgagee in connection with the Note; (d) any and all extensions, renewals, or modifications of the Note and Loan Agreement, whether the same be in greater or lesser amounts; and (e) payment and performance of any future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Mortgage (collectively, the "Secured Obligations"). This Mortgage secures the payment of the entire indebtedness secured hereby; provided, however, that the total amount secured by this Mortgage (excluding interest, costs, expenses, charges, fees, protective advances and indemnification obligations, all of any type or nature) shall not exceed an amount equal to 200% of the face amount of the Note. Capitalized terms used and not defined herein shall have the same meaning provided in the Loan Agreement.

- 2.2 **INCORPORATION.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations, together with all costs of collecting the Secured Obligations. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE III. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Mortgagor hereby irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing, occupancy or operation of the Property, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, revenues, receipts, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("Payments"). The term "Leases" shall also include all subleases and other agreements for the use or occupancy of the Property, all guarantees of and security for the tenant's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent, upon and may be exercised without, possession of the Property.
- 3.2 **GRANT OF LICENSE.** Mortgagee confers upon Mortgagor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Mortgagee may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no duty to inquire as to whether any Default has actually occurred or is then existing. Mortgagor hereby relieves the tenants from

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any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee may apply, in its sole discretion, any Payments so collected by Mortgagee against any Secured Obligation under the Loan Documents (as defined in the Loan Agreement), whether existing on the date hereof or hereafter arising. Collection of any Payments by Mortgagee shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

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

ARTICLE IV. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Mortgagee a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Mortgagor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Mortgagee, whether or

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not disbursed; all funds deposited with Mortgagee pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Mortgagee to Mortgagor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Mortgagor and Mortgagee in connection with the Note; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under the Illinois Uniform Commercial Code, as amended or recodified from time to time ("UCC"). Trustor is the record owner of the Property.

The filing of a financing statement covering the Collateral shall not be construed to derogate from or impair the lien or provisions of this Mortgage with respect to any property described herein which is real property or which the parties have agreed to treat as real property. Similarly, nothing in any financing statement shall be construed to alter any of the rights of Mortgagee under this Mortgage or the priority of Mortgagee's lien created hereby, and such financing statement is declared to be for the protection of Mortgagee in the event any court shall at any time hold that notice of Mortgagee's priority interest in any property or interests described in this Mortgage must, in order to be effective against a particular class of persons, including but not limited to the Federal government and any subdivision, agency or entity of the Federal government, be filed in the Uniform Commercial Code records.

- 4.2 **RIGHTS OF MORTGAGEE.** Upon the occurrence of a Default, Mortgagee shall have all the rights of a "Secured Party" under the UCC. In addition to such rights, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; (c) inspect the Collateral; (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral, and (e) file financing statements covering "all assets" of the Borrower. Mortgagee may: (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; and/or (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under the UCC or other applicable law.

Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten days prior notice of such disposition is commercially reasonable notice. Mortgagor further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Mortgagee first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations.

- 4.3 **REPRESENTATIONS, WARRANTIES AND COVENANTS.** Mortgagor represents and warrants that: (a) Mortgagor's principal place of business is located at the address shown in the preamble of this

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Mortgage; and (b) Mortgagor's legal name is exactly as set forth on the first page of this Mortgage and all of Mortgagor's organizational documents or agreements delivered to Mortgagee are complete and accurate in all material respects. Mortgagor agrees: (a) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Mortgagee 30 days prior written notice thereof; (b) to cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the creation, preservation, perfection, priority or enforcement of any of its rights hereunder; and (c) that Mortgagee is authorized to file financing statements in the name of Mortgagor to perfect Mortgagee's security interest in the Collateral.

ARTICLE V. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor and Borrower shall promptly pay and perform each Secured Obligation when due. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may significantly affect Mortgagee's rights in the Property, then Mortgagee may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to protect the value of the Property and Mortgagee's rights in the Property, including the retaining of counsel, and any amount so expended by Mortgagee will be added to the Secured Obligations and will be payable by Mortgagor to Mortgagee on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Note.
- 5.2 **TAXES AND ASSESSMENTS.** Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed upon the Property by any public authority or upon Mortgagee by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Mortgagee pursuant to any Secured Obligation; provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Mortgagee and which are measured by and imposed upon Mortgagee's net income.
- 5.3 **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall immediately discharge any lien not approved by Mortgagee in writing that has or may attain priority over this Mortgage. Notwithstanding the foregoing, if Mortgagor desires, in good faith, to contest any lien or assessment, Mortgagor shall furnish a surety bond or title endorsement over the lien satisfactory to Mortgagee for the full amount of the lien, or provide such security or other assurances as shall be satisfactory to Mortgagee, except that Mortgagor shall pay the debt secured by any such lien forthwith upon the commencement of proceedings to foreclose such lien, unless such foreclosure is stayed by the filing of an appropriate bond in a manner satisfactory to Mortgagee.
- 5.4 **DUE ON SALE OR ENCUMBRANCE.** Except as may be expressly permitted under the Loan Agreement, if the Property or any interest therein shall be sold, transferred, including, without limitation, through sale or transfer, directly or indirectly, of a majority or controlling interest in the corporate stock, partnership interests, or limited liability company membership interests of a Mortgagor or manager, managing member or general partner of Mortgagor, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Mortgagee, **THEN** Mortgagee, in its sole discretion, may at anytime thereafter declare all Secured Obligations immediately due and payable.

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5.5 DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.

- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Mortgagee and, at the request of Mortgagee, shall be paid directly to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property or Collateral; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Mortgage, Mortgagee may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order acceptable to Mortgagee, and/or Mortgagee may release all or any part of the proceeds to Mortgagor upon any conditions Mortgagee may impose. Mortgagee may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Mortgagee; provided, however, in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Mortgagee or its employees or agents.
- (b) At its sole option, Mortgagee may permit insurance or condemnation proceeds held by Mortgagee to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Mortgagee of such additional funds which Mortgagee determines are needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Mortgagee of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Mortgagee, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Mortgagee; and (iv) the delivery to Mortgagee of evidence acceptable to Mortgagee (aa) that after completion of the work the income from the Property will be sufficient to pay all expenses and debt service for the Property; (bb) of the continuation of Leases acceptable to and required by Mortgagee; (cc) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Mortgagor and Borrower and any guarantors since the date of this Mortgage; and (ee) of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Mortgagee of such insurance or condemnation proceeds, then Mortgagee may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose.

- 5.6 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Mortgagee hereunder

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against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of any material damage to the Property or Collateral and of any condemnation offer or action.

- 5.7 **COMPENSATION; EXCULPATION; INDEMNIFICATION.** Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of (i) the exercise or non-exercise of the rights, remedies or powers granted to Mortgagee in this Mortgage; (ii) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or (iii) any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Property after a Default (hereinafter defined) or from any other act or omission (regardless of whether same constitutes negligence) of Mortgagee in managing the Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Mortgagee and no such liability shall be asserted against or imposed upon Mortgagee, and all such liability is hereby expressly waived and released by Mortgagor.

MORTGAGOR AGREES TO INDEMNIFY MORTGAGEE AGAINST, AND HOLD MORTGAGEE HARMLESS FOR, FROM, AND AGAINST ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER EXPENSES WHICH EITHER MAY SUFFER OR INCUR: (i) BY REASON OF THE PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (ii) AS A RESULT OF ANY FAILURE OF MORTGAGOR TO PERFORM MORTGAGOR'S OBLIGATIONS; OR (iii) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON MORTGAGEE'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE PROPERTY. The above obligation of Mortgagor to indemnify and hold harmless Mortgagee shall survive the release and cancellation of the Secured Obligations and the release or partial release of the lien of this Mortgage.

- 5.8 **INTENTIONALLY OMITTED.**
- 5.9 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Mortgagee may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Mortgage upon the Property and Collateral.
- 5.10 **SUBROGATION.** Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to the Loan Documents or by the proceeds of any loan secured by this Mortgage.
- 5.11 **RIGHT OF INSPECTION.** Mortgagee, its agents and employees, may enter the Property at any reasonable time for the purpose of inspecting the Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof.

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ARTICLE VI. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "Default" shall mean any default under the Note, the Loan Agreement, or any of the other Loan Documents, including this Mortgage.
- 6.2 **RIGHTS AND REMEDIES.** At any time after a Default has occurred, Mortgagee shall have all the following rights and remedies:
- (a) With or without notice, unless notice is expressly required under the Loan Documents to declare all Secured Obligations immediately due and payable;
 - (b) With or without notice, unless notice is expressly required under the Loan Documents, and without releasing Mortgagor or Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor or Borrower and, in connection therewith, to enter upon the Property and do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Mortgagee under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority to this Mortgage, the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (iv) to employ counsel, accountants, contractors and other appropriate persons;
 - (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defenses of laches and any applicable statute of limitations;
 - (d) To apply to a court of competent jurisdiction for and to obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment;
 - (e) To enter upon, possess, manage and operate the Property or any part thereof;
 - (f) To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both; and

Upon sale of the Property at any judicial or non-judicial foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion and to the extent allowed by law) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Property prior to foreclosure; (iii) expenses and costs

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which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, the costs of any structural reports, hazardous waste reports or any remediation costs related thereto; (iv) anticipated discounts upon resale of the Property as a distressed or foreclosed property; and (v) such other factors or matters that Mortgagee deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Mortgagee; and (z) Mortgagee's credit bid may be higher or lower than any appraised value of the Property.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Mortgagee, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Mortgagee under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Mortgagee under this Mortgage other than those described in Section 6.3, less all costs and expenses incurred by Mortgagee or any receiver, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Mortgagee shall determine in its sole discretion; provided, however, Mortgagee shall have no liability for funds not actually received by Mortgagee.
- 6.5 **NO CURE OR WAIVER.** Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Mortgagee or any receiver, shall cure or waive any breach, Default or notice of Default under this Mortgage, or nullify the effect of any notice of Default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other Defaults), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of, or security interests created by, this Mortgage.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Mortgagee immediately and without demand all costs and expenses incurred by Mortgagee pursuant to this Article 6 (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property). In addition, Mortgagor will pay a reasonable fee for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing amounts must be paid to Mortgagee as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Mortgagee.

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- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record any document necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Property and Collateral, and upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Mortgagee may perform any obligation of Mortgagor hereunder.
- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Mortgagee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law or in any other agreements between Mortgagor and Mortgagee. No failure on the part of Mortgagee to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Mortgagee in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Mortgagee shall not waive the agreement contained herein that time is of the essence, nor shall Mortgagee waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.
- 6.9 **ILLINOIS MORTGAGE FORECLOSURE LAW.** It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgagor agrees and covenants that:
- (a) Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 6.2 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of a Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Mortgage, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.
 - (b) Wherever provision is made in this Mortgage or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.
 - (c) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall

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have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions for in Sections 15-1701 and 15-1703 of the Act.

- (d) Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.
- (e) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.

ARTICLE VII. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference. Where Mortgagor and Borrower are not the same, "Mortgagor" means the owner of the Property in any provision dealing with the Property, "Borrower" means the obligor in any provision dealing with the Secured Obligations, and both where the context so requires.
- 7.2 **ATTORNEYS' FEES.** If the Note is placed with an attorney for collection or if an attorney is engaged by Mortgagee to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, enforcement of rights and remedies, then in all events, Mortgagor agree(s) to pay all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 7.3 **NO WAIVER.** No previous waiver and no failure or delay by Mortgagee in acting with respect to the terms of the Note or this Mortgage shall constitute a waiver of any breach, default, or failure of condition under the Note, this Mortgage or the obligations secured thereby. A waiver of any term of the Note, this Mortgage or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of the Note and the terms of any other document related to the loan evidenced by the Note, the terms of the Note shall prevail.
- 7.4 **MERGER.** No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Property unless Mortgagee consents to a merger in writing.
- 7.5 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section does not waive or modify the provisions of the Section above titled "Due on Sale or Encumbrance".
- 7.6 **GOVERNING LAW.** This Mortgage shall be construed in accordance with the laws of the state where the Property is located, except to the extent that federal laws preempt the laws of such state.

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- 7.7 **EXHIBITS INCORPORATED.** All exhibits, schedules or other items attached hereto are incorporated into this Mortgage by such attachment for all purposes.
- 7.8 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Mortgage shall be in writing and shall be delivered in accordance with Section 9.1 of the Loan Agreement.
- 7.9 **ADVERTISING.** In connection with the Loan, Mortgagor hereby agrees that Reliance Bank and its subsidiaries ("Reliance") may publicly identify details of the Loan in Reliance advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail, or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the Loan, the date of the closing and a description of the size/location of the Property.
- 7.10 **WAIVER OF MARSHALING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property marshaled upon any foreclosure of the lien of this Mortgage or on a foreclosure of any other lien securing the Secured Obligations. Mortgagee shall have the right to sell the Property and any or all of said other property as a whole or in separate parcels, in any order that Mortgagee may designate.
- 7.11 **SEVERABILITY.** If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then the Mortgagee may, at its option declare the Loan immediately due and payable.

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year set forth above.

"MORTGAGOR"

TDG ASHLAND, LLC,
a Missouri limited liability company

By: Desco 3, L.L.C.,
a Missouri limited liability company,
its Managing Member

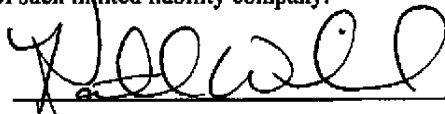
By: The DESCO Group, Inc.,
a Missouri corporation,
its sole Manager

By: 
Mark J. Schnuck, CEO

STATE OF MISSOURI)

COUNTY OF ST. LOUIS)

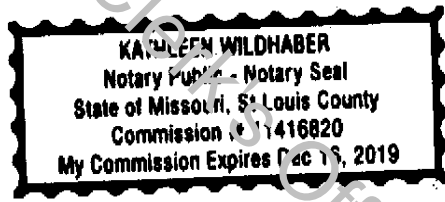
The foregoing instrument was acknowledged before me this 19th day of May, 2017 by Mark J. Schnuck, CEO of The DESCO Group, Inc., a Missouri corporation, sole Manager of Desco 3, L.L.C., a Missouri limited liability company, Managing Member of TDG ASHLAND, LLC, a Missouri limited liability company, on behalf of such limited liability company.

 (signature)

Print Name: Kathleen Wildhaber

Senior Paralegal (title)

My Commission Expires: 12/16/2019



Drafted By:
Dentons US LLP
One Metropolitan Square
Suite 3000
St. Louis, MO 63102

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EXHIBIT A

DESCRIPTION OF PROPERTY

PARCEL 1:

LOTS 3 AND 4 IN ASHLAND-WELLINGTON SUBDIVISION, BEING A SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 CREATED BY THE DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS RECORDED JANUARY 7, 1994 AS DOCUMENT 94022716 FOR INGRESS AND EGRESS BY VEHICULAR AND PEDESTRIAN TRAFFIC AND VEHICULAR PARKING AND FOR PUBLIC UTILITIES, UPON, ACROSS, AND OVER THOSE PORTIONS OF THE COMMON AREA OF THE FOLLOWING DESCRIBED LAND AS DEFINED IN SAID DECLARATION:

EASEMENT PARCEL 2A:

LOTS 1 AND 2 IN ASHLAND-WELLINGTON SUBDIVISION, BEING A SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; AND

EASEMENT PARCEL 2B:

THAT PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED BY A LINE DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF WELLINGTON AVENUE (BEING A LINE 33.0 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 30), WITH THE WEST LINE OF ASHLAND AVENUE (BEING A LINE 50.0 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 30); THENCE SOUTH 00 DEGREES 38 MINUTES 20 SECONDS EAST, ALONG SAID WEST LINE OF ASHLAND AVENUE, 312.00 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, PARALLEL WITH THE SOUTH LINE OF WELLINGTON AVENUE, AS AFORESAID, 352.80 FEET; THENCE NORTH 00 DEGREES 34 MINUTES 54 SECONDS WEST, PARALLEL WITH THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 30, A DISTANCE OF 29.00 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, PARALLEL WITH THE SOUTH LINE OF WELLINGTON AVENUE, AS AFORESAID, 225.00 FEET TO A POINT IN THE EAST LINE OF PAULINA STREET (BEING A LINE 33.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 30); THENCE NORTH 00 DEGREES 34 MINUTES 54 SECONDS WEST, ALONG SAID EAST LINE OF PAULINA STREET, 283.00 FEET TO ITS INTERSECTION WITH THE SOUTH LINE OF WELLINGTON AVENUE, AS AFORESAID; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG SAID SOUTH LINE OF WELLINGTON AVENUE, 577.49 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.