

Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*1720713020\*

Doc# 1720713020 Fee \$106.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 07/26/2017 10:15 AM PG: 1 OF 3

The property identified as: **PIN:** 25-32-107-039-0000

**Address:**

**Street:** 12901-13001 S. ASHLAND AVENUE

**Street line 2:**

**City:** CALUMET PARK

**State:** IL

**ZIP Code:** 60827

**Lender:** PNC BANK, NATIONAL ASSOCIATION

**Borrower:** RACEWAY CENTRAL LLC

**Loan / Mortgage Amount:** \$205,000,000.00

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.

**Certificate number:** 9786639D-6B5F-4536-845F-26744612E0B0

**Execution date:** 7/20/2017

*[Handwritten signature]*  
35

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**DEBTOR IN POSSESSION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT  
OF LEASES AND RENTS  
AND FINANCING STATEMENT**

By

**RACEWAY CENTRAL LLC,  
Mortgagor,**

To

**PNC Bank, National Association, as Administrative Agent,  
Mortgagee,**

**Relating to Premises in:**

**Cook County, Illinois  
(12901-13001 S. Ashland Avenue, Calumet Park, IL 60827, Parcel 3)**

**Dated: as of July 20, 2017, effective as of July 24, 2017**

**After recording this instrument should be returned to:**

**Steven A. Shoumer, Esq.  
Blank Rome LLP  
One Logan Square  
Philadelphia, PA 19103**

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## DEBTOR IN POSSESSION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FINANCING STATEMENT

**THIS DEBTOR IN POSSESSION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FINANCING STATEMENT** (this "Mortgage") is made as of July 20, 2017, effective as of July 24, 2017, by **RACEWAY CENTRAL LLC**, an Illinois limited liability company, with its principal office at 2600 West Haven Ave, Joliet, Illinois 60433, as mortgagor ("Mortgagor"), for the benefit of **PNC BANK, NATIONAL ASSOCIATION**, with offices at One North Franklin Street, 25<sup>th</sup> Floor, Chicago, Illinois 60606 (together with any successors or assigns in such capacity, the "Mortgagee"), as Administrative Agent for the benefit of itself and the Lenders defined below.

### I

#### RECITALS

**WHEREAS**, Mortgagor is the owner of that certain real property situated in Cook County in the State of Illinois (the "State"), as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Premises");

**WHEREAS**, Mortgagor is an affiliate of Central Grocers, Inc. ("Borrower");

**WHEREAS**, Borrower, certain subsidiaries of Borrower including Mortgagor (together with Borrower, collectively, the "Loan Parties") the various financial institutions party thereto as lenders (the "Lenders"), and PNC Bank, National Association, as administrative agent ("Administrative Agent"), have entered into that certain Debtor-In-Possession Credit Agreement, dated May 19, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement") pursuant to which the Lenders have agreed to make loans and other financial accommodations (collectively, the "Loans"; each a "Loan") on a revolving basis to the Borrower up to an aggregate outstanding principal amount of Two Hundred Five Million and No/100 Dollars (\$205,000,000.00), upon the terms and subject to the conditions set forth in the Credit Agreement;

**WHEREAS**, all or a portion of the Loans bear interest at a variable rate;

**WHEREAS**, the Loans are evidenced by certain Notes executed and delivered by Borrower to Lenders in the form prescribed by the Credit Agreement (as amended or restated from time to time, the "Notes");

**WHEREAS**, as consideration for the financial accommodations being made under the Credit Agreement for Loan Parties' benefit, the Lenders have required that Mortgagor grant to Mortgagee, as Administrative Agent, for the benefit of Administrative Agent, the Lenders, the other Postpetition Secured Parties (as defined in the Credit Agreement), the Prepetition Revolving Credit Agent (as defined in the Credit Agreement) and the other Prepetition Revolving Credit Secured Parties (as defined in the Credit Agreement) a security interest in and a mortgage lien on the Property (as hereinafter defined) to secure the Loan Parties' obligations

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under the Credit Agreement (the Credit Agreement, this Mortgage, the Notes and all other documents entered into in connection with the transactions contemplated by the Credit Agreement, whether now or hereafter existing, as may be amended, restated, supplemented or otherwise modified from time to time, are collectively hereinafter referred to as the “Loan Documents”) and certain of the Loan Parties’ Prepetition Revolving Credit Diminution Obligations (as defined in the Credit Agreement);

**WHEREAS**, Mortgagor derives substantial direct and indirect economic benefit from the making of the Loans and other benefits to be provided under the Credit Agreement, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged;

**WHEREAS**, this Mortgage is being given by Mortgagor to secure (a) as to the Postpetition Secured Parties (as defined in the Credit Agreement), all of the Postpetition Obligations (as defined in the Credit Agreement), whether now or hereafter arising or existing and including any amount owing to a Lender under any Lender Provided Interest Rate Hedge and Other Lender Provided Financial Services Product (as each such term is defined in the Credit Agreement), (b) as to the Prepetition Revolving Credit Secured Parties, all of the Prepetition Revolving Credit Diminution Obligations (as defined in the Credit Agreement) (collectively, the “Secured Indebtedness”) and (c) the performance of all other terms, covenants, conditions, provisions, agreements and liabilities contained in the Credit Agreement, the Note, this Mortgage and the other Loan Documents (together with the Secured Indebtedness, the “Obligations”), whether now or hereafter arising or existing;

**WHEREAS**, capitalized terms used herein without definitions shall have the meanings assigned to such terms in the Credit Agreement; and

**WHEREAS**, to the extent the following is now or hereafter may be applicable, this Mortgage also secures the payment of and includes all amounts owing with respect to all future or further advances or re-advances of the Loans, regardless of whether proceeds of the Loans have been or shall be disbursed by Mortgagee herein, the Lenders or their successors or assigns, to and for the benefit of Borrower, Mortgagor, or their successors or assigns, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of Secured Indebtedness secured by this Mortgage may decrease or increase from time to time. Such further or future advances shall be considered obligatory advances and the same shall bear interest at the same rate as specified in the Credit Agreement unless such interest rate shall be modified by subsequent agreement. The parties hereby acknowledge and intend that all advances, including future advances whenever hereafter made, shall be secured by this Mortgage.

## II

### THE GRANT

**NOW, THEREFORE**, in order to secure the payment and performance of (i) the Postpetition Obligations in full and (ii) the Prepetition Revolving Credit Diminution Obligations in full, and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by Mortgagee, to Mortgagor, the Recitals above stated, and for other good and valuable consideration, the receipt

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and sufficiency of which are hereby acknowledged, and intending to be legally and firmly bound, Mortgagor hereby **GRANTS, BARGAINS, SELLS, ASSIGNS, RELEASES, ALIENS, TRANSFERS, REMISES, WARRANTS, DEMISES, CONVEYS and MORTGAGES** to Mortgagee, as Administrative Agent, and its successors and assigns forever (and grants to Mortgagee and its successors and assigns forever a continuing security interest in and to) and as collateral agent for the Prepetition Revolving Credit Agent and the other Prepetition Revolving Credit Secured Parties, the Premises described in Exhibit A, and all of its estate, right, claim and interest therein, together with all of its estate, right, claim and interest in the following described property, all of which other such property is pledged primarily on a parity with the Premises and not secondarily (the Premises and the following described rights, interests, claims and property are collectively referred to as the "Property"):

(a) all buildings, structures and other improvements of every kind and description now or hereafter erected, situated, or placed upon the Premises (the "Improvements"), together with any and all Personal Property (as defined in Paragraph (j) below) and all attachments now or hereafter owned by Mortgagor and located in or on, forming part of, attached to, used or intended to be used in connection with, or incorporated in any such Improvements, including all extensions of, additions to, betterments, renewals of, substitutions for and replacements for any of the foregoing;

(b) all estate; claim, demand, right, title and interest of Mortgagor now owned or hereafter acquired, including without limitation, any after-acquired title, franchise, license, remainder or reversion, in and to any and all (i) land or vaults lying within the right-of-way of any street, avenue, way, passage, highway, or alley, open or proposed, vacated or otherwise, adjoining the Premises; (ii) alleys, sidewalks, streets, avenues, strips and gores of land belonging, adjacent to, or pertaining to the Premises or the Improvements; (iii) storm and sanitary sewer, water, gas, electric, railway and telephone services relating to the Premises and the Improvements; (iv) development rights, air rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Premises or any part thereof; and (v) tenements, hereditaments, easements, appurtenances, other rights, liberties, reservations, allowances and privileges relating to the Premises or the Improvements or in any way now or hereafter appertaining thereto, including homestead and any other claims at law or in equity;

(c) all leasehold estates and right, title and interest of Mortgagor in any and all leases, subleases, management agreements, arrangements, concessions or agreements, written or oral, relating to the use and occupancy of the Premises or the Improvements or any portion thereof, now or hereafter existing or entered into (collectively "Leases");

(d) all rents, issues, profits, royalties, revenue, advantages, income, avails, claims against guarantors, all cash or security deposits, advance rentals, deposits or payments given and other benefits now or hereafter derived directly or indirectly from the Premises and Improvements under the Leases or otherwise (collectively "Rents"), subject to the right, power and authority to assign, collect and apply the Rents;

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(e) all right, title and interest of Mortgagor in and to all options to purchase or lease the Premises or the Improvements or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Property now owned or hereafter acquired by Mortgagor;

(f) any interests, estates or other claims of every name, kind or nature, both in law and in equity, which Mortgagor now has or may acquire in the Premises and Improvements or other rights, interests or properties comprising the Property now owned or hereafter acquired;

(g) all rights of Mortgagor to any and all plans and specifications, designs, drawings and other matters prepared for any construction on the Premises or regarding the Improvements;

(h) 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 Premises or the Improvements;

(i) all right, title and interest of Mortgagor in and to (i) ground water on, under, pumped from or otherwise available to the Premises or any other water rights appurtenant to the Premises, whether as a result of groundwater rights, contractual rights, or otherwise and whether riparian, appropriative, or otherwise; (ii) rights to remove or extract any such ground water including any permits, rights or licenses granted by any governmental authority or agency and any rights granted or created by any easement, covenant, agreement or contract with any person or entity; (iii) rights to which the Premises is entitled with respect to surface water, whether such rights are appropriative, riparian, prescriptive or otherwise and whether or not pursuant to permit or other governmental authorization; (iv) rights to store any such water; (v) water rights, water allocations for water not yet delivered, distribution rights, delivery rights, water storage rights, or other water-related entitlements appurtenant to or otherwise applicable to the Premises by virtue of the Premises being situated within the boundaries of any governmental water district or within the boundaries of any private water company, mutual water company, or other non-governmental entity; and (vi) any shares, or any rights under such shares, of any private water company, mutual water company, or other non-governmental entity pursuant to which Mortgagor or the Premises may receive water;

(j) all right, title and interest of Mortgagor in and to all the following tangible personal property ("Personal Property") owned by Mortgagor and now or at any time hereafter located in, on or at the Premises or the Improvements and used or useful in connection therewith;

(i) all building materials and equipment located upon the Premises and intended for construction, reconstruction, alteration, repair or incorporation in or to the Improvements now or hereafter to be constructed thereon, whether or not

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yet incorporated in such Improvements (all of which shall be deemed to be included in the Property upon delivery thereto);

(ii) all machines, machinery, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, plumbing, sprinkler, waste removal, refrigeration, ventilation, and all fire sprinklers, alarm systems, protection, electronic monitoring equipment and devices;

(iii) all window, structural, maintenance and cleaning equipment and rigs; and

(iv) all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Premises or the Improvements.

All such property owned by Mortgagor and placed by it on the Premises or used in connection with the operation or maintenance shall, so far as permitted by law, be deemed for the purposes of this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage. As to any of the property that is not part of such real estate or does not constitute a "fixture", as such term is defined in the Uniform Commercial Code of the State (the "Code"), this Mortgage shall be deemed to be a security agreement under the Code for the purpose of creating hereby a security interest in property, which Mortgagor hereby grants to Mortgagee as "secured party" as defined in the Code. The enumeration of any specific items of Personal Property set forth herein shall in no way exclude or be held to exclude any items of property not specifically enumerated;

(k) all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) proceeds of insurance in effect with respect to the Property and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards");

(l) all books and records pertaining to any and all of the property described above, including computer readable memory and any computer hardware or software necessary to access and process such memory; and

(m) all proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

Notwithstanding anything contained herein to the contrary, Property does not include any movable personal property or movable contents owned by the Mortgagor and located within the



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Improvements which would be insurable as “contents” pursuant to Section III. Property Covered: Coverage B – Personal Property of the General Property Form, Standard Flood Insurance Policy issued by the United States Federal Emergency Agency National Flood Insurance Program.

**TO HAVE AND TO HOLD** the Property hereby mortgaged and conveyed, or so intended, together with its rents, issues and profits, unto the Mortgagee, its successors and assigns, forever, for the uses and purposes herein set forth, and Mortgagor does hereby bind itself and its successors and assigns to **WARRANT AND FOREVER DEFEND** the Property unto the Mortgagee and unto its or successors and assigns, against any and every person lawfully claiming or to claim the same or any part thereof by, through and under Mortgagor.

Notwithstanding anything contained herein to the contrary, the principal amount of the Secured Indebtedness secured hereunder shall in no event exceed Two Hundred Five Million and No/100 Dollars (\$205,000,000.00).

The Mortgagor hereby represents, warrants and covenants with the Mortgagee and with the purchaser at any foreclosure sale that, at the execution and delivery hereof: (a) Mortgagor owns the Property and has good, indefeasible estate in the Premises, in fee simple, (b) the Property is free from all encumbrances and exceptions to title (and any claim of any other person) other than those exceptions and matters expressly listed on Exhibit B, any other encumbrances and liens expressly permitted by Section 8.2.2 of the Credit Agreement, and any other exceptions and matters subsequently approved in writing by Mortgagee at the direction of Administrative Agent in its sole and absolute discretion (collectively, the “Permitted Exceptions”), (c) Mortgagor has good and marketable title in and to the Property and good and lawful right to sell, mortgage and convey its interest in the Property, and (d) Mortgagor and its successors and assigns shall forever warrant and defend the Property against all claims and demands whatsoever.

If and when Mortgagor has paid and performed all of the Obligations and there exist no commitments of the Mortgagee under the Loan Documents which could give rise to Obligations, then this Mortgage and the estate, right and interest of Mortgagee in and to the Property shall cease and shall be released by Mortgagee delivering to Mortgagor a satisfaction of this Mortgage in proper recordable form at the cost of Mortgagor, but until such time shall remain in full force and effect.

## III

### GENERAL AGREEMENTS

3.01 Impositions. Mortgagor shall pay immediately, when first due and owing, all general taxes, special taxes, general assessments, special assessments, water charges, sewer charges, and any other charges, fees, taxes, claims, levies, expenses, liens (including mechanics’ liens, materialmen’s liens and similar liens) and assessments, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise (all of the foregoing being herein collectively referred to as “Impositions”), that may be asserted against the Property or any part thereof or interest therein.



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Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Impositions; provided, that:

(a) Mortgagor shall pay all such Impositions so contested under protest if such payment is required to prevent such contest from (i) having the effect of preventing the sale or forfeiture of the Property or any sub-part or interest therein, (ii) having the effect of preventing the use or occupancy of the Property, or (iii) materially increasing the amount of any Imposition by any interest, penalties or costs;

(b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to prosecute the contest before any Impositions have been materially increased by any interest, penalties, or costs; and

(c) Mortgagor shall diligently prosecute the contest of such Impositions by appropriate legal proceedings.

3.02 Payment of Impositions by Mortgagee. Upon Mortgagor's failure to pay the Impositions as provided above, Mortgagee is hereby authorized to make or advance, in the place and stead of Mortgagor, any payment relating to Impositions, unless such Imposition is then being contested by Mortgagor pursuant to Section 3.01. Mortgagee may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy or the validity of any Impositions lien, sale, forfeiture, or related title or claim and use reasonable efforts to provide notice to the Mortgagor of the same. Mortgagee is further authorized to make or advance, in place of Mortgagor, unless such matter is being contested by Mortgagor in accordance with Section 3.01, any payment relating to any apparent adverse title, lien, statement of lien, encumbrance, claim, charge, or payment otherwise relating to any other purpose herein and hereby authorized (except the Permitted Exceptions), but not enumerated in this Section, whenever, in Mortgagee's reasonable judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be created by this Mortgage. All such advances and indebtedness authorized by this Section shall constitute Secured Indebtedness and shall be repayable by Mortgagor upon demand with interest at the rate of interest then applicable to the Loans after an Event of Default under the Credit Agreement (the "Default Rate").

3.03 Insurance, Casualty Loss and Insurance Proceeds. Mortgagor shall, at its sole expense, obtain and maintain such insurance policies as are required under the Credit Agreement (the "Policies").

(a) Mortgagor shall give Mortgagee prompt written notice of any loss or damage to the Property, or any part thereof, by fire or other casualty.

(b) In case of loss or damage covered by any one of the Policies which equal or exceed Two Million and 00/100 Dollars (\$2,000,000), Mortgagee is hereby authorized to settle and adjust any claim under such Policies (and after the entry of a decree of foreclosure, or a sale or transfer pursuant thereto or in lieu thereof, the decree creditor or such purchaser or transferee, as the case may be, are hereby authorized to settle and adjust any claim under such Policies) upon consultation with, but without the requiring

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the consent of, Mortgagor; and Mortgagee shall, and is hereby authorized to, collect and receipt for any and all proceeds payable under such Policies in connection with any such loss (“Insurance Proceeds”). Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment (i) of 100% of all such losses directly to Mortgagee alone in the case such loss or damage equals or exceeds Two Million and 00/100 Dollars (\$2,000,000.00) and (ii) of 100% of all such losses to Mortgagor alone in the case such loss or damage is less than Two Million and 00/100 Dollars (\$2,000,000.00), and in no case to Mortgagor and Mortgagee jointly. All reasonable costs and expenses incurred by Mortgagee in the adjustment and collection of any such Insurance Proceeds (including without limitation reasonable attorneys’ fees and expenses) shall be added to the Secured Indebtedness, and shall be reimbursed to Mortgagee upon demand or may be paid and deducted by Mortgagee from such Insurance Proceeds prior to any other application thereof. Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure, other than the gross negligence or willful misconduct of Mortgagee.

(c) Insurance Proceeds received by Mortgagee under the provisions of this Mortgage or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the Property or any part thereof shall be applied by Mortgagee and the Administrative Agent, as and for a prepayment on the Obligations (whether or not the same is then due or otherwise adequately secured), or shall be disbursed for restoration of such improvements (“Restoration”), in which event Mortgagee shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the Secured Indebtedness. If Mortgagee and Administrative Agent permit the use of Insurance Proceeds to restore such improvements Mortgagee may but shall not be obligated to do all necessary acts to accomplish that purpose, including advancing additional funds, all such additional funds to constitute part of the Secured Indebtedness. If Mortgagee elects to make the Insurance Proceeds available to Mortgagor for the purpose of effecting the Restoration, or, following an Event of Default, elects to restore such improvements, any excess Insurance Proceeds above the amount necessary to complete the Restoration shall be applied as and for a prepayment on the Obligations, without a prepayment fee or premium. No interest shall be payable to Mortgagor upon Insurance Proceeds held by Mortgagee.

(d) So long as any Obligations shall be outstanding and unpaid, and whether or not Insurance Proceeds are available or sufficient therefor, Mortgagor shall promptly commence and complete, or cause to be commenced and completed, with all reasonable diligence, the Restoration of the Property as nearly as possible to the same value, condition and character which existed immediately prior to such loss or damage in accordance with plans and specifications approved by Mortgagee for any Restoration involving costs in excess of Two Million and 00/100 Dollars (\$2,000,000.00) (“Restoration Plans”) and in compliance with all legal requirements. Any Restoration shall be effected in accordance with procedures to be first submitted to and approved by Mortgagee in accordance with Section 3.05 hereof. Mortgagor shall pay all costs of such Restoration.

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## 3.04 Condemnation and Eminent Domain Awards.

(a) Any and all awards (the “Awards”) heretofore or hereafter made or to be made to Mortgagor (or any subsequent owner of the Property, or any part thereof) by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Property (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned, by Mortgagor to Mortgagee, which Awards Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to appear in and prosecute, in the name of and on behalf of Mortgagor, any action or proceeding to enforce any such cause of action and to make any compromise or settlement in connection therewith and to give appropriate receipts and acquittance therefor in the name and in behalf of Mortgagor. Mortgagor shall give Mortgagee prompt notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Property and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. All reasonable costs and expenses incurred by Mortgagee in the adjustment and collection of any such Awards (including without limitation reasonable attorneys’ fees and expenses) shall be reimbursed to Mortgagee from any Award prior to any other application thereof. Mortgagor further agrees to make, execute and deliver to Mortgagee, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever (other than Liens permitted under Section 8.2.2 of the Credit Agreement), any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all Awards and other compensation heretofore and hereafter made to Mortgagor for any permanent taking, under any such proceeding.

(b) The proceeds of any Award received by Mortgagee under the provisions of this Mortgage or any instrument supplemental hereto, shall be applied by Mortgagee and Administrative Agent, as and for a prepayment on the Secured Indebtedness (whether or not the same is then due or otherwise adequately secured), or shall be disbursed for Restoration of the Property, in which event Mortgagee shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the Secured Indebtedness. If Mortgagee elects to permit the use of the proceeds of an Award to restore such improvements Mortgagee may but shall not be required to do all necessary acts to accomplish that purpose, including advancing additional funds, all such additional funds to constitute part of the Obligations. If Mortgagee elects to make the proceeds of an Award available to Mortgagor for the purpose of effecting the Restoration, or, following an Event of Default, elects to restore such improvements, any excess of such proceeds above the amount necessary to complete the Restoration shall be applied as and for a prepayment on the Notes, without a prepayment fee or premium. No interest shall be payable to Mortgagor upon such proceeds held by Mortgagee.

(c) So long as any Obligations shall be outstanding and unpaid, and whether or not Awards are available or sufficient therefor, Mortgagor shall promptly commence and complete, or cause to be commenced and completed, with all reasonable diligence

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the Restoration of the portion of the Property not so taken as nearly as possible to the same value, condition and character, which existed immediately prior to such taking in compliance with all legal requirements. Any Restoration of the Property involving costs in excess of Two Million and 00/100 Dollars (\$2,000,000.00) shall be effected in accordance with Restoration Plans to be first submitted to and approved by Mortgagee as provided in Section 3.05 hereof. Mortgagor shall pay all costs of such Restoration.

## 3.05 Disbursement of Insurance Proceeds and Awards.

(a) All Insurance Proceeds and/or Awards received by Mortgagee as provided in Section 3.03 or Section 3.04 hereof shall, after payment or reimbursement therefrom of all reasonable costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by Mortgagee in the adjustment and collection thereof (the "Net Proceeds"), be deposited with Mortgagee, or such other depository as may be designated by Mortgagee, and applied as provided in this Section.

(b) Mortgagee may elect to apply the Net Proceeds to prepayment of the Secured Indebtedness, whether then due or not. If the Secured Indebtedness is not prepaid in full, then the Net Proceeds shall be applied to Secured Indebtedness in the order of priority determined by Mortgagee in its sole discretion.

(c) Net Proceeds which are not applied to the payment of the Secured Indebtedness shall be applied to fund the payment of the costs, fees and expenses incurred for the Restoration of the Premises as required under Section 3.03 or Section 3.04 hereof and such Net Proceeds shall be disbursed to complete the Restoration; provided that Mortgagee shall receive the following:

(i) Restoration Plans which shall be subject to the reasonable approval of Mortgagee prior to the commencement of the Restoration; and

(ii) Such architect's and engineer's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey, opinions of counsel and such other evidences of cost, payment and performance as Mortgagee may reasonably require and approve.

(d) If Mortgagor shall fail to commence Restoration within thirty (30) days after the settlement of the claim involving loss or damage to the Premises and diligently proceed to complete Restoration in accordance with the Restoration Plans, or if any other Event of Default shall occur hereunder at any time (whether before or after the commencement of such Restoration), all or any portion of the Secured Indebtedness may be declared, to be immediately due and payable and such Net Proceeds, or any portion thereof, then held, or subsequently received, by Mortgagee or other depository hereunder may be applied, at the option and in the sole discretion of Mortgagee, to the payment or prepayment of the Secured Indebtedness in whole or in part, or to the payment and performance of such Obligations of Mortgagor as may then be in default hereunder or under any other of the Loan Documents.

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(e) Any surplus which may remain out of such Net Proceeds after payment of all costs, fees and expenses of such Restoration shall be applied to prepayment of the Secured Indebtedness in reverse order of the installments due pursuant to the Credit Agreement.

(f) Notwithstanding anything to the contrary herein, Mortgagor may itself adjust losses aggregating not in excess of Two Million and 00/100 Dollars (\$2,000,000.00) if such adjustment is carried out in a competent and timely manner; provided that in any case Mortgagee is hereby authorized to collect and give receipt for any such insurance proceeds; and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be added to the amount of the Secured Indebtedness, and shall be reimbursed to Mortgagee upon demand.

3.06 Maintenance of Property. Mortgagor shall:

(a) promptly repair, restore, replace or rebuild any portion of the Property which may become damaged, destroyed, altered, removed, severed, or demolished, whether or not proceeds of insurance are available or sufficient for the purpose, with replacements at least equal in quality and condition as previously existed, free from any security interest in, encumbrances on or reservation of title thereto;

(b) keep the Property in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims except as permitted under the Credit Agreement; and

(c) not make any material alterations in the Property, except as permitted by the Credit Agreement.

3.07 Prohibited Liens and Transfers.

(a) Except for existing liens of record or as expressly provided in the Credit Agreement, and as provided by operation of the laws of the State, Mortgagor shall not create, suffer, or permit to be created or filed against the Property any other mortgage lien or other lien superior or inferior to the lien created by this Mortgage. To the extent that any lien, privilege or other security device is created by operation of law, Mortgagor shall cause such security device to be released as soon as practicable after its creation. Mortgagor may contest any lien claim arising from any work performed, material furnished, or obligation incurred by Mortgagor upon furnishing Mortgagee security and indemnification reasonably satisfactory to Mortgagee for the final payment and discharge of the lien.

(b) Except as expressly provided in the Credit Agreement, Mortgagor shall not create, effect, contract for, consent to or permit any conveyance, sale, assignment, transfer, pledge, security interest, encumbrance or alienation of the Property or any part thereof or interest therein, whether any such conveyance, sale, contract, assignment, transfer, pledge, security interest, encumbrance or alienation is effected directly or indirectly.



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3.08 Stamp Taxes. If at any time the United States government, or any federal, state, or municipal governmental subdivision, requires Internal Revenue or other documentary stamps or levies any tax on this Mortgage or on the Note, or requires payment of any tax in the nature of or comparable to the United States Interest Equalization Tax on the Secured Indebtedness, then Mortgagor shall pay such tax, including interest and penalties, in the required manner.

3.09 Change in Tax Laws. In the event of the enactment, after the date of this Mortgage, of any law of the United States of America, or any state or political subdivision thereof, (i) deducting from the value of the Premises, for the purpose of taxation, the amount of any lien thereon; (ii) imposing upon Mortgagee the payment of all or any part of the taxes, assessments, charges or liens hereby required to be paid by Mortgagor; or (iii) changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagor's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the Obligations; then Mortgagor, upon demand by Mortgagee, and as required by law, shall pay such taxes, assessments, charges, or liens or reimburse Mortgagee therefor. If, in the opinion of counsel for Mortgagee, it would be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the applicable provisions of the Credit Agreement shall apply. Nothing contained in this Section 3.09 shall be construed as obligating Mortgagor to pay any portion of Mortgagee's federal, state and local income tax.

3.10 Assignment of Leases and Rents. All right, title, and interest of Mortgagor in and to all present Leases and including and together with any and all future Leases, written or oral, and together with all of the Rents and any other income, receipts, revenues, issues, avails and profits from or due or arising out of the Property are hereby absolutely and unconditionally transferred and assigned simultaneously herewith to Mortgagee, as further security for the payment and performance of the Obligations. All future Leases affecting the Property shall be submitted by Mortgagor to Mortgagee for its approval prior to execution. Further, no later than ten (10) business days following full execution of any such future Lease, Mortgagor shall provide Mortgagee a true, correct and complete copy of such Lease. Each Lease, including all future Leases shall be subordinate to this Mortgage, provided that, upon the request of the Mortgagor and the lessee under any such Lease, Mortgagee shall enter into a subordination, non-disturbance and attornment agreement (or similar agreement) with such lessee in form and substance reasonably satisfactory to Mortgagee, pursuant to which (i) Mortgagee will agree that so long as such Lease shall be in full force and effect and such lessee is not in default thereunder, Mortgagee will not disturb, pursuant to a foreclosure action or otherwise, such lessee's possession under such Lease, and (ii) such lessee shall agree that if Mortgagee or any future holder of this Mortgage shall become the owner of the Property by reason of foreclosure of the Mortgage or otherwise, or if the Property shall be sold as a result of any foreclosure action or deed in lieu thereof, then such lease shall continue in full force and effect as a direct lease between such lessee and the then owner of the Property. Although it is the intention of the parties that the assignment contained in this Section shall be a present, irrevocable and absolute assignment, it is expressly understood and agreed, anything to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section unless an Event of Default shall have occurred and be continuing under this Mortgage. From time to time, Mortgagor shall furnish Mortgagee with executed copies of each of the Leases and shall use commercially reasonable efforts to furnish Mortgagee with estoppel letters from each tenant



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under each of the Leases in a form reasonably satisfactory to Mortgagee within thirty (30) days after Mortgagee's written demand.

If an Event of Default has occurred and is continuing, (a) Mortgagee shall have the rights and powers as are provided herein, (b) this Mortgage shall constitute a direction to each lessee under the Leases and each guarantor thereof to pay all Rents directly to Mortgagee without proof of the Event of Default, and (c) 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 Property.

If Mortgagor, as lessor under any Lease, shall neglect or refuse to perform, observe and keep all of the covenants, provisions and agreements contained in such Lease, then Mortgagee may perform and comply with any such Lease covenants, agreements and provisions. All costs and expenses incurred by Mortgagee in complying with such covenants, agreements, and provisions shall constitute Secured Indebtedness and shall be payable upon demand with interest at the Default Rate.

Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability under any Lease, and Mortgagor shall and does hereby agree, except to the extent of Mortgagee's gross negligence or willful misconduct, to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under any Lease or under or by reason of their assignments and of and from any and all claims and demands whatsoever which may be asserted against it by reason of all alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in such Lease. Should Mortgagee incur any such liability, loss or damage under any Lease or under or by reason of its assignment, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby. Mortgagor shall reimburse Mortgagee therefor immediately upon demand with interest payable at the Default Rate.

Mortgagor hereby represents and warrants to Mortgagee that Mortgagor has not executed any prior assignment of the Leases or Rents, that Mortgagor has not performed any act and has not executed any instrument that would prevent Mortgagee from exercising its rights under this Section, and as of the date hereof, no portion of the Rent has been or is anticipated to be prepaid more than two months in advance. Mortgagor hereby covenants that it shall not perform any act and or execute any instrument that would prevent Mortgagee from exercising its rights under this Section and shall not collect or accept payment of any portion of the Rent more than two months prior to the applicable due date of such Rent.

3.11 Releases. Without notice and without regard to the consideration therefor, and to the existence at that time of any inferior liens, Mortgagee at the written direction of Administrative Agent may release from the lien created hereby all or any part of the Property, or release from liability any person obligated to repay or perform any Obligations, without affecting the liability of any party to the Note, this Mortgage, or any of the other Loan Documents (including without limitation any guaranty given as additional security) and without in any way affecting the priority of the lien created hereby. Administrative Agent may agree with any liable

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party to extend the time for payment of any part or all of the Secured Indebtedness. Such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the Secured Indebtedness, but shall extend the lien created by this Mortgage as against the title of all parties having any interest, subject to the Obligations.

3.12 Further Assurances. Mortgagor agrees that, upon request of Mortgagee from time to time, it will, at Mortgagor's sole cost and expense, execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary to fully effectuate the intent of this Mortgage, including without limitation, reimbursing Mortgagee for the reasonable costs of appraisals of the Property, to the extent that Mortgagee determines in good faith that such appraisals are required by any law or any governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any interpretation thereof, including, without limitation, the provisions of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and any rules promulgated to implement such provisions. In the event that Mortgagor shall fail to do any of the foregoing, Mortgagee may, in its sole discretion, do so in the name of Mortgagor, and Mortgagor hereby appoints Mortgagee as its attorney-in-fact to do any of the foregoing. Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, will cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Property, or any portion thereof, and each instrument of further assurance, to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of Mortgagee in, the Property.

3.13 Environmental Provisions. The representations, warranties and covenants regarding "Environmental Matters" contained in section 6.1.14 the Credit Agreement and the other Loan Documents are incorporated herein by this reference and made by Mortgagor as if fully set forth herein.

3.14 Use Violations or Alterations. Mortgagor shall not knowingly use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Property in any manner which (a) violates any applicable law; (b) may be dangerous, unless safeguarded as required by applicable law; (c) constitutes a public or private nuisance; (d) will materially increase the risk of fire or other hazard to the Property or any part thereof, or will wholly or partially invalidate any insurance coverage required to be carried under the Loan Documents.

3.15 Platting, Replatting, Subdivision and Resubdivision. Mortgagor shall not, without the consent of Mortgagee, impose any restrictions, agreements or covenants which run with the land upon the Premises or the Improvements or any part thereof, nor plat, replat, subdivide, or resubdivide.

3.16 Estoppel Letters. Mortgagor, upon ten (10) business days' prior written notice, shall furnish Mortgagee with a written statement, duly acknowledged, confirming the unpaid principal of, and interest on, the Obligations, and stating whether, to Mortgagor's best knowledge, any off-sets or defenses exist against such principal and interest, and, if so, the particulars thereof, and any other matters requested by Mortgagee.

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## IV

### EVENT OF DEFAULT AND REMEDIES

4.01 Event of Default. Each of the following shall constitute an event of default ("Event of Default") under this Mortgage:

(a) The occurrence of an "Event of Default" as defined in the Credit Agreement;

(b) The failure of Mortgagor to perform or observe any monetary covenant, agreement, representation, warranty or other provision contained in this Mortgage within ten (10) days after written notice of the default from Mortgagee to Mortgagor; or

(c) The Mortgagor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by the Mortgagor under the Notes, this Mortgage or any of the other Loan Documents; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by the Mortgage or any of the other Loan Documents and the value of the Premises are not impaired, threatened or jeopardized, then the Mortgagor shall have a period (the "Cure Period") of thirty (30) days after the Mortgagor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if the Mortgagor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate.

4.02 Remedies. Following the occurrence and during the continuance of an Event of Default (and without limitation to any other right or remedy provided for Administrative Agent herein or in any other of the Loan Documents):

(a) Acceleration. Mortgagee may declare any or all of the Secured Indebtedness to be due and payable immediately.

(b) Mortgagee's Power of Enforcement. Mortgagee may immediately, in one or several concurrent or consecutive proceedings, foreclose the lien hereof upon the Property or any part thereof, for the Secured Indebtedness, or any part thereof, by judicial or other action permitted by applicable law. The court in which any proceeding is pending for the purpose of foreclosure of this Mortgage may, at once or at any time thereafter, either before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment or performance of the Obligations, and without regard to the then value of the Property or the occupancy thereof as a homestead, appoint a receiver (to the extent permitted by applicable law) (the provisions for the appointment of a receiver and assignment of Rents being an express condition upon which the Loans are made) for the benefit of Mortgagee,

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with power to collect the Rents, due and to become due, during such foreclosure suit and the full statutory period of redemption. The receiver, out of the Rents, when collected, may pay costs incurred in the management and operation of the Property, prior and subordinate liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to the Property, and may pay all or any part of the Secured Indebtedness or other sums secured hereby or any deficiency decree entered in such foreclosure proceedings. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Illinois Mortgage Foreclosure Law (the "Act"), and all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, in addition to any other powers set forth herein or in the other Loan Documents. Upon or at any time after the filing of a suit to foreclose this Mortgage, the court in which such suit is filed shall have full power to enter an order placing Mortgagee in possession of the Property with the same power granted to a receiver pursuant to this subsection and with all other rights and privileges of a mortgagee-in-possession under applicable law.

(c) Mortgagee's Other Rights. Mortgagee shall have the right to take such other steps to protect and enforce its rights, whether by action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained in this Mortgage, or in aid of the execution of any power granted in this Mortgage, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee and/or the trustees shall elect. Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Indebtedness or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under the Act and any other applicable law, and shall have the benefit of all of the provisions of the Act and such applicable law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act that 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.

(d) UCC Remedies. Mortgagee may exercise any or all of the rights and remedies granted to a secured party under the Code.

(e) Final Order. Notwithstanding anything to the contrary contained in the foregoing provisions of this Section 4.02 or otherwise in this Mortgage, any Loan Document or any Prepetition Revolving Credit Loan Document, in connection with exercising any foreclosure on any of the Property or otherwise exercising remedies against the Property, the Administrative Agent (or, if applicable, the Prepetition Revolving Credit Agent) shall comply with all requirements and procedures in the Final Order (or, prior to the entry of the Final Order, the Interim Order).

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4.03 Litigation Expenses. In any proceeding to foreclose the lien of this Mortgage or enforce any other right or remedy of Mortgagee under the Credit Agreement, the Note, this Mortgage, or the other Loan Documents, or in any other proceeding in connection with any of the Loan Documents or any of the Property in which Mortgagee is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree resulting all related expenses paid or incurred by or on behalf of Mortgagee. Such expenses shall include: reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, survey costs, and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, and any similar data and assurances with respect to title to the Property as Mortgagee may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the Premises or the Property. All foregoing expenses, and such expenses as may be incurred in the protection of any of the Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation affecting the Credit Agreement, the Note, this Mortgage, or the Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding (which may be estimated as to items to be expended after entry of such judgment or decree), shall be due and payable by Mortgagor within 10 days of the demand therefor with interest thereon at the Default Rate.

4.04 Mortgagee's Performance of Mortgagor's Obligations. Following the occurrence of an Event of Default, Mortgagee, at the direction of Administrative Agent, either before or after acceleration of the Obligations or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein, in the Note, any of the Loan Documents or any document or instrument related thereto which is required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any form and manner deemed expedient to Mortgagee, and in connection therewith enter any portion of the Property and so any and all other things that it may in its reasonable discretion consider necessary or appropriate to protect the Property and the lien of this Mortgage. Mortgagee may take any of the actions permitted under this Section either with or without giving notice to any person other than Administrative Agent. Any amounts expended by Mortgagee under this Section shall be deemed part of the Secured Indebtedness and shall be secured by this Mortgage. Without limiting the foregoing, Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on any permitted prior deed of trust, this Mortgage or any encumbrances and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any Impositions and may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises, and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and Improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such Improvements or to pay any such operating costs and expenses thereof or to keep the Premises and Improvements operational and usable for their intended purposes, shall constitute Secured Indebtedness, whether or not they exceed the amount of the



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Note, and shall become due and payable upon demand and with interest thereon at the Default Rate. Mortgagee, in making any payment hereby authorized: (a) for the payment of Impositions, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim or lien which may be asserted; or (c) for the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating cost and expenses thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

All advances, disbursements and expenditures (collectively "Advances") made by Mortgagee after an Event of Default, before and during foreclosure, prior to sale, and where applicable, after sale, for the following purposes, including interest thereon at the Default Rate, are hereinafter referred to as "Protective Advances", and shall be deemed to include, without limitation:

- (1) Advances pursuant to this Section 4.04;
- (2) Any amount expended by Mortgagee in restoring the Property in excess of the actual or estimated proceeds of insurance or condemnation, which excess shall constitute additional Secured Indebtedness;
- (3) Advances in accordance with the terms of this Mortgage to: (a) protect, preserve or restore the Property; (b) preserve the lien of this Mortgage or the priority thereof; or (c) enforce this Mortgage;
- (4) When due installments of real estate taxes and other Impositions; other obligations authorized by this Mortgage; or with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, all as referred to in this Section 4.04;
- (5) Reasonable attorneys' fees and other costs incurred in connection with: (a) the exercise of Mortgagee's rights to make Protective Advances; (b) the foreclosure of this Mortgage; (c) any other litigation or administrative proceeding relating to the Property to which Mortgagee may be or become or be threatened or contemplated to be a party, without fault on its part, including probate and bankruptcy proceedings; or (d) in the preparation for the commencement or defense of any such suit or proceeding; including filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, appraisals, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Property;



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- (6) Mortgagee's fees and costs arising between the entry of judgment of foreclosure and the confirmation hearing;
- (7) Payment by Mortgagee of any Impositions as may be permitted by this Mortgage;
- (8) Mortgagee's Advances of any amount required to make up a deficiency in deposits for installments of Impositions as may be permitted by this Mortgage;
- (9) Expenses deductible from proceeds of sale;
- (10) Expenses incurred and expenditures made by Mortgagee for any one or more of the following: (a) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required without regard to the limitation to maintaining insurance in effect at the time any receiver, deed of trust beneficiary or Mortgagee takes possession of the Property; (b) expenditures in connection with restoring the Property in excess of available insurance proceeds or condemnation awards; (c) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (d) operating deficits incurred by Mortgagee as a deed of trust beneficiary or Mortgagee in possession or reimbursed by Mortgagee to any receiver; and (e) all amounts paid to any public authority for the use or occupancy of any street, alley, or public way.

All Protective Advances shall constitute Secured Indebtedness and shall become immediately due and payable without notice and with interest thereon 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 the Mortgage is recorded.

WITHOUT LIMITING THE FOREGOING, PURSUANT TO SECTION 10 OF THE ILLINOIS COLLATERAL PROTECTION ACT (815 ILCS 180/10), UNLESS MORTGAGOR PROVIDES MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED UNDER THE CREDIT AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, MORTGAGEE MAY PURCHASE INSURANCE AT MORTGAGOR'S EXPENSE TO PROTECT MORTGAGEE'S INTERESTS IN THE PROPERTY. THIS INSURANCE MAY, BUT NEED NOT, PROTECT MORTGAGOR'S INTERESTS. THE COVERAGE THAT MORTGAGEE PURCHASES MAY NOT PAY ANY CLAIM THAT MORTGAGOR MAKES OR ANY CLAIM THAT IS MADE AGAINST MORTGAGOR IN CONNECTION WITH THE PROPERTY. MORTGAGOR MAY LATER CANCEL ANY INSURANCE PURCHASED BY MORTGAGEE, BUT ONLY AFTER PROVIDING MORTGAGEE WITH EVIDENCE THAT MORTGAGOR HAS OBTAINED INSURANCE AS REQUIRED UNDER THIS MORTGAGE. IF MORTGAGEE PURCHASES INSURANCE FOR THE PROPERTY, MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES MORTGAGEE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE

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ADDED TO MORTGAGOR'S TOTAL OUTSTANDING BALANCE OR OBLIGATION AND SHALL CONSTITUTE SECURED INDEBTEDNESS HEREUNDER. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE MORTGAGOR MAY BE ABLE TO OBTAIN INDEPENDENTLY.

4.05 Right of Possession. In any case in which Mortgagee has a right to institute foreclosure proceedings (whether or not the entire principal sum secured hereby becomes immediately due and payable or whether before or after the institution of foreclosure proceedings or whether before or after judgment thereunder and at all times until the confirmation of sale) and upon Mortgagee's request to the court, Mortgagor shall, immediately upon Mortgagee's demand, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of the Property or any part thereof, personally or by its agent or attorneys. Mortgagee may enter upon and take and maintain possession or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of the Property, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Property relating thereto. Mortgagee may exclude Mortgagor, such owner, and any agents and servants from the Property. As attorney-in-fact or agent of Mortgagor or such owner, or in its own name Mortgagee may hold, operate, manage, and control all or any part of the Property and conduct the business thereof, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as it may deem proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Property, including actions for recovery of rent, actions in forcible entry and detainer, and actions in distress for rent, all without notice to Mortgagor.

4.06 Priority of Rent Payments. Any rents, issues, deposits, profits, and avails of the Property received by Mortgagee after taking possession of the Property, or pursuant to any assignment to Mortgagee under the provisions of this Mortgage or any of the other Loan Documents, shall be applied as provided under applicable law or, in the case of a receivership, as the court may determine.

4.07 Appointment of Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall appoint a receiver of the Property whenever Mortgagee when entitled to possession so requests. Such receiver shall have all powers and duties prescribed by applicable law, including the power to make leases to be binding upon all parties, including the Mortgagor after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Mortgage real estate after entry of a judgment of foreclosure. In addition, such receiver shall also have the following powers: (a) to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Obligations and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the Mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and

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operation of the Property during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Secured Indebtedness, or any amounts included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a Protective Advance, and (b) the deficiency in case of a sale and deficiency.

4.08 Application of the Rents or Proceeds from Foreclosure or Sale. In any foreclosure of this Mortgage by judicial action, the proceeds of such foreclosure proceeding and/or sale and/or the Rents paid to Mortgagee shall, to the extent permitted by law, be applied as follows:

First: to the ratable payment of the costs and expenses of such sale, including reasonable fees and expenses incurred by Mortgagee, its agents and attorneys, and of any judicial or private proceedings in which such sale may be made, and of all other expenses, liabilities and advances made or incurred by Mortgagee and its agents and attorneys under this Mortgage, together with interest at the Default Rate on such costs, expenses and liabilities and on all advances made by Mortgagee from the date any such cost, expense or liability is due, owing or unpaid or any such advance is made, in each case until paid in full.

Second: to the payment of the Secured Indebtedness.

Third: the surplus, if any, to be paid to whomever may be lawfully entitled to receive such surplus.

4.09 Cumulative Remedies; Delay or Omission Not a Waiver. Each remedy or right of Mortgagee shall not be exclusive of, but shall be in addition to, every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise or omission to exercise any remedy or right accruing on the occurrence or existence of any Event of Default under the Credit Agreement shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or acquiescence therein, nor shall it affect any subsequent Event of Default of the same or different nature. Every such remedy or right may be exercised concurrently or independently and when and as often as may be deemed expedient by Mortgagee.

4.10 Reserved.

4.11 No Merger. In the event of a foreclosure of this Mortgage, the Obligations then due Mortgagee shall not be merged into any decree of foreclosure entered by the court, and Mortgagee may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Obligations. Additionally, no merger shall occur as a result of Mortgagee otherwise acquiring any estate in or any other lien on the Property unless Mortgagee intends such merger as evidenced in a writing duly executed by Mortgagee.

4.12 Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in the restoration of the Property shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In case of the foreclosure of this Mortgage, the court in its judgment may provide that the judgment creditor may cause a new or additional loss clause to be

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attached to each of said policies making the loss thereunder payable to said judgment creditor; and any such foreclosure judgment may further provide, unless the right of redemption has been waived, that in case of redemption under said judgment, pursuant to applicable law, then, and in every such case, the redemptory may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redemptory. In the event of foreclosure sale, Mortgagee is hereby authorized, but not required, without the consent of Mortgagor, to assign or cause a receiver to assign any and all insurance policies to the purchaser at the sale, or to take such other action as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

4.13 Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisement, valuation, redemption, stay, extension, or exemption laws, or any so-called "moratorium laws" now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and Mortgagor hereby waives the benefit of such laws (to the extent permitted by applicable law). Mortgagor, for itself and all who may claim through or under it, waives any and all rights to have the Property and estates comprising the Property marshaled upon any foreclosure of the lien of this Mortgage, and agrees that any court having jurisdiction to foreclose such lien may order the Property sold in its entirety. Mortgagor further waives any and all rights of redemption from foreclosure and from sale under any order or decree of foreclosure (whether full or partial) of the lien created by this Mortgage, for itself and on behalf of: (i) any trust estate of which the Premises are a part, all beneficially interested persons; (ii) each and every person acquiring any interest in the Property or title to the Premises subsequent to the date of this Mortgage; and (iii) all other persons to the extent permitted by the provisions of laws of the State in which the Premises are located. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1202 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (as amended from time to time, the "Act")) or residential real estate (as defined in Section 15-1219 of the Act).

## V

### MISCELLANEOUS

5.01 Notices. Any notice, demand, request or other communication that Mortgagee or Mortgagor may desire or be required to give to the other shall be in writing and shall be mailed or delivered to the address set forth in the first paragraph of this Mortgage. Except as otherwise specifically required, notice of the exercise of any right or option granted to Mortgagee by this Mortgage is not required to be given.

5.02 Time of Essence. Time is of the essence of this Mortgage.

5.03 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Premises.

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## 5.04 GOVERNING LAW; FORUM; WAIVER OF JURY TRIAL.

(a) THIS MORTGAGE SHALL BE CONSTRUED, GOVERNED AND ENFORCED ACCORDING TO THE LAWS OF THE STATE OF ILLINOIS. TO THE EXTENT THAT THIS MORTGAGE MAY OPERATE AS A SECURITY AGREEMENT UNDER THE CODE, MORTGAGEE SHALL HAVE ALL RIGHTS AND REMEDIES CONFERRED THEREIN FOR THE BENEFIT OF A SECURED PARTY AS SUCH TERM IS DEFINED IN THE CODE.

(b) IF (I) ANY CASE IS DISMISSED, (II) THE BANKRUPTCY COURT ABSTAINS FROM HEARING ANY ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE (OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS MORTGAGE OR THE TRANSACTIONS RELATED HERETO) OR (III) THE BANKRUPTCY COURT REFUSES TO EXERCISE JURISDICTION OVER ANY ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT (OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS MORTGAGE OR THE TRANSACTIONS RELATED HERETO), THEN (X) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF ILLINOIS OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IN ANY OF CASES (I) THROUGH (III), ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH ILLINOIS STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT, AND (Y) EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, THE PREPETITION REVOLVING CREDIT AGENT OR ANY OTHER SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE IN ANY COURT REFERRED TO IN THIS SECTION 5.04. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY



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**WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND AGREES NOT ASSERT ANY SUCH DEFENSE. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 5.01, NOTHING IN THIS MORTGAGE WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.**

**(c) MORTGAGOR AND MORTGAGEE EACH HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

5.05 Rights and Remedies Cumulative. All rights and remedies in this Mortgage are cumulative. The holder(s) of the Note and of every other obligation secured hereby may recover judgment, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy.

5.06 Severability. If any provision of this Mortgage or any paragraph, sentence, clause, phrase, or word, or their application, in any circumstance, is held invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included.

5.07 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by any party, to or of any breach or default by any other party shall be deemed a consent to or waiver of the performance by such defaulting party of any other obligations or the performance by any other party of the same, or of any other obligations.

5.08 Headings. The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions.

5.09 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

5.10 Deed in Trust. If title to the Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction against the creation of any lien on the



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Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

5.11 Successors and Assigns. This Mortgage shall be binding upon Mortgagor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through Mortgagor. "Mortgagee", when used herein, shall include its successors and assigns and its legal representatives. "Mortgagor", when used herein, shall include all such persons and entities and any others liable for the payment of the Secured Indebtedness, or any part thereof, or the performance of any of the other Obligations, whether or not they have executed the Credit Agreement, a Note or this Mortgage.

5.12 Mortgagee in Possession. Nothing contained in this Mortgage shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Property.

5.13 Compliance with Applicable Law. Anything elsewhere herein contained to the contrary notwithstanding:

(a) in the event that any provision in this Mortgage shall be inconsistent with any provision of applicable law, the provisions of applicable law 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 applicable law;

(b) if any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under applicable law in the absence of said provision, Mortgagee shall be vested with the rights granted under applicable law to the full extent permitted by law; and

(c) it is the intention of the parties to conform strictly to the usury laws, whether state or federal, that are applicable to the Note or the Mortgage. All agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid by Mortgagor for the use, forbearance or detention of the money loaned or to be loaned under the Note or this Mortgage, or for the payment or performance of any covenant or obligation contained herein or in the Note, exceed the maximum amount permissible under applicable federal or state usury laws. If under any circumstances whatsoever fulfillment of any provision hereof or of the Note, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity. If under any circumstances Mortgagor shall have paid an amount deemed interest by applicable law, which would exceed the highest lawful rate, such amount that would be excessive interest under applicable usury laws shall be applied to the reduction of the principal amount owing in respect of the Loans and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal and any other amounts due hereunder, the excess

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shall be refunded to Mortgagor. All sums paid or agreed to be paid for the use, forbearance or detention of the principal under the Loans shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, prorated, allocated and spread from the date of this Mortgage until payment in full of the Secured Indebtedness so that the actual rate of interest on account of such principal amounts is uniform throughout the term hereof. The terms and provisions of this subparagraph shall control and supersede every other provision of this Mortgage or the Note.

5.14 Incorporation of Credit Agreement. The terms of the Credit Agreement are incorporated by reference herein as though set forth in full detail. In the event of any conflict between the terms and provisions of this Mortgage and any other Loan Document, the terms and provisions of such other Loan Document shall control.

5.15 Security Agreement. This Mortgage is hereby deemed to be as well a Security Agreement for the purpose of creating hereby a security interest securing the indebtedness secured hereby in and to the Personal Property except as otherwise expressly set forth in this Mortgage. Without derogating any of the provisions of this Mortgage, except as otherwise expressly set forth in this Mortgage, Mortgagor by this Mortgage:

(a) grants to Mortgagee a security interest in all of Mortgagor's right, title and interest in and to all Personal Property, including, but not limited to, the items referred to above, together with all additions, accessions and substitutions and all similar property hereafter acquired and used or obtained for use on, or in connection with the Property. The Personal Property and all proceeds thereof are intended to be secured hereby; however, such intent shall never constitute an express or implied consent on the part of Mortgagee to the sale of any or all Personal Property;

(b) agrees that the security interest hereby granted by this Mortgage shall secure the payment and performance of the Obligations;

(c) agrees not to sell, convey, mortgage or grant a security interest in, or otherwise dispose of or encumber, any of the Personal Property or any of the Mortgagee's right, title or interest therein except as permitted by the Credit Agreement without first securing Mortgagee's written consent;

(d) agrees that upon or after the occurrence of any Event of Default under this Mortgage, Mortgagee shall have all rights and remedies granted by law and more particularly the Code, including, but not limited to, the right to take possession of the Personal Property, and for this purpose may enter upon any premises on which any or all of the Personal Property is situated without being deemed guilty of trespass and without liability for damages thereby occasioned (except for damages caused by Mortgagee's gross negligence or willful misconduct), and take possession of and operate said Personal Property or remove it therefrom. Mortgagee shall have the further right to take any action it deems necessary, appropriate or desirable, at its option and in its discretion, to repair, refurbish or otherwise prepare the Personal Property for sale, lease or other use or disposition, and to sell at public or private sales or otherwise dispose of, lease or utilize

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the Personal Property and any part thereof in any manner authorized or permitted by law and to apply the proceeds thereof toward payment of any costs and expenses, to the extent permitted by law, thereby incurred by Mortgagee and toward payment of the Secured Indebtedness and all other indebtedness described in this Mortgage, in such order and manner as is provided in Section 4.08 hereof. To the extent permitted by law, Mortgagor expressly waives any notice of sale or other disposition of the Personal Property and any other rights or remedies of a debtor or formalities prescribed by law relative to a sale or disposition of the Personal Property or to exercise any other right or remedy existing after default hereunder; and to the extent any notice is required and cannot be waived, Mortgagor agrees that if such notice is deposited for mailing, postage prepaid, certified mail or registered mail, return receipt requested, to Mortgagee at the address designated in the first page of this Mortgage at least fifteen (15) days before the time of sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirements for giving of said notice; provided that if Mortgagor has furnished Mortgagee with notice of a change of address in accordance with Section 5.01, then any such notice shall not be reasonable unless sent to the new address;

(e) agrees, to the extent permitted by law and without limiting any rights and privileges herein granted to Mortgagee, that Mortgagee may dispose of any or all of the Personal Property at the same time and place upon giving the same notice provided for in this Mortgage, and in the same manner as the non-judicial foreclosure sale provided under the terms and conditions of this Mortgage; and

(f) authorizes Mortgagee to file in the jurisdiction where this Mortgage will be given effect, financing statements including renewal or confirmation thereof, covering the Personal Property; and at the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more such financing statements including renewal or confirmation thereof, pursuant to the Code in a form reasonably satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices at any time and from time to time wherever Mortgagee deems filing or recording of any financing statements including renewal or confirmation thereof or of this instrument to be desirable or necessary.

5.16 Fixture Filing. This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the Code, covering any of the Property that now is or later may become fixtures attached to the Premises or the Improvements. The addresses first set forth above are the respective mailing addresses of Mortgagee, as secured party under the Code, and Mortgagor, as debtor under the Code.

5.17 Maintenance of Encumbrance Amount. If at any time this Mortgage shall secure less than all of the principal amount of the Secured Indebtedness, it is expressly agreed that any repayments of the principal amount of the Secured Indebtedness shall not reduce the amount of the encumbrance of this Mortgage until the encumbrance amount shall equal the principal amount of the Secured Indebtedness outstanding.

5.18 Additional Provisions. The following provisions shall also constitute an integral part of this Mortgage. Furthermore, in the event that any prior provisions of this Mortgage

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conflict with the following provisions of this Section, the provisions of this Section shall control and shall be deemed a modification of or amendment to the section or provision at issue:

(a) Payment of Taxes and Fees. Mortgagor agrees to pay all transfer taxes, recordation taxes, recording fees, and any other fees required by or imposed by the State or the county in which the Premises is located in order to record this Mortgage in the Recorder's Office of the County in which the Premises is located.

(b) No Assumption of Obligations. In the event of a foreclosure of the Property, Mortgagee shall not assume any liability of Mortgagor for Mortgagor's violation of any environmental laws, statutes, codes, regulations, or practices and Mortgagor's indemnifications as contained herein and in the Credit Agreement shall survive said foreclosure.

(c) Expenses of Enforcement Waiver. Mortgagor agrees to bear and pay all reasonable expenses (including reasonable attorney fees and appellate attorney fees), of or incidental to the enforcement of any provision hereof, or the enforcement, compromise, or settlement of this Mortgage or the Obligations, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise. All rights and remedies of Mortgagee shall be cumulative and may be exercised singly or concurrently. Notwithstanding anything herein contained to the contrary, Mortgagor to the extent permitted by applicable law: (i) will not (a) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or execution or moratorium law, any exemption for execution of sale of the Property or any part thereof, whenever enacted, now or at any time hereafter enforced, which may affect the covenants and terms of performance of this Mortgage, nor (b) claim, take or insist upon any benefit or advantage of any law now or hereafter enforced providing for the evaluation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction, nor (c) after any such sale or sales, claim, or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof; (ii) hereby expressly waives all benefit or advantage of any such law or laws including but not limited to a waiver of the equity of redemption, statutory right of redemption, and any other statutory or common law right of redemption, homestead, dower, marital share and all other exemptions; and (iii) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such laws or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Property marshaled upon any foreclosure hereof.

(d) Subordination of Property Manager's Lien and Real Estate Broker's Lien. Any property management agreement for the Property entered into hereafter by Mortgagor with a property manager shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager may have pursuant to the Illinois Mechanics Lien Act, 770 ILCS 60/.01 et seq. Such property management agreement or a short form thereof shall, at Mortgagee's

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request, be recorded with the Recorder of Deeds of the county where the Property is located. In addition, Mortgagor shall use commercially reasonable efforts to cause the property manager to enter into a subordination of management agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property manager, to the lien of this Mortgage. Any agreement entered into hereafter by Mortgagor or any agent of Mortgagor with any "broker" (as defined in the Real Estate License Act of 1983, 225 ILCS 455/1-1 et seq.) that is an affiliate of Mortgagor for the purpose of selling, leasing or otherwise conveying an interest in the Property shall contain a "no lien" provision whereby such broker waives and releases any and all lien rights that such broker or anyone claiming by, through or under such broker may have pursuant to the Commercial Broker Lien Act, 770 ILCS 15/1 et seq. Mortgagor shall use commercially reasonable efforts to cause such broker to enter into a subordination agreement with Mortgagee, in recordable form, whereby such broker, on its own behalf and on behalf of any party claiming by, through or under such broker, subordinates present and future lien rights to the lien of this Mortgage.

5.19 Agent Capacity. The parties hereto acknowledge and agree that Mortgagee is the Administrative Agent entitled to the exculpatory provisions of Section 10 of the Credit Agreement and to reimbursement of costs with respect to this Mortgage from funds available for Administrative Agent's costs, fee, expenses and disbursement under Section 9.2.4(i) of the Credit Agreement.

*[signature and no other pages follow]*


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**IN WITNESS WHEREOF**, Mortgagor has duly signed and delivered this Mortgage as of the date first above written.

**MORTGAGOR:**

**RACEWAY CENTRAL LLC**

By: CENTRAL GROCERS, INC.,  
an Illinois corporation, its sole manager

By:   
Printed Name: Donald E. Harer  
Title: Chief Restructuring Officer

Property of Cook County Clerk's Office



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STATE OF ILLINOIS §  
COUNTY OF DuPage §

On July 20<sup>th</sup> 2017, before me, the undersigned, a notary public in and for said State, personally appeared Donald E. Harer personally known to be the Chief Restructuring Officer of Central Grocers, Inc., the sole manager of Raceway Central LLC, personally known to me (or proved to me 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.



[SEAL]

Karen L. Arnold  
Notary Public  
Name: Karen L. Arnold  
County of Residence: DuPage

My commission expires:

April 24, 2018

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## EXHIBIT "A"

### Legal Description

#### PARCEL 3:

##### TRACT 1 (ULTRA STORE):

THAT PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32 AFORESAID AND THE EAST LINE OF THE WEST 1/2 OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 32; RUNNING THENCE SOUTH 00 DEGREES 00 MINUTES 32 SECONDS EAST ALONG SAID EAST LINE OF THE WEST 1/2, A DISTANCE OF 43.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF VERMONT STREET; RUNNING THENCE NORTH 88 DEGREES 03 MINUTES 23 SECONDS WEST ALONG SAID SOUTH RIGHT-OF-WAY LINE OF VERMONT STREET A DISTANCE OF 129.02 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 55 SECONDS EAST, A DISTANCE OF 401.58 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 05 SECONDS WEST, A DISTANCE OF 336.50 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 55 SECONDS EAST, A DISTANCE OF 112.50 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 05 SECONDS WEST, A DISTANCE OF 33.44 FEET TO THE POINT OF BEGINNING, BEING A POINT ON THE WEST LINE OF VACATED LAFLIN STREET (PER ORDINANCE 01-757, DATED MARCH 5, 2001); THENCE NORTH 00 DEGREES 00 MINUTES 23 SECONDS WEST ALONG THE WEST LINE OF VACATED LAFLIN STREET AFORESAID, A DISTANCE OF 446.68 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF VERMONT STREET AFORESAID; RUNNING THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE OF VERMONT STREET THE FOLLOWING FIVE (5) COURSES: 1) SOUTH 89 DEGREES 59 MINUTES 05 SECONDS WEST, A DISTANCE OF 18.92 FEET; THENCE 2) NORTH 35 DEGREES 51 MINUTES 22 SECONDS WEST, A DISTANCE OF 37.10 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE 3) ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 1091.50 FEET, WHOSE CHORD BEARS SOUTH 72 DEGREES 14 MINUTES 14 SECONDS WEST A DISTANCE OF 108.98 FEET FOR AN ARC DISTANCE OF 109.03 FEET TO A POINT ON NON-TANGENCY; THENCE 4) SOUTH 74 DEGREES 13 MINUTES 09 SECONDS WEST, A DISTANCE OF 136.42 FEET; THENCE 5) SOUTH 66 DEGREES 12 MINUTES 41 SECONDS WEST, A DISTANCE OF 137.58 FEET; THENCE DEPARTING SAID SOUTH RIGHT-OF-WAY OF VERMONT STREET, SOUTH 00 DEGREES 00 MINUTES 55 SECONDS EAST, A DISTANCE OF 351.01 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 05 SECONDS EAST, A DISTANCE OF 401.56 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

##### TRACT 2 (MAIN ENTRY):

THAT PART OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 32; THENCE NORTH 00 DEGREES 00 MINUTES 55 SECONDS WEST ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 32, A DISTANCE OF 160.00 FEET, TO THE POINT OF INTERSECTION WITH THE SOUTHWESTERLY EXTENSION OF THE NORTHERLY LINE OF TRACT OF LAND CONVEYED TO SANITARY DISTRICT OF CHICAGO, CORPORATION OF ILLINOIS BY WARRANTY DEED DATED SEPTEMBER 30, 1911 AND RECORDED OCTOBER 25, 1991 IN BOOK 11716, PAGE 334 AS DOCUMENT NUMBER 4854550; THENCE CONTINUING NORTH 00 DEGREES 00 MINUTES 55 SECONDS WEST ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 32, A DISTANCE OF 71.42 FEET; THENCE NORTH 89 DEGREES 32 MINUTES 17 SECONDS EAST, A DISTANCE OF 30.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF

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ASHLAND AVENUE PER CONDEMNATION DOCUMENTS 74L12029 AND 92L51309 RECORDED JANUARY 14, 1976 AND NOVEMBER 30, 1994, RESPECTIVELY; RUNNING THENCE ALONG SAID EAST RIGHT-OF-WAY OF ASHLAND AVENUE THE FOLLOWING TWO (2) COURSES: 1) NORTH 00 DEGREES 00 MINUTES 55 SECONDS WEST, 42.61 FEET; THENCE 2) NORTH 02 DEGREES 22 MINUTES 20 SECONDS EAST, 188.08 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE SAME COURSE A DISTANCE OF 52.47 FEET; THENCE ALONG SAID EAST LINE OF ASHLAND AVENUE NORTH 00 DEGREES 00 MINUTES 55 SECONDS WEST A DISTANCE OF 60.79 FEET; THENCE DEPARTING SAID EAST LINE OF ASHLAND AVENUE SOUTH 61 DEGREES 09 MINUTES 36 SECONDS EAST 46.81 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 05 SECONDS EAST, 172.40 FEET; THENCE NORTH 23 DEGREES 34 MINUTES 05 SECONDS EAST, 24.00 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 55 SECONDS WEST, 180.50 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 05 SECONDS EAST, 31.00 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 55 SECONDS EAST, 247.50 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 05 SECONDS WEST, 175.78 FEET; THENCE SOUTH 60 DEGREES 24 MINUTES 48 SECONDS WEST, 92.45 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

25-32-107-038-0000

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