

# UNOFFICIAL COPY

Doc#: 1731008028 Fee: \$140.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 11/06/2017 09:24 AM Pg: 1 of 47

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: **PIN:** 20-22-226-023-0000

**Address:**

**Street:** 6620 S RHODES AVE

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60637

**Lender:** Patch Of Land Lending LLC

**Borrower:** SBH INVESTMENT GROUP LLC

**Loan / Mortgage Amount:** \$85,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is not owner-occupied.

**Certificate number:** 52B6C332-D877-47D9-A152-B33D765B1B09

**Execution date:** 10/30/2017

**UNOFFICIAL COPY****This Instrument Prepared By And  
After Recording Return To:**

Patch of Land Lending, LLC  
15165 Ventura Blvd suite 200  
Sherman Oaks, CA 91403  
Attn: Post Closing Department

**Property Identification Number(s):**

20-22-226-023-0000

**Common Address(es):**

6620 S Rhodes Ave, Chicago, IL, 60637



170272346 Rm  
Rm ASS

[Above space reserved for recording information.]

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

THIS MORTGAGE AND SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES, AND FIXTURE FINANCING STATEMENT ("*Mortgage*") is made and delivered as of October 30, 2017, among **SBH Investment Group LLC, a(n) Illinois Limited Liability Company**, as mortgagor ("*Borrower*"), whose address is **73 E LAKE ST APT 3706 CHICAGO IL 60601-4801**, to and for the benefit of **PATCH OF LAND LENDING, LLC**, a limited liability company formed under the laws of the State of Delaware, its endorsees, successors and assigns ("*Lender*"), having a mailing address of: 15165 Ventura Blvd Suite 200, Sherman Oaks, CA 91403, Attention, Mera Baker, Corporate Counsel.

**RECITALS:**

A. Borrower is the fee simple owner of the Mortgaged Property (as hereinafter defined).

B. Borrower is indebted to Lender, as evidenced by that certain Promissory Note (as the same may be amended, modified, restated or replaced from time to time, the "*Note*") of even date herewith, in the original principal sum of **Eighty Five Thousand and 00/100 (\$85,000.00)** (the "*Loan*"), providing for monthly installments of interest at the pre-default rate of 10.75 % per annum, with both principal and interest of the Note being payable at the office of Mortgagee as more specifically set forth therein.

C. In connection with the Loan, and as a condition thereof: (i) Russell Barnes an individual (individually and collectively, the "*Guarantor*"), have executed and delivered that

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certain Guaranty, of even date herewith, in favor of Lender with respect to the Loan and the obligations of Borrower with respect thereto (as the same may be amended, modified, restated or replaced from time to time, the "*Guaranty*"); and (ii) Borrower and Guarantor have executed and delivered that certain Environmental Indemnity Agreement, of even date herewith, in favor of Lender with respect to the Mortgaged Property (as the same may be amended, modified, restated or replaced from time to time, the "*Environmental Indemnity Agreement*").

D. As a condition precedent to making the Loan, Lender has required, among other things, that the Borrower execute and deliver this Mortgage to, and in favor of, Lender.

E. In order to induce the Lender to make the Loan, and all other monies to be advanced under the Note, Borrower has agreed to execute and deliver this Mortgage.

NOW, THEREFORE, in consideration of the above recitals and of the Lender agreeing to make the Loan to Borrower, and other valuable consideration, the receipt and sufficiency of which is acknowledged, Borrower hereby represents, warrants, covenants and agrees for the benefit of Lender as follows:

## 1. Transfer Of Rights In The Property.

1.1 Grant of Interest. To secure the full and timely payment and performance (as applicable) of the Obligations (as defined below), Borrower does hereby irrevocably and unconditionally MORTGAGE, GRANT, ASSIGN, REMISE, WARRANT AND CONVEY to and for the benefit of Lender the properties identified in Section 1.2 below (such properties identified in Section 1.2 (a) through (f) below being hereafter sometimes referred to, individually and collectively, as the "*Mortgaged Property*") with power of sale and right of entry, subject only to the Permitted Encumbrances, to have and to hold the Mortgaged Property, and Borrower does hereby bind itself, its successors, and its assigns to warrant and forever defend the title to the Mortgaged Property to Lender against anyone lawfully claiming it or any part of it; provided, however, that if the Obligations are paid and/or performed (as applicable) in full as and when it becomes due, then the liens, security interests, estates, and rights granted by the Loan Documents shall terminate; otherwise, they shall remain in full force and effect.

## 1.2 Granting Clauses.

a. Land. All the tracts or parcels of real property lying and being in the COUNTY OF Cook, STATE OF ILLINOIS (the "*Land*") all as more fully described in Exhibit A attached hereto and which is hereby incorporated into this Mortgage by reference, together with all the estates and rights in and to the Land, and in and to lands lying in streets, alleys and roads or gores of land adjoining the Land, all minerals, oil, gas and other hydrocarbon substances on, in and under the Land, as well as all development rights, air rights, water, water rights, water stock, mineral or oil rights, parking rights and general intangibles relating to, generated from, arising out of or incidental to the Land, its ownership, development or use.

b. Improvements, Fixtures, Equipment and Personal Property. All buildings, structures, improvements, fixtures and annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the Land and all proceeds and products derived

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therefrom whether now owned or hereafter acquired; and all equipment (including Borrower's interest in any lease of such equipment), fixtures, improvements, building supplies and materials and personal property owned by Borrower now or hereafter attached to, located in, placed in or necessary to the use, operation or maintenance of the improvements on the land including, but without being limited to, all machinery, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection, as well as all elevators, escalators, overhead cranes, hoists and assists, and the like, and all furnishings, supplies, draperies, maintenance and repair equipment, window and structural cleaning rigs and equipment, floor coverings, appliances, screens, storm windows, blinds, awnings, shrubbery and plants, stoves, ranges, ovens, refrigerators, air conditioners, dishwashers, clothes dryers, washing machines, disposals and compactors (it being understood that the enumeration of specific articles of property shall in no way be held to exclude items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts, fittings, insurance payments, awards and substitutes thereof, together with all interest of Borrower in any such items hereafter acquired, and all personal property which by the terms of any lease shall become the property of Borrower at the termination of such lease, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Mortgaged Property, but excluding therefrom the removable personal property owned by tenants in the Mortgaged Property (all of the forgoing, individually and collectively, the "**Improvements**").

c. Rents, Leases and Profits. All rents, issues, income, revenue, receipts, fees, and profits now due or which may hereafter become due under or by virtue of and together with all right, title and interest of Borrower in and to any lease, license, sublease, contract or other kind of occupancy agreement, whether written or verbal, for the use or occupancy of the Mortgaged Property or any part thereof together with all security therefor and all monies payable thereunder, including, without limitation, tenant security deposits, and all books and records which contain information pertaining to payments made thereunder and security therefor, subject, however, to the conditional permission herein given to Borrower to collect the rents, income and other normal income benefits arising under any agreements. Lender shall have the right, not as a limitation or condition hereof but as a personal covenant available only to Lender, at any time and from time to time, to notify any lessee of the rights of Lender hereunder. Together with all right, title and interest of Borrower in and to any and all contracts for sale and purchase of all or any part of the property described in the granting clauses provided in Section 1.2 (a), (b) and (c) and any down payments, earnest money deposits or other sums paid or deposited in connection therewith, (all of the forgoing agreements being hereinafter referred to, individually and collectively, as the "**Leases**" and all such amounts now or hereafter owed to Borrower (or the record title owner of the Mortgaged Property) thereunder being hereinafter referred to, individually and collectively, as the "**Rents**").

d. Judgments, Condemnation Awards, Insurance Proceeds, and Other Rights. All awards, compensation or settlement proceeds made by any governmental or other lawful authorities for the threatened or actual taking or damaging by eminent domain of the whole or any part of the Mortgaged Property, including any awards for a temporary

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taking, change of grade of streets or taking of access, together with all Insurance Proceeds resulting from a casualty to any portion of the Mortgaged Property; all rights and interests of Borrower against others, including adjoining property owners, arising out of damage to the property including damage due to environmental injury or release of hazardous substances.

e. Licenses, Permits, Equipment Leases and Service Agreements. All right, title and interest of Borrower in and to any licenses, permits, regulatory approvals, government authorizations, franchise agreements and equipment or chattel leases, service contracts or agreements, tradenames, any and all other intangibles, including general intangibles, and all proceeds therefrom, arising from, issued in connection with or in any way related to the use, occupancy, operation, maintenance or security of the Mortgaged Property, together with all replacements, additions, substitutions and renewals thereof, which may be assigned pursuant to agreement or law.

f. Proceeds. All sale proceeds, refinancing proceeds or other proceeds, including deposits and down payments derived from or relating to the Mortgaged Property described in the granting clauses provided in Section 1.2 (a) through (f) above.

g. Prohibited Transfer. Any action taken by, or on behalf of, Borrower, without the prior written consent of Lender (which consent may be withheld in its sole discretion), to:

i. sell, assign, transfer, hypothecate, grant a security interest in, grant a right to purchase (including, without limitation, any such right in a Lease); or convey title to: (1) the Mortgaged Property or any part thereof; (2) any equity interest in Borrower; or (3) any equity interest in any entity controlling, directly or indirectly, Borrower;

ii. obtain any financing, all or a part of which will be secured by: ((1) the Mortgaged Property or any part thereof; (2) any equity interest in Borrower; or (3) any equity interest in any entity controlling, directly or indirectly, Borrower; or

iii. convert Borrower from one type of legal entity into another type of legal entity

TO MAINTAIN AND PROTECT THE SECURITY OF THIS MORTGAGE, TO SECURE THE FULL AND TIMELY PERFORMANCE BY BORROWER OF EACH AND EVERY OBLIGATION, COVENANT, AND AGREEMENT OF BORROWER UNDER THE LOAN DOCUMENTS, AND AS ADDITIONAL CONSIDERATION FOR THE INDEBTEDNESS AND OBLIGATIONS EVIDENCED BY THE LOAN DOCUMENTS, BORROWER HEREBY COVENANTS, REPRESENTS, AND AGREES AS FOLLOWS:

2. Defined Terms. For purposes of this Mortgage, each of the following terms shall have the following respective meanings. Any terms not otherwise defined in this Mortgage shall have the meaning given them in the Note.

"Affiliate" shall mean any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, another Person. A Person shall be deemed to control



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another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

**“Applicable Law.”** All controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

**“Attorney Fees.”** Any and all attorney fees (including the allocated cost of in-house counsel), paralegal, and law clerk fees, including, without limitation, fees for advice, negotiation, consultation, arbitration, and litigation at the pretrial, trial, and appellate levels, and in any bankruptcy proceedings, and attorney costs and expenses incurred or paid by Lender in protecting its interests in the Mortgaged Property, including, but not limited to, any action for waste, and enforcing its rights under this Mortgage.

**“Default Rate.”** The Default Rate as defined in the Note.

**“Event of Default.”** An Event of Default as defined in Section 18 of this Mortgage.

**“Environmental Laws.”** Any Governmental Requirements pertaining to health, industrial hygiene, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 United States Code (“U.S.C.”) §§ 9601-9675); the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. §§ 6901-6992k); the Hazardous Materials Transportation Act (49 U.S.C. §§ 5101-5127); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1376); the Clean Air Act (42 U.S.C. §§ 7401-7671q); the Toxic Substances Control Act (15 U.S.C. §§ 2601-2692); the Refuse Act (33 U.S.C. §§ 407-426p); the Emergency Planning and Community Right-To-Know Act (42 U.S.C. §§ 11001-11050); the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j); and, applicable state environmental quality and protection laws.

**“Fixtures.”** All right, title, and interest of Borrower in and to all materials, supplies, equipment, apparatus, and other items now or later attached to, installed on or in the Land or the Improvements, or that in some fashion are deemed to be fixtures to the Land or Improvements under the laws of the state where the Mortgaged Property is situated. “Fixtures” includes, without limitation, all items of Personalty to the extent that they may be deemed Fixtures under Governmental Requirements.

**“Governmental Authority.”** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or later in existence.

**“Governmental Requirements.”** Any and all laws, statutes, codes, ordinances, regulations, enactments, decrees, judgments, and orders of any Governmental Authority.

**“Hazardous Substance.”** Any and all (a) substances defined as “hazardous substances,” “hazardous materials,” “toxic substances,” or “solid waste” in CERCLA, RCRA, and the Hazardous Materials Transportation Act (49 United States Code §§5101-5127), and in the regulations promulgated under those laws; (b) substances defined as “hazardous wastes,”

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“hazardous substances” or “infectious waste” under the laws of the state where the Mortgaged Property is situated and in the regulations promulgated under that law; (c) substances listed in the United States Department of Transportation Table (49 Code of Federal Regulations § 172.101 and amendments); (d) asbestos-containing materials; (e) polychlorinated biphenyl; (f) underground storage tanks, whether empty, filled, or partially filled with any substance; (g) petroleum and petroleum products, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any such mixture; and (h) such other substances, materials, and wastes that are or become regulated under applicable local, state, or federal law, or that are classified as hazardous or toxic under any Governmental Requirements or that, even if not so regulated, are known to pose a hazard to the health and safety of the occupants of the Mortgaged Property or of real property adjacent to it.

**“Impositions.”** All real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges; charges imposed under any subdivision, planned unit development, or condominium declaration or restrictions; charges for any easement, license, or agreement maintained for the benefit of the Mortgaged Property, and all other taxes, charges, and assessments and any interest, costs, or penalties of any kind and nature that at any time before or after the execution of this Mortgage may be assessed, levied, or imposed on the Mortgaged Property or on its ownership, use, occupancy, or enjoyment.

**“Improvements.”** Has the meaning given such term in Section 1.2(b) above.

**“Land.”** Has the meaning given such term in Section 1.2(a) above.

**“Leases.”** Has the meaning given such term in Section 1.2(c) above. Without limiting the generality of the forgoing, the term “Leases” shall mean and include any and all leases, subleases, licenses, concessions, or other agreements (written or verbal, now or later in effect) that grant a possessory interest in and to, or the right to extract, mine, reside in, sell, or use the Mortgaged Property, and all other agreements, including, but not limited to, all utility contracts, maintenance agreements, and service contracts that in any way relate to the use, occupancy, operation, maintenance, enjoyment, or ownership of the Mortgaged Property, except any and all leases, subleases, or other agreements under which Borrower is granted a possessory interest in the Land.

**“Loan Documents.”** Individually and collectively as the case may be: this Mortgage, the Note, the Guaranty, the Environmental Indemnity Agreement, and all other instruments and agreements now or hereafter entered into in connection herewith or therewith (as the same may be amended, modified, restated or replaced from time to time) and/or otherwise evidencing or securing the Loan (or any portion thereof).

**“Mortgaged Property.”** Has the meaning given such term in Section 1.1 above. As used in this Mortgage, “Mortgaged Property” is expressly defined as meaning all or, when the context permits or requires, any portion of it and all or, when the context permits or requires, any interest in it.

**“Obligations.”** Means, individually and collectively as the case may be:

- (a) All principal of, interest on, and other amounts and payments due under or evidenced by, the Note;

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(b) Any and all future loans or other amounts advanced by Lender (or any of its affiliates) to Borrower pursuant to one or more of the Loan Documents and/or otherwise advanced to protect the rights of Lender hereunder or under any of the other Loan Documents;

(c) Any and all covenants and agreements of Borrower contained in this Agreement and the other Loan Documents; and

(d) Any and all fees (including attorneys' fees), expenses and other indebtedness which this Mortgage by its terms secures.

**Permitted Encumbrances.** At any particular time, (a) liens for taxes, assessments, or governmental charges not then due and payable or not then delinquent; (b) liens, easements, encumbrances, and restrictions on the Mortgaged Property that are allowed by Lender to appear in Schedule B, with Parts I and II of an ALTA title policy to be issued to Lender following recordation of the Mortgage; and (c) liens in favor of or consented to in writing by Lender.

**Person.** Natural persons, corporations, partnerships, unincorporated associations, joint ventures, and any other form of legal entity.

**Personalty.** All of the right, title, and interest of Borrower in and to all tangible and intangible personal property, whether now owned or later acquired by Borrower, including, but not limited to, water rights (to the extent they may constitute personal property), all equipment, inventory, goods, consumer goods, accounts, chattel paper, instruments, money, general intangibles, letter-of-credit rights, deposit accounts, investment property, documents, minerals, crops, and timber (as those terms are defined in the Uniform Commercial Code as adopted by the state where the Mortgaged Property is situated) and that are now or at any later time located on, attached to, installed, placed, used on, in connection with, or are required for such attachment, installation, placement, or use on the Land, the Improvements, or on other goods located on the Land or Improvements, together with all additions, accessions, accessories, amendments, modifications to the Land or Improvements, extensions, renewals, and enlargements and proceeds of the Land or Improvements, substitutions for, and income and profits from, the Land or Improvements. The Personalty includes, but is not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems); building materials, air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, maintenance, extermination of vermin or insects, dust removal, refuse and garbage equipment, vehicle maintenance and repair equipment; office furniture (including tables, chairs, planters, desks, sofas, shelves, lockers, and cabinets); safes, furnishings, appliances (including ice-making machines, refrigerators, fans, water heaters, and incinerators); rugs, carpets, other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, curtains, other window coverings; lamps, chandeliers, other lighting fixtures; office maintenance and other supplies; loan commitments, financing arrangements, bonds, construction contracts, leases, tenants' security deposits, licenses, permits, sales contracts, option contracts, lease contracts, insurance policies, proceeds from policies, plans, specifications, surveys, books, records, funds, bank deposits; and all other intangible personal property. Personalty also includes any other portion or items of the Mortgaged Property that constitute personal property under the Uniform Commercial Code as adopted by the state where the Mortgaged Property is situated.



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**“Property Jurisdiction.”** The jurisdiction in which the Mortgaged Property is situated.

**“Related Loans.”** Means, individually and collectively as the case may be, any and all loans (or other credit facilities), of any kind or nature, now or hereafter extended by Lender (or any of its Affiliates), to Borrower (or any of its Affiliates).

**“Related Loan Documents.”** Means, individually and collectively as the case may be, any and all documents or other instruments now or hereafter evidencing, securing or otherwise executed in conjunction with the Related Loans (or any of them), together with all amendments, restatements, supplements and modifications thereof.

**“Rents”** Has the meaning given such term in Section 1.2(c) above. Without limiting the generality of the forgoing, the term “Rents” shall mean and include all rents, issues, revenues, income, proceeds, royalties, profits, license fees, prepaid municipal and utility fees, bonds, and other benefits to which Borrower or the record title owner of the Mortgaged Property may now or later be entitled from or which are derived from the Mortgaged Property, including, without limitation, sale proceeds of the Mortgaged Property; any room or space sales or rentals from the Mortgaged Property; and other benefits paid or payable for using, leasing, licensing, possessing, operating from or in, residing in, selling, mining, extracting, or otherwise enjoying or using the Mortgaged Property.

**“Water Rights.”** All water rights of whatever kind or character, surface or underground, appropriative, decreed, or vested, that are appurtenant to the Mortgaged Property or otherwise used or useful in connection with the intended development of the Mortgaged Property.

### 3. **Covenants.** Borrower and Lender covenant and agree as follows:

3.1 **Repair and Maintenance of Mortgaged Property.** Borrower shall: (a) keep the Mortgaged Property in good condition and repair; (b) not substantially alter, remove, or demolish the Mortgaged Property or any of the Improvements except when incident to the replacement of Fixtures, equipment, machinery, or appliances with items of like kind, (c) restore and repair to the equivalent of its original condition all or any part of the Mortgaged Property that may be damaged or destroyed, including, but not limited to, damage from termites and dry rot, soil subsidence, and construction defects, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair, and regardless of whether Lender permits the use of any insurance proceeds to be used for restoration pursuant to the terms of this Mortgage; (d) pay when due all claims for labor performed and materials furnished in connection with the Mortgaged Property and not permit any mechanics’ or materialman’s lien to arise against the Mortgaged Property or furnish a loss or liability bond against such mechanics’ or materialman’s lien claims; (e) comply with all laws affecting the Mortgaged Property or requiring that any alterations, repairs, replacements, or improvements be made on it; (f) not commit or permit waste on or to the Mortgaged Property, or commit, suffer, or permit any act or violation of law to occur on it; (g) not abandon the Mortgaged Property; (h) cultivate, irrigate, fertilize, fumigate, and prune in accordance with prudent agricultural practices; (i) if required by Lender, provide for management satisfactory to Lender under a management contract approved by Lender; (j) notify Lender in writing of any condition at or on the Mortgaged Property that may have a significant and measurable effect on its market value; (k) if the Mortgaged Property is rental property, generally operate and maintain it in such manner as to realize its maximum rental potential; and (l) do all other things that the character or

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use of the Mortgaged Property may reasonably render necessary to maintain it in the same condition (reasonable wear and tear expected) as existed at the date of this Mortgage.

3.2 Use of Mortgaged Property. Unless otherwise required by Governmental Requirements or unless Lender otherwise consents in writing, Borrower shall not allow changes in the use of the Mortgaged Property from that which is contemplated by Borrower and Lender at the time of execution of this Mortgage, as specified in the loan application and the Loan Documents. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Mortgaged Property without Lender's prior written consent.

### 3.3 Insurance.

3.3.1. Casualty Insurance. Borrower shall at all times keep the Mortgaged Property insured for the benefit of Lender as follows, despite Governmental Requirements that may detrimentally affect Borrower's ability to obtain or may materially increase the cost of such insurance coverage:

(a) Against damage or loss by fire and such other hazards (including lightning, windstorm, hail, explosion, riot, acts of striking employees, civil commotion, vandalism, malicious mischief, aircraft, vehicle, and smoke) as are covered by the broadest form of extended coverage endorsement available from time to time, in an amount not less than the full insurable value (as defined in Section 3.3.9 below) of the Mortgaged Property, with a deductible amount not to exceed an amount satisfactory to Lender;

(b) Rent loss or business interruption or use and occupancy insurance on such basis and in such amounts and with such deductibles as are satisfactory to Lender;

(c) Against damage or loss by flood if the Land is located in an area identified by the Secretary of Housing and Urban Development or any successor or other appropriate authority (governmental or private) as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, modified, supplemented, or replaced from time to time, on such basis and in such amounts as Lender may require;

(d) Against damage or loss from: (i) sprinkler system leakage and (ii) boilers, boiler tanks, heating and air conditioning equipment, pressure vessels, auxiliary piping, and similar apparatus, on such basis and in such amounts as Lender may require;

(e) During any alteration, construction, or replacement of the Improvements, or any substantial portion of it, a Builder's All Risk policy with extended coverage with course of construction and completed value endorsements, for an amount at least equal to the full insurable value of the Improvements, and workers' compensation, in statutory amounts, with provision for replacement with the coverage described in Section 3.1, without gaps or lapsed coverage, for any completed portion of the Improvements; and

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(f) Against damage or loss by earthquake, in an amount and with a deductible satisfactory to Lender, if such insurance is required by Lender in the exercise of its business judgment in light of the commercial real estate practices existing at the time the insurance is issued and in the County where the Land is situated.

3.3.2. Liability Insurance. Borrower shall procure and maintain workers' compensation insurance for Borrower's employees and comprehensive general liability insurance covering Borrower and Lender against claims for bodily injury or death or for damage occurring in, on, about, or resulting from the Mortgaged Property, or any street, drive, sidewalk, curb, or passageway adjacent to it, in standard form and with such insurance company or companies and in an amount of at least \$2,000,000.00 combined single limit, or such greater amount as Lender may require, which insurance shall include completed operations, product liability, and blanket contractual liability coverage that insures contractual liability under the indemnifications set forth in this Mortgage and the Loan Documents (but such coverage or its amount shall in no way limit such indemnification).

3.3.3. Other Insurance. Borrower shall procure and maintain such other insurance or such additional amounts of insurance, covering Borrower or the Mortgaged Property, as (a) may be required by the terms of any construction contract for the Improvements or by any Governmental Authority, (b) may be specified in any other Loan Documents, or (c) may be required by Lender from time to time.

3.3.4. Form of Policies. All insurance required under this Section 3.3 shall be fully paid for and nonassessable. The policies shall contain such provisions, endorsements, and expiration dates as Lender from time to time reasonably requests and shall be in such form and amounts, and be issued by such insurance companies doing business in the state where the Mortgaged Property is situated, as Lender shall approve in Lender's sole and absolute discretion. Unless otherwise expressly approved in writing by Lender, each insurer shall have a Best Rating of Class A, Category VIII, or better. All policies shall (a) contain a waiver of subrogation endorsement; (b) provide that the policy will not lapse or be canceled, amended, or materially altered (including by reduction in the scope or limits of coverage) without at least 30 days prior written notice to Lender; (c) with the exception of the comprehensive general liability policy, contain a mortgagee's endorsement (438 BFU Endorsement or equivalent), and name Lender as insured; and (d) include such deductibles as Lender may approve. If a policy required under this Section 3.3 contains a co-insurance or overage clause, the policy shall include a stipulated value or agreed amount endorsement acceptable to Lender.

3.3.5. Duplicate Originals or Certificates. Duplicate original policies evidencing the insurance required under this Section 3.3 and any additional insurance that may be purchased on the Mortgaged Property by or on behalf of Borrower shall be deposited with and held by Lender and, in addition, Borrower shall deliver to Lender (a) receipts evidencing payment of all premiums on the policies and (b) duplicate original renewal policies or a binder with evidence satisfactory to Lender of payment of all premiums at least 30 days before the policy expires. In lieu of the duplicate original policies to be delivered to Lender under this Section 3.3, Borrower may deliver an underlier of any

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blanket policy, and Borrower may also deliver original certificates from the issuing insurance company, evidencing that such policies are in full force and effect and containing information that, in Lender's reasonable judgment, is sufficient to allow Lender to ascertain whether such policies comply with the requirements of this Section.

3.3.6. Increased Coverage. If Lender determines that the limits of any insurance carried by Borrower are inadequate or that additional coverage is required, Borrower shall, within ten (10) days after written notice from Lender, procure such additional coverage as Lender may require in Lender's sole and absolute discretion.

3.3.7. No Separate Insurance. Borrower shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Section 3.3 unless endorsed in favor of Lender as required by this Section and otherwise approved by Lender in all respects.

3.3.8. Transfer of Title. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the Obligations, all right, title, and interest of Borrower in and to all insurance policies required under this Section 3.3 or otherwise then in force with respect to the Mortgaged Property and all proceeds payable under, and unearned premiums on, such policies shall immediately vest in the purchaser or other transferee of the Mortgaged Property.

3.3.9. Replacement Cost. For purposes of this Section 3.3, the term "full insurable value" means the actual cost of replacing the Mortgaged Property in question, without allowance for depreciation, as calculated from time to time (but not more often than once every calendar year) by the insurance company or companies holding such insurance or, at Lender's request, by appraisal made by an appraiser, engineer, architect, or contractor proposed by Borrower and approved by said insurance company or companies and Lender. Borrower shall pay the cost of such appraisal.

3.3.10. Approval Not Warranty. No approval by Lender of any insurer may be construed to be a representation, certification, or warranty of its solvency and no approval by Lender as to the amount, type, or form of any insurance may be construed to be a representation, certification, or warranty of its sufficiency.

3.3.11. Lender's Right to Obtain. Borrower shall deliver to Lender original policies or certificates evidencing such insurance at least 30 days before the existing policies expire. If any such policy is not so delivered to Lender or if any such policy is canceled, whether or not Lender has the policy in its possession, and no reinstatement or replacement policy is received before termination of insurance, Lender, without notice to or demand on Borrower, may (but is not obligated to) obtain such insurance insuring only Lender with such company as Lender may deem satisfactory, and pay the premium for such policies, and the amount of any premium so paid shall be charged to and promptly paid by Borrower or, at Lender's option, may be added to the Obligations. Borrower acknowledges that, if Lender obtains insurance, it is for the sole benefit of Lender, and Borrower shall not rely on any insurance obtained by Lender to protect Borrower in any way.



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3.4 Duty to Restore After Casualty. If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) results in damage to or loss or destruction of the Mortgaged Property, Borrower shall immediately give notice of such loss or damage to Lender and, if Lender so instructs, shall promptly, at Borrower's sole cost and expense, regardless of whether any insurance proceeds will be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace, and rebuild the Mortgaged Property as nearly as possible to its value, condition, and character immediately before the damage, loss, or destruction.

3.5 Intentionally Omitted.

## 4. Condemnation And Insurance Proceeds.

4.1 Assignment to Lender. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Mortgaged Property, or any part of it, or for conveyance in lieu of condemnation, are assigned to and shall be paid to Lender, regardless of whether Lender's security is impaired. All causes of action, whether accrued before or after the date of this Mortgage, of all types for damages or injury to the Mortgaged Property or any part of it, or in connection with any transaction financed by funds lent to Borrower by Lender and secured by this Mortgage, or in connection with or affecting the Mortgaged Property or any part of it, including, without limitation, causes of action arising in tort or contract or in equity, are assigned to Lender as additional security, and the proceeds shall be paid to Lender. Lender, at its option, may appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement of such action. Borrower shall notify Lender in writing immediately on obtaining knowledge of any casualty damage to the Mortgaged Property or damage in any other manner in excess of \$5,000.00 or knowledge of the institution of any proceeding relating to condemnation or other taking of or damage or injury to all or any portion of the Mortgaged Property. Lender, in its sole and absolute discretion, may participate in any such proceedings and may join Borrower in adjusting any loss covered by insurance. Borrower covenants and agrees with Lender, at Lender's request, to make, execute, and deliver, at Borrower's expense, any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid award or awards, causes of action, or claims of damages or proceeds to Lender free, clear, and discharged of any and all encumbrances of any kind or nature.

4.2 Insurance Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments that Borrower may receive or to which Lender may become entitled with respect to the Mortgaged Property if any damage or injury occurs to the Mortgaged Property, other than by a partial condemnation or other partial taking of the Mortgaged Property, shall be paid over to Lender and shall be applied first toward reimbursement of all costs and expenses of Lender in connection with their recovery and disbursement, and shall then be applied as follows:

4.2.1. Lender shall consent to the application of such payments to the restoration of the Mortgaged Property so damaged only if Borrower has met all the following conditions (a breach of one of which shall constitute a default under this Mortgage, the Note, and any Loan Documents): (a) Borrower is not in default under any of the terms, covenants, and conditions of the Loan Documents; (b) all then-existing Leases affected in any way by such



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damage will continue in full force and effect; (c) Lender is satisfied that the insurance or award proceeds, plus any sums added by Borrower, shall be sufficient to fully restore and rebuild the Mortgaged Property under then current Governmental Requirements; (d) within 60 days after the damage to the Mortgaged Property, Borrower presents to Lender a restoration plan satisfactory to Lender and any local planning department, which includes cost estimates and schedules; (e) construction and completion of restoration and rebuilding of the Mortgaged Property shall be completed in accordance with plans and specifications and drawings submitted to Lender within 30 days after receipt by Lender of the restoration plan and thereafter approved by Lender, which plans, specifications, and drawings shall not be substantially modified, changed, or revised without Lender's prior written consent; (f) within 3 months after such damage, Borrower and a licensed contractor satisfactory to Lender enter into a fixed price or guaranteed maximum price contract satisfactory to Lender, providing for complete restoration in accordance with such restoration plan for an amount not to exceed the amount of funds held or to be held by Lender; (g) all restoration of the Improvements so damaged or destroyed shall be made with reasonable promptness and shall be of a value at least equal to the value of the Improvements so damaged or destroyed before such damage or destruction; (h) Lender reasonably determines that there is an identified source (whether from income from the Mortgaged Property, rental loss insurance, or another source) sufficient to pay all debt service and operating expenses of the Mortgaged Property during its restoration as required above; and (i) any and all funds that are made available for restoration and rebuilding under this Section 4 shall be disbursed, at Lender's sole and absolute discretion to Lender, through Lender or a title insurance or trust company satisfactory to Lender, in accordance with standard construction lending practices, including a reasonable fee payable to Lender from such funds and, if Lender requests, mechanics' lien waivers and title insurance date-downs, and the provision of payment and performance bonds by Borrower, or in any other manner approved by Lender in Lender's sole and absolute discretion; or

4.2.2. If fewer than all conditions (a) through (i) in Section 4.2.1 are satisfied, then such payments shall be applied in the sole and absolute discretion of Lender (a) to the payment or prepayment, with any applicable prepayment premium, of any Obligations secured by this Mortgage in such order as Lender may determine, or (b) to the reimbursement of Borrower's expenses incurred in the rebuilding and restoration of the Mortgaged Property. If Lender elects under this Section 4.2.2 to make any funds available to restore the Mortgaged Property, then all of conditions (a) through (i) in Section 4.2.1 shall apply, except for such conditions that Lender, in its sole and absolute discretion, may waive.

4.3 Material Loss Not Covered. If any material part of the Mortgaged Property is damaged or destroyed and the loss, measured by the replacement cost of the Improvements according to then current Governmental Requirements, is not adequately covered by insurance proceeds collected or in the process of collection, Borrower shall deposit with Lender, within 30 days after Lender's request, the amount of the loss not so covered.

4.4 Total Condemnation Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments that Borrower may receive or to which Borrower may become entitled with respect to the Mortgaged Property in the event of a total condemnation or other total taking of the Mortgaged Property shall be paid over to Lender and

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shall be applied first to reimbursement of all Lender's costs and expenses in connection with their recovery, and shall then be applied to the payment of any Obligations secured by this Mortgage in such order as Lender may determine, until the Obligations secured by this Mortgage has been paid and satisfied in full. Any surplus remaining after payment and satisfaction of the Obligations secured by this Mortgage shall be paid to Borrower as its interest may then appear.

4.5 Partial Condemnation Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments ("**fun**ds") that Borrower may receive or to which Borrower may become entitled with respect to the Mortgaged Property in the event of a partial condemnation or other partial taking of the Mortgaged Property, unless Borrower and Lender otherwise agree in writing, shall be divided into two portions, one equal to the principal balance of the Note at the time of receipt of such funds and the other equal to the amount by which such funds exceed the principal balance of the Note at the time of receipt of such funds. The first such portion shall be applied to the sums secured by this Mortgage, whether or not then due, including but not limited to principal, accrued interest, and advances, and in such order or combination as Lender may determine, with the balance of the funds paid to Borrower. Any dispute as to the fair market value of the Mortgaged Property shall be settled by arbitration in accordance with the Real Estate Valuation Arbitration Rules of the American Arbitration Association.

4.6 No Cure of Waiver of Default. Any application of such amounts or any portion of it to any Obligations secured by this Mortgage shall not be construed to cure or waive any default or notice of default under this Mortgage or invalidate any act done under any such default or notice.

## 5. Taxes And Other Sums Due.

5.1 Borrower shall promptly pay, satisfy, and discharge: (a) all Impositions affecting the Mortgaged Property before they become delinquent; (b) such other amounts, chargeable against Borrower or the Mortgaged Property, as Lender reasonably deems necessary to protect and preserve the Mortgaged Property, this Mortgage, or Lender's security for the performance of the Obligations; (c) all encumbrances, charges, and liens on the Mortgaged Property, with interest, which in Lender's judgment are, or appear to be, prior or superior to the lien of this Mortgage or all costs necessary to obtain protection against such lien or charge by title insurance endorsement or surety company bond; (d) such other charges as Lender deems reasonable for services rendered by Lender at Borrower's request; and (e) all costs, fees, and expenses incurred by Lender in connection with this Mortgage, whether or not specified in this Mortgage.

5.2 On Lender's request, Borrower shall promptly furnish Lender with all notices of sums due for any amounts specified in the preceding clauses 5(a) through (e), and, on payment, with written evidence of such payment. If Borrower fails to promptly make any payment required under this Section 5, Lender may (but is not obligated to) make such payment. Borrower shall notify Lender immediately on receipt by Borrower of notice of any increase in the assessed value of the Mortgaged Property and agrees that Lender, in Borrower's name, may (but is not obligated to) contest by appropriate proceedings such increase in assessment. Without Lender's prior written consent, Borrower shall not allow any lien inferior to the lien of this Mortgage to be perfected against the Mortgaged Property and shall not permit any improvement bond for any unpaid special assessment to issue.

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## 6. Leases Of Mortgaged Property By Borrower.

6.1 At Lender's request, Borrower shall furnish Lender with executed copies of all Leases of the Mortgaged Property or any portion of it then in force. If Lender so requires, all Leases later entered into by Borrower are subject to Lender's prior review and approval and must be acceptable to Lender in form and content. Each Lease must specifically provide, inter alia, that: (a) it is subordinate to the lien of this Mortgage; (b) the tenant attorns to Lender (and Borrower consents to any such attornment), such attornment to be effective on Lender's acquisition of title to the Mortgaged Property; (c) the tenant agrees to execute such further evidence of attornment as Lender may from time to time request; (d) the tenant's attornment shall not be terminated by foreclosure; and (e) Lender, at Lender's option, may accept or reject such attornment. If Borrower learns that any tenant proposes to do, or is doing, any act that may give rise to any right of setoff against rent, Borrower shall immediately (i) take measures reasonably calculated to prevent the accrual of any such right of setoff; (ii) notify Lender of all measures so taken and of the amount of any setoff claimed by any such tenant; and (iii) within 10 days after the accrual of any right of setoff against rent, reimburse any tenant who has acquired such right, in full, or take other measures that will effectively discharge such setoff and ensure that rents subsequently due shall continue to be payable without claim of setoff or deduction.

6.2 At Lender's request, Borrower shall assign to Lender, by written instrument satisfactory to Lender, all Leases and Rents of the Mortgaged Property, and all security deposits made by tenants in connection with such Leases and Rents. On assignment to Lender of any such Lease, Lender shall succeed to all rights and powers of Borrower with respect to such Lease, and Lender, in Lender's sole and absolute discretion, shall have the right to modify, extend, or terminate such Lease and to execute other further leases with respect to the Mortgaged Property that is the subject of such assigned Lease.

## 7. Right To Collect And Receive Rents.

7.1 Despite any other provision of this Mortgage, Lender grants permission to Borrower to collect and retain the Rents of the Mortgaged Property as they become due and payable; however, such permission to Borrower shall be automatically revoked on default by Borrower in payment of any Obligations secured by this Mortgage, and Lender shall have the right to collect and receive the Rents regardless of whether declaration of default has been delivered pursuant to the terms of this Mortgage, and without regard to the adequacy of the security for the Obligations secured by this Mortgage. Failure of or discontinuance by Lender at any time, or from time to time, to collect any such Rents shall not in any manner affect the subsequent enforcement by Lender at any time, or from time to time, of the right, power, and authority to collect these Rents. The receipt and application by Lender of all such Rents under this Mortgage, after execution and delivery of declaration of default and demand for sale as provided in this Mortgage or during the pendency of trustee's sale proceedings under this Mortgage, shall neither cure such breach or default nor affect such sale proceedings, or any sale made under them, but such Rents, less all costs of operation, maintenance, collection, and Attorney Fees, when received by Lender, may be applied in reduction of the entire Indebtedness from time to time secured by this Mortgage, in such order as Lender may decide. Nothing in this Mortgage, nor the exercise of Lender's right to collect, nor an assumption by Lender of any tenancy, lease, or option, nor an assumption of liability under,

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nor a subordination of the lien or charge of this Mortgage to, any such tenancy, lease, or option, shall be, or be construed to be, an affirmation by Lender of any tenancy, lease, or option.

7.2 If the Rents of the Mortgaged Property are not sufficient to meet the costs, if any, of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an Obligation of Borrower to Lender secured by this Mortgage. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable on notice from Lender to Borrower requesting such payment and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to Governmental Requirements, in which event the amounts shall bear interest at the highest rate that may be collected from Borrower under Governmental Requirements.

7.3 Borrower expressly understands and agrees that Lender will have no liability to Borrower or any other Person for Lender's failure or inability to collect Rents from the Mortgaged Property or for failing to collect such Rents in an amount that is equal to the fair market rental value of the Mortgaged Property. Borrower understands and agrees that neither the assignment of Rents to Lender nor the exercise by Lender of any of its rights or remedies under this Mortgage shall be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment, or operation of all or any portion of it, unless and until Lender, in person or by agent, assumes actual possession of it. Nor shall appointment of a receiver for the Mortgaged Property by any court at the request of Lender or by agreement with Borrower, or the entering into possession of the Mortgaged Property or any part of it by such receiver be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment, or operation of all or any portion of it.

7.4 During an Event of Default, any and all Rents collected or received by Borrower shall be accepted and held for Lender in trust and shall not be commingled with Borrower's funds and property, but shall be promptly paid over to Lender.

## **8. Funds For Taxes And Insurance.**

8.1 If Borrower is in default under this Mortgage or any of the Loan Documents, regardless of whether the default has been cured, then Lender may at any subsequent time, at its option to be exercised on thirty (30) days written notice to Borrower, require Borrower to deposit with Lender or its designee, at the time of each payment of an installment of interest or principal under the Note, an additional amount sufficient to discharge the obligations of Borrower under the Note and this Mortgage as they become due. The calculation of the amount payable and of the fractional part of it to be deposited with Lender shall be made by Lender in its sole and absolute discretion. These amounts shall be held by Lender or its designee not in trust and not as agent of Borrower and shall not bear interest, and shall be applied to the payment of any of the Obligations under the Loan Documents in such order or priority as Lender shall determine. If at any time within thirty (30) days before the due date of these obligations the amounts then on deposit shall be insufficient to pay the obligations under the Note and this Mortgage in full, Borrower shall deposit the amount of the deficiency with Lender within 10 days after Lender's demand. If the amounts deposited are in excess of the actual obligations for which they were deposited, Lender may refund any such excess, or, at its option, may hold the excess in a reserve account, not in trust and not



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bearing interest, and reduce proportionately the required monthly deposits for the ensuing year. Nothing in this Section shall be deemed to affect any right or remedy of Lender under any other provision of this Mortgage or under any statute or rule of law to pay any such amount and to add the amount so paid to the Obligations secured by this Mortgage. Lender shall have no obligation to pay insurance premiums or taxes except to the extent the fund established under this Section is sufficient to pay such premiums or taxes, to obtain insurance, or to notify Borrower of any matters relative to the insurance or taxes for which the fund is established under this Section.

8.2 Lender or its designee shall hold all amounts so deposited as additional security for the sums secured by this Mortgage. Lender may, in its sole and absolute discretion and without regard to the adequacy of its security under this Mortgage, apply such amounts or any portion of it to any Obligations secured by this Mortgage, and such application shall not be construed to cure or waive any default or notice of default under this Mortgage.

8.3 If Lender requires deposits to be made under this Section 8, Borrower shall deliver to Lender all tax bills, bond and assessment statements, statements for insurance premiums, and statements for any other obligations referred to above as soon as Borrower receives such documents.

8.4 If Lender sells or assigns this Mortgage, Lender shall have the right to transfer all amounts deposited under this Section 8 to the purchaser or assignee. After such a transfer, Lender shall be relieved and have no further liability under this Mortgage for the application of such deposits, and Borrower shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

## **9. Assignment Of Causes Of Action, Awards, And Damages.**

9.1 All causes of action, and all sums due or payable to Borrower for injury or damage to the Mortgaged Property, or as damages incurred in connection with the transactions in which the Loan secured by this Mortgage was made, including, without limitation, causes of action and damages for breach of contract, fraud, concealment, construction defects, or other torts, or compensation for any conveyance in lieu of condemnation, are assigned to Lender, and all proceeds from such causes of action and all such sums shall be paid to Lender for credit against the Obligations secured by this Mortgage. Borrower shall notify Lender immediately on receipt by Borrower of notice that any such sums have become due or payable and, immediately on receipt of any such sums, shall promptly remit such sums to Lender.

9.2 After deducting all expenses, including Attorney Fees, incurred by Lender in recovering or collecting any sums under this Section 9, Lender may apply or release the balance of any funds received by it under this Section, or any part of such balance, as it elects. Lender, at its option, may appear in and prosecute in its own name any action or proceeding to enforce any cause of action assigned to it under this Section and may make any compromise or settlement in such action whatsoever. Borrower covenants that it shall execute and deliver to Lender such further assignments of any such compensation awards, damages, or causes of action as Lender may request from time to time. If Lender fails or does not elect to prosecute any such action or proceeding and Borrower elects to do so, Borrower may conduct the action or proceeding at its own expense and risk.



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**10. Defense Of Mortgage; Litigation.** Borrower shall give Lender immediate written notice of any action or proceeding (including, without limitation, any judicial, whether civil, criminal, or probate, or nonjudicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Mortgaged Property, this Mortgage, Lender's security for the payment and performance (as applicable) of the Obligations, or the rights or powers of Lender under the Loan Documents. Despite any other provision of this Mortgage, Borrower agrees that Lender may (but is not obligated to) commence, appear in, prosecute, defend, compromise, and settle, in Lender's or Borrower's name, and as attorney-in-fact for Borrower, and incur necessary costs and expenses, including Attorney Fees in so doing, any action or proceeding, whether a civil, criminal, or probate judicial matter, nonjudicial proceeding, arbitration, or other alternative dispute resolution procedure, reasonably necessary to preserve or protect, or affecting or purporting to affect, the Mortgaged Property, this Mortgage, Lender's security for performance of the payment and performance (as applicable) of the Obligations,, or the rights or powers of Lender under the Loan Documents, and that if Lender elects to do so, Borrower shall commence, appear in, prosecute, and defend any such action or proceeding. Borrower shall pay all costs and expenses of Lender, including costs of evidence of title and Attorney Fees, in any such action or proceeding in which Lender may appear or for which legal counsel is sought, whether by virtue of being made a party defendant or otherwise, and whether or not the interest of Lender in the Mortgaged Property is directly questioned in such action or proceeding, including, without limitation, any action for the condemnation or partition of all or any portion of the Mortgaged Property and any action brought by Lender to foreclose this Mortgage or to enforce any of its terms or provisions.

**11. Borrower's Failure To Comply With Mortgage.** If Borrower fails to make any payment or do any act required by this Mortgage, or if there is any action or proceeding (including, without limitation, any judicial or nonjudicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Mortgaged Property, this Mortgage, Lender's security for the payment and performance (as applicable) of the Obligations,, or the rights or powers of Lender under the Note or this Mortgage, Lender may (but is not obligated to) (a) make any such payment or do any such act in such manner and to such extent as either deems necessary to preserve or protect the Mortgaged Property, this Mortgage, or Lender's security for the payment and performance (as applicable) of the Obligations,, or the rights or powers of Lender under the Loan Documents, Lender being authorized to enter on the Mortgaged Property for any such purpose; and (b) in exercising any such power, pay necessary expenses, retain attorneys, and pay Attorney Fees incurred in connection with such action, without notice to or demand on Borrower and without releasing Borrower from any Obligations.

**12. Sums Advanced to Bear Interest and to Be Secured by Mortgage.** At Lender's request, Borrower shall immediately pay any sums advanced or paid by Lender under any provision of this Mortgage or the other Loan Documents. Until so repaid, all such sums and all other sums payable to Lender shall be added to, and become a part of, the Obligations secured by this Mortgage and bear interest from the date of advancement or payment by Lender at the same rate as provided in the Note, unless payment of interest at such rate would be contrary to Governmental Requirements. All sums advanced by Lender under this Mortgage or the other Loan Documents, whether or not required to be advanced by Lender under the terms of this Mortgage or the other Loan Documents, shall conclusively be deemed to be mandatory advances required to preserve and protect this Mortgage and Lender's security for the payment and performance (as

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applicable) of the Obligations, and shall be secured by this Mortgage to the same extent and with the same priority as the principal and interest payable under the Note.

**13. Inspection of Mortgaged Property.** In addition to any rights Lender may have under Applicable Law, Lender may make, or authorize other Persons, including, but not limited to, appraisers and prospective purchasers at any foreclosure sale commenced by Lender, to enter on or inspect the Mortgaged Property at reasonable times and for reasonable durations. Borrower shall permit all such entries and inspections to be made as long as Lender has given Borrower written notice of such inspection at least 24 hours before the entry and inspection.

## **14. Financial Statements; Estoppel Certificates**

**14.1 Borrower's Financial Statements.** On receipt of Lender's written request and without expense to Lender, Borrower shall furnish to Lender:

(a) an annual statement of the operation of the Mortgaged Property prepared and certified by Borrower, showing in reasonable detail satisfactory to Lender total Rents received and total expenses together with an annual balance sheet and profit and loss statement, within ninety (90) days after the close of each fiscal year of Borrower, beginning with the fiscal year first ending after the date of recordation of this Mortgage;

(b) within thirty (30) days after the end of each calendar quarter (March 31, June 30, September 30, December 31) interim statements of the operation of the Mortgaged Property showing in reasonable detail satisfactory to Lender total Rents and other income and receipts received and total expenses for the previous quarter, certified by Borrower;

(c) copies of Borrower's annual state and federal income tax returns within thirty (30) days after filing them. Borrower shall keep accurate books and records, and allow Lender, its representatives and agents, on notice, at any time during normal business hours, access to such books and records regarding acquisition, construction, and development of the Mortgaged Property, including any supporting or related vouchers or papers, shall allow Lender to make extracts or copies of any such papers, and shall furnish to Lender and its agents convenient facilities for the audit of any such statements, books, and records; and

(d) with reasonable promptness, such other information with respect to Borrower and/or the Mortgaged Property as Lender may from time to time request.

**14.2 Recordkeeping.** Borrower shall keep adequate records and books of account in accordance with generally accepted accounting principles and practices and shall permit Lender, by its agents, accountants, and attorneys, to examine Borrower's records and books of account and to discuss the affairs, finances, and accounts of Borrower with the officers of Borrower, at such reasonable times as Lender may request

**14.3 Guarantors' Financial Statements.** Except to the extent already required by Section 14.1, Borrower, its controlling shareholders, Guarantor and any and all other guarantors of the Obligations (or any portion thereof), if any, shall deliver to Lender: (a) with reasonable promptness after the close of their respective fiscal years, a balance sheet and profit and loss statement (which, if required by Lender, shall be prepared by an independent certified public accountant satisfactory

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to Lender), setting forth in each case, in comparative form, figures for the preceding year together with such supporting documentation as Lender may reasonably request, (including, as applicable, supporting statements of preparing accountant); and (b) with reasonable promptness, such other information with respect to Guarantor as Lender may from time to time request.

14.4 Estoppel Certificates. Within ten (10) days after Lender's request for such information, Borrower shall execute and deliver to Lender, and to any third party designated by Lender, in recordable form, a certificate of the principal financial or accounting officer of Borrower, dated within three (3) days after delivery of such statements, or the date of such request, as the case may be, reciting that the Loan Documents are unmodified and in full force and effect, or that the Loan Documents are in full force and effect as modified and specifying all modifications asserted by Borrower. The certificate shall be in form and substance acceptable to Lender (in its discretion) and will include a detailed statement of any right of setoff, counterclaim, or other defense that Borrower contends exists against the Obligations; a statement that such Person knows of no Event of Default or prospective Event of Default that has occurred and is continuing, or, if any Event of Default or prospective Event of Default has occurred and is continuing, a statement specifying the nature and period of its existence and what action Borrower has taken or proposes to take with respect to such matter; and, except as otherwise specified, a statement that Borrower has fulfilled all Obligations that are required to be fulfilled on or before the date of such certificate.

14.5 Failure to Deliver Estoppel Certificate. If Borrower fails to execute and deliver the certificate required by Section 14.4 within such 10-day period: (a) the Loan Documents shall, as to Borrower, conclusively be deemed to be either in full force and effect, without modification, or in full force and effect, modified in the manner and to the extent specified by Lender, whichever Lender reasonably and in good faith may represent; (b) the Obligations shall, as to Borrower, conclusively be deemed to be in the amount specified by Lender and no setoffs, counterclaims, or other defenses exist against the Obligations; and (c) Borrower shall conclusively be deemed to have irrevocably constituted and appointed Lender as Borrower's special attorney-in-fact to execute and deliver such certificate to any third party.

14.6 Reliance on Estoppel Certificate. Borrower and Lender expressly agree that any certificate executed and delivered by Borrower, or any representation in lieu of a certificate made by Lender under Section 14.5, may be relied on by any prospective purchaser or any prospective assignee of any interest of Lender in the Note and other Obligations secured by this Mortgage or in the Mortgaged Property, and by any other Person, without independent investigation or examination, to verify the accuracy, reasonableness, or good faith of the recitals in the certificate or representation.

14.7 No Waiver of Default or Rights. Lender's exercise of any right or remedy provided by this Section 14 shall not constitute a waiver of, or operate to cure, any default by Borrower under this Mortgage, or preclude any other right or remedy that is otherwise available to Lender under this Mortgage or Governmental Requirements.

14.8 Confidentiality. Financial statements and related information submitted by Borrower or Guarantor to Lender are submitted confidentially, and Lender shall not disclose them to third parties and shall limit access to them to what is necessary to service the loan, accomplish the normal administrative, accounting, tax-reporting, and other necessary functions, to sell all or

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any part of the loan and to report such information as required to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Internal Revenue Service, and similar entities.

## 15. Uniform Commercial Code Security Agreement.

15.1 This Mortgage is intended to be and shall constitute a security agreement under the Uniform Commercial Code for any of the Personalty specified as part of the Mortgaged Property that, under Governmental Requirements, may be subject to a security interest under the Uniform Commercial Code, and Borrower grants to Lender a security interest in those items. Borrower authorizes Lender to file financing statements in all states, counties, and other jurisdictions as Lender may elect, without Borrower's signature if permitted by law. Borrower agrees that Lender may file this Mortgage, or a copy of it, in the real estate records or other appropriate index or in the Office of the Secretary of State in the state where the Mortgaged Property is situated and such other states as the Lender may elect, as a financing statement for any of the items specified above as part of the Mortgaged Property. Any reproduction of this Mortgage or executed duplicate original of this Mortgage, or a copy certified by a County Recorder, or of any other security agreement or financing statement, shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, at Lender's request, any UCC financing statements, as well as any extensions, renewals, and amendments, and copies of this Mortgage in such form as Lender may require to perfect a security interest with respect to the Personalty. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases of such statements, and shall pay all reasonable costs and expenses of any record searches for financing statements that Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created any other security interest in the items, including any replacements and additions.

15.2 On any Event of Default, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies in Section 44 of this Mortgage as to such items. In exercising any of these remedies, Lender may proceed against the items of Mortgaged Property and any items of Personalty separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies in Section 44 of this Mortgage.

16. Fixture Filing. This Mortgage constitutes a financing statement filed as a fixture filing under Article 9, Section 502 (c) of the Uniform Commercial Code, as adopted by the State where the Mortgaged Property is situated, and as amended or recodified from time to time, covering any portion of the Mortgaged Property that now is or later may become a fixture attached to the Mortgaged Property or to any Improvement.

17. Waiver of Statute of Limitations. Borrower waives the right to assert any statute of limitations as a defense to the Loan Documents and the Obligations secured by this Mortgage, to the fullest extent permitted by Governmental Requirements.

18. Events of Default. The term Event of Default as used in this Mortgage means the occurrence or happening, at any time and from time to time, of any one or more of the following:

18.1 Payment of Obligations. Borrower fails to pay any installment of interest and/or principal under the Note or any other monetary Obligations when due and such failure continues



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for more than ten (10) days after the date such payment was due and payable whether on maturity, the date stipulated in any Loan Document, by acceleration, or otherwise.

18.2 Performance of Specific Obligations. Borrower's failure, refusal, or neglect to perform and discharge fully and timely any of the covenants or Obligations set forth in Sections 3 (including without limitation, Section 3.5), 5 and 12 of this Mortgage, as and when required

18.3 Performance of Other Obligations. The failure, refusal, or neglect to perform and discharge fully and timely any of the covenants or other Obligations (other than those Obligations referred to in Section 18.2 above) as and when required, and the continuance of such failure for ninety (90) days after Lender gives written notice of such failure to Borrower.

18.4 Judgment. If any final judgment, order, or decree is rendered against Borrower or a guarantor and is not paid or executed on, or is not stayed by perfection of an appeal or other appropriate action, such as being bonded, or is not otherwise satisfied or disposed of to Lender's satisfaction within 30 days after entry of the judgment, order, or decree.

18.5 Voluntary Bankruptcy. If Borrower or any guarantor: (a) seeks entry of an order for relief as a debtor in a proceeding under the Bankruptcy Code; (b) seeks, consents to, or does not contest the appointment of a receiver or trustee for itself or for all or any part of its property; (c) files a petition seeking relief under the bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States or any state or any other competent jurisdiction; (d) makes a general assignment for the benefit of its creditors; or (e) states in writing its inability to pay its debts as they mature.

18.6 Involuntary Bankruptcy. If (a) a petition is filed against Borrower or any guarantor seeking relief under any bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States or any state or other competent jurisdiction, or (b) a court of competent jurisdiction enters an order, judgment, or decree appointing, without the consent of Borrower or any guarantor, a receiver or trustee for it, or for all or any part of its property; and (c) such petition, order, judgment, or decree is not discharged or stayed within 90 days after its entry.

18.7 Foreclosure of Other Liens. If the holder of any lien or security interest on the Mortgaged Property (without implying Lender's consent to the existence, placing, creating, or permitting of any lien or security interest) institutes foreclosure or other proceedings to enforce its remedies thereunder and any such proceedings are not stayed or discharged within sixty (60) days after institution of such foreclosure proceedings.

18.8 Sale, Lease, Encumbrance, or Other Transfer. The occurrence of any Prohibited Transfer (other than a Permitted Encumbrance) without Lender's prior written consent.

18.9 Title and Lien Priority. If Borrower's title to any or all of the Mortgaged Property or the status of this Mortgage as a first and prior lien and security interest on the Mortgaged Property is endangered in any manner, and Borrower fails to cure the same on Lender's demand; provided, however, that Borrower shall not be in default under this Section 18.9 if Borrower is diligently pursuing a contest or cure of such title or lien issue and Borrower has posted adequate security to protect Lender's rights, interest, and priority under this Mortgage, as determined by Lender.



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18.10 Levy on Assets. A levy on any of the assets of Borrower or any guarantor, and such levy is not stayed or abated within sixty (60) days after such levy.

18.11 Breach of Representations. The breach of any material representation, warranty, or covenant in this Mortgage or other Loan Documents.

18.12 Default Under Prior Mortgage, Security Instrument, or Lien. The failure to pay on a timely basis, or the occurrence of any other default under any note, mortgage, deed of trust, contract of sale, lien, charge, encumbrance, or security interest encumbering or affecting the Mortgaged Property and having priority over the lien of this Mortgage.

18.13 Other Defaults. The occurrence of any "Event of Default" (as such term is respectively used and defined in the Security Instrument and the other Loan Documents), or any other default under the Security Instrument or any of the other Loan Documents, that has continued after the giving of any applicable notice and the expiration of any applicable grace or cure periods.

18.14 Cross-Default. The occurrence of any "default" or "event of default" (as such terms are used and defined therein) under any of the Related Loan Documents that has continued after the giving of any applicable notice and the expiration of any applicable grace or cure periods.

## 19. Acceleration on Transfer or Encumbrance.

19.1 Acceleration on Prohibited Transfer. Upon the occurrence of any Prohibited Transfer, then Lender, at Lender's option, may, without prior notice, declare all sums secured by this Mortgage, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Mortgage, including those in Section 44.

19.2 Replacement Personalty. Despite the provisions of Section 19.1, Borrower may from time to time replace Personalty constituting a part of the Mortgaged Property, as long as (a) the replacements for such Personalty are of equivalent value and quality; (b) Borrower has good and clear title to such replacement Personalty free and clear of any and all liens, encumbrances, security interests, ownership interests, claims of title (contingent or otherwise), or charges of any kind, or the rights of any conditional sellers, vendors, or any other third parties in or to such replacement Personalty have been expressly subordinated to the lien of the Mortgage in a manner satisfactory to Lender and at no cost to Lender; and (c) at Lender's option, Borrower provides at no cost to Lender satisfactory evidence that the Mortgage constitutes a valid and subsisting lien on and security interest in such replacement Personalty of the same priority as this Mortgage has on the Mortgaged Property and is not subject to being subordinated or its priority affected under any Governmental Requirements, including Article 9 § 334 of the Uniform Commercial Code as adopted by the state where the Mortgaged Property is situated.

20. Obligation to Notify Lender of Bankruptcy, Insolvency, Transfer, or Encumbrance. Borrower shall notify Lender in writing, at or before the time of the occurrence of each and every Event of Default and/or Prohibited Transfer and shall promptly furnish Lender with any and all information on such event that Lender may request.

21. Waiver of Marshaling. Despite the existence of interests in the Mortgaged Property other than that created by this Mortgage, and despite any other provision of this Mortgage, if Borrower defaults in paying or performing (as applicable) any Obligations, Lender shall have

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the right, in Lender's sole and absolute discretion, to establish the order in which the Mortgaged Property will be subjected to the remedies provided in this Mortgage and to establish the order in which all or any part of the Obligations secured by this Mortgage is satisfied from the proceeds realized on the exercise of the remedies provided in this Mortgage. Borrower and any Person who now has or later acquires any interest in the Mortgaged Property with actual or constructive notice of this Mortgage waives any and all rights to require a marshaling of assets in connection with the exercise of any of the remedies provided in this Mortgage or otherwise provided by Governmental Requirements.

## 22. Environmental Matters.

22.1 Borrower's Representations and Warranties. Borrower represents and warrants to Lender that:

22.1.1. The Mortgaged Property and Borrower are not in violation of any Environmental Laws or subject to any existing, pending, or threatened investigation by any Governmental Authority under any Environmental Laws.

22.1.2. Borrower has not obtained and is not required by any Environmental Laws to obtain any permits or licenses to construct or use the Mortgaged Property or the Improvements.

22.1.3. Borrower has conducted an appropriate inquiry into previous uses and ownership of the Mortgaged Property, and after such inquiry determined that no Hazardous Substance has been disposed of, transported, or released on or at the Mortgaged Property.

22.1.4. No part of the Mortgaged Property is being used or, to the knowledge of Borrower, has been used at any previous time, for the disposal, storage, treatment, processing, transporting, or other handling of Hazardous Substances, nor is any part of the Mortgaged Property affected by any Hazardous Substance contamination.

22.1.5. To the best of Borrower's knowledge and belief, no real property adjoining the Mortgaged Property is being used, or has ever been used at any previous time, for the disposal, storage, treatment, processing, or other handling of Hazardous Substances, nor is any other real property adjoining the Mortgaged Property affected by Hazardous Substances contamination.

22.1.6. No investigation, administrative order, consent order or agreement, litigation, or settlement with respect to Hazardous Substances or Hazardous Substances contamination is proposed, threatened, anticipated, or in existence regarding the Mortgaged Property. The Mortgaged Property is not currently on, and to Borrower's knowledge, after diligent investigation and inquiry, has never been on, any federal or state "Superfund" or "Superlien" list.

22.1.7. Neither Borrower nor, to the best of Borrower's knowledge and belief, any tenant of any portion of the Mortgaged Property has received any notice from any Governmental Authority regarding any violation of any Environmental Laws.

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22.1.8. The use that Borrower makes and intends to make of the Mortgaged Property shall not result in the disposal or release of any Hazardous Substances on, in, or to the Mortgaged Property.

22.1.9. Borrower shall not cause any violation of any Environmental Laws, nor permit any tenant of any portion of the Mortgaged Property to cause such a violation, nor permit any environmental liens to be placed on any portion of the Mortgaged Property.

22.1.10. Neither Borrower nor any third party shall use, generate, manufacture, store, release, discharge, or dispose of any Hazardous Substance on, under, or about the Mortgaged Property, or transport any Hazardous Substance to or from the Mortgaged Property.

22.2. Survival of Representations and Warranties. The foregoing representations and warranties shall be continuing and shall be true and correct for the period from the date of this instrument to the release of this Mortgage (whether by payment and performance of the Obligations secured by this Mortgage or foreclosure or action in lieu of foreclosure), and these representations and warranties shall survive such release.

22.3. Notice to Lender. Borrower shall give prompt written notice to Lender of:

22.3.1. Any proceeding or inquiry by any Governmental Authority (including, without limitation, any Department of Health, Department of Health Services, Department of Environmental Quality, etc.) regarding the presence or threatened presence of any Hazardous Substance on the Mortgaged Property;

22.3.2. All claims made or threatened by any third party against Borrower or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance;

22.3.3. Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause it or any part of it to be subject to any restrictions on the ownership, occupancy, transferability, or use of the Mortgaged Property under any Environmental Laws.

22.4. Lender's Right to Join Legal Actions. Lender shall have the right, at its option, but at Borrower's sole cost and expense, to join and participate in, as a party if it so elects, any legal proceedings or actions initiated by or against Borrower or the Mortgaged Property in connection with any Environmental Laws.

22.5. Borrower's Indemnity. Borrower shall indemnify, defend, and hold harmless Lender, its directors, officers, employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising from or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Mortgaged Property, or any order, consent decree, or settlement relating to the cleanup of a Hazardous Substance, or any claims of loss, damage, liability, expense, or injury relating to or arising from, directly or indirectly, any disclosure by Lender to anyone of information, whether true or not, relative to a Hazardous Substance or Environmental Law violation, including, without limitation, Attorney Fees. This

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indemnity shall survive the release of this Mortgage (whether by payment and performance of the Obligations secured by this Mortgage or foreclosure or action in lieu of foreclosure).

**23. No Waiver by Lender.** No waiver by Lender of any right or remedy provided by the Loan Documents or Governmental Requirements shall be effective unless such waiver is in writing and signed by two authorized officers of Lender. Waiver by Lender of any right or remedy granted to Lender under the Loan Documents or Governmental Requirements as to any transaction or occurrence shall not be deemed a waiver of any future transaction or occurrence. The acceptance of payment of any sum secured by this Mortgage after its due date, or the payment or performance (as applicable) by Lender of any Obligations of Borrower under the Loan Documents, on Borrower's failure to do so, or the addition of any payment so made by Lender to the Obligations secured by this Mortgage, or the exercise of Lender's right to enter the Mortgaged Property and receive and collect the Rents from it, or the assertion by Lender of any other right or remedy under the Loan Documents, shall not constitute a waiver of Lender's right to require prompt payment and performance (as applicable) of all other Obligations of Borrower under the Loan Documents, or to exercise any other right or remedy under the Loan Documents for any failure by Borrower to timely and fully pay or perform (as applicable) such Obligations. Lender may waive any right or remedy under the Loan Documents or Governmental Requirements without notice to or consent from Borrower, any guarantor of the Obligations (or any portion thereof), or any holder or claimant of a lien or other interest in the Mortgaged Property that is junior to the lien of this Mortgage, and without incurring liability to Borrower or any other Person by so doing.

**24. Consents and Modifications; Borrower and Lien Not Released.**

24.1. Despite Borrower's default in the payment or performance (As applicable) of any Obligations secured by this or Borrower's breach of any obligation, covenant, or agreement in the Loan Documents, Lender, at Lender's option, without notice to or consent from Borrower, any guarantor of the Obligations (or any portion thereof) under the Loan Documents, or any holder or claimant of a lien or interest in the Mortgaged Property that is junior to the lien of this Mortgage, and without incurring liability to Borrower or any other Person by so doing, may from time to time: (a) extend the time for payment or performance (as applicable) of all or any portion of Borrower's Obligations under the Loan Documents; (b) accept a renewal note or notes, or release any Person from liability, for all or any portion of such Obligations; (c) agree with Borrower to modify the terms and conditions of payment under the Loan Documents; (e) reconvey or release other or additional security for the repayment of Borrower's Obligations under the Loan Documents; (f) approve the preparation or filing of any map or plat with respect to the Mortgaged Property; (g) enter into any extension or subordination agreement affecting the Mortgaged Property or the lien of this Mortgage; and (h) agree with Borrower to modify the term, the rate of interest, or the period of amortization of the Note or alter the amount of the monthly installments payable under the Note.

24.2. No action taken by Lender under this Section shall be effective unless it is in writing, subscribed by Lender, and, except as expressly stated in such writing, no such action will impair or affect: (a) Borrower's obligation to pay or perform (as applicable) all Obligations of Borrower contained in the Loan Documents; (b) the guaranty of any Person of the payment of the Obligations secured by this Mortgage (or any portion thereof); or (c) the lien or priority of the lien of this Mortgage. At Lender's request, Borrower shall promptly pay Lender a reasonable service



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charge, together with all insurance premiums and Attorney Fees as Lender may have advanced, for any action taken by Lender under this Section.

24.3. Whenever Lender's consent or approval is specified as a condition of any provision of this Mortgage, such consent or approval shall not be effective unless such consent or approval is in writing, signed by two authorized officers of Lender.

25. **Waiver of Right of Offset.** No portion of the Obligations secured by this Mortgage shall be or be deemed to be offset or compensated by all or any part of any claim, cause of action, counterclaim, or cross-claim, whether liquidated or unliquidated, that Borrower may have or claim to have against Lender.

26. **Future Advances.** On request by Borrower, Lender, at Lender's option, may make future advances to Borrower. All such future advances, with interest, shall be added to and become a part of the Obligations secured by this Mortgage when evidenced by promissory notes reciting that such note(s) are secured by this Mortgage.

27. **Prepayment.** If the Note secured by this Mortgage provides for a fee or charge as consideration for the acceptance of prepayment of principal, Borrower agrees to pay said fee or charge if the Obligations or any part of it shall be paid, whether voluntarily or involuntarily, before the due date stated in the Note, even if Borrower has defaulted in payment or in the performance of any agreement under this Mortgage and Lender, for that reason or by reason of any other provision of this Mortgage, shall have declared all sums secured by this Mortgage immediately due and payable.

28. **Additional Borrower Representations.** To induce Lender to enter into this Mortgage, the Note, and the other Loan Documents and to make the Loan, Borrower makes the following representations and warranties, which are deemed made as of both the date and the recordation of this Mortgage:

28.1. **Capacity.** Borrower and the individuals executing Loan Documents on Borrower's behalf have the full power, authority, and legal right to execute and deliver, and to perform and observe the provisions of this Mortgage, the Note, the other Loan Documents, and any other document, agreement, certificate, or instrument executed in connection with the Loan, and to carry out the contemplated transactions.

28.2. **Authority and Enforceability.** Borrower's execution, delivery, and performance of this Mortgage, the Note, the other Loan Documents, and any other document, agreement, certificate, or instrument executed in connection with the Loan have been duly authorized by all necessary corporate or other business entity action and do not and shall not require any registration with, consent, or approval of, notice to, or any action by any Person or Governmental Authority. Borrower has obtained or will obtain on or before the recordation of this Mortgage all necessary Governmental Authority and other approvals necessary for Borrower to comply with the Loan Documents. This Mortgage, the Note, and the other Loan Documents executed in connection with the Loan, when executed and delivered by Borrower, shall constitute the legal, valid, binding, and joint and several obligations of Borrower enforceable in accordance with their respective terms.

28.3. **Compliance With Other Instruments.** The execution and delivery of this Mortgage and the other Loan Documents, and compliance with their respective terms, and the issuance of

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the Note and other Loan Documents as contemplated in this Mortgage, shall not result in a breach of any of the terms or conditions of, or result in the imposition of, any lien, charge, or encumbrance (except as created by this Mortgage and the other Loan Documents) on any properties of Borrower, or constitute a default (with due notice or lapse of time or both) or result in an occurrence of an event for which any holder or holders of indebtedness may declare the same due and payable under, any indenture, agreement, order, judgment, or instrument to which Borrower is a party or by which Borrower or its properties may be bound or affected.

28.4. Compliance With Law. The execution and delivery of this Mortgage, the Note, and the other Loan Documents, or any other document, agreement, certificate, or instrument to which Borrower is bound in connection with the Loan, do not conflict with, result in a breach or default under, or create any lien or charge under any provision of any Governmental Requirements to which it is subject and shall not violate any of the Governmental Requirements.

28.5. Material Adverse Events. Since the date of the financial statements delivered to Lender before recordation of this Mortgage, neither the condition (financial or otherwise) nor the business of Borrower and the Mortgaged Property have been materially adversely affected in any way.

28.6. Litigation. There are no actions, suits, investigations, or proceedings pending or, to Borrower's knowledge after due inquiry and investigation, threatened against or affecting Borrower at law or in equity, before or by any Person or Governmental Authority, that, if adversely determined, would have a material adverse effect on the business, properties, or condition (financial or otherwise) of Borrower or on the validity or enforceability of this Mortgage, any of the other Loan Documents, or the ability of Borrower to perform under any of the Loan Documents.

28.7. No Untrue Statements. All statements, representations, and warranties made by Borrower in this Mortgage or any other Loan Document and any other agreement, document, certificate, or instrument previously furnished or to be furnished by Borrower to Lender under the Loan Documents (a) are and shall be true, correct, and complete in all material respects at the time they were made and on and as of the recordation of this Mortgage, (b) do not and shall not contain any untrue statement of a material fact, and (c) do not and shall not omit to state a material fact necessary to make the information in them neither misleading nor incomplete. Borrower understands that all such statements, representations, and warranties shall be deemed to have been relied on by Lender as a material inducement to make the Loan.

28.8. Policies of Insurance. Each copy of the insurance policies relating to the Mortgaged Property delivered to Lender by Borrower (a) is a true, correct, and complete copy of the respective original policy in effect on the date of this Mortgage, and no amendments or modifications of said documents or instruments not included in such copies have been made, except as stated in this Section 28.8; and (b) has not been terminated and is in full force and effect. Borrower is not in default in the observance or performance of its material obligations under said documents or instruments and Borrower has done all things required to be done as of the date of this Mortgage to keep unimpaired its rights thereunder.

28.9. Financial Statements. All financial statements furnished to Lender are true and correct in all material respects, are prepared in accordance with generally accepted accounting

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principles, and do not omit any material fact the omission of which makes such statement or statements misleading. There are no facts that have not been disclosed to Lender by Borrower in writing that materially or adversely affect or could potentially in the future affect the Mortgaged Property or the business prospects, profits, or condition (financial or otherwise) of Borrower or any guarantor or Borrower's abilities to pay or perform (as applicable) the Obligations.

28.10. Water Rights. (a) Borrower is the sole owner of record of the Water Rights; (b) the Water Rights are appurtenant to the Mortgaged Property and are free and clear of all liens and encumbrances except for the Permitted Encumbrances; (c) the Water Rights are sufficient to satisfy all water requirements of the development of the Mortgaged Property as presently contemplated; (d) the Water Rights include all water rights appurtenant to the Mortgaged Property; (e) Borrower has received a water service commitment from the applicable local water district, guaranteeing water service for the Mortgaged Property in an amount necessary to satisfy the requirements for such property in its currently contemplated final state of development; and (f) on recordation of this Mortgage with the county recorder, Lender shall have a valid perfected security interest in the Water Rights.

28.11. Taxes. Borrower has filed or caused to be filed all tax returns that are required to be filed by Borrower under the Governmental Requirements of each Governmental Authority with taxing power over Borrower, and Borrower has paid, or made provision for the payment of, all taxes, assessments, fees, and other governmental charges that have or may have become due under said returns, or otherwise, or under any assessment received by Borrower except that such taxes, if any, as are being contested in good faith and as to which adequate reserves (determined in accordance with generally accepted accounting principles) have been provided.

28.12. Leases. If the Mortgaged Property includes a leasehold estate, Borrower has not and shall not surrender, terminate, cancel, waive, accept waiver, change, supplement, grant subleases of, alter, surrender, or amend, and shall comply with all terms, covenants, and conditions in the Leasehold.

28.13. Further Acts. Borrower shall, at its sole cost and expense, and without expense to Lender, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers, and assurances as Lender shall from time to time require, for the purpose of better assuring, conveying, assigning, transferring, pledging, mortgaging, warranting, and confirming to Lender the Mortgaged Property and rights, and as to Lender the security interest as to the Personalty, conveyed or assigned by this Mortgage or intended now or later so to be, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering, or recording this Mortgage and, on demand, shall execute and deliver, and authorizes Lender to execute in the name of Borrower, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien of this Mortgage on the Mortgaged Property.

28.14. Filing Fees. Borrower shall pay all filing, registration, or recording fees, all Governmental Authority stamp taxes and other fees, taxes, duties, imposts, assessments, and all other charges incident to, arising from, or in connection with the preparation, execution, delivery, and enforcement of the Note, this Mortgage, the other Loan Documents, any supplemental Mortgage or mortgage, or any instrument of further assurance.

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28.15. Entity Compliance. As long as it is the owner of the Mortgaged Property, Borrower, if a corporation, limited liability company, or partnership, shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights, and privileges as such entity under the laws of the state of its incorporation or formation, and shall comply with all Governmental Requirements of any Governmental Authority applicable to Borrower or to the Mortgaged Property or any part of it.

## 29. Governing Law; Consent to Jurisdiction and Venue.

29.1. This Mortgage shall be governed by the laws of the Property Jurisdiction without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction.

29.2. BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED (AT THE OPTION OF LENDER) IN THE STATE AND FEDERAL COURTS OF THE STATE OF CALIFORNIA OR, IF LENDER INITIATES SUCH ACTION, ANY COURT OF RECORD IN THE PROPERTY JURISDICTION OR ANY OTHER COURT IN WHICH LENDER SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. THE PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH EITHER OF THEM MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, AND ANY CLAIM THAT SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTWITHSTANDING THE FOREGOING, LENDER SHALL NOT BE DEEMED TO BE PRECLUDED FROM ENFORCING ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR TAKING ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

30. Taxation of Mortgage. In the event of the enactment of any law deducting from the value of the Mortgaged Property any mortgage lien on it, or imposing on Lender the payment of all or part of the taxes, charges, or assessments previously paid by Borrower under this Mortgage, or changing the law relating to the taxation of mortgages, debts secured by mortgages, or Lender's interest in the Mortgaged Property so as to impose new incidents of tax on Lender, then Borrower shall pay such taxes or assessments or shall reimburse Lender for them, provided, however, that if in the opinion of Lender's counsel such payment cannot lawfully be made by Borrower, then Lender may, at Lender's option, declare all sums secured by this Mortgage to be immediately due and payable without notice to Borrower. Lender may invoke any remedies permitted by this Mortgage.

31. Mechanics' Liens. Borrower shall pay from time to time when due, all lawful claims and demands of mechanics, materialmen, laborers, and others that, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part of it, or on the Rents arising therefrom, and in general shall do or cause to be done everything necessary so that the lien and security interest of this Mortgage shall be fully preserved, at Borrower's expense, without expense to Lender; provided, however, that if Governmental Requirements empower Borrower to discharge of record any mechanics', laborer's, materialman's, or other lien against the Mortgaged



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Property by the posting of a bond or other security, Borrower shall not have to make such payment if Borrower posts such bond or other security on the earlier of (a) 10 days after the filing or recording of same or (b) within the time prescribed by law, so as not to place the Mortgaged Property in jeopardy of a lien or forfeiture.

**32. Brokerage.** Borrower represents and warrants to Lender that Borrower has not dealt with any Person who is or may be entitled to any finder's fee, brokerage commission, loan commission, or other sum in connection with the execution of this Mortgage, the consummation of the transactions contemplated by this Mortgage, or the making of the Loan secured by this Mortgage by Lender to Borrower, and Borrower indemnifies and agrees to hold Lender harmless from and against any and all loss, liability, or expense, including court costs and Attorney Fees, that Lender may suffer or sustain if such warranty or representation proves inaccurate in whole or in part

**33. Liability for Acts or Omissions; Indemnification.**

33.1. Lender shall not be liable or responsible for its acts or omissions under this Mortgage, except for Lender's own gross negligence or willful misconduct, or be liable or responsible for any acts or omissions of any agent, attorney, or employee of Lender, if selected with reasonable care.

33.2. Borrower agrees to indemnify, protect, hold harmless and defend Lender from and against any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses (including actual attorneys' fees, disbursements and court costs prior to trial, at trial and on appeal) which may be imposed on, incurred or paid by, or asserted against Lender by reason or on account of, in connection with, or arising from: (a) the construction, reconstruction or alteration of the Mortgaged Property, (b) any negligence of Borrower or any tenant of any portion of the Mortgaged Property or any of their respective agents, contractors, subcontractors, servants, directors, officers, employees, licensees or invitees, (c) any accident, injury, death or damage to any person or property occurring in, on or about the Mortgaged Property or any street, drive, sidewalk, curb or passageway adjacent thereto, except to the extent that the same results directly from the willful misconduct of Lender, (d) or by virtue of Lender's interest in this document. Any amount payable to Lender under this Section shall be due and payable upon demand therefor and receipt by Borrower of a statement from Lender setting forth in reasonable detail the amount claimed and the basis therefor. Borrower's obligations under this Section shall survive the repayment or any other satisfaction of the Note and shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal of any insurance carrier to perform any obligation on its part under any such policy of insurance. If any claim, action or proceeding is made or brought against Lender which is subject to the indemnity set forth in this Section, Borrower shall resist or defend against the same, in its own name or, if necessary, in the name of Lender, by attorneys for Borrower's insurance carrier (if the same is covered by insurance) approved by Lender or otherwise by attorneys retained by Borrower and approved by Lender. Notwithstanding the foregoing, Lender, in its discretion, if it disapproves of the attorneys provided by Borrower or Borrower's insurance carrier, may engage its own attorneys to resist or defend, or to assist therein, and Borrower shall pay or, on demand, shall reimburse Lender for the payment of, all actual fees and disbursements of said attorneys.

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**34. Notices.** All notices, requests and demands hereunder shall be in writing and: (a) made to a party at the address identified below, or to such other address as a party may designate by written notice to the other parties in accordance with this provision; and (b) deemed to have been given or made: (i) if delivered in person, immediately upon delivery; (ii) if by nationally recognized overnight courier service with all delivery fees prepaid and with instructions to deliver the next business day, one (1) business day after sending; (iii) if by certified mail, with all postage fees paid and return receipt requested, three (3) business days after mailing; or (iv) one (1) workday following transmission, if sent by e-mail, provided that evidence of such facsimile or e-mail transmission is retained by the sending party and the intended receiving party shall be entitled to a copy of such evidence upon request. A written notice sent to a party (other than via e-mail transmission) shall also be deemed received on the date delivery shall have been refused at the address required by this Mortgage.

To Lender: Patch of Land Lending, LLC  
15165 Ventura Blvd suite 200  
Sherman Oaks, CA 91403  
Attention, Mera Baker, Corporate Counsel  
Email: mera@patchofland.com

To Borrower: SBH Investment Group LLC  
73 E LAKE ST APT 3706  
CHICAGO IL 60601-4801  
Email: russell@barnesproperties.net

**35. Statement of Obligations.** Except as otherwise provided by Governmental Requirements, at Lender's request, Borrower shall promptly pay to Lender such fee as may then be provided by law as the maximum charge for each statement of obligations, Lender's statement, Lender's demand, payoff statement, or other statement on the condition of, or balance owed, under the Note or secured by this Mortgage.

**36. Application of Payments.** Except as otherwise expressly provided by Governmental Requirements or any other provision of this Mortgage, all payments received by Lender from Borrower under the Loan Documents shall be applied by Lender in the following order: (a) costs, fees, charges, and advances paid or incurred by Lender or payable to Lender and interest under any provision of this Note or the Mortgage, in such order as Lender, in its sole and absolute discretion, elects, (b) interest payable under the Note, and (c) principal under the Note.

**37. Remedies Are Cumulative.** Each remedy in this Mortgage is separate and distinct and is cumulative to all other rights and remedies provided by this Mortgage or by Governmental Requirements, and each may be exercised concurrently, independently, or successively, in any order whatsoever.

**38. Obligations of Borrower Joint and Several.** If more than one Person is named as Borrower, each obligation of Borrower under this Mortgage shall be the joint and several obligations of each such Person.

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**39. Severability.** Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law. Any term or provision of this Mortgage that is invalid or unenforceable in any situation shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation. In the event that any clause, term, or condition of this Mortgage shall be held invalid or contrary to law: (a) this Mortgage shall remain in full force and effect as to all other clauses, terms, and conditions; (b) the subject clause, term, or condition shall be revised to the minimum extent necessary to render the modified provision valid, legal and enforceable; and (c) the remaining provisions of this Mortgage shall be amended to the minimum extent necessary so as to render the Mortgage as a whole most nearly consistent with the parties' intentions in light of the modification or removal of the invalid or illegal provision.

**40. Delegation of Authority.** Whenever this Mortgage provides that Borrower authorizes and appoints Lender as Borrower's attorney-in-fact to perform any act for or on behalf of Borrower or in the name, place, and stead of Borrower, Borrower expressly understands and agrees that this authority shall be deemed a power coupled with an interest and such power shall be irrevocable.

## **41. General Provisions**

**41.1. Successors and Assigns.** Subject to Sections 18 and 19 of this Mortgage, this Mortgage applies to, inures to the benefit of, and binds, the respective heirs, legatees, devisees, administrators, executors, successors, and assigns of each party to this Mortgage.

**41.2. Meaning of Certain Terms.** As used in this Mortgage and unless the context otherwise provides, the words "herein," "hereunder" and "hereof" mean and include this Mortgage as a whole, rather than any particular provision of it.

**41.3. Authorized Agents.** In exercising any right or remedy, or taking any action provided in this Mortgage, Lender may act through its employees, agents, or independent contractors, as Lender expressly authorizes.

**41.4. Gender and Number.** Wherever the context so requires in this Mortgage, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa.

**41.5. Captions.** Captions and Section headings used in this Mortgage are for convenience of reference only, are not a part of this Mortgage, and shall not be used in construing it.

**41.6. Time Is of the Essence.** As a material inducement and consideration to the parties entering into this Mortgage, and but for this provision the parties would not enter into this Mortgage, the parties agree that the performance in a timely manner of each deadline set forth in this Mortgage before its expiration is of crucial importance to the parties. Failure by a party to timely perform an obligation before the deadline set forth in this Mortgage (no matter for what reason, nor how soon thereafter it may have been performed, nor the lack of prejudice to the other party as the result of such nonperformance) shall result in a default by the nonperforming party or the failure of a condition, as appropriate. The parties expressly waive any equitable relief with respect to a missed deadline.

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## 42. Leasehold Provisions.

42.1. Leasehold Estate. If the security for this Mortgage is a leasehold estate demised by a lease (the "Leasehold"), this Mortgage shall be a lien on all present and future right, title, estate, and interest of Borrower in the Mortgaged Property and Improvements covered by the Leasehold and on all Mortgaged Property interests acquired by Borrower as a result of the exercise of any option in the Leasehold or as amended, in the same manner and to the same extent as if the Mortgaged Property encompassed in the Leasehold and option agreements had been held in fee by Borrower at the time of the execution of this Mortgage, and Borrower agrees not to amend, change, or modify its leasehold interest, or any of its terms, or to exercise any option to purchase, or agree to do so, without having obtained Lender's prior written consent. In a violation of this provision, Lender may, at its option, declare all sums secured by this Mortgage immediately due and payable. Consent to any amendment, change, or modification, or a waiver of the right to require such consent in one instance, shall not be a waiver of the right to require such consent at a subsequent time. The term "Mortgaged Property" as used in this Mortgage means such leasehold estate or any other present or future interest of Borrower in the Mortgaged Property whenever the context requires.

42.2. Compliance With Leasehold. In the event that the security for this Mortgage is a leasehold estate, Borrower covenants and agrees as follows: (a) to promptly and faithfully observe, perform, and comply with all Leasehold terms, covenants, and provisions on its part to be observed, performed, and complied with, at the times set forth in the Leasehold; (b) not to do, permit, suffer, or refrain from doing anything, as a result of which, there would be a default under or breach of any of the terms of the Leasehold; (c) not to cancel, surrender, modify, amend, or in any way alter or permit the alteration of any of the terms of the Leasehold; (d) to give Lender immediate notice of any default by anyone under the Leasehold and to promptly deliver to Lender copies of each notice of default and all other notices, communications, plans, specifications, and other similar instruments received or delivered by Borrower in this connection; (e) to furnish to Lender such information and evidence as Lender may reasonably require for Borrower's due observance, performance, and compliance with the Leasehold terms, covenants, and provisions; (f) that any default of the tenant under the Leasehold shall constitute an Event of Default under this Mortgage; and (g) to give immediate written notice to Lender of the commencement of any remedial proceedings under the Leasehold by any party to it and, if required by Lender, to permit Lender as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings. Borrower expressly transfers and assigns to Lender the benefit of all covenants in the Leasehold, whether or not such covenants run with the land, but Lender shall have no liability with respect to such covenants or any other covenants in the Leasehold.

42.3. Borrower's Warranties and Representations. With respect to the Leasehold, Borrower warrants and represents as follows: (a) the Leasehold is in full force and effect, unmodified by any writing or otherwise, except as specifically set forth in Exhibit B; (b) all rent, additional rent, and other charges reserved in the Leasehold have been paid to the extent they are payable to the date of this Mortgage; (c) Borrower enjoys the quiet and peaceful possession of the Mortgaged Property demised by the Leasehold; (d) Borrower is not in default under any Leasehold term and, to the best of its knowledge, there are no circumstances that, with the passage of time or the giving of notice or both, would constitute an Event of Default under the Leasehold; (e) to the best of Borrower's knowledge, the landlord under the Leasehold is not in default under any Leasehold term or provision the landlord is required to observe or perform.



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42.4. Assignments to Lender. If Borrower files any petition or action for relief under any bankruptcy, reorganization, insolvency, moratorium law, or any other law or laws for the relief of or relating to debtors, on demand by Lender, Borrower covenants to transfer and assign to Lender its leasehold estate and the Leasehold in lieu of rejection of the Leasehold by Borrower and covenants to assign to Lender its right to accept or reject the Leasehold and to apply for any extension of time within which to accept or reject the Leasehold. These assignments to Lender shall be automatic on Lender's demand. If Lender demands the assignment of the Leasehold under this Mortgage, Lender covenants to cure any defaults outstanding under the Leasehold after the Leasehold is assigned to Lender.

42.5. Default Under Leasehold. If Borrower defaults in performing any of its obligations under the Leasehold, including, without limitation, any default in the payment of rent and other charges and impositions made payable by the tenant under the Leasehold, then, in each and every case, Lender may, at its option and without notice, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Borrower under the Leasehold in the name of and on behalf of Borrower. Borrower shall, on demand, reimburse Lender for all advances made and expenses incurred by Lender in curing any such default (including, without limitation, reasonable Attorney Fees), together with interest computed at the rate provided for in the Note from the date that an advance is made or expense is incurred, to and including the date the same is paid. Lender shall have no duty to prevent the termination of the leasehold estate by the landlord. If the landlord terminates the leasehold estate, Lender shall have the right, at its option, to declare all sums secured by this Mortgage immediately due and payable and immediately bring an action on the Note, provided there is no other real property security for the Note.

42.6. Options. Borrower shall give Lender notice of its intention to exercise each and every option to extend the term of the Leasehold at least 20 days but not more than 60 days before expiration of the time to exercise such option under the Leasehold. If Borrower intends to extend the term of the Leasehold, it shall deliver to Lender, with the notice of such decision, a copy of the notice of extension delivered to the landlord under the Leasehold. If Borrower does not intend to extend the term of the Leasehold, Lender may, at its option, exercise the option to extend in the name and on behalf of Borrower.

42.7. No Merger/Attorney-in-Fact. It is hereby agreed that the fee title, the leasehold estate, and the subleasehold estate in the Mortgaged Property demised by the Leasehold shall not merge but shall be kept separate and distinct, despite the union of these estates in either the landlord under the Leasehold, Borrower, or a third party, whether by purchase or otherwise. If Borrower acquires the fee title or any other estate, title, or interest in the Mortgaged Property demised by the Leasehold or any part of it, the lien of this Mortgage shall attach to, cover, and be a lien on such acquired estate, title, or interest and it shall simultaneously be and become a part of the Mortgaged Property with the same force and effect as if specifically encumbered in this Mortgage. Borrower agrees to execute all instruments and documents that Lender may reasonably require to ratify, confirm, and further evidence Lender's lien on the acquired estate, title, or interest. Furthermore, Borrower appoints Lender as its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of Borrower. This power, being coupled with an interest, shall be irrevocable as long as any amounts secured by this Mortgage remain unpaid.

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42.8. Interests in Successor Leasehold. If the Leasehold is canceled or terminated, and if Lender or its nominee shall acquire an interest in any new lease of the Mortgaged Property demised by the Leasehold, Borrower shall have no right, title, or interest in or to the new lease or the leasehold estate created by such new lease.

42.9. Estoppel Certificate. Borrower shall use its best efforts to obtain and deliver to Lender, within twenty (20) days after written demand by Lender, an estoppel certificate (in form and substance acceptable to Lender) from the landlord under the Leasehold setting forth (a) the name of the tenant under the Leasehold, (b) that the Leasehold has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (c) the basic rent payable under the Leasehold, (d) the date to which the tenant paid all rental charges under the Leasehold, and (e) whether there are any alleged defaults of the tenant under the Leasehold and, if there are, setting forth their nature in reasonable detail.

42.10. Limitations on Lender's Liability Under Leasehold. Despite anything to the contrary in this Mortgage, this Mortgage shall not constitute an assignment of the Leasehold within the meaning of any provision of the Leasehold prohibiting its assignment, and Lender shall have no liability or obligation under the Leasehold because of its acceptance of this Mortgage. Lender shall be liable for the tenant's obligations arising under the Leasehold for only that period of time that Lender is in possession of the Mortgaged Property covered by the Leasehold or has acquired, by foreclosure or otherwise, and is holding all of Borrower's right, title, and interest in the Mortgaged Property covered by the Leasehold.

42.11. Additional Assurances. Borrower agrees, and hereby authorizes Lender to file on its behalf, upon request by Lender to execute and deliver further instruments, replacement documents, correcting documents, financing statements and/or continuation statements under the Uniform Commercial Code and assurances and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Mortgage and to provide the requisite loan documentation, security and collateral as contemplated by the loan application or loan commitment submitted or issued in connection with the Loan and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clause hereof, or intended so to be. Borrower agrees to pay any recording fees, filing fees, stamp taxes or other charges arising out of or incident to the filing, the issuance and delivery of the Note, the filing or recording of this Mortgage or the delivery and recording of such further assurances and instruments as may be required pursuant to the terms of this Section.

42.12. Lender's Expenses. Should Lender make any payments hereunder or under the Note or under any other Loan Documents or incur any liability, loss or damage under or by reason of this Mortgage, the Note or any other Loan Documents, or in the defense of any claims or demands, the amount thereof, and all costs and expenses, including all filing, recording, and title fees and any other expenses relating to the Indebtedness, including without limitation filing fees for UCC continuation statements and any expense involving modification thereto, actual attorneys' fees, and any and all costs and expenses incurred in connection with making, performing, or collecting the Indebtedness or exercising any of Lender's rights under the Note, this Mortgage or any other Loan Documents, including actual attorneys' fees, the cost of appraisals and the cost of any environmental inspections in connection therewith, and all claims for brokerage and finder's fees which may be made in connection with the making of the Loan, together with interest thereon, at the Default Rate, shall become part of the Indebtedness and shall be secured by this Mortgage

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and the other Loan Documents and Borrower hereby agrees to reimburse Lender therefor immediately upon demand. Such sums, costs and expenses shall be, until so paid, part of the Indebtedness and Lender shall be entitled, to the extent permitted by law, to receive and retain the full amount of the Indebtedness in any action for redemption by Borrower, for an accounting for the proceeds of a foreclosure sale or of Insurance Proceeds or for apportionment of an eminent domain damage award.

#### 42.13. Lender's Right to Counsel.

42.13.1. If Lender retains attorneys to enforce any of the terms of the Loan Documents or because of the breach by Borrower of any of the terms hereof or of any of the other Loan Documents, or for the recovery of any Indebtedness, Borrower shall pay to Lender actual attorneys' fees and all costs and expenses, whether or not an action is actually commenced and the right to such actual attorneys' fees and all costs and expenses shall be deemed to have accrued on the date such attorneys are retained, shall include fees and costs in connection with litigation, arbitration, mediation, bankruptcy and/or administrative proceedings, and shall be enforceable whether or not such action is prosecuted to judgment and shall include all appeals. Attorneys' fees and expenses shall for purposes of this Mortgage include all paralegal, electronic research, legal specialists and all other costs in connection with that performance of Lender's attorneys.

42.13.2. If Lender is, by reason of being the holder of this Mortgage, made a party defendant of any litigation, action, proceeding, (including without limitation condemnation or insurance loss matters) concerning this Mortgage or the Mortgaged Property or any part thereof or therein, or the construction, maintenance, operation or the occupancy or use thereof by Borrower, then Borrower shall indemnify, defend and hold Lender harmless from and against all liability by reason of said litigation, including actual attorneys' fees and all costs and expenses incurred by Lender in any such litigation or other proceedings, whether or not any such litigation or other proceedings is prosecuted to judgment or other determination.

**43. Contractual Right to Appoint a Receiver Upon Default.** Upon an Event of Default under this Mortgage or a breach of any clause of any agreement signed in connection with the loan to Borrower, Borrower agrees that Lender may appoint a receiver to control the Mortgaged Property within seven (7) days of any default. Borrower agrees to cooperate with the receiver and turn over all control to said receiver and otherwise cooperate with the receiver appointed by Lender.

#### **44. Default; Acceleration; Remedies.**

44.1. If an Event of Default has occurred and is continuing, Lender, at its option, may declare the Obligations to be immediately due and payable without further demand, and may either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy: (a) to enforce payment of the Mortgage Loan; (b) to foreclose this Mortgage judicially or non-judicially; (c) to enforce or exercise any right under any Loan Document; and (d) to pursue any one (1) or more other remedies provided in this Mortgage or in any other Loan Document or otherwise afforded by Applicable Law. Each right and remedy provided in this Mortgage or any other Loan Document is distinct

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from all other rights or remedies under this Mortgage or any other Loan Document or otherwise afforded by Applicable Law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order. Borrower has the right to bring an action to assert the nonexistence of an Event of Default or any other defense of Borrower to acceleration and sale.

44.2. In connection with any sale made under or by virtue of this Mortgage, the whole of the Mortgaged Property may be sold in one (1) parcel as an entirety or in separate lots or parcels at the same or different times, all as Lender may determine in its sole discretion. Lender shall have the right to become the purchaser at any such sale. In the event of any such sale, the outstanding principal amount of the Mortgage Loan and the other Obligations, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. If the Mortgaged Property is sold for an amount less than the amount outstanding under the Obligations, the deficiency shall be determined by the purchase price at the sale or sales. Borrower waives any and all rights to file or pursue permissive counterclaims in connection with any legal action brought by Lender under this Mortgage, the Note, or any other Loan Document. To the extent not prohibited by Applicable Law, Borrower waives all rights, claims, and defenses with respect to Lender's ability to obtain a deficiency judgment.

44.3. Borrower acknowledges and agrees that the proceeds of any sale shall be applied as determined by Lender unless otherwise required by Applicable Law.

44.4. In connection with the exercise of Lender's rights and remedies under this Mortgage and any other Loan Document, there shall be allowed and included as Obligations: (a) all expenditures and expenses authorized by Applicable Law and all other expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable legal fees, appraisal fees, outlays for documentary and expert evidence, stenographic charges and publication costs; (b) all expenses of any environmental site assessments, environmental audits, environmental remediation costs, appraisals, surveys, engineering studies, wetlands delineations, flood plain studies, and any other similar testing or investigation deemed necessary or advisable by Lender incurred in preparation for, contemplation of or in connection with the exercise of Lender's rights and remedies under the Loan Documents; and (c) costs (which may be reasonably estimated as to items to be expended in connection with the exercise of Lender's rights and remedies under the Loan Documents), fees, charges, and taxes (including documentary stamp tax, intangible taxes (recurring and non-recurring)) including costs of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute any suit or to evidence the true conditions of the title to or the value of the Mortgaged Property to bidders at any sale which may be held in connection with the exercise of Lender's rights and remedies under the Loan Documents.

44.5. All expenditures and expenses of the nature mentioned in this Section 44, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceedings affecting this Mortgage, the Note, the other Loan Documents, or the Mortgaged Property, including bankruptcy proceedings, any Foreclosure Event, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Obligations and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.



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44.6. Any action taken by Lender pursuant to the provisions of this Section 44 shall comply with the laws of the Property Jurisdiction. Such Applicable Laws shall take precedence over the provisions of this Section 44, but shall not invalidate or render unenforceable any other provision of any Loan Document that can be construed in a manner consistent with any Applicable Law. If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession), or a receiver appointed pursuant to the provisions of this Mortgage any powers, rights or remedies prior to, upon, during the continuance of or following an Event of Default that are more limited than the powers, rights, or remedies that would otherwise be vested in such party under any Applicable Law in the absence of said provision, such party shall be vested with the powers, rights, and remedies granted in such Applicable Law to the full extent permitted by law.

**45. Waiver of Redemption.** Borrower hereby covenants and agrees that it will not at any time apply for, insist upon, plead, avail itself, or in any manner claim or take any advantage of, any appraisalment, stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter enacted or in force in order to prevent or hinder the enforcement or foreclosure of this Mortgage. Without limiting the foregoing:

(a) Borrower, for itself and all Persons who may claim by, through or under Borrower, hereby expressly waives any so-called "Moratorium Law" and any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, it being the intent hereof that any and all such "Moratorium Laws", and all rights of reinstatement and redemption of Borrower and of all other Persons claiming by, through or under Borrower are and shall be deemed to be hereby waived to the fullest extent permitted by the laws of the Property Jurisdiction;

(b) Borrower shall not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(c) if Borrower is a trust, Borrower represents that the provisions of this Section 44.2 (including the waiver of reinstatement and redemption rights) were made at the express direction of Borrower's beneficiaries and the Persons having the power of direction over Borrower, and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well as all other Persons mentioned above.

**46. Release.** Upon payment and performance (as applicable) in full of the Obligations, Lender shall cause the release of this Mortgage. As permitted by Applicable Law, Borrower shall pay Lender's costs incurred in connection with such release.

**47. Dispute Resolution: Waiver of Right to Jury Trial; Additional Waiver**

47.1. WAIVER OF RIGHT TO JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING FROM THIS MORTGAGE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY

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COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. BORROWER AND, BY ITS ACCEPTANCE OF THE BENEFITS OF THIS MORTGAGE, LENDER EACH (A) ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR BORROWER AND LENDER TO ENTER INTO A BUSINESS RELATIONSHIP, THAT BORROWER AND LENDER HAVE ALREADY RELIED ON THIS WAIVER BY ENTERING INTO THIS MORTGAGE OR ACCEPTING ITS BENEFITS, AS THE CASE MAY BE, AND THAT EACH SHALL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS, AND (B) FURTHER WARRANTS AND REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS MORTGAGE.

47.2. ARBITRATION. TO THE EXTENT A PREDISPUTE WAIVER OF THE RIGHT TO TRIAL BY JURY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS MORTGAGE AND OTHER LOAN DOCUMENTS OR TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING, WITHOUT LIMITATION, THE MAKING, PERFORMANCE, OR INTERPRETATION OF THIS MORTGAGE OR OTHER LOAN DOCUMENTS, SHALL BE RESOLVED BY BINDING ARBITRATION. UNLESS OTHERWISE AGREED ON, THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE THEN-CURRENT ARBITRATION PROCEDURES SET FORTH IN THE CODE OF CIVIL PROCEDURE OF THE PROPERTY JURISDICTION AND LOCAL SUPPLEMENTARY RULES THEN IN EFFECT. JUDGMENT ON THE ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. UNLESS OTHERWISE AGREED BY THE PARTIES, THE ARBITRATION SHALL BE HELD BEFORE A SINGLE ARBITRATOR SELECTED AS FOLLOWS: THE DISPUTING PARTIES SHALL, WITHIN TEN (10) BUSINESS DAYS FROM THE DATE ARBITRATION IS REQUESTED BY EITHER PARTY, AGREE UPON AN ARBITRATOR. IF THE PARTIES CANNOT SO AGREE, THEN EACH PARTY, WITHIN FIVE (5) BUSINESS DAYS THEREAFTER, SHALL NAME AN ARBITRATOR WHO SHALL BE AN ATTORNEY LICENSED TO PRACTICE IN THE STATE WHERE THE MORTGAGED PROPERTY IS SITUATED AND EXPERIENCED AND QUALIFIED IN REAL ESTATE MATTERS OF THE TYPE CONTEMPLATED BY THIS MORTGAGE AND OTHER LOAN DOCUMENTS OR A RETIRED SUPERIOR OR APPELLATE COURT JUDGE. THOSE TWO NAMED ARBITRATORS SHALL THEN, WITHIN FIVE (5) BUSINESS DAYS, SELECT A THIRD ARBITRATOR WHO SHALL BE QUALIFIED AS DEFINED ABOVE, AND SUCH THIRD ARBITRATOR SHALL BE THE SOLE ARBITRATOR TO HEAR AND DETERMINE THE DISPUTE. IF ANY PARTY HERETO FAILS TO NAME AN ARBITRATOR WITHIN THE TIME LIMIT PROVIDED IN THIS PARAGRAPH, THEN THE ARBITRATOR TIMELY NAMED BY THE OTHER PARTY SHALL HEAR AND DECIDE THE DISPUTE. IF THE ARBITRATION IS COMMENCED, THE PARTIES AGREE TO PERMIT DISCOVERY PROCEEDINGS OF THE TYPE PROVIDED BY THE CODE OF CIVIL PROCEDURE OF THE PROPERTY JURISDICTION BOTH IN ADVANCE OF, AND DURING RECESSES OF,

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THE ARBITRATION HEARINGS. ALL FACTS AND OTHER INFORMATION RELATING TO ANY ARBITRATION ARISING UNDER THIS DECLARATION SHALL BE KEPT CONFIDENTIAL TO THE FULLEST EXTENT PERMITTED BY LAW. THE DECISION OR THE ARBITRATOR(S) SHALL FOLLOW THE LAW, SHALL BE RENDERED WITHIN TEN (10) BUSINESS DAYS FOLLOWING THE CONCLUSION OF THE ARBITRATION, AND SHALL BE SET FORTH IN A WRITTEN OPINION STATING THE FINDINGS OF FACT OR THE ARBITRATOR(S) AND LEGAL AUTHORITIES THAT ARE THE BASIS OF THE DECISION. THE VENUE FOR ANY SUCH ARBITRATION SHALL BE THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS SITUATED. THE COSTS OF THE ARBITRATOR(S) SHALL BE SPLIT EQUALLY BY THE PARTIES BUT SHALL BE A RECOVERABLE COST FOR THE PARTY PREVAILING IN THE ARBITRATION.

**47.3. PROVISIONAL REMEDIES; FORECLOSURE AND INJUNCTIVE RELIEF.**

Nothing in Section 47.2, above, shall be deemed to apply to or limit the right of Lender to: (a) exercise self help remedies, (b) foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (c) obtain from a court provisional or ancillary remedies (including, but not limited to, injunctive relief, a writ of possession, prejudgment attachment, a protective order or the appointment of a receiver) or (d) pursue rights against Borrower or any other party in a third party proceeding in any action brought against Lender (including, but not limited to, actions in bankruptcy court). Lender may exercise the rights set forth in the foregoing clauses (a) through (d), inclusive, before, during, or after the pendency of any proceeding referred to in Section 47.2, above. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies or the opposition to any such provisional remedies shall constitute a waiver of the right of any Borrower, Lender or any other party, including, but not limited to, the claimant in any such action, to require submission the dispute, claim or controversy occasioning resort to such remedies to any proceeding referred to in Section 47.2, above.

**47.4. Waiver.** To the extent the laws of the state of California apply to this Mortgage, any of the other Loan Documents, or any of the Related Loan Documents, Borrower hereby expressly waives any and all benefits under (a) California Code of Civil Procedure Section 580a (which Section, if this waiver had not been given, might otherwise limit Borrower's liability after a nonjudicial foreclosure sale to the difference between the obligations of Borrower under this Agreement and the fair market value of the property or interests sold at such nonjudicial foreclosure sale); (b) California Code of Civil Procedure Sections 580b and 580d (which Sections, if this waiver had not been given, might otherwise limit Lender's right to recover a deficiency judgment with respect to purchase money obligations and after a nonjudicial foreclosure sale, respectively); and (c) California Code of Civil Procedure Section 726 (which Section, if this waiver had not been given, among other things, might otherwise require Lender to exhaust all of its security before a personal judgment could be obtained for a deficiency).

**48. Fixture Filing.** As to those items of collateral described in this Mortgage that are, or are to become "Fixtures" (as such term is defined in the Uniform Commercial Code as adopted by the state where the Mortgaged Property is situated) related to the real estate mortgaged herein, and all products and proceeds thereof, it is intended as to those items that THIS MORTGAGE SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING from the date of its filing in the real estate records of the County where the Mortgaged Property is situated. This document covers goods which are or are to become fixtures. The name of the record

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owner of said real estate is Borrower set forth in the preamble to this Mortgage. Information concerning the security interest created by this instrument may be obtained from Lender, as secured party, at its address as set forth in the preamble to this Mortgage. The address of Borrower, as debtor, is as set forth in the preamble to this Mortgage. Except as specifically disclosed by Borrower to Lender prior to the execution of this Mortgage, during the five (5) years and six months prior to the date of this Mortgage, Borrower has not been known by any legal name different from the one set forth in the first paragraph of this Mortgage, nor has Borrower been the subject of any merger, consolidation or other organizational reorganization during such period of time. Borrower hereby authorizes Lender to cause any financing statement or fixture filing to be filed or recorded without the necessity of any signature of Borrower on such financing statement or fixture filing.

**49. Incorporation of State Law Provisions.** Certain provisions/sections of this Mortgage and certain additional provisions/sections that are required by laws of the State or Commonwealth in which the Mortgage Property is located may be amended, described and/or otherwise set forth in more detail on Exhibit B attached hereto, which such Exhibit by this reference, is incorporated into and made a part of this Mortgage. In the event of any conflict between such state law provisions and any provision herein, the state law provisions shall control.

**50. Cross-collateralization, Lender's Options.**

50.1. In addition to the Note, all liens, security interests, assignments, suretyship obligations, stock pledges, rights and remedies granted to the Lender in the Loan Documents shall secure all obligations, debts and liabilities, plus interest thereon, of the Borrower, Guarantor(s) and any Affiliate to the Lender, as well as the Related Loans and claims by the Lender against the Borrower, Guarantor(s) or any Affiliate whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, absolute or contingent, whether the Borrower or Affiliate may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

50.2. Notwithstanding anything contained herein, in any of the other Loan Documents, or in any of the Related Loan Documents (including, without limitation, each of the Senior Loan Documents), Borrower hereby acknowledges and agree that:

50.3. This Mortgage by its terms secures, and for so long as it remains outstanding shall secure, the payment and performance (as applicable) of the Indebtedness, including without limitation, the repayment of the Loan and each of the Related Loans;

(a) For all purposes of exercising its remedies herein, in any of the other Loan Documents, in any of the Related Loan Documents (including, without limitation, any of the Related Loan Documents), or otherwise available at law, to the fullest extent permitted by law Lender may elect, in its sole discretion and without further notice to Borrower, to treat the Loan and each (or any) of the Related Loans; and the Indebtedness (or any portion thereof), as either: (i) separate and independent obligations of Borrower (or its Affiliate, as applicable); or (ii) as the integrated indebtedness of Borrower and its Affiliates.



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(b) Borrower hereby waives, to the fullest extent permitted by law, all rights to require Lender to proceed against any Affiliate or any other Person (including without limitation, any guarantor of any of the Indebtedness), or to pursue any other right or remedy Lender may now or hereafter have against any Affiliate or any other Person prior to exercise any one or more of its remedies against Borrower and/or with respect to the Mortgaged Property (or any portion thereof).

50.4. Except to the extent consistent with an election made by Lender pursuant to Section 50.3(b) above, no judgment obtained by Lender in any proceeding enforcing any of the Loan Documents or any of the Related Loan Documents shall merge any of the Indebtedness into that judgment, and all Indebtedness that remains unpaid shall remain a continuing obligation of Borrower and any Affiliate. Notwithstanding any foreclosure of the Loan or any of the Related Loans, Borrower shall remain bound under this agreement.

50.5. To the extent the laws of the state of California apply to this Mortgage, any of the other Loan Documents, or any of the Related Loan Documents, Borrower hereby expressly waives any and all benefits under: (a) California Code of Civil Procedure Section 580a (which Section, if this waiver had not been given, might otherwise limit Borrower's liability after a nonjudicial foreclosure sale to the difference between the obligations of Borrower under this Agreement and the fair market value of the property or interests sold at such nonjudicial foreclosure sale); (b) California Code of Civil Procedure Sections 580b and 580d (which Sections, if this waiver had not been given, might otherwise limit Lender's right to recover a deficiency judgment with respect to purchase money obligations and after a nonjudicial foreclosure sale, respectively); and (c) California Code of Civil Procedure Section 726 (which Section, if this waiver had not been given, among other things, might otherwise require Lender to exhaust all of its security before a personal judgment could be obtained for a deficiency).

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## EXHIBIT A

### LEGAL DESCRIPTION

**Legal Description:**

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN THE COUNTY OF COOK,  
AND STATE OF ILLINOIS, BEING KNOWN AND DESIGNATED AS FOLLOWS:

LOT 30 IN BLOCK 6 IN MCCHESENEY'S RESUBDIVISION OF THE NORTH 1/2 OF  
BLOCKS 1 TO 7 IN MCCHESENEY'S HYDE PARK HOMESTEAD SUBDIVISION  
OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 27  
NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK  
COUNTY ILLINOIS.

**Property Identification Number(s):**

20-22-226-023-0000

**Common Address:**

6620 S Rhodes Ave, Chicago, IL, 60637

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## EXHIBIT B

### APPLICABLE STATE LAW

B-1 Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to two hundred percent of (200%) of the stated maximum principal amount of the Note; provided, however, in no event shall the Lender be obligated to advance funds in excess of the face amount of the Note.

B-2 Collateral Protection Insurance. Unless Borrower provides Lender with evidence of the insurance coverage required by the Mortgage, Lender may purchase insurance at Borrower's expense to protect Lender's interests in Borrower's Premises. This insurance may, but need not, protect Borrower's interests. The coverage that Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Premises. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by this paragraph. If Lender purchases insurance for the Premises, Borrower will be responsible for the costs of that insurance, including interest and any other charges we 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 added to the total outstanding balance of the Indebtedness. The cost of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

B-3 Selection and Appointment of Receiver. In lieu of taking possession of the Premises following an Event of Default, in any judicial foreclosure proceeding, Lender may require that the court appoint a receiver. Lender may select the receiver that it requests the court to appoint and Borrower waives any right to object to either the appointment or selection of the receiver sought to be appointed by Lender.