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Edward M. Moody  
Cook County Recorder of Deeds  
Date: 06/07/2019 09:28 AM Pg: 1 of 31

[Hodgkins, Illinois]

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THIS MORTGAGE SECURES FUTURE ADVANCES AND REVOLVING CREDIT LOAN(S)  
MORTGAGE SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS  
AND FINANCING STATEMENT (FIXTURE FILING)

By

**BEAVER OIL, LLC,**  
an Illinois limited liability company,

as Mortgagor,

To

**TWIN BROOK CAPITAL PARTNERS, LLC,**  
as Agent for all of the Lenders,

as Mortgagee,

Relating to Premises in:

Cook County, Illinois

Dated: As of June 4, 2019

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This instrument was prepared by  
and after recording should be returned to:

Luke Haller, Esq.  
Winston & Strawn LLP  
35 W. Wacker Drive  
Chicago, Illinois 60601

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**NCS 955446**

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## MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FINANCING STATEMENT (FIXTURE FILING)

**THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FINANCING STATEMENT (FIXTURE FILING)** (as may be amended, restated, supplemented or otherwise modified from time to time, this "Mortgage") is made as of June 4, 2019 by **BEAVER OIL, LLC**, an Illinois limited liability company (successor by conversion to Beaver Oil, Inc., an Illinois corporation), with offices at c/o Intergulf Corporation, 428 Texas 146 Business, La Porte, TX 77571; Attn: Joe Brunetti, as mortgagor ("Mortgagor"), for the benefit of **TWIN BROOK CAPITAL PARTNERS, LLC**, with its principal office at 111 South Wacker Drive, 46<sup>th</sup> Floor, Chicago, IL 60606; Attn: Intergulf Account Manager, as Agent for all of the Lenders (as hereinafter defined) and, in such capacity, as mortgagee, assignee and secured party (together with any successors and/or assigns in such capacity, "Mortgagee").

### I

#### RECITALS

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

**WHEREAS**, Mortgagee, as Agent, and certain other financial institutions (collectively and together with each of their respective successors and assigns, the "Lenders") have entered into as of November 16, 2018 that certain Credit Agreement (together with any and all renewals, amendments, modifications, supplements, restatements, extensions for any period, or increases or rearrangements thereof, the "Credit Agreement") with Intergulf Corporation, a Texas corporation (the "Borrower"), (defined as Borrower under the Credit Agreement), as borrower, pursuant to which the Lenders have made and may in the future make term, delayed draw term, incremental term loans and revolving credit facilities and other financial accommodations to Borrower in the aggregate principal amount of up to Fifty-Nine Million and No/100 Dollars (\$59,000,000.00) (collectively, the "Loan"), upon the terms and subject to the conditions set forth in the Credit Agreement, and all as more fully described in the Credit Agreement;

**WHEREAS**, the Loan may from time to time be evidenced by certain promissory notes (as may be amended, restated, supplemented or otherwise modified from time to time, the "Notes"), such Notes having a maturity date of November 26, 2023 (as such date may be extended pursuant to the hereinafter defined Loan Documents' terms);

**WHEREAS**, the interest rates applicable to the Loans are set forth in the Credit Agreement and may be variable and adjust from time to time pursuant to the terms thereof;

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**WHEREAS**, Mortgagor is a subsidiary of the Borrower and derives substantial direct and indirect benefits from the making of the Loan and other benefits to be provided under the Credit Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged;

**WHEREAS**, Mortgagor wishes to provide further assurance and security to Mortgagee and the Lenders and, as a condition to Mortgagee and the Lenders entering into the Credit Agreement, Mortgagee and the Lenders are requiring that Mortgagor grant to Mortgagee, for the benefit of the Lenders, a security interest in and a first priority mortgage lien on the Property (as hereinafter defined) to secure Mortgagor's and Borrower's obligations under, as applicable the Credit Agreement (the Credit Agreement, this Mortgage, the Notes and all other documents entered into in connection with the transactions contemplated by the Credit Agreement (including the Loan Documents (as defined in the Credit Agreement), whether now or hereafter existing, as may be amended, restated, supplemented or otherwise modified from time to time, are collectively hereinafter referred to as the "Loan Documents") and the other Loan Documents;

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

**WHEREAS**, this Mortgage is being given by Mortgagor to secure (a) the payment of all monetary obligations of Mortgagor and Borrower arising under, as applicable the Credit Agreement, the Notes, this Mortgage and the other Loan Documents (the "Secured Indebtedness"), and (b) the performance of all other terms, covenants, conditions, provisions, agreements and liabilities contained in the Credit Agreement, the Notes, this Mortgage and the other Loan Documents (together with the Secured Indebtedness, the "Obligations");

**WHEREAS**, in confirmation and furtherance of the foregoing, this Mortgage also secures the payment of all Future Advances, as defined in and in accordance with Section 5.16 hereof and which form a part of the Secured Indebtedness; and

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

## II

### THE GRANT

**NOW, THEREFORE**, in order to secure the payment and performance of the Obligations, direct or indirect, absolute or contingent, or otherwise, that may now or hereafter become owing or otherwise arise, and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by Mortgagee on behalf of the Lenders, to Mortgagor, the Recitals above stated, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally and firmly bound, Mortgagor hereby **GRANTS**,

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**BARGAINS, SELLS, ASSIGNS, RELEASES, ALIENS, TRANSFERS, REMISES, WARRANTS, DEMISES, CONVEYS, SETS OVER and MORTGAGES** to Mortgagee and its successors and assigns forever, for the benefit of the Lenders, (and grants to Mortgagee and its successors and assigns forever, for the benefit of the Lenders, a continuing security interest in and to) the Premises described in Exhibit A, together with all of the following described property, now owned or hereafter acquired, all of which other such property is pledged primarily on a parity with the Premises and not secondarily (the Premises and the following described rights, interests, claims and property are collectively referred to as the "Property"):

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

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

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

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

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

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

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

(h) all rights of Mortgagor under any contracts executed by Mortgagor with any provider of goods or services for or in connection with any construction undertaken on or services performed or to be performed in connection with the Premises or the Improvements;

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

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

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(i) all building materials and equipment located upon the Premises and intended for construction, reconstruction, alteration, repair or incorporation in or to the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements, (all of which shall be deemed to be included in the Property upon delivery thereto);

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

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

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

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

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

**TO HAVE AND TO HOLD** the Property hereby mortgaged and conveyed, or so intended, together with its rents, issues and profits, unto Mortgagee, its successors and assigns,

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forever, for the uses and purposes herein set forth, and Mortgagor does hereby bind itself and its successors and assigns to **WARRANT AND FOREVER DEFEND** the Property unto Mortgagee and unto its or their successors and assigns, against any and every person lawfully claiming or to claim the same or any part thereof by, through and under Mortgagor.

Mortgagor hereby represents, warrants and covenants to and with Mortgagee and with the purchaser at any foreclosure or other sale hereunder that, at the execution and delivery hereof: (a) Mortgagor owns the Property and has good, indefeasible and marketable estate in the Premises, in fee simple, (b) the Property is free from all encumbrances and exceptions to title (and any claim of any other person) other than the Permitted Liens (as defined in the Credit Agreement) (c) Mortgagor has good and marketable title in and to the Property and good and lawful right to sell, mortgage and convey its interest in the Property, and (d) Mortgagor and its successors and assigns shall forever warrant and defend the Property against all claims and demands whatsoever.

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

## III

### GENERAL AGREEMENTS

3.01 Incorporation of Recitals. Each of the Recitals set forth above is incorporated herein as if entirely set forth herein.

3.02 Payment and Performance of the Obligations. Mortgagor shall pay and perform (or cause to be paid and performed) promptly and when due all of the Obligations required to be paid and performed by it under, and in the manner provided in, the Credit Agreement, this Mortgage and the other Loan Documents to which it is a party. The outside maturity date of the Obligations under the Loan Documents is November 26, 2023.

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

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

- (a) Mortgagor shall pay all such Impositions so contested under protest if such payment is required to prevent such contest from (i) having the effect of preventing the sale or forfeiture of the Property or any sub-part or interest therein, (ii) having the effect of preventing the use or occupancy of the Property, or (iii) materially increasing the amount of any Imposition by any interest, penalties or costs;
- (b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to prosecute the contest before any Impositions have been materially increased by any interest, penalties, or costs;
- (c) Mortgagor shall diligently prosecute the contest of such Impositions by appropriate legal proceedings;
- (d) Mortgagor has set aside on its books adequate reserves in accordance with generally acceptable accounting principles;
- (e) Mortgagor has furnished Mortgagee with security and an indemnity reasonably satisfactory to Mortgagee for the payment of the Imposition and any lien created thereby; and
- (f) No notice of a Lien has been filed or recorded.

3.04 Payment of Impositions by Mortgagee. Upon Mortgagor's failure to pay the Impositions as provided above, Mortgagee is hereby authorized to make or advance, in the place and stead of Mortgagor, any payment relating to Impositions, unless such Imposition is then being contested by Mortgagor in accordance with Section 3.03. Mortgagee may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy or the validity of any Impositions, lien, sale, forfeiture, or related title or claim. Mortgagee is further authorized to make or advance, in place of Mortgagor, unless such matter is being contested by Mortgagor in accordance with Section 3.03, any payment relating to any apparent adverse title, lien, statement of lien, encumbrance, claim, charge, or payment otherwise relating to any other purpose herein and hereby authorized (except the Permitted Liens), but not enumerated in this Section, whenever, in Mortgagee's reasonable judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be created by this Mortgage. All such advances and indebtedness authorized by this Section shall constitute Secured Indebtedness, whether or not they exceed the amount of the Loans, and shall be repayable by Mortgagor upon demand with interest at the highest rate of interest that may be charged to Borrower under the Credit Agreement, including upon the occurrence of a default or an Event of Default (the "Default Rate").

3.05 Insurance and Insurance Proceeds.



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(a) Mortgagor, at its sole cost and expense, shall maintain or cause to be maintained all insurance on the Property that is required to be maintained under the Credit Agreement. In addition, Mortgagor, at its sole cost and expense, shall maintain or cause to be maintained such other insurance as may, from time to time, reasonably be required by Mortgagee in order to protect its interests in the Property.

(b) All such insurance policies (and any other insurance policies) with respect to the Property shall contain a standard, non-contributory mortgagee clause naming Mortgagee, and its successors and assigns, as an additional insured under all liability insurance policies, as the first mortgagee and loss payee on all property insurance policies, and as the sole loss payee on all rental loss or business interruption insurance policies and shall be otherwise in form and substance reasonably acceptable to Mortgagee.

(c) Mortgagor shall promptly notify Mortgagee of any damage to, destruction or loss of or other casualty with respect to any of the Property, whether insured or not. In case of such damage, destruction, loss or other casualty, Mortgagee is authorized (i) to settle and adjust any claim under insurance policies that insure against such risks and to deduct therefrom costs and expenses of collection (including attorney's fees and expenses), or (ii) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such casualty. In either case, Mortgagee is authorized to collect and give receipt for any such insurance money, with notice of such collection and receipt to Mortgagor.

(d) If any damage to, destruction or loss of or other casualty with respect to any of the Property shall occur, the proceeds of any insurance available as a result of such destruction, loss or casualty shall be disbursed and administered in accordance with the terms and provisions of the Credit Agreement.

3.06 Condemnation Awards. In the event of any taking of the Property or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Property or any part thereof, by any governmental authority, civil or military (each a "Taking"), Mortgagor shall immediately notify Mortgagee upon receiving notice of such taking or commencement of proceedings therefor. Mortgagor shall then, if requested by Mortgagee, file or defend its claim thereunder and prosecute the same with due diligence to its final disposition. Mortgagee shall be entitled to participate in any such proceeding, at Mortgagor's sole cost and expense, and Mortgagor shall deliver or cause to be delivered to Mortgagee such instruments as may be reasonably requested by Mortgagee from time to time to permit such participation. Except as may otherwise be expressly provided in the Credit Agreement, all proceeds or any award or payment in respect of any Taking are hereby assigned and shall be paid to Mortgagee, and Mortgagor shall take all steps necessary to notify the condemning authority of such assignment. Such award or payment shall be applied in accordance with the provisions of the Credit Agreement.

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3.07 Restoration. In the event of a casualty loss, damage to or destruction of the Property or any part thereof, the terms and provisions of the Credit Agreement shall govern and control with respect to the restoration, repair and replacement thereof.

3.08 Maintenance of Property. Except as may otherwise be expressly provided or permitted in the Credit Agreement, Mortgagor shall:

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

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

(c) not make any material alterations to the Property.

3.09 Prohibited Liens and Transfers.

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

(b) Except as may otherwise be expressly permitted by the Credit Agreement, Mortgagor shall not sell, lease or convey all or any part of the Property.

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

3.11 Change in Tax Laws. In the event of the enactment, after the date of this Mortgage, of any law of the United States, or any state or political subdivision thereof, (i) deducting from the value of the Premises, for the purpose of taxation, the amount of any lien

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thereon; (ii) imposing upon Mortgagee the payment of all or any part of the taxes, assessments, charges or liens hereby required to be paid by Mortgagor; or (iii) changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagor's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the Obligations (each, a "Tax Law Change"), then Mortgagor, upon demand by Mortgagee, and as required by law, shall pay such taxes, assessments, charges, or liens or reimburse Mortgagee therefor. If, in the opinion of counsel for Mortgagee, it would be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then either the applicable provisions of the Credit Agreement shall apply or, if the Credit Agreement does not contain any such provisions, Mortgagee shall determine in its sole discretion the appropriate manner in which to address such Tax Law Change such that neither Mortgagee nor its lien on the Property is adversely affected, including, without limitation, declaring all of the Obligations to be and become immediately due and payable. Nothing contained in this Section 3.11 shall be construed as obligating Mortgagor to pay any portion of Mortgagee's federal, state and local income tax.

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

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Following the occurrence of an Event of Default, (a) Mortgagor shall promptly send written notification of same to each lessee under a Lease and each guarantor thereof, (b) Mortgagee shall have all of the rights and powers as are provided herein, (c) each lessee under a Lease and each guarantor thereof shall pay all Rents directly to Mortgagee without proof of the Event of Default, and (d) Mortgagee shall have the authority, as Mortgagor's attorney-in-fact (such authority being coupled with an interest and irrevocable), to sign the name of Mortgagor and to bind Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Property.

If Mortgagor, as lessor under any Lease, shall neglect or refuse to perform, observe and keep all of the covenants, provisions and agreements contained in such Lease, then Mortgagee may perform and comply with any such Lease covenants, agreements and provisions. All costs and expenses incurred by Mortgagee in complying with such covenants, agreements, and provisions shall constitute Secured Indebtedness, whether or not they exceed the amount of the Loans, and shall be payable upon demand with interest at the Default Rate.

Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability under any Lease, and Mortgagor shall and does hereby agree, except to the extent of Mortgagee's gross negligence or willful misconduct as determined by a court of competent jurisdiction, to indemnify and hold Mortgagee and the Lenders harmless of and from any and all liability, loss or damage which they may or might incur under any Lease or under or by reason of the assignment of such Lease and of and from any and all claims and demands whatsoever which may be asserted against them by reason of all alleged obligations or undertakings on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained in such Lease. Should Mortgagee and/or any Lender incur any such liability, loss or damage under any Lease or under or by reason of its assignment, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall constitute Secured Indebtedness, whether or not they exceed the amount of the Loans, and shall be payable upon demand with interest at the Default Rate.

3.13 Releases. Without notice and without regard to the consideration therefor, and to the existence at that time of any inferior liens, Mortgagee may release from the lien created hereby all or any part of the Property, or release from liability any person obligated to repay or perform any Obligations, without affecting the liability of any party under the Credit Agreement, any of the Notes, this Mortgage, or any of the other Loan Documents (including without limitation any guaranty given as additional security) and without in any way affecting the priority of the lien created hereby. Mortgagee may agree with any liable party to extend the time for payment and/or performance of any part or all of the Obligations. Such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay and/or perform the Obligations, but shall extend the lien created by this Mortgage as against the title of all parties having any interest in the Property, subject to the Obligations.

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3.14 Further Assurances. Mortgagor agrees that, upon request of Mortgagee from time to time, it will, at Mortgagor's sole cost and expense, execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary to fully effectuate the intent of this Mortgage, including without limitation, reimbursing Mortgagee for the reasonable costs of appraisals of the Property, to the extent that Mortgagee determines in good faith that such appraisals are required by any law or any governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any interpretation thereof, including, without limitation, the provisions of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and any rules promulgated to implement such provisions. In the event that Mortgagor shall fail to do any of the foregoing, Mortgagee may, in its sole discretion, do so in the name of Mortgagor, and Mortgagor hereby appoints Mortgagee as its attorney-in-fact to do any of the foregoing (such authority being coupled with an interest and irrevocable).

3.15 Environmental Provisions. The representations, warranties and covenants regarding "Environmental Laws", "Environmental Permits", "Environmental Claims", "Hazardous Materials" and other environmental matters contained in the Credit Agreement are incorporated herein by this reference as if fully set forth herein.

## IV

### EVENT OF DEFAULT AND REMEDIES

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

(a) The occurrence of an "Event of Default" as defined in the Credit Agreement or in any other Loan Document; or

(b) The failure of Mortgagor to perform or observe any other covenant, agreement, representation, warranty or other provision contained in this Mortgage within thirty (30) days after written notice of the default from Mortgagee to Mortgagor.

4.02 Remedies. Following the occurrence of an Event of Default:

(a) Mortgagee's Power of Enforcement. Mortgagee may (i) immediately sell the Property, either in whole or in separate parcels, as prescribed by State law, under power of sale, which power is hereby granted to Mortgagee to the full extent permitted by State law, and thereupon, to make and execute to any purchaser(s) thereof deeds of conveyance pursuant to applicable law, (ii) immediately foreclose this Mortgage by judicial or other action permitted by applicable law, or (iii) take any other action permitted by the terms of the Credit Agreement. Mortgagee or any Lender may be the purchaser at any sale. Mortgagee or the court in which any proceeding is pending for the purpose of foreclosure of this Mortgage may, at once or at any time thereafter, either

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before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment or performance of the Obligations, and without regard to the then value of the Property or the occupancy thereof as a homestead, appoint a receiver (to the extent permitted by applicable law) (the provisions for the appointment of a receiver and assignment of Rents being an express condition upon which the Loans are made) for the benefit of Mortgagee, with power to collect the Rents, due and to become due, during such foreclosure suit and the full statutory period of redemption. The receiver, out of the Rents, when collected, may pay costs incurred in the management and operation of the Property, prior and subordinate liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to the Property, and may pay all or any part of the Secured Indebtedness or other sums secured hereby or any deficiency decree entered in such foreclosure proceedings. Upon or at any time after the filing of a suit to foreclose this Mortgage, the court in which such suit is filed shall have full power to enter an order placing Mortgagee in possession of the Property with the same power granted to a receiver pursuant to this subsection and with all other rights and privileges of a mortgagee-in-possession under applicable law.

(b) Mortgagee's Other Rights. Mortgagee shall have the right to take such other steps to protect and enforce its rights, whether by action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained in this Mortgage, or in aid of the execution of any power granted in this Mortgage, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee and/or the trustees shall elect.

4.03 Litigation Expenses. In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee and/or any Lender under the Credit Agreement, the Notes, this Mortgage, or any other Loan Document, or in any other proceeding in connection with any of the Loan Documents or any of the Property in which Mortgagee and/or any Lender is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree resulting therefrom, all related expenses paid or incurred by or on behalf of Mortgagee and/or any Lender. Such expenses shall include: reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, survey costs, and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and any similar data and assurances with respect to title to the Property as Mortgagee and/or any Lender may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the Premises or the other Property. All foregoing expenses, and such expenses as may be incurred in the protection of any of the Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee and/or any Lender in any litigation affecting the Credit Agreement, the Notes, this Mortgage, any other Loan Document or the Property, or in preparation for the commencement or

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defense of any proceeding or threatened suit or proceeding (which may be estimated as to items to be expended after entry of such judgment or decree), shall be due and payable by Mortgagor within ten (10) days of the demand therefor with interest thereon at the Default Rate.

4.04 Mortgagee's Performance of Mortgagor's Obligations. Following the occurrence of an Event of Default, Mortgagee, both before and after acceleration of the Obligations or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to do any one or more of the following: (i) make any payment or perform any act herein, or in the Credit Agreement, the Notes, any of the other Loan Documents or any document or instrument related thereto which is required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any form and manner deemed expedient to Mortgagee; (ii) make full or partial payments of principal or interest on any permitted prior deed of trust or mortgage, this Mortgage or any encumbrances, (iii) purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, (iv) redeem from any tax sale or forfeiture affecting the Premises, (v) contest any Impositions, or (vi) complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and Improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such Improvements or to pay any such operating costs and expenses thereof or to keep the Premises and Improvements operational and usable for their intended purposes, shall constitute Secured Indebtedness, whether or not they exceed the amount of the Loans, and shall become due and payable upon demand with interest thereon at the Default Rate. Mortgagee, in making any payment hereby authorized: (a) for the payment of Impositions, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim or lien which may be asserted; or (c) for the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating cost and expenses thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

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

- (1) Advances pursuant to this Section 4.04.

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(2) Any amount expended by Mortgagee in restoring the Property in excess of the actual or estimated proceeds of insurance or condemnation;

(3) Advances in accordance with the terms of this Mortgage to: (a) protect, preserve or restore the Property; (b) preserve the lien of this Mortgage or the priority thereof; or (c) enforce this Mortgage;

(4) When due, installments of real estate taxes and other Impositions; other obligations authorized by this Mortgage; or with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, all as referred to in this Section 4.04;

(5) Reasonable attorneys' fees and other costs incurred in connection with: (a) the exercise of Mortgagee's rights to make Protective Advances; (b) the foreclosure of this Mortgage; (c) any other litigation or administrative proceeding relating to the Property to which Mortgagee and/or any Lender may be or become or be threatened or contemplated to be a party, without fault on its part, including probate and bankruptcy proceedings; or (d) in the preparation for the commencement or defense of any such suit or proceeding; in each case including, without limitation, filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, Torrens certificates, appraisals, and similar data and assurances with respect to title and value as Mortgagee and/or any Lender may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Property;

(6) Mortgagee's fees and costs arising between the entry of judgment of foreclosure and the confirmation hearing;

(7) Payment by Mortgagee of any Impositions as may be permitted by this Mortgage;

(8) Mortgagee's Advances of any amount required to make up a deficiency in deposits for installments of Impositions as may be permitted by this Mortgage;

(9) Expenses deductible from proceeds of sale; and

(10) Expenses incurred and expenditures made by Mortgagee for any one or more of the following: (a) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required without regard to the limitation to maintaining insurance in effect at the time any receiver, deed of trust beneficiary or Mortgagee takes possession of the Property; (b) expenditures in connection with restoring the Property in excess of available insurance proceeds or condemnation awards; (c) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by



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the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (d) operating deficits incurred by Mortgagee as a deed of trust beneficiary or Mortgagee in possession or reimbursed by Mortgagee to any receiver; and (e) all amounts paid to any public authority for the use or occupancy of any street, alley, or public way.

All Protective Advances shall constitute Secured Indebtedness, regardless of whether any Loan proceeds have been disbursed and regardless of whether they exceed the amount of the Loans, and shall become immediately due and payable without notice and with interest thereon until paid at the Default Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded.

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

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

4.07 Appointment of Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall appoint a receiver of the Property whenever Mortgagee when entitled to possession so requests. Such receiver shall have all powers and duties prescribed by applicable law, including the power to make leases to be binding upon all parties, including Mortgagor after redemption, the purchaser at a sale pursuant

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to a judgment of foreclosure and any person acquiring an interest in the Mortgage real estate after entry of a judgment of foreclosure. In addition, such receiver shall also have the following powers: (a) to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Obligations and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the Mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his or its hands in payment in whole or in part of: (a) the Secured Indebtedness, or any amounts included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a Protective Advance, and (b) the deficiency in case of a sale and deficiency.

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

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

**Second:** to the payment in full of the other Secured Indebtedness.

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

**4.09 Cumulative Remedies; Delay or Omission Not a Waiver.** Each remedy or right of Mortgagee shall not be exclusive of, but shall be in addition to, every other remedy or right now or hereafter existing at law, in equity and/or under any of the Loan Documents. No delay in the exercise or omission to exercise any remedy or right accruing on the occurrence or existence of any Event of Default hereunder and/or under any other Loan Document shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or acquiescence therein, nor shall it affect any subsequent Event of Default of the same or different nature. Every

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such remedy or right may be exercised concurrently or independently and when and as often as may be deemed expedient by Mortgagee.

4.10 Mortgagee's Remedies Against Multiple Parcels. The Obligations are, or in the future may be, also secured by other properties, lots or parcels covered by other mortgages, deeds of trust or deeds to secure debt ("Other Mortgages") within and/or outside the State. If this Mortgage or any of the Other Mortgages is foreclosed upon, or if judgment is entered upon any Obligations, or if Mortgagee exercises its power of sale, execution may be made upon or Mortgagee may exercise its power of sale against any one or more of the properties, lots or parcels and not upon the others, or upon all of such properties or parcels, either together or separately, and at different times or at the same time, and execution sales or sales under the power of sale herein granted may likewise be conducted separately or concurrently, in each case at the election of Mortgagee. No event of enforcement taking place in any state other than the State shall (and no failure to prosecute any such other enforcement) in any way stay, preclude or bar enforcement of this Mortgage and Mortgagee may pursue any or all of Mortgagee's rights and remedies under this Mortgage to the maximum extent permitted by State law until the Obligations are paid and discharged in full.

4.11 No Merger. In the event of a foreclosure of this Mortgage, the Obligations then due Mortgagee shall not be merged into any decree of foreclosure entered by the court, and Mortgagee may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Obligations.

4.12 Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied to the restoration of the Property shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In case of the foreclosure of this Mortgage, the court in its judgment may provide that the judgment creditor may cause a new or additional loss clause to be attached to each of said policies making the loss thereunder payable to said judgment creditor; and any such foreclosure judgment may further provide, unless the right of redemption has been waived, that in case of redemption under said judgment, pursuant to applicable law then, and in every such case, the redemptory may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redemptory. In the event of foreclosure sale, Mortgagee is hereby authorized, but not required, without the consent of Mortgagor, to assign or cause a receiver to assign any and all insurance policies to the purchaser at the sale, or to take such other action as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

4.13 Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisalment, valuation, redemption, stay, extension, or exemption laws, or any so-called "moratorium laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and Mortgagor hereby waives the benefit of such

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laws (to the extent permitted by applicable law). Mortgagor, for itself and all who may claim through or under it, waives any and all rights to have the Property and estates comprising the Property marshaled upon any foreclosure of the lien of this Mortgage, and agrees that any court having jurisdiction to foreclose such lien may order the Property sold in its entirety. Mortgagor further waives any and all rights of redemption from foreclosure and from sale under any order or decree of foreclosure (whether full or partial) of the lien created by this Mortgage, pursuant to Section 15-1601(b) of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (as amended from time to time, the "Act"), and all rights of reinstatement under Section 15-1602 of the Act, for itself and on behalf of: (i) any trust estate of which the Premises are a part and all beneficially interested persons; (ii) each and every person acquiring any interest in the Property or title to the Premises subsequent to the date of this Mortgage; and (iii) all other persons to the extent permitted by the provisions of laws of the State. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act). Further, Mortgagor acknowledges that the Loans constitute a business loan which comes within the purview of Subparagraph 1(c) of Section 4 of the Interest Act (815 ILCS 205/3.01 et seq.).

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### MISCELLANEOUS

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

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

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

5.04 GOVERNING LAW. THIS MORTGAGE SHALL BE CONSTRUED, GOVERNED AND ENFORCED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK, PROVIDED, HOWEVER, THAT MATTERS OF CREATION, PERFECTION, PRIORITY OR ENFORCEABILITY OF ANY AND ALL LIENS AND SECURITY INTERESTS AND RIGHTS AND REMEDIES PROVIDED FOR HEREIN SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED. TO THE EXTENT THAT THIS MORTGAGE MAY OPERATE AS A SECURITY AGREEMENT UNDER THE CODE, MORTGAGEE SHALL HAVE ALL RIGHTS AND REMEDIES CONFERRED THEREIN FOR THE BENEFIT OF A SECURED PARTY AS SUCH TERM IS DEFINED IN THE CODE.

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

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

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

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

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

5.10 Deed in Trust. If title to the Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction against the creation of any lien on the Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

5.11 Successors and Assigns. This Mortgage shall be binding upon Mortgagor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through Mortgagor. "Mortgagee", when used herein, shall include Twin Brook Capital Partners, LLC, as Agent for and on behalf of the Lenders, together with its successors, assigns and/or legal representatives. "Mortgagor", when used herein, shall include all such person, and entities and any others liable for the payment of the Secured Indebtedness, or any part thereof, or the performance of any of the other Obligations, whether or not they have executed the Credit Agreement, the Notes, this Mortgage or any other Loan Document.

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

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

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(a) in the event that any provision in this Mortgage shall be inconsistent with any provision of applicable law, the provisions of applicable law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with applicable law;

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

(c) it is the intention of the parties to conform strictly to the usury laws, whether state or federal, that are applicable to the Credit Agreement, the Notes or the Mortgage. All agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid by Mortgagor for the use, forbearance or detention of the money loaned or to be loaned under the Credit Agreement, the Notes or this Mortgage, or for the payment or performance of any covenant or obligation contained herein, in the Credit Agreement or in the Notes, exceed the maximum amount permissible under applicable federal or state usury laws. If under any circumstances whatsoever fulfillment of any provision hereof or of the Credit Agreement or the Notes, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity. If under any circumstances Mortgagor shall have paid an amount deemed interest by applicable law, which would exceed the highest lawful rate, such amount that would be excessive interest under applicable usury laws shall be applied to the reduction of the principal amount owing in respect of the Loans and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal and any other amounts due hereunder, the excess shall be refunded to Mortgagor. All sums paid or agreed to be paid for the use, forbearance or detention of the principal under the Loans shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, prorated, allocated and spread from the date of this Mortgage until payment in full of the Secured Indebtedness so that the actual rate of interest on account of such principal amounts is uniform throughout the term hereof. The terms and provisions of this subparagraph shall control and supersede every other provision of this Mortgage.

5.14 Incorporation of Credit Agreement and Other Loan Documents. The terms of the Credit Agreement and the other Loan Documents (other than the Other Mortgages) are incorporated by reference herein as though set forth in full detail. In the event of any conflict between the terms and provisions of this Mortgage and any other Loan Document (other than the

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Other Mortgages), the terms and provisions of such other Loan Document shall control, and the Credit Agreement shall control over all other Loan Documents.

5.15 Security Agreement. This Mortgage is hereby deemed to also be a security agreement for the purpose of creating hereby a security interest in and to the Personal Property. Without derogating any of the provisions of this Mortgage, Mortgagor, as debtor, by this Mortgage:

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

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

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

(d) agrees that upon or after the occurrence of any Event of Default under this Mortgage, Mortgagee shall have all rights and remedies granted by law (including, without limitation, the Code), including, but not limited to, the right to take possession of the Personal Property, and for this purpose may enter upon any premises on which any or all of the Personal Property is situated without being deemed guilty of trespass and without liability for damages thereby occasioned (except for damages caused by Mortgagee's gross negligence or willful misconduct as determined by a court of competent jurisdiction), and take possession of and operate said Personal Property or remove it therefrom. Mortgagee shall have the further right to take any action it deems necessary, appropriate or desirable, at its option and in its discretion, to repair, refurbish or otherwise prepare the Personal Property for sale, lease or other use or disposition, and to sell at public or private sales or otherwise dispose of, lease or utilize the Personal Property and any part thereof in any manner authorized or permitted by law and to apply the proceeds thereof toward payment of any costs and expenses, to the extent permitted by law, thereby incurred by Mortgagee and toward payment of the Secured Indebtedness and all other indebtedness described in this Mortgage, in such order and manner as is provided in Section 4.08 hereof. To the extent permitted by law, Mortgagor expressly waives any notice of sale or other disposition of the Personal Property and any other rights or remedies of a debtor or formalities prescribed by law relative to a sale or

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disposition of the Personal Property or to exercise any other right or remedy existing after default hereunder; and to the extent any notice is required and cannot be waived, Mortgagor agrees that if such notice is given in accordance with Section 5.01 or is deposited for mailing, postage prepaid, certified mail or registered mail, return receipt requested, to Mortgagor at the address designated in the first page of this Mortgage at least fifteen (15) days before the time of sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirements for giving of said notice; provided that if Mortgagor has furnished Mortgagee with notice of a change of address in accordance with Section 5.01, then any such notice shall not be reasonable unless sent to the new address;

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

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

To the extent any items of Personal Property are or are to become fixtures upon the Premises under applicable law, and to the extent permitted under applicable law, the recording hereof in the real estate records of the county in which the Premises is located shall operate from the time of recording as a fixture filing or fixture financing statement with respect to such Premises, and the following information is applicable for the purpose of such fixture filing, to wit:

<b>Name and Address of the Debtor:</b> The Mortgagor having an address set forth on first page hereof.	<b>Name and Address of the Secured Party:</b> The Mortgagee having an address set forth on the first page hereof.
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**This Financing Statement covers the following types or items of property:**

The Premises.

This instrument covers all of the Personal Property which is or is to become fixtures upon the Premises described in Exhibit "A" attached hereto.

The name of the record owner of the Premises on which such fixtures are or are to be located is the Mortgagor.

This financing statement (fixture filing) is intended to be filed for record in the real estate records of the county in which the Premises is located.

5.16 Future Advances; Revolving Credit Advances. At all times, regardless of whether proceeds of the Loans have been or shall be disbursed by the Lenders or their respective successors or assigns, this Mortgage also secures the payment of and includes all amounts owing with respect to all (i) future and further advances, re-advances, revolving credit advances and re-borrowings of the Loans (including letters of credit) (ii) future loan disbursements and other advances (including letters of credit) made by the Lenders under the Credit Agreement, the Notes, this Mortgage or any other Loan Document, and (iii) all other sums from time to time owing to the Lenders under the Credit Agreement, the Notes, this Mortgage or any other Loan Document (collectively, "Future Advances"). Future Advances, whether obligatory or discretionary, shall be deemed obligatory for purposes of this Mortgage, attach upon execution and delivery and have the same priority from the time of recording of this Mortgage as if they were made or issued on the date of the execution of this Mortgage, and bear interest at the same rate(s) as specified in the Credit Agreement unless such interest rate(s) shall be modified by subsequent agreement, which interest rate(s) may be variable. The parties hereby acknowledge and intend that all advances, including Future Advances whenever hereafter made, shall be secured by this Mortgage. Notwithstanding the foregoing, while the total amount of Secured Indebtedness secured by this Mortgage may decrease or increase from time to time, the maximum principal amount secured at any one time, subject to Section 5.19 hereof, shall not exceed the lesser of: (i) the maximum principal sum permitted by the laws of the State or (ii) \$118,000,000.00, together with interest and fees thereon and any and all disbursements made by Mortgagee for the payment of taxes, special assessments, insurance on the Property, and any other Protective Advances and for reasonable attorneys' fees, loan commissions, service charges, liquidated damages, expenses and court costs incurred in the collection of any or all of such sums of money, with interest on all such disbursements. This Mortgage is given, in whole or in part, to secure a "revolving credit" loan, as defined and authorized under 205 ILCS 5/5d, 205 ILCS 105/1-6b, 815 ILCS 205/4.1 and 735 ILCS 5/15-1207(b). Nothing in this Section or in any other provision of this Mortgage shall be deemed an obligation on the part of Mortgagee and/or any Lender to make any Future Advances other than in accordance with the terms and provisions of the Credit Agreement.

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

5.18 Counterparts. This Mortgage may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument.

5.19 Creditor's Rights and Fraudulent Conveyance Savings. Notwithstanding any provision herein contained to the contrary, Mortgagor's liability under this Mortgage shall be limited to an amount not to exceed as of any date of determination the amount which could be claimed by Mortgagee from Mortgagor under this Mortgage without rendering such claim voidable or avoidable under section 548 of the Bankruptcy Code (title 11, U.S.C.) or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law (collectively, the "Avoidance Laws") after taking into account, among other things, Mortgagor's right of contribution and indemnification from each other Loan Party, if any, it being understood that such liability shall at all times equal or exceed the amount of the Loans made and disbursed directly to or for the direct benefit of Mortgagor. To the end set forth above, but only to the extent that the Obligations of Mortgagor hereunder would otherwise be subject to avoidance under the Avoidance Laws, if Mortgagor is not deemed to have received valuable consideration, fair value, fair consideration or reasonably equivalent value for the Obligations, or if the Obligations would render Mortgagor insolvent, or leave Mortgagor with an unreasonably small capital to conduct its business, or cause Mortgagor to have incurred debts (or to have intended to have incurred debts) beyond its ability to pay such debts as they mature, in each case as of the time any of the Obligations is deemed to have been incurred for the purposes of the Avoidance Laws, the maximum amount of Obligations for which Mortgagor shall be liable hereunder shall be reduced to that amount which, after giving effect thereto, would not cause the Obligations as so reduced, to be subject to avoidance under the Avoidance Laws.

5.20 Additional Provisions. The following provisions shall also constitute an integral part of this Mortgage. Furthermore, in the event that any prior provisions of this Mortgage conflict with the following provisions of this Section, the provisions of this Section shall control and shall be deemed a modification of or amendment to the section or provision at issue:

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

(b) No Assumption of Obligations. In the event of a foreclosure of the Property, neither Mortgagee nor any Lender shall assume any liability of Mortgagor for

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Mortgagor's violation of any environmental laws, statutes, codes, regulations, or practices and Mortgagor's indemnifications as contained herein and in the Credit Agreement and the other Loan Documents shall survive said foreclosure.

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

(d) Subordination of Property Manager's Lien and Real Estate Broker's Lien. Any property management agreement for the Property entered into hereafter by Mortgagor with a property manager shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager may have pursuant to the Illinois Mechanics Lien Act, 770 ILCS 60/1 et seq. Such property management agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the County where the Property is located. In addition, Mortgagor shall use commercially reasonable efforts to cause the property manager to enter into a subordination of management agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property

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


*[signature and notary pages follow]*

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

**Mortgagor:**

**BEAVER OIL, LLC,**  
an Illinois limited liability company

By:   
\_\_\_\_\_

Printed: Brandon Velek

Its: CEO

Property of Cook County Clerk's Office

[notary page follows]

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STATE OF TEXAS

SS:

COUNTY OF HARRIS

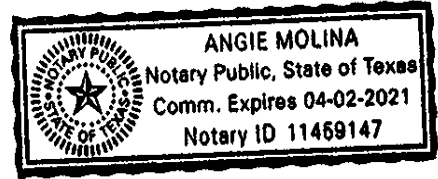
On this 30<sup>th</sup> day of MAY, 2019 before me, the undersigned, a Notary Public in and for the State of TEXAS, personally known, who, being by me duly sworn, did say that he is BRANDON VELEK, the CEO of BEAVER OIL, LLC, an Illinois limited liability company, and that the instrument was signed and sealed by him on behalf of said BEAVER OIL, and that the foregoing signatory acknowledged the execution of the instrument to be the voluntary act and deed of said BRANDON VELEK.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

*Angie Molina*

Notary Public  
(Seal)

My commission expires: 04-02-2021



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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

LOTS 1, 2, 3 AND 4 (EXCEPT THE NORTH 13.0 FEET THEREOF) IN BLOCK 3 IN LENZIE FIRST ADDITION TO HODGKINS, IN THE WEST 1/2 OF THE SOUTHWEST 1/4 AND THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 38 NORTH RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 38 NORTH RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION, THENCE NORTH ALONG THE WEST LINE OF SAID SECTION, A DISTANCE OF 985.50 FEET, THENCE EAST ON A LINE FORMING A RIGHT ANGLE WITH THE WEST LINE OF SAID SECTION A DISTANCE OF 247 FEET TO CORNER OF LENZIE'S FIRST ADDITION TO HODGKINS, THE PLACE OF BEGINNING, THENCE CONTINUING EAST ALONG THE LAST DESCRIBED COURSE A DISTANCE OF 264.20 FEET, THENCE NORTH 10 DEGREES 00 MINUTES 30 SECONDS EAST A DISTANCE OF 331 FEET, THENCE NORTH 21 DEGREES 08 MINUTES 30 SECONDS EAST A DISTANCE OF 120 FEET, THENCE NORTH 23 DEGREES 10 MINUTES 00 SECONDS 162.48 FEET TO AN ANGLE POINT IN THE EAST LINE OF LOT 4 IN BLOCK 3 IN LENZIE'S FIRST ADDITION TO HODGKINS, THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF LENZIE'S FIRST ADDITION TO HODGKINS A DISTANCE OF 727.22 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

THE NORTH 13.0 FEET OF LOT 4 AND ALL OF LOTS 5, 6 AND 7 IN BLOCK 3 IN LENZIE FIRST ADDITION TO HODGKINS IN THE WEST 1/2 OF THE SOUTHWEST 1/4 AND THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 38 NORTH RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address(es): 6037 Lenzi Ave., Hodgkins, IL 60525

PIN(s): 18-15-302-015-0000  
18-15-302-016-0000