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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1921106158

Doc# 1921106158 Fee \$88.00

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

EDWARD H. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 07/30/2019 04:14 PM PG: 1 OF 60

The property identified as: PIN: 08-14-403-022-0000

Address:

Street: 1500 NORTH ELMHURST ROAD

Street line 2:

City: MOUNT PROSPECT

State: IL

ZIP Code: 60056

Lender: PSL AUSTIN LENDING LLC

Borrower: 24 MOUNT PROSPECT, LLLP AND LHE MOUNT PROSPECT, LLC

Loan / Mortgage Amount: \$22,000,000.00

This property is located within the program area and is exempt from the requirements of 705 ILCS 77/70 et seq. because it is commercial property.

Certificate number: E28A32F2-CC29-4890-91A7-A6BBFB7146EC

Execution date: 7/17/2019

S Y
P 60
S L
M 1
SC Y
E 1
INT 2019

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

PSL AUSTIN LENDING LLC
 100 Congress Avenue
 Suite 1550
 Austin, Texas 78701
 Attn: Theresa Risenhoover

Permanent Index Nos.: 08-14-403-022-0000 Vol. 049;
 08-14-403-027-0000 Vol. 049;
 08-14-403-028-0000 Vol. 049

**MORTGAGE,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING
 (CONSTRUCTION)**

This Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (herein referred to as the "**Mortgage**"), is executed as of the date indicated below but effective as of the Effective Date (defined below), by **24 MOUNT PROSPECT, LLLP**, a Delaware limited liability limited partnership, and **LHE MOUNT PROSPECT, LLC**, an Illinois limited liability company as tenants in common, whose mailing address for notice hereunder is 4683 Chabot Drive, Suite 220, Pleasanton, CA 94588 (collectively, "**Borrower**"), for the benefit of **PSL AUSTIN LENDING LLC**, a Texas limited liability company, whose mailing address for notice hereunder is 100 Congress Avenue, Suite 1550, Austin, Texas 78701 (together with its successors and assigns, "**Lender**").

WITNESSETH:**ARTICLE ONE:
DEFINITIONS**

Section 1.01. **Definitions.** As used herein, the following terms shall have the following meanings:

24HF Lease: A prospective lease agreement that may be executed (subject to Lender's approval rights set forth in this Agreement) between Borrower, as landlord, and 24 Hour Fitness

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USA, Inc., a California corporation, as tenant, in accordance with the terms of the Loan Agreement.

24HF Premises: The currently vacant premises within the Project consisting of the 24HF square footage (as defined in Exhibit H), which would be leased to 24 Hour Fitness USA, Inc., a California corporation, if the 24HF Lease is approved and executed.

Act: The Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as from time to time amended.

Affiliate: When used with respect to any Person, any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), with respect to any Person, means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

Architect: Such architect to be engaged by Borrower in connection with the Tenant Work, who shall be approved in writing by Lender in its sole discretion.

Architectural Barrier Laws: Any and all architectural barrier laws including, without limitation, the Fair Housing Act, the Americans with Disabilities Act of 1990, P.L. 101-336, and the applicable state law where the Mortgaged Property is located, as amended, or any successor thereto.

Assignment of Construction Documents: Has the meaning set forth in the Loan Agreement.

Assignment of Leases and Rents: The Assignment of Leases and Rents dated of even date herewith pursuant to which Borrower grants to Lender as security an assignment and security interest in of leases and rents from the Mortgaged Property (as that term is defined in this Mortgage) to secure the loan represented by the Note, as the same may be extended, amended and/or modified from time to time, and as more specifically set forth in that assignment.

Charges: shall mean all fees, charges and/or other things of value, if any, contracted for, charged, received, taken or reserved by Lender in connection with the transactions relating to the Note and the Loan Documents, which are treated as interest under applicable law.

Code: The Uniform Commercial Code, as amended from time to time, in effect in the State of Illinois or any other state in which the Mortgaged Property is located or having jurisdiction with respect to any of the rights of Lender under the Loan Documents.

Constituent Party: Any signatory to this Mortgage that signs on Borrower's behalf that is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business organization.

Construction Contracts: The General Contract together with any and all contracts, subcontracts, and agreements, written or oral, between Borrower and any other party, and between parties other than Borrower, in any way relating to the construction of the Improvements on the

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Land or the supplying of material (specially fabricated or otherwise), labor, supplies, or other services therefor, all of which shall be approved in writing by Lender in its reasonable discretion, provided that upon an Event of Default any such approval shall be in the sole discretion of Lender.

Contracts: All of the right, title, and interest of Borrower, including equitable rights, in, to, and under any and all (i) contracts for the purchase of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments and supplements to and renewals and extensions of the contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from the contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each Governmental Authority required: (a) to evidence compliance by Borrower and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property, and (b) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (iii) any and all right, title, and interest Borrower may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; and (iv) all other contracts which in any way relate to the construction, development, use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Leases), including but not limited to maintenance and service contracts and management agreements.

Default Rate: The rate of interest specified in the Note to be paid by the maker of the Note from and after the occurrence of a default in payment under the provisions of the Note and Loan Documents but not in excess of the Maximum Lawful Rate and not in excess of any rate which would violate or cause a violation of applicable Legal Requirements.

Design Professional: Each Engineer, interior designer, space planner, landscape designer or other person or entity with whom Borrower contracts for the providing of planning, design, engineering or other similar services relating to the Tenant Work, each of whom shall be approved in writing by Lender in its sole discretion.

Disposition: Any sale, lease (except as permitted under this Mortgage), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the controlling beneficial ownership interest in Borrower (if Borrower is a corporation, limited liability company, general partnership, limited partnership, joint venture, trust, or other type of business organization or legal entity), or any transfer by either tenant in common comprising Borrower, whether direct or indirect, and

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regardless of how remote; provided, however, that a Partial Release (as defined in the Loan Agreement) executed strictly in accordance with Section 9.25 of the Loan Agreement shall not be considered a Disposition.

Effective Date: As defined in Exhibit "C".

Engineer: Such engineer to be engaged by Borrower who is approved by Lender in its sole discretion, in connection with the Tenant Work, all of whom shall be approved in writing by Lender in its sole discretion.

Environmental Law: Any and all present and future federal, state, and local laws, statutes, ordinances, regulations, permits, guidance documents, policies, and any other requirements of governmental authorities relating to any hazardous substances or the protection of the environment, industrial hygiene, or the safety and health of persons or animals, in each case on, under, or about the Project including, without limitation, the following, as they pertain to the Project, as now or hereafter amended: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§9601, *et. seq.*) as heretofore or hereafter amended from time to time (CERCLA), the Resource Conservation Recovery Act (RCRA), the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Clean Water Act, the Endangered Species Act, the Clean Air Act, the Occupational Health and Safety Act, Emergency Planning and Community Right to Know Act, Federal Water Pollution Control Act; and all similar federal, state and local environmental laws, statutes, ordinances; and the rules, regulations, orders, decrees, standards and guidance documents promulgated or published thereunder, and as such rules, regulations, orders, decrees, standards and guidance documents are amended from time to time.

Event of Default: As defined in Article IV hereof.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Borrower and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Borrower and are now or hereafter attached to the Land or the Improvements, and including but not limited to any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and lighting, traffic control, waste disposal, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

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General Contract: The general contract(s) between Borrower and General Contractor pertaining to the construction of the Tenant Work, all of which shall be approved in writing by Lender in its sole discretion.

General Contractor: The general contractor approved by Lender in Lender's sole discretion named in the Construction Contract, who is licensed to conduct business in the state where the Land is located and has appropriate bonding capacity and the requisite experience and financial capacity to complete the Tenant Work, or such substitute, replacement or additional contractor approved by Lender in Lender's sole discretion.

Governmental Authority: The United States, each state, each county, each city, and each other political subdivision in which all or any portion of the Mortgaged Property is located, and each other political subdivision, agency, or instrumentality exercising jurisdiction over Borrower, Lender, Guarantor, any Constituent Party or the Mortgaged Property, domestic or foreign.

Borrower: The entity described as Borrower in the initial paragraph of this Mortgage and any and all subsequent owners of the Mortgaged Property or any part thereof (without hereby implying Lender's consent to any Disposition of all or any part of the Mortgaged Property).

Guarantor: As defined in Exhibit "C".

Guaranty: That or those continuing Guaranty Agreement(s) now or hereafter in effect from Guarantors to Lender guaranteeing the completion of the Tenant Work and payment of the Indebtedness, as the same may be amended, modified, restated, ratified, supplemented or replaced from time to time.

Impositions: (i) All real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon the Project or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Project; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Project; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Project.

Improvements: (i) Any and all improvements of any kind or nature currently existing on the Land as of the Effective Date (ii) once constructed, any and all improvements relating to the Tenant Work as described in the Plans, (iii) once constructed, any items related to the construction, installation, equipping or decoration of the Project outside the 24HF Premises required by the 24HF Lease but not covered by the Plans, and (iv) any and all additions, alterations, betterments or appurtenances to any of the foregoing, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

Indebtedness: (i) The principal of, interest on, or other sums evidenced by the Note and the Loan Documents including, without limitation, interest at the Default Rate defined herein; (ii) any other amounts, payments, or premiums payable under the Loan Documents; (iii) such

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additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from Lender, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by Borrower and Lender that such future indebtedness may be incurred); and (iv) any and all other indebtedness, obligations, and liabilities of any kind or character of Borrower to Lender, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, or direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations, and liabilities to Lender of Borrower as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Borrower as principal, surety, endorser, guarantor, accommodation party or otherwise, and (v) any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements, and extensions of items (i) – (iv), it being contemplated by Borrower and Lender that Borrower may hereafter become indebted to Lender in further sum or sums. Notwithstanding the foregoing provisions of this definition, this Mortgage shall not secure any such other loan, advance, debt, obligation or liability with respect to which Lender is by applicable law prohibited from obtaining a lien on real estate, nor shall this definition operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt or obligation of any other person to the extent that the same would violate or cause a violation of or exceed the limit provided in any applicable usury or other law.

Land: All that certain real property located in the Location (as defined in Exhibit "C"), more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, together with all right, title, interest, and privileges of Borrower in and to (i) all streets, ways, roads, alleys, easements, rights -of -way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber and crops pertaining to such real estate; and (iv) all appurtenances and all reversions and remainders in or to such real property.

Leases: As defined in Exhibit "C".

Legal Requirements: (i) Any and all present and future judicial decisions, statutes (including Architectural Barrier Laws and Environmental Laws), rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Borrower (and each tenant in common), any Guarantors, or the Project, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, construction, operation, maintenance, alteration, repair, or reconstruction of the Project, (ii) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in any way or are applicable to the Project or the ownership, use, or occupancy thereof, (iii) Borrower's (and each tenant in common's) or any Guarantor's presently or subsequently effective bylaws and articles of incorporation, operating agreement and articles of organization or partnership, limited partnership, joint venture, trust, or other form of business association agreement, (iv) any and all Leases, (v) any and all contracts, and (vi) any and all leases, other than those described in (iv) above, and other contracts (written or oral), other than those described in (v) above, of any nature that relate in any way to the Project and to which

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Borrower (or any tenant in common) or any Guarantors may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Borrower is granted a possessory interest in and to either or both of the Land or the Improvements.

Lessee: As defined in Exhibit "C".

Lien: Any valid and enforceable interest in any property, whether real, personal or mixed, securing an indebtedness, obligation or liability owed to or claimed by any Person other than the owner of such property, whether such indebtedness is based on the common law or any statute or contract and including, but not limited to liens created by or pursuant to, a security interest, pledge, mortgage, assignment, conditional sale, trust receipt, lease, consignment or bailment for security purposes.

Loan Agreement: The Construction Loan Agreement of even date herewith by and between Borrower, as borrower, and Lender, as lender, governing advances under the loan evidenced by the Note and secured, inter alia, by the liens created by this Mortgage.

Loan Documents: The Loan Agreement, the Note, this Mortgage, the Assignment of Leases and Rents, the Environmental Indemnity Agreement, the Guaranty, and any and all other documents, instruments and agreements, now or hereafter executed by Borrower, Guarantor, or any other person or party in connection with the loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations, together with any and all renewals, amendments, modifications, rearrangements, consolidations, reinstatements, enlargements, or extensions of such loan documents.

Maximum Lawful Rate: The maximum lawful rate or amount of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable state law (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under applicable state law without violating or causing a violation of state law), taking into account all Charges and other amounts payable or made in connection with the transaction evidenced by the Note and the other Loan Documents. To the extent that Chapter 303 of the Texas Finance Code applies to determine the Maximum Lawful Rate payable on the Note and/or the Related Indebtedness, without violating or causing a violation of any applicable state law, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law without violating or causing a violation of any applicable state law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

Minerals: All substances in, on, under, or above the Land which are now, or may become in the future, intrinsically valuable (that is, valuable in themselves) and which now or may be in the future enjoyed through extraction or removal from the property, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other non-hydrocarbon

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gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores.

Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Construction Contracts, Plans, Rents, Leases, and any interest of Borrower now owned and hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Construction Contracts, Plans, Rents and Leases, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. As used in this Mortgage, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Note: That certain Promissory Note of even date herewith, incorporated herein by this reference, executed by Borrower and payable to the order of Lender in the Note Amount (as defined in Exhibit "C"), bearing interest at a variable rate as therein specified and as specified in the Loan Agreement, containing an attorneys' fee clause, interest and principal being payable as provided in the Note and the Loan Agreement, and finally maturing on the Maturity Date (as defined therein), and secured by, among other things, this Mortgage; and any and all renewals, modifications, amendments, rearrangements, consolidations, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, substitution or replacement of such promissory note.

Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower to Lender or others as set forth in the Loan Documents, the Leases, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Operating Expenses: All costs and expenses related to the ownership, operation, management, repair and leasing of the Mortgaged Property, including, without limitation, ground lease payments, costs and expenses associated with the operation of any parking facility associated with and constituting a part of the Mortgaged Property, insurance charges and premiums for coverages related to the Mortgaged Property, Impositions, the costs of prevention of waste, ordinary repairs, maintenance, environmental audits, property management, security, normal fees paid to accountants, reasonable marketing and promotional expenses, reasonable legal expenses, the cost and expense of all obligations under the Leases and all costs related to compliance with Legal Requirements.

Permitted Exceptions: The liens, easements, restrictions, security interests, and other matters (if any) as reflected on Exhibit "B" attached hereto and incorporated herein by reference and the liens and security interests created by the Loan Documents.

Person: Any individual, corporation, partnership (general or limited), joint venture, limited liability company or partnership, association, trust, venture, unincorporated association, joint stock company, government, municipality, political subdivision or agency, or other entity.

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Personalty: All of the right, title, and interest of Borrower in and to (i) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and as-extracted collateral); (ii) general intangibles, money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, chattel paper, instruments, investment property, letter of credit rights, and inventory; (iii) all cash funds, fees (whether refundable, returnable or reimbursable), deposit accounts or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Borrower with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, Construction Contracts, or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and (iv) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Borrower, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

Plans: Any final plans, working drawings, and specifications for the performance of the Tenant Work, prepared by Borrower, the Architect, the Engineer or the Design Professional and approved by Lender as required in the Loan Agreement, by all applicable Governmental Authorities, by any party to a purchase or Construction Contract with a right of approval, all amendments and modifications thereof approved in writing by the same, and all other design, engineering or architectural work, contracts, test reports, surveys, shop drawings, and related items.

Project: The collective reference to (i) the Land, together with all buildings, structures and improvements located or to be located thereon, including the Improvements (ii) all rights, privileges, easements and hereditaments relating or appertaining thereto, and (iii) all personal property, fixtures and equipment required or beneficial for the operation thereof.

Related Indebtedness: Any and all debt paid or payable by Borrower to Lender pursuant to the Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, except such debt which has been paid or is payable by Borrower to Lender under the Note.

Rents: All rents from all or any portion of the Mortgaged Property, including without limitation, any royalties, issues, bonus monies, revenues, income, proceeds, profits, security and other types of deposits, impounds, reserves, tax refunds, termination payments, cancellation payments, option payments, service reimbursements, prepaid rents, damages payable upon a default under any Lease, concession fees, lease termination payments, and other rights to revenues and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing,

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operating from, residing in, selling, or otherwise enjoying all or any portion of the Mortgaged Property.

Subordinate Mortgage: As defined in Section 6.09 of this Mortgage.

Tenant Work: Construction and tenant improvement work that Landlord is obligated to perform or fund pursuant to the 24HF Lease (if such lease is executed after the Effective Date) for the benefit of the tenant under the 24HF Lease.

Section 1.02. Additional Definitions. As used herein, the following terms shall have the following meanings:

(a) "Hereof," "hereby," "hereto," "hereunder," "herewith," and similar terms mean of, by, to, under and with respect to, this Mortgage or to the other documents or matters being referenced.

(b) "Heretofore" means before, "hereafter" means after, and "herewith" means concurrently with, the date of this Mortgage.

(c) All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require.

(d) "Including" means including, without limitation.

(e) All terms used herein, whether or not defined in Section 1.01 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

ARTICLE TWO: GRANT

Section 2.01. Grant. To secure the full and timely payment of the indebtedness and the full and timely performance and discharge of the Obligations, Borrower has GRANTED, BARGAINED, SOLD, TRANSFERRED, ASSIGNED and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, TRANSFER, ASSIGN and CONVEY, unto Lender the Mortgaged Property, subject, however, to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property unto Lender, forever, and Borrower does hereby bind itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Lender against every person whomsoever lawfully claiming or to claim the

same or any part thereof; provided, however, that if Borrower shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interests, estates, and rights granted by the Loan Documents shall terminate, in accordance with the provisions hereof, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Lender confirming that the Indebtedness has not been fully paid or the

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Obligations have not been fully performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

ARTICLE THREE: REPRESENTATIONS AND COVENANTS

Section 3.01. Representations and Warranties. Borrower (and each tenant in common) represents and warrants that:

(a) Borrower has good and indefeasible title to the Land, Improvements and Fixtures in fee simple free from any encumbrance superior to the indebtedness hereby secured, subject only to the Permitted Exceptions. This Mortgage constitutes a valid, subsisting first lien on the Land, the Improvements, and the Fixtures; a valid, subsisting first priority security interest in and to the Fixtures, Personalty, and Contracts; and all subject to the Permitted Exceptions;

(b) Borrower has or will have good title to all of the Mortgaged Property;

(c) Borrower (and each tenant in common) has the power, right and authority to execute and deliver this Mortgage, to encumber the Mortgaged Property, and to assign the Rents;

(d) The Mortgaged Property is taxed separately without regard to any other real estate and the Land constitutes a legally subdivided lot under all applicable laws and regulations (or, if not subdivided, no subdivision or platting of the Land is required under applicable laws or regulations), and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel;

(e) The loan evidenced by the Note is solely for the purpose of carrying on or acquiring a business of Borrower, and is not for personal, family, household or agricultural purposes; and

(f) No part of the Mortgaged Property is Borrower's homestead of any type or character.

Section 3.02. Covenants. Unless Lender otherwise consents in writing, Borrower (and each tenant in common) hereby covenants and agrees as follows:

(a) If any action or proceeding shall be instituted to evict Borrower or to recover possession of the Land or for any other purpose affecting this Mortgage, Borrower will, immediately upon service thereof on or to Borrower, deliver to Lender a true copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings, and papers, however designated, served in any such action or proceeding.

(b) If any action, proceeding, motion or notice shall be commenced or filed in respect of the Land in connection with any case under the Bankruptcy Code, Lender shall have the option, exercisable upon notice from Lender to Borrower, to conduct and control any such litigation with counsel of Lender's choice. Lender may proceed in its own name or in the name of Borrower in connection with any such litigation, and Borrower agrees to execute any and all powers, authorizations, consents or other documents reasonably required by Lender in connection

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therewith. Borrower shall, upon demand, pay to Lender all costs and expenses (including attorneys' fees) paid or incurred by Lender in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Borrower as aforesaid shall be secured by the lien of this Mortgage and shall be added to the principal amount of the indebtedness secured hereby.

(c) Borrower will pay all Impositions of every kind upon the Mortgaged Property before the same become delinquent, provided, however, that Borrower shall have the right to pay such Imposition under protest or to otherwise contest any such Imposition, but only if (a) such contest has the effect of preventing the collection of such Imposition so contested and also of preventing the sale or forfeiture of the Mortgaged Property or any part thereof or any interest therein, (b) Borrower has notified Lender of Borrower's intent to contest such Imposition, and (c) Borrower has deposited security in form and amount satisfactory to Lender, in its sole discretion, and has increased the amount of such security so deposited promptly after Lender's request therefor. Notwithstanding the foregoing, Borrower shall immediately upon request of Lender pay any such Imposition notwithstanding such contest if in the reasonable opinion of Lender the Mortgaged Property or Lender's rights with respect thereto shall be in jeopardy or in danger of being forfeited or foreclosed. If Borrower fails to commence such contest or, having commenced to contest the same, and having deposited such security required by Lender for its full amount, shall thereafter fail to prosecute such contest in good faith or with due diligence, or, upon adverse conclusion of any such contest, shall fail to pay such Imposition, Lender may, at its election (but shall not be required to), pay and discharge any such Imposition, and any interest or penalty thereon, and any amounts so expended by Lender shall be deemed to constitute advances of the loan under the Loan Agreement (even if the total amount of the advances would exceed the face amount of the Note). Borrower shall furnish to Lender evidence that Impositions are paid at least five (5) days prior to the last date for payment of such Imposition and before imposition of any penalty or accrual of interest.

(d) Borrower will purchase and maintain policies of insurance with respect to the Property with such insurers, in such amounts and covering such risks as shall be satisfactory to Lender, in accordance with the Loan Agreement.

(e) Borrower (and each tenant in common) will preserve and maintain in full force and effect its legal existence and preserve and maintain such of its rights, licenses, and privileges as are material to the business and operations conducted by it; qualify and remain qualified and in good standing to do business in each jurisdiction in which the Land is located; continue to conduct and operate its business substantially as conducted and operated during the present and preceding calendar year; at all times maintain, preserve and protect all of its franchises and trade names and preserve all the remainder of its property and keep the same in good repair, working order and condition; and from time to time make, or cause to be made, all needed and proper repairs, renewals, replacements, betterments and improvements thereto.

(f) Borrower will keep the Mortgaged Property in first-class order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto in and to the Mortgaged Property, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same the Mortgaged Property in such first-class order and

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condition. Borrower will prevent any act, occurrence, or neglect which might impair the value or usefulness of the Mortgaged Property for its intended usage as set forth in the Plans or elsewhere in the Loan Documents, excluding acts or occurrences of ordinary wear and tear.

(g) Borrower (and each tenant in common) will maintain its/their status as a Single Purpose Entity (as that term is defined in the Loan Agreement).

(h) Borrower will correct: (a) any structural defect in the Improvements; (b) any material departure from the Plans not approved in writing by the Lender; (c) except for any encroachment present before closing, any encroachment by any part of the Improvements or any other structures or improvements over or on any set back line, easement, adjoining property or other restricted area; and (d) any encroachment of any adjoining structure upon the Land which any survey or inspection reflects.

(i) Borrower will not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, the Mortgaged Property in any manner which (a) violates any Legal Requirement, (b) may be dangerous, unless appropriately safeguarded as required by law and/or appropriate insurance, (c) constitutes a public or private nuisance, or (d) makes void, voidable, or cancellable, or increases the premium of, any insurance then in force with respect thereto the Mortgaged Property.

(j) Borrower will not initiate or permit any zoning reclassification of the Mortgaged Property or seek any variance under existing zoning ordinances applicable to the Mortgaged Property or use or permit the use of the Mortgaged Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other applicable laws. Borrower shall not cause or permit any drilling or exploration for, or extraction, removal or projection of, minerals from the surface or subsurface of the Mortgaged Property. Borrower shall not operate the Mortgaged Property, or permit the Mortgaged Property to be operated, as a cooperative or condominium building or buildings in which the tenants or occupants participate in the ownership, control or management of the Mortgaged Property or any part thereof, as tenant stockholders or otherwise.

(k) Borrower will not create, incur, assume or suffer to exist any Lien upon, or create, suffer or permit to exist any Lien upon the Mortgaged Property, or any part thereof, except for Permitted Exceptions.

(l) Unless otherwise prohibited by applicable law, should any tax (other than a tax based upon the net income of Lender) or recording or filing fee become payable upon this Mortgage, any rights, titles, liens or security interests created hereby any of the Mortgaged Property, any of the Indebtedness or any amendment, modification or supplement hereof or thereof, Borrower agrees to pay such taxes (or reimburse Lender therefor upon demand for reimbursement), together with any interest or penalties thereon, and agrees to hold Lender harmless with respect to all such taxes, interest or penalties.

(m) Subject to the provisions of this Mortgage, Borrower will pay Lender, on demand, all costs and expenses, including, without limitation, reasonable attorneys' fees and legal expenses (whether inside or outside counsel is used), incurred by Lender to third parties incident to this

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Mortgage or any other Loan Document (including, but not limited to, reasonable attorneys' fees and expenses in connection with the negotiation, preparation and execution of this Mortgage and of any other Loan Document and any amendment hereto or thereto, any release hereof, any consent, approval or waiver hereunder or under any other Loan Document, the making of any advance under the Note, and any suit to which Lender is a party involving this Mortgage or the Mortgaged Property) or incident to the enforcement of the Indebtedness or Obligation or the exercise of any right or remedy of Lender under any Loan Document.

(n) Borrower will deliver to Lender, promptly after request therefor, estoppel certificates or written statements, duly acknowledged, stating the amount that has then been advanced to Borrower under the Loan Agreement, the amount due on the Note, and whether any offsets or defenses exist against the Note or any of the other Loan Documents (and the nature of any such offsets or defenses).

(o) Borrower shall not cause or permit the Fixtures or any part thereof, to be removed from the county and state where the Land is located, except items of the Fixtures which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new.

ARTICLE FOUR: EVENTS OF DEFAULT

Section 4.01. Event of Default. The term "Event of Default," as used herein, shall mean the occurrence of any one or more of the following events or conditions:

- (a) Borrower shall fail, refuse or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in this Mortgage or the Loan Documents, upon acceleration or otherwise; provided, however, that failure, refusal or neglect by Borrower to pay a regularly scheduled monthly installment due pursuant to the Note (other than at the Maturity Date) shall not constitute an "Event of Default" hereunder unless such failure continues for at least five (5) days after Lender's written notice to Borrower of such failure; provided, however, that under no circumstances shall Lender be required to give Borrower more than two (2) such notices in any given 12-month period or more than four (4) notices over the term of loan evidenced by the Note;
- (b) The failure of Borrower to timely and properly, observe, keep or perform any covenant, agreement, warranty or condition required herein, where such failure continues for at least thirty (30) days after Lender's written notice to Borrower of such failure; or
- (c) Any representation, covenant or warranty made by Borrower herein or in any of the other Loan Documents shall be untrue or incorrect in any material respect; or
- (d) if Borrower (or any tenant in common) (i) shall execute an assignment for the benefit of creditors or an admission in writing by Borrower (or any tenant in common) of Borrower's (or any tenant in common's) inability to pay, or Borrower's (or any tenant in common's) failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or

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other writ which is not vacated within sixty (60) days after the levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Borrower (or any tenant in common) or of the Mortgaged Property or any part thereof, which receiver, trustee or custodian is not discharged within sixty (60) days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of Debtor Relief Laws, or takes any action in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Lender granted in the Note, herein or in any Loan Document; or (vi) allows the filing of a petition, case, proceeding or other action against Borrower (or any tenant in common) as a debtor under Debtor Relief Laws or seeks appointment of a receiver, trustee, custodian or liquidator of Borrower (or any tenant in common) or of the Mortgaged Property, or any part thereof, or of any significant portion of Borrower's other property; and (a) Borrower (or any tenant in common) admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Borrower (or any tenant in common), or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of filing; or

- (e) The abandonment of any portion of the Mortgaged Property or any material portion of any of the other property of Borrower (or any tenant in common); or
- (f) The occurrence of any event referred to in Subsections (c) and (d) above with respect to any Guarantor or other person or entity obligated in any manner to pay or perform the Indebtedness or Obligations or any part thereof (as if such Guarantor or other person or entity were "Borrower") in such Subsections;
- (g) an Event of Default as defined in the Loan Agreement occurs; or
- (h) this Mortgage ceases or fails to be or become a first priority lien against the Mortgaged Property.

ARTICLE FIVE: REMEDIES

Section 5.01. Lender's Remedies upon Default. Upon the occurrence of an Event of Default or any event or circumstance which, with the lapse of time, or the giving of notice, or both, would constitute an Event of Default, Lender may, at Lender's option, do any one or more of the following to the extent permitted by applicable law:

- (a) Right to Perform Borrower's Covenants. If Borrower (or any tenant in common) has failed to keep or perform any covenant whatsoever contained in this Mortgage or the other Loan Documents, Lender may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness, and Borrower promises, upon demand, to pay to Lender, at the place

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where the Note is payable, all sums so advanced or paid by Lender, with interest from the date when paid or incurred by Lender at the Default Rate. No such payment by Lender shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Lender shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Lender may make an advance, or which Lender may pay.

(b) Taking Possession, Collecting Rents, Etc. Upon demand by Lender, Borrower shall surrender to Lender and Lender may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Lender, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Borrower relating thereto, and may exclude Borrower and any agents and servants thereof wholly therefrom and may, on behalf of Borrower, or in its own name as Lender and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the Rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage without Lender's prior written consent;

(iv) extend or modify any then existing Leases and make new Leases of all or any part of the Mortgaged Property, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and 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 Borrower, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

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(v) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Lender, to insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all Rents, issues, deposits, profits, and avails therefrom;

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of property taxes, insurance premiums and other charges applicable to the Mortgaged Property, or in reduction of the Indebtedness in such order and manner as Lender shall select, in its sole discretion; and

(vii) receive and collect the Rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Borrower agrees to consent to a receiver if it is believed necessary or desirable by the Lender to enforce its rights under this subsection. The collection of Rents, issues, profits or revenues of the Mortgaged Property by the Lender shall in no way waive the right of the Lender to foreclose this Mortgage in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any Personal Property therein, to manage, operate, conserve and improve the same, and to collect the Rents, issues and profits thereof, shall be in addition to all other rights or remedies of Lender hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Borrower promises to pay upon demand together with interest thereon at the Default Rate. Lender shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any Rents actually received by Lender. Without taking possession of the Mortgaged Property, Lender may, in the event the Mortgaged Property become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Indebtedness payable upon demand with interest thereon at the Default Rate.

(c) **Indemnity. BORROWER (AND EACH TENANT IN COMMON) SHALL AND DOES HEREBY AGREE TO INDEMNIFY LENDER (WHICH SHALL INCLUDE THE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, REPRESENTATIVES AND AGENTS OF LENDER AND ANY PERSONS OR ENTITIES OWNED OR CONTROLLED BY, OWNING OR CONTROLLING, OR UNDER COMMON CONTROL OR AFFILIATED WITH LENDER) FOR, AND TO HOLD LENDER HARMLESS FROM, ANY AND ALL LIABILITY, LOSS, DAMAGE OR EXPENSE, WHICH MAY OR MIGHT BE INCURRED BY LENDER UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF**

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RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE. Should Lender incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, and Borrower shall reimburse Lender therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Lender for the control, care, management, leasing, or repair of the Mortgaged Property, or for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Borrower hereby assents to, ratifies, and confirms any and all actions of Lender with respect to the Mortgaged Property taken under this Subsection.

(d) Right to Accelerate. Lender may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Lender shall not be deemed to be a waiver of any rights or remedies of Lender under the Loan Documents, at law or in equity.

(e) Foreclosure. Lender may proceed to protect and enforce the rights of Lender hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Debt in the decree of sale, all expenditures and expenses authorized by the Act, and all other expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such 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 such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, 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 reasonable fees of any attorney employed by Lender in any litigation

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or proceedings affecting this Mortgage, the Note or the Mortgaged Property, including bankruptcy proceedings, 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 Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

(f) Partial Foreclosure. Sale of a part of the Mortgaged Property shall not exhaust the power of sale, but sales may be made from time to time until the Indebtedness is paid and the Obligations are performed and discharged in full. It is intended by each of the foregoing provisions of this subsection that Lender may sell not only the Land and the Improvements, but also the Fixtures and Personalty and other interests constituting a part of the Mortgaged Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Mortgaged Property separately from the remainder of the Mortgaged Property. It shall not be necessary to have present or to exhibit at any sale any of the Mortgaged Property.

(g) Lender's Right to Appointment of Receiver. Lender shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Borrower or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Property and the Rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Borrower hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Borrower or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, Rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(h) Lender's Uniform Commercial Code Remedies. Lender may exercise its rights of enforcement with respect to Fixtures and Personalty under the Code, and in conjunction with, in addition to or in substitution for the rights and remedies under the Code, Lender may and Borrower agrees as follows:

(i) without demand or notice to Borrower, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable; and

(ii) Lender may require Borrower to assemble the Personalty and make it available at a place Lender designates which is mutually convenient to allow Lender to take possession or dispose of the Personalty; and

(iii) written notice mailed to Borrower as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after

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which private sale of the Personalty will be made shall constitute reasonable notice; and

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under Section 9.604 of the Code; and

(v) in the event of a foreclosure sale, whether made under the terms hereof, or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of Lender, be sold as a whole; and

(vi) it shall not be necessary that Lender take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; and

(vii) prior to application of proceeds of disposition of the Personalty to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by Lender; and

(viii) after notification, Lender may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Lender's offices or elsewhere, for cash, on credit, or for future delivery. Borrower shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Lender in connection with the collection of the Indebtedness and the enforcement of Lender's rights under the Loan Documents. Lender shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of Section 5.04(ii) of this Mortgage. Borrower shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Borrower waives all rights of marshalling in respect of the Personalty; and

(ix) Lender may dispose of the Personalty or Fixtures in its then present condition, has no duty to repair or clean the Personalty or Fixtures prior to sale and may disclaim warranties of title, possession, quiet enjoyment and the like with respect to the Personalty or Fixtures, all without affecting the commercial reasonableness of the sale.

(x) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder,

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the nonpayment of the Indebtedness, the occurrence of any Event of Default, Lender having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Lender, shall be taken as *prima facie* evidence of the truth of the facts so stated and recited; and

(xi) Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender.

(i) Other Rights. Lender (i) may surrender the insurance policies maintained pursuant to Section 4.7 of the Loan Agreement or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 5.04 hereof, and, in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such premiums; and (ii) apply the reserve for Impositions and insurance premiums, if any, required by the provisions of this Mortgage, toward payment of the Indebtedness; and (iii) shall have and may exercise any and all other rights and remedies which Lender may have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

(j) Lender as Purchaser. Lender may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Lender shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Indebtedness. Lender, as purchaser, shall be treated in the same manner as any third-party purchaser and the proceeds of Lender's purchase shall be applied in accordance with Section 5.04 of this Mortgage.

(k) Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as Lender may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and reasonable attorneys' fees, all of which expenditures shall become so much additional Debt which Borrower agrees to pay and all of such expenditures shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

Section 5.02. Other Rights of Lender. Should any part of the Mortgaged Property come into the possession of Lender, whether before or after default, Lender may (for itself or by or

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through other persons, firms, or entities) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Lender may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Lender may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Lender in respect of the Mortgaged Property. Borrower covenants to promptly reimburse and pay to Lender on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Lender in connection with Lender's custody, preservation, use, or operation of the Mortgaged Property, together with interest thereon from the date incurred by Lender at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Lender's possession.

Section 5.03. Compliance with Illinois Mortgage Foreclosure Law.

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

(b) If any provision of this Mortgage shall grant to Lender any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 5.01(e) or 5.01(k) of this Mortgage, shall be added to the Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

Section 5.04. Possession after Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Borrower or Borrower's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Borrower and Borrower's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession

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thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

Section 5.05. Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this Article V, or the proceeds from the surrender of any insurance policies pursuant hereto, or any Rents collected by Lender from the Mortgaged Property (following any application of such Rents in accordance with Section 7.03 hereof), or the reserve for Impositions and insurance premiums, if any, required by the provisions of this Mortgage or sums received pursuant to Section 5.01 hereof, or proceeds from insurance which Lender elects to apply to the Indebtedness pursuant to Section 6.02 hereof, shall be applied by Lender the Indebtedness in the following order and priority: (i) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums, or other sums including reasonable attorneys' fees; (ii) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (iii) the balance, if any and to the extent applicable, remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or Lender of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (Lender shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (iv) the cash balance, if any, to Borrower. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

Section 5.06. Protective Advances.

(a) Advances, disbursements and expenditures made by Lender for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Mortgage, constitute "Protective Advances":

(i) all advances by Lender in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(ii) payments by Lender of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of property taxes and assessments, general and special and all other property taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with

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court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Mortgaged Property, as referred to in Section 5/15-1505 of the Act;

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under any prior liens;

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Mortgage or arising from the interest of the Lender hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(vi) advances of any amount required to make up a deficiency in deposits for installments of property taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(vii) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act; and

(viii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (B) repair or restoration of damage or destruction in excess of available Insurance Proceeds or condemnation awards; (C) payments required or deemed by Lender to be for the benefit of the Mortgaged 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 Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; (E) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

(b) All Protective Advances shall be so much additional Indebtedness, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

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(c) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in the:

(i) determination of the amount of Indebtedness at any time;

(ii) indebtedness found due and owing to the Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(iv) application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Act.

Section 5.07. Payment of Fees. If the Note or any other part of the Indebtedness shall be collected or if any of the Obligations shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Lender to mature same, or if Lender becomes a party to any suit where this Mortgage or the Mortgaged Property or any part thereof is involved, Borrower agrees to pay Lender's attorneys' fees and expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Rate. "Attorneys' fees and/or expenses" include, but are not limited to, those fees and costs, whether or not incurred in connection with collection, mediation, arbitration, and litigation, and if incurred in connection with litigation, include such fees, expenses, and costs as are incurred in connection with trial court proceedings and/or appellate court proceedings.

Section 5.08. Miscellaneous.

(a) Discontinuance of Remedies. In case Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such event, Borrower and Lender shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

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(b) Other Remedies. In addition to the remedies set forth in this Article, upon the occurrence of an Event of Default, Lender shall, in addition, have all other remedies available to them at law or in equity.

(c) Remedies Cumulative; Non-Exclusive; Etc. All rights, remedies, and recourses of Lender granted in the Note, this Mortgage, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Borrower, the Mortgaged Property, or any one or more of them, at the sole discretion of Lender; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Mortgaged Property prior to Lender bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Lender elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Borrower prior to exercising any remedies in relation to the Mortgaged Property, all liens and security interests, including the lien of this Mortgage, shall remain in full force and effect and may be exercised at Lender's option.

(d) Partial Release; Etc. Lender may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Mortgage or the other Loan Documents or affecting the obligations of Borrower or any other party to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Lender may resort to any of the collateral therefor in such order and manner as Lender may elect. No collateral heretofore, herewith, or hereafter taken by Lender shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(e) Waiver and Release by Borrower. Borrower hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Borrower by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default or of Lender's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(f) No Implied Covenants. Borrower and Lender mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Mortgage and the other Loan Documents. All agreed contractual duties are set forth in this Mortgage, the Note, and the other Loan Documents.

(g) Real Property Laws Govern. The remedies in this Article V shall be available under and governed by the real property laws of Illinois in the event that Lender elects to proceed as to the Fixtures and Personalty together with the other Mortgaged Property under and pursuant to the real property remedies of this Article V.

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Section 5.09. Waiver of Deficiency Statute.

(a) Waiver. In the event an interest in any of the Mortgaged Property is foreclosed upon pursuant to a judicial or non-judicial foreclosure sale, Borrower agrees as follows: to the extent permitted by law, Lender shall be entitled to seek a deficiency judgment from Borrower and any other party obligated on the Note. Borrower expressly recognizes that, to the extent permitted by law, this section constitutes a waiver of any applicable provision of law that would otherwise permit Borrower and other persons against whom recovery of deficiencies is sought or Guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Mortgaged Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Borrower further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Borrower, Guarantor, and others against whom recovery of a deficiency is sought.

(b) Alternative to Waiver. Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, to the extent permitted by applicable law, the following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale: (i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but no later than 12 months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Mortgaged Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years of experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

Section 5.10. Waiver of Right to Redeem - Waiver of Appraisalment, Valuation, Etc. Borrower shall not (nor shall any tenant in common) and will not apply for or avail itself of any appraisalment, valuation, 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, but hereby waives the benefit of such Moratorium Laws. Borrower for itself and all who may claim through or under it (and including each tenant in common) waives any and all

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right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Lender may determine in its sole discretion. Lender shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Lender so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Lender with the amount payable to Lender out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the loan evidenced by the Note and the other Indebtedness, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Act, or residential real estate, as defined in Section 5/15-1219 of the Act. To the fullest extent permitted by law, Borrower, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (a) any and all rights of redemption pursuant to Section 5/15-1601(b) of the Act, and (b) any and all rights of reinstatement.

Section 5.11. Bankruptcy Acknowledgment. In the event the Mortgaged Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then Lender shall immediately become entitled, in addition to all other relief to which Lender may be entitled under this Mortgage, to obtain (a) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to § 362 of 11 U.S.C. § 101 *et seq.*, as the same be amended from time to time (the "Bankruptcy Code") so to permit Lender to pursue its rights and remedies against Borrower (and each tenant in common) as provided under this Mortgage and all other rights and remedies of Lender at law and in equity under applicable state law, and (b) an order from the Bankruptcy Court prohibiting Borrower's use of all "cash collateral" as defined under § 362 of the Bankruptcy Code. In connection with such Bankruptcy Court orders, Borrower shall not (and neither shall any tenant in common) contend or allege in any pleading or petition filed in any court proceedings that Lender does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by the Borrower to stay, condition, or inhibit Lender from exercising its remedies are hereby admitted by Borrower to be in bad faith and Borrower (and each tenant in common) further admits that Lender would have just cause for relief from the automatic stay in order to take such actions authorized under state law.

ARTICLE SIX: SPECIAL PROVISIONS

Section 6.01. Condemnation Proceeds. Lender shall be entitled to receive any and all sums which may be awarded and become payable to Borrower for condemnation of the Mortgaged Property or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Borrower for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Lender, and Borrower shall, upon request of Lender, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time

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to enable Lender to collect and receipt for any such sums. Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums received by Lender as a result of condemnation shall be applied to the Indebtedness in accordance with the provisions of Section 5.04 hereof.

Section 6.02. Insurance Proceeds.

(a) Borrower will give Lender prompt notice of any damage to or destruction of the Mortgaged Property, and:

(i) In case of loss covered by policies of insurance, Lender (or, after foreclosure, the purchaser at the foreclosure sale) is hereby authorized, at Lender's option, either (i) to settle and adjust any claim under such policies without the consent of Borrower, or (ii) allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that Borrower may adjust losses aggregating not in excess of \$100,000.00 if such adjustment is carried out in a competent and timely manner, and provided that in any case Lender shall and is hereby authorized to collect and receive any such insurance proceeds; and the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall be additional indebtedness hereby secured and shall be reimbursed to Lender upon demand.

(ii) In the event of any insured damage to or destruction of the Mortgaged Property or any part thereof (herein called an "**Insured Casualty**") which, in the reasonable judgment of Lender, the Mortgaged Property can be restored on or before the Maturity Date to an economic unit not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness hereby secured, then, if no other Event of Default shall have occurred and be then continuing, and there are sufficient funds, in Lender's judgment, from such insurance proceeds and in the Borrower's Deposit (as defined in the Loan Agreement), to so restore the Mortgaged Property and to continue to pay the Note in accordance with its terms, then such casualty, in and of itself, will not constitute an Event of Default, and the proceeds of insurance shall be applied to reimburse Borrower for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to Insured Casualty, as provided for below; and Borrower hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Borrower shall pay all costs (and if required by Lender, Borrower shall deposit the total thereof with Lender in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(iii) Except as provided above, the proceeds of insurance from any Insured Casualty shall be applied to the payment of the Indebtedness hereby secured.

(iv) In the event that proceeds of insurance, if any, shall be made available to Borrower for the restoring, repairing, replacing or rebuilding of the Mortgaged Property, Borrower hereby covenants to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction,

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all to be effected in accordance with applicable law and plans and specifications approved in advance by Lender.

(b) In the event Borrower is entitled to reimbursement out of insurance proceeds held by Lender, such proceeds shall be disbursed from time to time upon Lender being furnished with (i) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (ii) funds, or, at Lender's option, assurances satisfactory to Lender that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Lender may reasonably require and approve; and Lender may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Lender prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such insurance proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Lender after payment of such costs of restoration, repair, replacement or rebuilding shall be applied as provided in Section 6.02(iii) above.

Section 6.03. Reserve for Impositions and Insurance Premiums. At Lender's request, Borrower shall create a fund or reserve for the payment of all insurance premiums and Impositions against or affecting the Mortgaged Property by paying to Lender, on the first day of each calendar month prior to the maturity of the Note, a sum equal to the premiums that will next become due and payable on the insurance policies covering Borrower, the Mortgaged Property or any part thereof or such other insurance policies required hereby or by the Loan Documents, plus Impositions next due on the Mortgaged Property or any part thereof as estimated by Lender, less all sums paid previously to Lender therefor, divided by the number of months to elapse before one (1) month prior to the date when each of such premiums and Impositions will become due, such sums to be held by Lender without interest to Borrower, unless interest is required by applicable law, for the purposes of paying such premiums and Impositions. Any excess reserve shall, at the discretion of Lender, be credited by Lender on subsequent reserve payments or subsequent payments to be made on the Note by the maker thereof, and any deficiency shall be paid by Borrower to Lender on or before the date when Lender demands such payment to be made, but in no event after the date when such premiums and Impositions shall become delinquent. If there exists a deficiency in such fund or reserve at any time when Impositions or insurance premiums are due and payable, Lender may, but shall not be obligated to, advance the amount of such deficiency on behalf of Borrower and such amounts so advanced shall become a part of the Indebtedness, shall be immediately due and payable, and shall bear interest at the Default Rate from the date of such advance through and including the date of repayment. Transfer of legal title

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to the Mortgaged Property shall automatically transfer the interest of Borrower in all sums deposited with Lender under the provisions hereof or otherwise.

Section 6.04. **BORROWER'S INDEMNITY.** BORROWER (AND EACH TENANT IN COMMON) SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS LENDER, LENDER'S PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS (THE "**INDEMNIFIED PARTIES**") FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, LOSSES, COSTS, OR EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES), ACTIONS, PROCEEDINGS, CLAIMS OR DISPUTES (THE "**INDEMNIFIED LOSSES**") INCURRED OR SUFFERED BY THE INDEMNIFIED PARTIES, SAVE AND EXCEPT WITH RESPECT TO INDEMNIFIED LOSSES PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OF ANY INDEMNIFIED PARTY, OR BREACH OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS BY LENDER, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN CONNECTION WITH THE FOLLOWING:

(a) ANY LITIGATION CONCERNING THIS MORTGAGE, THE OTHER LOAN DOCUMENTS OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF BORROWER OR LENDER THEREIN, OR THE RIGHT OF OCCUPANCY OF THE MORTGAGED PROPERTY BY BORROWER OR LENDER, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT;

(b) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN BORROWER (INCLUDING THE TENANTS IN COMMON COMPRISING BORROWER), GUARANTORS OR OTHER PARTNERS OR VENTURERS OF BORROWER IF BORROWER IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS OF BORROWER IF BORROWER IS A CORPORATION OR LIMITED LIABILITY COMPANY OR PARTNERSHIP, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF BORROWER IS AN ASSOCIATION, TRUST OR OTHER ENTITY, OR IN CONNECTION WITH THE MANAGEMENT AGREEMENT ENTERED INTO BY BORROWER RELATED TO THE MANAGEMENT OF THE PROPERTY,

(c) ANY ACTION TAKEN OR NOT TAKEN BY LENDER WHICH IS ALLOWED OR PERMITTED UNDER THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO BORROWER, THE MORTGAGED PROPERTY, GUARANTORS OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS;

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(d) ANY ACTION BROUGHT BY LENDER AGAINST BORROWER UNDER THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT; AND

(e) BORROWER'S FAILURE TO PURCHASE AND/OR MAINTAIN THE INSURANCE COVERAGES REQUIRED BY THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.

LENDER MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE LENDER'S RIGHTS, REMEDIES AND RECOURSES UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND LENDER WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. BORROWER SHALL REIMBURSE LENDER FOR LENDER'S REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND FOR REIMBURSEMENT, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY LENDER. ANY PAYMENTS NOT MADE WITHIN FIFTEEN (15) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 6.04 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS MORTGAGE, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY BORROWER OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE MORTGAGED PROPERTY, AND THE EXERCISE BY LENDER OF ANY AND ALL REMEDIES SET FORTH IN THIS MORTGAGE OR IN ANY OTHER LOAN DOCUMENT. **BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT THIS SECTION 6.04 OF THIS MORTGAGE INCLUDES AN INDEMNIFICATION BY BORROWER OF LENDER FROM CLAIMS OR LOSSES ARISING AS A RESULT OF LENDER'S OWN NEGLIGENCE. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, SUCH INDEMNIFICATION SHALL APPLY ONLY IF AND TO THE EXTENT SUCH INDEMNIFICATION IS NOT IN VIOLATION OF APPLICABLE LAW.**

Section 6.05. Waiver of Subrogation. Borrower (and each tenant in common) hereby waives any and all right to claim, recover, or subrogation that arises or may arise in its favor and against Lender or its officers, directors, employees, agents, attorneys, or representatives hereto for any and all loss of, or damage to, Borrower, the Mortgaged Property, Borrower's property, or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of the Loan Documents. Said waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Mortgage with respect to any loss or damage to property of the parties hereto. Inasmuch as the above waivers preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Borrower hereby agrees to immediately give to each insurance company which has issued to it any such insurance policy whether or not it is required to be insured against by the provisions of the Loan Documents written notice of the terms of said

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waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

Section 6.06. Waiver of Setoff. The Indebtedness, or any part thereof, shall be paid by Borrower without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by reason of: (i) any damage to, destruction of, or any condemnation or similar taking of the Mortgaged Property; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property; (iii) any title defect or encumbrance or any eviction from the Mortgaged Property by superior title or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Lender or Borrower, or any action taken with respect to this Mortgage by any receiver of Lender or Borrower, or by any court, in any such proceeding; (v) any claim which Borrower has or might have against Lender; (vi) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of the Indebtedness.

Section 6.07. Setoff. Lender shall be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Borrower (or any tenant in common) in and to each and every account and other property of Borrower that are in the possession of Lender to the full extent of the outstanding balance of the Indebtedness.

Section 6.08. Consent to Disposition. In the event of a Disposition, Lender may, at Lender's option, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration or other notice, or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner on the Indebtedness, declare the Indebtedness to be immediately due and payable, which option may be exercised at any time following such Disposition, and upon such declaration the entire unpaid balance of the Indebtedness shall be immediately due and payable. Lender may, in Lender's sole discretion and at Borrower's request, decide not to exercise said option to accelerate the Indebtedness, in which event Lender's forbearance and Lender's decision to grant or withhold consent to a Disposition may be predicated on such terms and conditions as Lender may, in Lender's sole discretion, require, including, without limitation, (i) consideration of the creditworthiness of the party to whom such Disposition will be made and its management ability with respect to the Mortgaged Property, (ii) consideration of whether the security for repayment of the Indebtedness and the performance and discharge of the Obligations, or Lender's ability to enforce its rights, remedies, and recourses with respect to such security, will be impaired in any way by the proposed Disposition, (iii) a payment of a part of the principal amount of the Indebtedness, (iv) an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the Note and other Loan Documents, (v) reimbursement of Lender for all costs and expenses incurred by Lender in investigating the creditworthiness and management or consulting ability of the party to whom such Disposition will be made and in determining whether Lender's security will be impaired by the proposed Disposition, (vi) payment to Lender of a transfer fee to cover the cost of documenting the Disposition in its records, (vii) payment of Lender's reasonable attorneys' fees in connection with such Disposition, (viii) the express assumption of payment of the

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Indebtedness and performance and discharge of the Obligations by the party to whom such Disposition will be made (with or without the release of Borrower from liability for such Indebtedness and Obligations), (ix) the execution of assumption agreements, modification agreements, supplemental loan documents, and financing statements, satisfactory in form and substance to Lender, (x) endorsements (to the extent available under applicable law) to any existing mortgagee title insurance policies insuring Lender's liens and security interests covering the Mortgaged Property, and (xi) requiring additional security for the payment of the Indebtedness and performance and discharge of the Obligations. Should the Mortgaged Property be subject to a Disposition without the prior written consent of Lender and should payment of any portion of the Indebtedness thereafter be accepted by Lender, such acceptance shall not be deemed a waiver of the requirement of Lender's consent in writing to such Disposition or with respect to any other Disposition. Notwithstanding the foregoing, said option shall not apply in case of sales or transfers of items of Fixtures which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new.

Section 6.09. Consent to Subordinate Mortgage. If Borrower (or any tenant in common), without the prior written consent of Lender, executes or delivers any pledge, security agreement, mortgage or Mortgage covering all or any portion of the Mortgaged Property (hereinafter called "Subordinate Mortgage"), Lender may, at Lender's option, which option may be exercised at any time following the grant of such Subordinate Mortgage, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration or other notice, or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner on the Indebtedness, declare the Indebtedness to be immediately due and payable. In the event of consent by Lender to the granting of a Subordinate Mortgage, or in the event the above-described right of Lender to declare the Indebtedness to be immediately due and payable upon the granting of a Subordinate Mortgage without the prior written consent of Lender is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, Borrower will not execute or deliver any Subordinate Mortgage unless (i) it shall contain express covenants to the effect: (a) that the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by this Mortgage and each term and provision hereof, including, without limitation, the Assignment of Rents; (b) that if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Lender; (c) that the Rents and profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations; and (d) that if any action or proceeding shall be brought to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), written notice of the commencement thereof will be given to Lender contemporaneously with the commencement of such action or proceeding; and (ii) a copy thereof shall have been delivered to Lender not less than ten (10) days prior to the date of the execution of such Subordinate Mortgage.

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Section 6.10. Payment after Acceleration. If, following the occurrence of an Event of Default, and an acceleration of the Indebtedness or any part thereof but prior to a foreclosure sale of the Mortgaged Property, Borrower shall tender to Lender the payment of an amount sufficient to satisfy the entire Indebtedness or the part thereof which has been accelerated, such tender shall be deemed a voluntary prepayment pursuant to the Indebtedness and, accordingly, Borrower, to the extent permitted by applicable law, shall also pay to Lender the premium, if any, then required under the Indebtedness or the Loan Documents in order to exercise the prepayment privilege contained therein.

Section 6.11. Environmental Matters; Compliance with Laws. Borrower warrants and represents to Lender that (a) the occupancy, operation, and use of the Mortgaged Property shall not violate any applicable law, statute, ordinance, rule, regulation, order, writs, injunctions, decrees, or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (of record or otherwise) affecting the Mortgaged Property, including, without limitation, applicable zoning ordinances and building codes, the Americans with Disabilities Act of 1990, flood disaster laws and Environmental Laws, as they may be amended from time to time (hereinafter sometimes collectively called the "Applicable Regulations"); (b) Borrower and any Lessee of space from Borrower in the Mortgaged Property shall obtain all permits, licenses, or similar authorizations required by reason of any Applicable Regulations relating to pollution and the protection of health and the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as each is amended from time to time; and (c) the use that Borrower intends to make, or intends to allow, of the Mortgaged Property will not result in the disposal of or release of any hazardous substance or solid waste onto or into the Mortgaged Property, or any part thereof, in violation of any Environmental Laws. The terms (as used in this Mortgage) "hazardous substance" and "release" have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA. If either CERCLA or RCRA is amended to broaden the meaning of any term defined thereby, the broader meaning shall apply to this provision after the effective date of the amendment. Moreover, to the extent that Illinois law establishes a meaning for "hazardous substance", "release", "solid waste", or "disposal" that is broader than that specified in either CERCLA or RCRA, the broader meaning shall apply.

Borrower agrees to give prompt written notices to Lender of: (i) any proceeding or inquiry by any governmental or nongovernmental entity or person with respect to the presence of any hazardous substance on, in, under, from or about the Mortgaged Property, the migration thereof from or to other property, the disposal, storage, or treatment of any hazardous substance generated or used on, under or about the Mortgaged Property, (ii) all claims made or threatened by any third party against Borrower (or any tenant in common) or the Mortgaged Property or any other owner or operator of the Mortgaged Property relating to any loss or injury resulting from any hazardous substance, and (iii) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any investigation or cleanup of the Mortgaged Property pursuant to any Environmental Law. Borrower shall permit Lender to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in

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connection with any Environmental Law or hazardous substance, and Borrower shall pay all reasonable attorneys' fees incurred by Lender in connection therewith. If any remedial work is required by Environmental Law or is reasonably necessary in the opinion of Lender, Borrower shall commence within thirty (30) days after written demand by Lender for performance thereof (or such shorter period of time as may be required under any Environmental Law) and thereafter diligently prosecute to completion all such remedial work. All remedial work shall comply with Environmental Laws after consultation and approval by the governing authority under the Environmental Law. Remedial work shall be performed by contractors approved in advance by Lender, and under the supervision of a consulting engineer approved by Lender. All costs and expenses of such remedial work shall be paid by Borrower including, without limitation, Lender's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such remedial work. If Borrower shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such remedial work, Lender may, but shall not be required to, cause such remedial work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the Indebtedness.

Lender (through its officers, employees and agents) at any reasonable time and from time to time, either prior to or after an Event of Default in this Mortgage or under the Note secured hereby, may employ persons authorized under applicable laws (the "**Site Reviewers**") to conduct environmental site assessments ("**Site Assessments**") on the Mortgaged Property to determine whether or not there exists on the Mortgaged Property any environmental condition which might result in any liability, cost or expense to the owner, occupier or operator of the Mortgaged Property arising under the Environmental Laws. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Lender (so as not to unreasonably interfere with the operation of the Property). The Site Reviewers are authorized at their own risk to enter upon the Mortgaged Property and to perform above and below-the-ground testing (including, without limitation, taking of core samples) to determine environmental damage or presence of any hazardous substance or solid waste in, on or under the Mortgaged Property and such other tests as may be necessary or desirable, in the opinion of the Site Reviewers, to conduct Site Assessments. Borrower will supply to the Site Reviewers such historical and operational information available to Borrower regarding the Mortgaged Property as may be requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. If the Site Assessments show conditions that materially or substantially violate the terms of this Mortgage or the other Loan Documents, then the cost of performing such Site Assessments will be paid by Borrower upon demand of Lender, which, if not paid, will be added to the indebtedness secured by this Mortgage.

BORROWER (AND EACH TENANT IN COMMON) SHALL INDEMNIFY, DEFEND (WITH COUNSEL SELECTED BY LENDER) AND HOLD LENDER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ATTORNEYS AND ALL PARTIES ACTING ON BEHALF OF LENDER (THE "**INDEMNIFIED PARTIES**") HARMLESS FROM AND AGAINST, AND REIMBURSE INDEMNIFIED PARTIES WITH RESPECT TO, ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSS, DAMAGE, LIABILITIES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS) OF EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT, ASSERTED AGAINST OR INCURRED BY INDEMNIFIED PARTY AT ANY TIME AND

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FROM TIME TO TIME BY REASON OF OR ARISING OUT OF ANY VIOLATION OF AN APPLICABLE ENVIRONMENTAL LAW AND ALL MATTERS ARISING OUT OF ACTS, OMISSIONS, EVENTS, OR CIRCUMSTANCES RELATING TO THE PROPERTY, BORROWER OR BORROWER'S BUSINESS (INCLUDING, WITHOUT LIMITATION, THE PRESENCE ON THE PROPERTY OR RELEASE FROM OR TO THE PROPERTY OF HAZARDOUS SUBSTANCES OR SOLID WASTES DISPOSED OF OR OTHERWISE RELEASED AND BORROWER'S (OR ANY TENANT IN COMMON'S) BREACH OF ANY OF ITS COVENANTS, REPRESENTATIONS OR INDEMNITIES UNDER THIS PROVISION), REGARDLESS OF WHETHER THE ACT, OMISSION, EVENT, OR CIRCUMSTANCE CONSTITUTED A VIOLATION OF ANY APPLICABLE ENVIRONMENTAL LAW AT THE TIME OF THE EXISTENCE OR OCCURRENCE. THE REPRESENTATIONS, COVENANTS, WARRANTIES AND INDEMNIFICATIONS HEREIN CONTAINED SHALL SURVIVE THE RELEASE AND/OR JUDICIAL OR NON-JUDICIAL FORECLOSURE (OR TRANSFER IN LIEU THEREOF) OF THE LIEN OF THIS MORTGAGE.

Section 6.12. Maximum Interest. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable state law governing the maximum rate or amount of interest payable on the Note or the Related Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under applicable state law without violating or causing a violation of applicable state law). In no event shall interest contracted for, charged or received on the Note or the Related Indebtedness, plus any other amounts or charges in connection therewith or under the Loan Documents which constitute interest, exceed the maximum interest permitted under any other applicable law or violate or cause a violation of any applicable law. If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged or received by reason of Lender's exercise of the option to accelerate the maturity of the Note and/or the Related Indebtedness, or (iii) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of the Note and/or the Related Indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Lender shall be credited on the principal balance of the Note and/or the Related Indebtedness (or, if the Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term of the Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against the Note and/or any Related Indebtedness then owing by Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender

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in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note and/or the Related Indebtedness then owing by Borrower to Lender. All sums contracted for, charged or received by Lender for the use, forbearance or detention of any debt evidenced by the Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the Related Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note and/or the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

Section 6.13. Appraisals. Upon written request of Lender during or following an Event of Default or a Material Adverse Change (as that term is defined in the Loan Agreement), Borrower agrees to reimburse Lender for the full cost of narrative appraisals of the Mortgaged Property, such appraisals being required from time-to-time in Lender's sole discretion to re-evaluate the current value of the Mortgaged Property due to such event. Each appraisal shall be ordered directly by Lender from an appraiser satisfactory to Lender and shall be in form and substance necessary to comply with all laws and regulations affecting Lender. Borrower shall reimburse Lender for any requested appraisal expense within thirty (30) days from the date of the written request by Lender. Appraisals may be ordered by Lender at any time in its sole discretion, but Borrower is required to reimburse Lender for only one appraisal in any calendar year. Failure of Borrower to reimburse Lender for any requested appraisal (not to exceed one appraisal in any twelve-month period) shall constitute an Event of Default under this Mortgage.

ARTICLE SEVEN: ASSIGNMENT OF RENTS

Section 7.01. Assignment. For \$10.00 and other good and valuable consideration, including the indebtedness Borrower hereby collaterally assigns, transfers and sets over to Lender all of the right, title and interest of Borrower in and to the Leases and the Rents and grants a security interest in and to the Leases and the Rents in favor of Lender. Borrower shall not otherwise assign, transfer or encumber in any manner the Leases or the Rents or any portion thereof. Borrower may collect and use the Rents as the same become due and payable and to exercise and enjoy the rights and benefits of the lessor under the Leases (collectively, the "Rights") so long as no Event of Default has occurred. Upon the occurrence of an Event of Default, Lender may, at its option, receive and collect all Rents as they become due and exercise the Rights. The existence or exercise of Borrower's rights to collect Rents and exercise the Rights shall not operate to subordinate this assignment to any subsequent assignment. The provisions of this Article shall be in addition to, and not in derogation of, the Assignment of Leases and Rents that is being executed and delivered in connection with the Loan.

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Section 7.02. Receipt of Rents. Neither this grant nor the receipt of Rents by Lender (except to the extent, if any, that Lender actually receives Rents pursuant to its foreclosure on the security interest hereby granted therein and applies such Rents to the indebtedness) shall effect a pro tanto payment of the Indebtedness. If and upon Lender's foreclosure on the security interest hereby granted therein, Rents actually received by Lender shall be applied by Lender as provided in Section 7.03 below. Lender shall not be deemed to have received Rents or to have applied Rents to the Indebtedness until the money is actually received by Lender at its principal office in Austin, Texas, or at such other place as Lender shall designate in writing. Lender shall not apply Rents to the indebtedness after foreclosure or any other transfer of all or any part of the Mortgaged Property to Lender or any other third party.

Section 7.03. Collection and Application of Rents. Rents received by Lender for any period prior to foreclosure under this Mortgage or acceptance of a deed in lieu of foreclosure shall be applied by Lender to the payment of the following (in the order and priority as Lender determines or in such order as shall be required by applicable law): (a) all operating expenses; (b) all expenses incident to taking and retaining possession of the Mortgaged Property and/or collecting Rent as it becomes due and payable; and (c) the Indebtedness. The Indebtedness will not be reduced under this Section 7.03 except to the extent, if any, that Lender actually receives and applies any Rents to the Indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Lender may, at its option, at any time and from time to time, release to Borrower any Rents so received by Lender. At any time during which Borrower is receiving Rents directly from any of the Lessees under the Leases, Borrower shall, upon receipt of written direction from Lender, make demand and sue for all Rents due and payable under any Leases, as directed by Lender, as it becomes due and payable, including Rents which are past due and unpaid. If Borrower fails to take such action, or at any time during which Borrower is not receiving Rents directly from Lessees under the Leases, Lender shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Borrower, all Rents due and payable under the Leases, as it becomes due and payable, including Rents which are past due and unpaid.

Section 7.04. Lender Not Responsible. Under no circumstances shall Lender have any duty to produce or collect Rents from the Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Premises and Improvements, unless Lender agrees in writing to the contrary, Lender is not and shall not be deemed to be.

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Mortgaged Property, or any negligence in the management, upkeep, repair or control of the Mortgaged Property

Section 7.05. Assignment of Leases and Rents. The assignments of Leases and Rents contained in this Mortgage are intended to provide Lender with all of the rights and remedies of deeds of trust under Illinois law as may be amended from time to time. However nothing herein shall diminish, alter, impair, or affect any other rights and remedies of Lender, including but not limited to, the appointment of a receiver, nor shall any provision hereof diminish, alter, impair or

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affect any rights or powers of the receiver in law or equity or as set forth herein. In addition, this assignment shall be fully operative without regard to value of the Mortgaged Property or without regard to the adequacy of the Mortgaged Property to serve as security for the obligations owed by Borrower to Lender. To the extent permitted by Illinois law, except for the notices required under this Mortgage, if any, Borrower hereby waives any notice of default or demand for turnover of Rents by Lender as well as any right to apply to a court to deposit the Rents into the registry of the court or such other depository as the court may designate.

Section 7.06. Warranties Concerning Leases and Rents. Borrower represents and warrants that:

- (a) Borrower has good title to the Leases and Rents and authority to assign them, and no other person or entity has any right, title or interest therein;
- (b) All existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and to Borrower's knowledge, except as set forth in tenant estoppels delivered in connection with loan underwriting, no default exists thereunder;
- (c) Unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged;
- (d) No Rents have been or will be anticipated, waived, released, discounted, set off or compromised;
- (e) Except as indicated in the Leases, Borrower has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; and
- (f) All Leases shall specify U.S. addresses for notice to Lessees, and Borrower will prohibit prepayment of Rent more than one month in advance.

Section 7.07. Borrower's Covenants of Performance. Borrower covenants to:

- (a) Perform all of its obligations under the Leases and give prompt notice to Lender of any failure to do so;
- (b) Give immediate notice to Lender of any notice Borrower receives from any Lessee or subtenant under any Leases, specifying any claimed default by any party under such Leases, excluding, however, notices of default under residential leases;
- (c) Enforce the Lessees' obligations under the Leases;
- (d) Defend, at Borrower's expense, any proceeding pertaining to the Leases, including, if Lender so requests, any such proceeding to which Lender is a party;
- (e) Neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Mortgage and any other encumbrances permitted by this Mortgage; and

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Section 7.08. Prior Approval for Actions Affecting Leases. Borrower shall not, without the written consent of Lender:

- (a) Receive or collect Rents more than one month in advance;
- (b) Encumber or assign future Rents;
- (c) Waive or release any material obligation of any Lessee under the Leases;
- (d) Cancel, terminate or modify any of the Leases; cause or permit any cancellation, termination or surrender of any of the Leases; or commence any proceedings for dispossession of any Lessee under any of the Leases, except upon default by the Lessee thereunder;
- (e) Renew or extend any of the Leases, except pursuant to terms in existing Leases;
- (f) Permit any assignment of the Leases; or
- (g) Enter into any Leases after the date hereof.

Section 7.09. Conflict. In the event of any inconsistencies between the terms and conditions of Article Five of this Mortgage and this Article Seven, the terms and conditions of this Article Seven shall control and be binding.

ARTICLE EIGHT SECURITY AGREEMENT

Section 8.01. Security Interest. This Mortgage (a) shall be construed as a Mortgage on real property, and (b) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Mortgage shall terminate as provided in Article II hereof, a first and prior security interest under the Code as to property within the scope thereof and in the state where the Mortgaged Property is located with respect to the Personalty, Fixtures, Contracts, Construction Contracts, Leases, Accounts (as defined in the Code), Chattel Paper (as defined in the Code), Deposit Account (as defined in the Code), Documents (as defined in the Code), Equipment (as defined in the Code), General Intangibles (as defined in the Code), Goods (as defined in the Code), Instruments (as defined in the Code), and Inventory (as defined in the Code). To this end, Borrower GRANTS to, has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Lender, a first and prior security interest in all of Borrower's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Contracts, Construction Contracts, Leases, Accounts, Chattel Paper, Deposit Account, Documents, Equipment, General Intangibles, Goods, Instruments, and Inventory to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Borrower and Lender that this Mortgage encumber all Leases and that all items contained in the definition of "Leases" which are

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included within the Code be covered by the security interest granted in this Article VIII; and all items contained in the definition of "Leases" which are excluded from the Code be covered by the provisions of Article II hereof.

Section 8.02. Financing Statements. Borrower hereby agrees with Lender to execute and deliver to Lender, in form and substance satisfactory to Lender, such "Financing Statements" and such further assurances as Lender may, from time to time, reasonably consider necessary to create, perfect, and preserve Lender's security interest herein granted, and Lender may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest.

Section 8.03. No Changes. Borrower will not change its principal place of business or chief executive office, or change the state of its organization or registration, or change its name, without in each instance giving prompt notice to Lender regarding such change; provided, however, Borrower must execute and deliver any additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect the Lender's security interest in the Mortgaged Property as a result of such changes.

Section 8.04. Construction Mortgage and Fixture Filing. This Mortgage secures future advances to be used for construction of improvements on the Land pursuant to the Loan Agreement. Accordingly, this Mortgage constitutes a "construction mortgage" under the Code. This Mortgage shall also constitute a "fixture filing" for the purposes of the Code. All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest herein granted may be obtained from either party at the address of such party set forth herein. For purposes of the security interest herein granted, the address of debtor (Borrower) is set forth in the first paragraph of this Mortgage and the address of the secured party (Lender) is set forth in Article I hereof.

ARTICLE NINE: [INTENTIONALLY OMITTED]

ARTICLE TEN: MISCELLANEOUS

Section 10.01. Release. If the Indebtedness is paid in full in accordance with the terms of this Mortgage, the Note, and the other Loan Documents, and if Borrower shall well and truly perform each and every of the Obligations to be performed and discharged in accordance with the terms of this Mortgage, the Note and the other Loan Documents, then this conveyance shall become null and void and be released at Borrower's request and expense, and Lender shall have no further obligation to make advances under and pursuant to the provisions hereof or in the other Loan Documents.

Section 10.02. Performance at Borrower's Expense. Borrower shall (i) pay all legal fees incurred by Lender in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (ii) reimburse Lender, promptly upon demand, for all amounts expended, advanced, or incurred by Lender to satisfy any

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obligation of Borrower under the Loan Documents, which amounts shall include (without limitation) all court costs, attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), fees of auditors and accountants and other investigation expenses reasonably incurred by Lender in connection with any such matters; and (iii) reimburse Lender for any and all other costs and expenses of performing or complying with any and all of the Obligations. Except to the extent that costs and expenses are included within the definition of "Indebtedness," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

Section 10.03. Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this Section shall limit the obligations of Borrower as otherwise set forth herein.

Section 10.04. Recording and Filing. Borrower will cause the Loan Documents requested by Lender and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and refiled in such manner and in such places as Lender shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, documentary stamp taxes, fees, and other charges.

Section 10.05. Notices. All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage pre-paid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective on the earlier of its receipt by the addressee or the second (2nd) business day after its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon the earlier of its receipt by the addressee or the first (1st) business day after its delivery to such commercial delivery service; and notice given by personal delivery shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be as set forth herein; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

Section 10.06. Covenants Running with the Land. All Obligations contained in this Mortgage and the other Loan Documents are intended by Borrower and Lender to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Mortgage has been fully released by Lender.

Section 10.07. Successors and Assigns. Subject to the provisions of Sections 6.1(h) and 6.1(l) of the Loan Agreement, all of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through, or under them.

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Section 10.08. No Waiver; Severability. Any failure by Lender to insist, or any election by Lender not to insist, upon strict performance by Borrower or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Lender shall have the right at any time or times thereafter to insist upon strict performance by Borrower or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of this Mortgage or any of the other Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Section 10.09. Counterparts. To facilitate execution, this Mortgage may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Mortgage to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

Section 10.10. Governing Law. This Mortgage is executed and delivered as an incident to a lending transaction negotiated and consummated in Travis County, Texas. With respect to matters relating to the creation, perfection, validity, and enforcement of this Mortgage, this Mortgage shall be governed by, and construed in accordance with, the laws of the State of Illinois, it being understood that, except as expressly set forth above as to the applicability of Illinois law to the creation, perfection, validity, and enforcement of this Mortgage, to the fullest extent permitted by the laws of Illinois, the laws of the State of Texas shall govern any and all other matters, claims, controversies or disputes arising under or related to this Mortgage, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties relating to this Mortgage, the Loan Agreement and the other Loan Documents and all of the Indebtedness or Obligations arising thereunder or hereunder. Borrower (and each tenant in common), for itself and its successors and assigns, hereby irrevocably (i) submits to the nonexclusive jurisdiction of the state and federal courts in Illinois and Texas, (ii) waives, to the fullest extent permitted by law, any objection that it may now or in the future have to the laying of venue of any litigation arising out of or in connection with any Loan Document brought in the District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division, or in the state courts of the State of Illinois, or in the United States District Court for the Northern District of Illinois (iii) waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum, and (iv) agrees that any legal proceeding against any party to any Loan Document arising out of or in connection with any of the Loan Documents may be brought in one of the foregoing courts. Borrower (and each tenant in common) agrees that service of

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process upon it may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of Lender to serve process in any other manner permitted by law or shall limit the right of Lender to bring any action or proceeding against Borrower (and each tenant in common) or with respect to any of Borrower's (or any tenant in common's) property in courts in other jurisdictions. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any 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 each tenant in common) acknowledges that these waivers are a material inducement to Lender's agreement to enter into agreements and obligations evidenced by the Loan Documents, that Lender has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this section are irrevocable, meaning that they may not be modified either orally or in writing, and these waivers apply to any future renewals, extensions, amendments, modifications, or replacements in respect of the applicable Loan Document. In connection with any litigation, this Mortgage may be filed as a written consent to a trial by the court.

Section 10.11. Loan Agreement. Reference is hereby made for all purposes to the Loan Agreement of even date herewith between Lender and Borrower pertaining to the construction of Tenant Work on the Land, and the funding of the principal amount of the Note. In the event of a conflict between the terms and provisions of this Mortgage and the Loan Agreement, the Mortgage shall govern as to any matters relating to the creation, perfection, validity and enforcement of the Mortgage, and otherwise, to the fullest extent permitted by the laws of Illinois, the Loan Agreement shall govern. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

Section 10.12. Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the performance and discharge of the Obligations.

Section 10.13. Rights Cumulative. Lender shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Mortgaged Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Borrower or others obligated for the Indebtedness or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Lender, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Lender hereunder

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and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

Section 10.14. Payments. Remittances in payment of any part of the Indebtedness other than in the required amount in funds immediately available at the place where the Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or such other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

Section 10.15. Exceptions to Covenants. Borrower shall not be deemed to be permitted to take any action or to fail to take any action with respect to any particular covenant or condition contained herein or in any of the Loan Documents if the action or omission would result in the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Lender, nor shall Lender be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Indebtedness as a result of the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Lender.

Section 10.16. Reliance. Borrower recognizes and acknowledges that in entering into the loan transaction evidenced by the Loan Documents and accepting this Mortgage, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in in this Mortgage without any obligation to investigate the Mortgaged Property and notwithstanding any investigation of the Mortgaged Property by Lender; that such reliance exists on the part of Lender prior hereto; that such warranties and representations are a material inducement to Lender in making the loan evidenced by the Loan Documents and the acceptance of this Mortgage; and that Lender would not be willing to make the loan evidenced by the Loan Documents and accept this Mortgage in the absence of any of such warranties and representations.

Section 10.17. Change of Security. Any part of the Mortgaged Property may be released, regardless of consideration, by Lender from time to time without impairing, subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder. The lien, security interest, and other rights granted hereby shall not be affected by any other security taken for the Indebtedness or Obligations, or any part thereof. The taking of additional collateral, or the amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall not release or impair the lien, security interest, and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any junior lienholder; and this Mortgage, as well as any instrument given to secure any amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is fully paid and the Obligations are fully performed and discharged.

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Section 10.18. Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

Section 10.19. Entire Agreement; Amendment. THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions hereof and the other Loan Documents may be amended or waived only by an instrument in writing signed by Borrower and Lender.

Section 10.20. WAIVER OF RIGHT TO TRIAL BY JURY. BORROWER (AND EACH TENANT IN COMMON) HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.

Section 10.21. Counting of Days. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Land is located (whether legal or religious in nature), the period shall be deemed to end on the next succeeding business day. The term "business day" or "Business Day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Austin, Texas are authorized by law to be closed.

Section 10.22. No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Borrower, Lender, any Lessee, or any third-party purchaser or otherwise.

Section 10.23. Waiver of Automatic or Supplemental Stay. In the event of the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against Borrower (or any tenant in common) (other than an involuntary petition filed by or joined in by Lender), neither the Borrower nor any tenant in common shall assert, or request any other party to assert, that the automatic stay under § 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has by virtue of this Mortgage, or any other rights that Lender has, whether now or hereafter acquired, against any guarantor of the Indebtedness. Further, Borrower (and any tenant in common) shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to § 105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has by virtue of this Mortgage against any guarantor of

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the Indebtedness. The waivers contained in this Section are a material inducement to Lender's willingness to enter into the Loan Documents and Borrower (and each tenant in common) acknowledges and agrees that no grounds exist for equitable relief which would bar, delay or impede the exercise by Lender of Lender's rights and remedies against Borrower (or any tenant in common) or any guarantor of the Indebtedness.

Section 10.24. No Representation by Lender. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Lender pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Lender.

Section 10.25. Future Advances. This Mortgage also secures all future advances made or to be made under the Loan Documents, if any, which future advances shall have the same priority as if all such future advances were made on the date of execution hereof. Nothing in this Section 10.25 or in any other provision of this Mortgage shall be deemed either (a) an obligation on the part of Lender to make any future advances other than in accordance with the terms and provisions of the Loan Documents, or (b) an agreement on the part of Lender to increase the amount of the loan evidenced by the Note or the aggregate principal amount of the Note, to any amount in excess of Eleven Million Nine Hundred Thousand and 00/100 Dollars (\$11,900,000.00) in the aggregate.

Section 10.26. Maximum Amount Secured. Notwithstanding anything contained herein to the contrary, the maximum principal indebtedness secured by this Mortgage shall not exceed Twenty-Two Million and 00/100 Dollars (\$22,000,000.00), plus interest and Protective Advances.

Section 10.27. Certain Insurance Disclosures. Pursuant to the Illinois Collateral Protection Act, 815 ILCS 180/1 et. seq.:

You may obtain insurance required in connection with your loan or extension of credit from any insurance agent, broker, or firm that sells such insurance, provided the insurance requirements in connection with your loan are otherwise complied with. Your choice of insurance provider will not affect our credit decision or your credit terms. UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY YOUR AGREEMENTS WITH US, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST IN YOUR COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT YOUR INTERESTS. THE COVERAGE THAT WE PURCHASE MAY NOT PAY ANY CLAIM THAT YOU MAKE OR ANY CLAIM THAT IS MADE AGAINST YOU IN CONNECTION WITH THE COLLATERAL. YOU MAY LATER CANCEL ANY INSURANCE PURCHASED BY US, BUT ONLY AFTER PROVIDING US WITH EVIDENCE THAT YOU HAVE OBTAINED INSURANCE AS REQUIRED BY OUR AGREEMENTS. IF WE PURCHASE INSURANCE FOR THE COLLATERAL, YOU WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES WE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT

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OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO YOUR TOTAL OUTSTANDING BALANCE OR OBLIGATION. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE YOU MAY BE ABLE TO OBTAIN ON YOUR OWN.

Section 10.28. Business Loan. The Borrower declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that the loan is exempt from interest limitations pursuant to the provisions of 815 ILCS 205/4 and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

Section 10.29. Nature of Borrower. Borrower is a tenancy in common comprised of 24 Mount Prospect, LLLP, a Delaware limited liability limited partnership and LHE Mount Prospect, LLC, an Illinois limited liability company, which is governed by that certain Tenancy in Common Agreement – Mount Prospect, Illinois, as well as that certain Asset Management Agreement executed by the foregoing tenants (collectively, the “TIC Documents”). All references in this Mortgage and the Loan Documents to “Borrower” shall be (collectively) all tenants in common comprising Borrower. All representations, warranties, covenants, and obligations in this Mortgage and in the other Loan Documents are undertaken and made by each tenant in common. The entities comprising Borrower acknowledge and agree that all obligations of Borrower arising under this Mortgage and the other Loan Documents apply equally to each tenant in common; provided, however, that Borrower may delegate, and Lender may look to, the asset manager under the Asset Management Agreement (as applicable, the “Asset Manager”) (and the Asset Manager may be given all applicable authority to deal with Lender and the Loan) for performance under this Mortgage and the other Loan Documents; provided, however, that any such delegation of authority shall not diminish Borrower’s obligations arising under this Mortgage or the Loan Documents. Any covenant, representation, warranty or other right that is unavailable for Borrower or any tenant in common comprising Borrower shall be unavailable to the Asset Manager; any failure by the Asset Manager of a duty delegated to it will be imputed to Borrower. Notwithstanding anything to the contrary in this Mortgage or any other Loan Document, any notice to be delivered to Borrower need only be delivered pursuant to Section 10.05 of this Mortgage. This provision shall take precedence over or with respect to any contrary (or apparently contrary) provision of this Mortgage or any other Loan Document.

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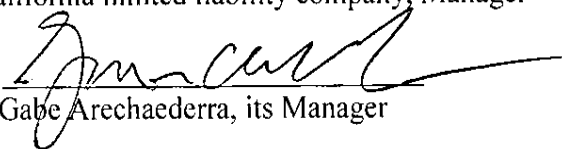
EXECUTED as of the date first above written.

BORROWER:

24 MOUNT PROSPECT, LLLP,
a Delaware limited liability limited partnership

By: 24 Mount Prospect GP, LLC,
a California limited liability company, General
Partner

By: ACRE Investment Company, LLC,
a California limited liability company, Manager

By: 
Gabe Arechaederra, its Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

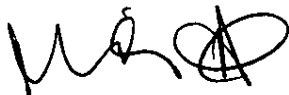
State of California)

County of Alameda)

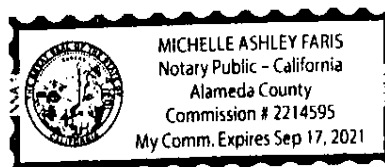
On July 17, 2019 before me, Michelle H. Faris, a Notary Public, personally appeared Gabe Arechaederra, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____ (Seal)



List of Attachments:

- Exhibit "A" - Land Description
- Exhibit "B" - Permitted Exceptions
- Exhibit "C" - Key Terms

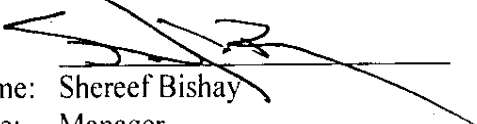
Mortgage – Signature Page

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BORROWER:

LHE MOUNT PROSPECT, LLC,
an Illinois limited liability company

By: LIGHTLY HELD EQUITIES, LLC,
a California limited liability company,
its Manager

By: 
Name: Shereef Bishay
Title: Manager

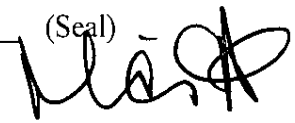
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

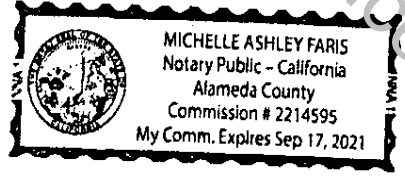
State of California)
County of Marin)

On July 23, 2019 before me, Michelle A. Faris, a Notary Public, personally appeared Shereef Bishay, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal) 



- List of Attachments:
Exhibit "A" - Land Description
Exhibit "B" - Permitted Exceptions
Exhibit "C" - Key Terms

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EXHIBIT "A"

LAND DESCRIPTION

PARCEL 1:

THAT PART PART OF THE SOUTH EAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 12 CHAINS SOUTH OF THE NORTH EAST CORNER OF SAID SOUTH EAST QUARTER OF SAID SECTION 14; THENCE WEST 11.5 CHAINS; THENCE SOUTH 2.35 CHAINS; THENCE WEST 8.50 CHAINS TO THE WEST LINE OF SAID SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER, THENCE SOUTH 5.66 CHAINS TO THE SOUTH WEST CORNER OF SAID SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER THENCE EAST 20 CHAINS TO THE SOUTH EAST CORNER OF SAID SECTION 14; THENCE NORTH 8.0 CHAINS TO THE POINT OF BEGINNING (EXCEPT THEREFROM THAT PART OF THE SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTH WEST CORNER OF SAID SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER, THENCE NORTH ALONG THE WEST LINE OF SAID SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER 385.20 FEET; THENCE EAST 552.28 FEET TO A POINT 355.38 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 14; THENCE SOUTH 355.38 FEET TO A POINT IN THE SOUTH LINE OF SAID SECTION 14 WHICH IS 582.0 FEET EAST OF THE SOUTH WEST CORNER OF SAID SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER; THENCE WEST ALONG THE SOUTH LINE OF SAID SECTION 14 TO THE POINT OF BEGINNING AND EXCEPT THEREFROM THE EAST 210 FEET OF THE SOUTH 220 FEET OF THE SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER OF SECTION 14, AFORESAID AND EXCEPT THEREFROM THAT PART OF THE EAST 50 OF THE SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER OF SECTION 14, AFORESAID WHICH LINE NORTH OF THE SOUTH 220 FEET OF THE SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER OF SECTION 14, AFORESAID, AND SOUTH OF THE NORTH LINE OF THE HEREIN ABOVE DESCRIBED TRACT OF LAND), IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOT 2, EXCEPT THE EAST 200.00 FEET (MEASURED PERPENDICULARLY) OF THE NORTH 145.00 FEET (MEASURED ALONG THE EAST LINE THEREOF) IN KENROY'S HUNTINGTON BEING A SUBDIVISION OF PART OF THE EAST HALF OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 1 AND 2 OF THE LAND ARE ALSO KNOWN AS LOT 2 IN KENROY'S ELMHURST DEMPSTER SUBDIVISION BEING A SUBDIVISION OF PART OF THE EAST HALF OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DATED APRIL 19, 1973 AND RECORDED MAY 18, 1973 AS DOCUMENT 22327173, AS AMENDED BY LETTER OF CORRECTION RECORDED NOVEMBER 9, 1989 AS DOCUMENT 89536360.

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PARCEL 3:

NON-EXCLUSIVE PERPETUAL EASEMENT FOR STORM WATER SEWER LINE FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FROM LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST NUMBER 33425, DATED APRIL 19, 1973 AND RECORDED MAY 22, 1973 AS DOCUMENT 22334719 AND AS AMENDED BY DOCUMENT RECORDED SEPTEMBER 26, 1973 AS DOCUMENT NUMBER 22492620.

PARCEL 4:

PERPETUAL EASEMENT FOR STORM WATER SEWER LINE FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FROM TRUSTEES OF SCHOOLS OF TOWNSHIP 41 NORTH, RANGE 11 EAST TO LASALLE NATIONAL BANK, TRUST NUMBER 33425 AND KENROY, INCORPORATED, DATED AUGUST 29, 1973 AND RECORDED SEPTEMBER 26, 1973 AS DOCUMENT NUMBER 22492619.

PARCEL 5:

NON-EXCLUSIVE PERPETUAL EASEMENT FOR STORM WATER SEWER LINE FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FROM THE COMMONWEALTH EDISON COMPANY, A CORPORATION OF ILLINOIS, TO LASALLE NATIONAL BANK, TRUST NUMBER 33425 AND KENROY, INCORPORATED, DATED AUGUST 23, 1973 AND RECORDED SEPTEMBER 26, 1973 AS DOCUMENT NUMBER 22492621.

PARCEL 6:

EXCLUSIVE PERPETUAL EASEMENT FOR STORM WATER SEWER LINE FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FROM MOUNT PROSPECT STATE BANK, TRUST NUMBER 270 AND KENROY INCORPORATED DATED AUGUST 29, 1973 AND RECORDED SEPTEMBER 26, 1973 AS DOCUMENT NUMBER 22492617.

PARCEL 7:

EXCLUSIVE PERPETUAL EASEMENT FOR STORM WATER SEWER LINE FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FROM HUNTINGTON COMMONS ASSOCIATION, NON-PROFIT CORPORATION OF ILLINOIS TO LASALLE NATIONAL BANK, TRUST NUMBER 33425 AND KENROY, INCORPORATED, A CORPORATION OF DELAWARE, DATED AUGUST 29, 1973 AND RECORDED SEPTEMBER 26, 1973 AS DOCUMENT NUMBER 22492618 AND AMENDED BY AMENDMENT RECORDED SEPTEMBER 28, 1973 AS DOCUMENT NUMBER 22495853.

Permanent Index Nos.: 08-14-403-022-0000 Vol. 049;
08-14-403-027-0000 Vol. 049;
08-14-403-028-0000 Vol. 049

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EXHIBIT "B"

Permitted Exceptions

1. General real estate taxes for the year(s) 2018 (Final Installment), 2019 and subsequent years.
2. Memorandum of Assignment and Assumption of Lease dated September 25, 2017 by and between Mount Prospect Center, L.L.C, an Illinois limited liability company ("Landlord"); Eddie's Restaurant Company, an Illinois corporation and FQSR, LLC, a Delaware limited liability company recorded October 16, 2017 as document no. 1728941148.
3. Terms, provisions and conditions contained in Lease by and between KRCV Corp., a Kansas corporation, Lessor, and Kohl's Department Stores, Inc., a Delaware corporation, Lessee, dated November 22, 2002 as disclosed by a Memorandum of Lease recorded July 8, 2003 as document 0318931058, and all rights thereunder of and all acts done and suffered thereunder of said lessee or any parties claiming by, through or under said lessee.
4. Unrecorded Lease as evidenced by a Assignment and Assumption of Lease by and between KFC Corporation, a Delaware corporation and Apex Brands Chicago, LLC, an Illinois limited liability company recorded April 11, 2012 as document no. 1210231039; as affected by that Assignment and Assumption of Leases by and between Ampex Brands Chicago, LLC f/k/a Apex Brands Chicago, LLC, a Delaware limited liability company and Eddies Restaurant Company, an Illinois corporation recorded May 2, 2016 as document no. 1612356152; as affected by that Consent to Assignment and Agreement Regarding Future Consents by and between KFC Corporation, a Delaware corporation to Eddies Restaurant Company, an Illinois corporation to FQSR, LLC, a Delaware limited liability company recorded October 16, 2017 as document no. 1728941147; as further affected by that Memorandum of Assignment and Assumption of Lease dated September 25, 2017 by and between Mount Prospect Center, L.L.C., an Illinois limited liability company; Eddie's Restaurant Company, an Illinois corporation and FQSR, LLC, a Delaware limited liability company recorded October 16, 2017 Document No. 1728941148.
5. A financing statement recorded July 7, 2014 as 1418815025 of Official Records, and that continuation statement recorded June 04, 2019 as 1915528004 of Official Records.

Debtor: MJVT Enterprises, Inc.

Secured party: Susquehanna Commercial Finance, Inc.

6. Rights of the public and the municipality in and to that part of the Land as designated by plat entitled Dempster Street Plat of Easement for Public highway recorded may 27, 1928 as document 9967970.

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7. Perpetual right, easement and authority to construct, install Operate, use, maintain, renew, replace, remove or relocate on, over or in Property owned by the Commonwealth Edison Company on February 9, 1954 Situated in County of Cook (excluding the city of Chicago), with such rights of access to such portions of said property as may be necessary of Incidental to exercise of such right, easement and authority, (a) existing Gas facilities, (b) gas facilities now in process of construction, and (c) Gas facilities which construction has been or shall be authorized in or before February 9, 1954, as contained in Grant made by Commonwealth Edison to Northern Illinois Gas Company, a corporation of Illinois in its deed dated and recorded February 9, 1954 as document 15829698 and filed in the Office of the Registrar of Titles on February 9, 1954 as document LR1506515
8. Easement over a 10 foot strip of land lying in Huntington Drive in favor of Northern Illinois Gas Company to lay and maintain gas mains necessary gas facilities, together with right of access thereto as granted by instrument recorded December 18, 1970 as Document 21346789.
9. Easement over Parcel 6 in favor of LaSalle National Bank, as trustee Under trust agreement dated January 22, 1971 and known as trust number 42301, owner of property located at the northeast corner of Lot 1 in Kenroy's Huntington subdivision, and in favor of Bralen, ltd., Bralen Townhome Owners Association, a not for profit corporation, to use the easement noted below created by document 21401332, for ingress and egress, as granted in instrument recorded March 9, 1972 as document 21831899 and in instrument recorded September 21, 1972 as document 22058639.
10. Easement for Pedestrian and Motor Vehicle Ingress and Egress to and From dedicated streets and/or public roads, as created by the Declaration recorded February 19, 1971 as document 21401332 made by LaSalle National Bank, a national banking association, as trustees under trust number 33425, 35280, 19237 and 28948, upon, over and along the servient land as shown on the Plat of Easement attached as Exhibit A to said Declaration.
11. Reservation of easement for private road for the purpose of vehicular and pedestrian ingress and egress to and from those parcels of real estate which adjoin such private roads and for the use of declarant, LaSalle National Bank, as trustee under trust numbers 28948, 19237 and 35280 and Kenroy Builders, Inc., and reservation unto Kenroy Builders, Inc., to Establish easements over, upon and across parcel 7 in favor of public utility companies and to install and maintain a television cable and master television system, all as set forth in the Declaration recorded October 8, 1971 as document 21661527 and covenants, conditions and restrictions contained therein.
12. Easement for ingress and egress over the Northeasterly corner of Lot 2 in Kenroy's Elmhurst-Dempster Subdivision, aforesaid adjoining Elmhurst Road, as shown on the plat of subdivision recorded as document 22327173.
13. Easement for sanitary sewer and water main over the East 23 feet of The North 205 feet of Lot 2 in Kenroy's Elmhurst-Dempster subdivision, Aforesaid adjoining Elmhurst road, as shown on the plat of subdivision recorded as document 22327173.
14. Easement in favor of Northern Illinois Gas Company to lay and maintain gas mains and necessary gas facilities, together with right of access thereto in, upon, under, along and across that

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portion of the land as created by Grant dated July 19, 1973 and recorded September 10, 1973 as document 22471640.

15. Covenants and restrictions contained in the Agreement dated April 19, 1973 and recorded September 25, 1973 as document 22489725 between Kenroy Builders, Inc., a corporation of Illinois and the Village of Mt. Prospect, a municipality, relating to maintenance of the land and open space easements.

16. Easement in favor of the Village of Mt. Prospect for Sanitary Sewer Lines and Water Main as disclosed by Grant dated February 17, 1975 and recorded February 26, 1975 as document 23006350.

17. Agreement for the Regulation of Traffic and Parking dated February 19, 1975 and recorded April 9, 1975 as document 23044818.

18. Grant of Non-Exclusive Perpetual Easement dated April 25, 1975 and recorded August 1, 1975 as document 23173133 made by the May Department Stores to the Metropolitan Sanitary District of Greater Chicago for the right, privilege and authority to construct, reconstruct, repair, maintain and operate a certain part of the conveyance facilities under and through a Portion of the land.

19. Electric Facilities Agreement dated February 9, 1976 and recorded as Document 23406655 in favor of Commonwealth Edison Company.

20. Grant of Easement recorded December 28, 1976 as document 23760270 Made by the May Department Stores to the Village of Mt. Prospect and the terms, provisions and conditions contained therein, to construct, build and control construction in open space shown on plat of open space attached as Exhibit A thereto.

21. Easement Agreement dated January 5, 1977 and recorded June 14, 1977 as document 23968409 creating a non-exclusive perpetual easement for the Purpose of surface parking of motor vehicles and vehicular and pedestrian ingress and egress incidental to any such surface parking.

22. Easement Agreement recorded September 1, 1977 as document 24088112 made by May Properties 1975, Inc., to Elden H. Haskell and Phyllis Haskell for the purpose of surface parking of motor vehicles thereupon and vehicular and pedestrian ingress and egress; as affected by that Assignment of the aforesaid Easement to Sambo's of Illinois, Inc., recorded September 1, 1977 as document 24088113; as affected by that Amended and Restated Easement Agreement recorded December 11, 2003 as document no. 0334534112; as further affected by that Reaffirmation of Amended and Restated Easement Agreement recorded October 7, 2016 as document no. 1628122133.

23. Grant of Easement made by Venture Stores, Inc., to Mt. Prospect Park District for right of way to construct, lay, install, operate, use, and maintain, alter, repair, replace and inspect or remove under ground sanitary sewer lines in, upon, under, along and across that portion of the Land as described in said Grant recorded March 22, 1990 as document 90128579.

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24. Terms, provisions and conditions of the Ordinance Granting an Amendment to a Planned Unit Development and granting variations dated February 6, 1990 and recorded July 3, 1990 as document 90273824.
25. Terms, conditions and provisions as contained in Ordinance No. 5031 by the Village of Mt. Prospect, An Ordinance Amending Ordinance No. 2416 Relative to the Planned Unit Development/Conditional Use Governing Big K-Mart Plaza in Order to Permit Hobby Lobby, 1550 South Elmhurst Road recorded September 15, 2000 as document no. 00717967.
26. Terms, conditions, provisions as contained in Ordinance No. 5859 by the Village of Mt. Prospect, An Amendment of Official Comprehensive Plan of the Village of Mt. Prospect, Illinois and Include the Northwest Highway Corridor Plan Dated may 2011 recorded July 28, 2011 as document no. 1120931083.
27. Any facts, rights, interests or claims that may exist or arise by reason of the following matter disclosed by an ALTA/NSPS survey made by JLH Land Surveying Inc., as coordinated by EMG on May 22, 2019 last revised July 23, 2019, designated 19-260-118: Building encroaches over easement.
28. Perpetual Easement for Storm Water Sewer Line, dated August 29, 1973 and recorded September 26, 1973 as Document No. 22492619.

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EXHIBIT "C"

Key Terms

1. Lender: PSL AUSTIN LENDING LLC, a Texas limited liability company, whose address for notice hereunder is 100 Congress Avenue, Suite 1550, Austin, Texas 78701, Attention: Brian Barrow, and the subsequent holder or holders, from time to time, of the Note.
2. Effective Date: July 22, 2019.
3. Existing Credit Facilities: Not applicable to this Loan.
4. Guarantor: As the context dictates, any Person(s) (other than Borrower), jointly and severally, who shall, at any time, guaranty the Obligations or Indebtedness or otherwise be or become obligated pursuant to any Guaranty, including without limitation, Mr. Gabe Arechaderra, an individual, and Acre Investment Company, a California limited liability company.
5. Leases: Collectively, (i) that certain Lease Agreement dated November 22, 2002, by and between KRCV Corp., succeeded-in-interest by Borrower, as landlord, and Kohl's Department Stores, Inc., succeeded-in-interest by Kohl's, Inc., as tenant, as guaranteed by that certain Guaranty of Lease dated November 22, 2002, executed by Kohl's Corporation for the benefit of Borrower, (ii) that certain Lease Agreement dated January 28, 1989, by and between Mount Prospect Center, LLC, an Illinois limited liability company, succeeded-in-interest by Borrower, as landlord, and FQSR, LLC, as tenant, (iii) that certain Lease Agreement dated as of July 23, 2003 for certain space within the Project leased by Enterprise Leasing Company of Chicago, LLC, a Delaware limited liability company, (iv) that certain Lease Agreement dated as of December 17, 2009 for certain space within the Project leased by True Value Company, L.L.C., a Delaware limited liability company, (v) that certain Shopping Center Lease dated as of June 29, 2005 for certain space within the Project leased by MJVT Enterprises, Inc., (vi) that certain Shopping Center Agreement (In-Line) license agreement dated January 12, 2018 for certain space within the Project licensed to Four Seasons of Fun, Inc., an Illinois corporation, and (vi) if approved and executed in accordance with the Loan Agreement, the 24HF Lease.
6. Lessee: Any and all tenants to the Leases, including without limitation Kohl's, Inc., FQSR, LLC, a Delaware limited liability company, Enterprise Leasing Company of Chicago, LLC, a Delaware limited liability company, True Value Company, L.L.C., a Delaware limited liability company, MJVT Enterprises, Inc., Four Seasons of Fun, Inc., an Illinois corporation, and, if the 24HF Lease is approved in accordance with the Loan Agreement, 24 Hour Fitness USA, Inc., a California corporation.
7. Location: Village of Mount Prospect, County of Cook, State of Illinois.

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8. Note Amount: \$11,900,000.00.

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
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