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Illinois Anti-Predatory Lending Database Program

Doc#: 1931022055 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 11/06/2019 10:55 AM Pg: 1 of 19

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN: 13-17-317-015-0000**

Address:

Street: 6000-6012 W Irving Park Rd.

Street line 2:

City: Chicago

State: IL

ZIP Code: 60634

Lender: Red Oak Capital Fund II, LLC

Borrower: Patio Theater Holdings, LLC

Loan / Mortgage Amount: \$2,362,500.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Certificate number: A680E858-056B-45D0-B598-07D804469BF1

Execution date: 9/30/2019

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(Space Above This Line for Recording Information)

MORTGAGE

THIS MORTGAGE ("Mortgage") is made as of September 30, 2019, by Patio Theater Holdings, LLC, a Illinois Limited Liability Company of 6008 W Irving Park Road, Chicago, IL 60634 ("Mortgagor"), in favor of Red Oak Capital Fund II, LLC a Delaware limited liability company, of 625 Kenmoor Ave SE, Suite 211, Grand Rapids, MI 49546 ("Lender").

GRANTING CLAUSE

To secure the Indebtedness (as hereinafter defined) and as security for the purposes stated elsewhere in this Mortgage, the Mortgagor MORTGAGES AND WARRANTS to the Lender, its successors and assigns, the following described properties, rights, interests and privileges (collectively, the "Mortgaged Property"):

A. The parcel(s) of real estate commonly known as 6000-6012 W Irving Park Road, located in the City of Chicago, County of Cook, State of Illinois, as more particularly described in Schedule A attached to this Mortgage (Real Estate");

B. All buildings, structures, fixtures and improvements now located, or subsequently constructed or placed upon the Real Estate, including, without limit, all building materials and building equipment located on the Real Estate;

C. All machinery, apparatus, equipment, utility systems, appliances, fittings, fixtures, supplies, goods, and articles of personal property of every kind and nature located or subsequently located on the Real Estate and all attachments, accessions and replacements (individually and collectively, "Equipment"), and all of the right, title and interest of the Mortgagor in and to any Equipment which may be subjected to any title retention or security agreement superior in lien to the lien of this Mortgage. All Equipment being part and parcel of the Mortgaged Property and appropriated to the use of the Real Estate and, whether affixed or not, unless the Lender shall otherwise elect, deemed to be real estate and mortgaged under this Mortgage;

D. All easements, rights -of -way, licenses, privileges and appurtenances relating to the Real Estate;

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E. All rents, issues, profits, revenues, proceeds, accounts and general intangibles arising from the Real Estate or relating to any business conducted by the Mortgagor on the Real Estate, or under present or future leases, reservation and/or purchase agreements, land contracts, licenses or otherwise, all of which are specifically assigned and transferred to the Lender including, without limit, all rights conferred by applicable Illinois law;

F. All right, title and interest of the Mortgagor in and to the land lying in the bed of any street, road, avenue, alley or walkway, opened or proposed or vacated, adjoining the Real Estate; and

G. Any and all awards or payments, including, without limit, interest on any awards or payments, and the right to receive them, which may be made with respect to the Mortgaged Property as a result of: the exercise of the right of eminent domain; the alteration of the grade of any street; any loss of or damage to any building or other improvement on the Real Estate; any other injury to or decrease in the value of the Mortgaged Property; any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the Mortgaged Property; or any refund of utility deposits or right to any tenant deposit.

INDEBTEDNESS SECURED BY THIS MORTGAGE

This Mortgage is made to secure all of the following (individually and collectively, the "Indebtedness"):

- I. Payment of Two Million Three Hundred Sixty Two Thousand Five Hundred (\$ 2,362,500.00) Dollars, together with interest, costs and all other sums payable on that amount, to be paid according to the Promissory Note dated on even date herewith made by Mortgagor payable to Lender and all extensions, renewals, modifications, substitutions or replacements (collectively, the "Note") and the Loan Agreement dated on even date herewith, made by and between Mortgagor and Lender and all amendments, modifications, renewals, substitutions or replacements thereof (the "Loan Agreement") and any other note(s), guaranty(ies), loan agreement(s), indemnity agreement(s) or other evidence(s) of indebtedness to Lender made as of the date of this Mortgage by the Mortgagor and any and all extensions, renewals, modifications, substitutions or replacements thereof. This reference to a particular dollar amount does not in any way limit the dollar amount secured by this Mortgage.

- II. The payment of any and all amounts of any kind now owing or later to become due to the Lender from the Mortgagor during the term of this Mortgage, however created or arising, whether under the obligations specified above or under any other existing or future instrument or agreement between the Mortgagor and the Lender, or otherwise, and whether direct, indirect, primary, secondary, fixed, contingent, joint or several, due or to become due, together with interest, costs and all other sums on that amount and including, without limit, all present and future indebtedness or obligations of third parties to the Lender which is guaranteed by the Mortgagor, and the present or future indebtedness originally owing by the Mortgagor, to third parties and assigned by third parties to the Lender, and any and all renewals, extensions, modifications, substitutions or replacements of any of them.

- III. The performance of the covenants and obligations due or to become due to the Lender, including, without limit, those due under this Mortgage, and the repayment of

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all sums expended by the Lender in connection with performance of those covenants and obligations and the enforcement of this Mortgage.

COVENANTS AND AGREEMENTS

1. **COVENANTS AND WARRANTIES.** The Mortgagor covenants and warrants to the Lender, as long as the Indebtedness remains outstanding, as follows:

- 1.1 **Authority: No Conflict.** The Mortgagor has the power and authority to execute, deliver and perform its obligations under this Mortgage. The execution, delivery and performance of this Mortgage by the Mortgagor does not, and will not violate or conflict with any provision of its organizational or charter documents or any agreement, court order or consent decree to which the Mortgagor is a party or by which the Mortgagor may be bound.
- 1.2 **Title to Mortgaged Property.** The Mortgagor is the owner and is lawfully seized and possessed of the Mortgaged Property. The Mortgagor has good right, full power and authority to mortgage the Mortgaged Property to Lender in accordance with the terms of this Mortgage. The Mortgaged Property is and shall remain free and clear of any liens and encumbrances save and except as may be set forth on Schedule B-II in that certain marked up commitment for title insurance issued by Stewart Title, Commitment No. 211036 delivered to Lender concurrent with the execution hereof. The Mortgagor shall pay when due all obligations which, if unpaid, may become a lien on the Mortgaged Property or which are secured by a lien on the Mortgaged Property with the Lender's consent.
- 1.3 **Payment of Indebtedness.** The Mortgagor will pay and perform the Indebtedness when due, whether by maturity, acceleration or otherwise.
- 1.4 **Maintenance of Mortgaged Property; Maintenance Reserve Account; and Waste.**
- 1.4.1 The Mortgagor shall preserve and maintain the Mortgaged Property in good repair, working order and condition, excepting ordinary wear and tear, shall replace any Equipment which requires replacement, shall procure all necessary utility services, and shall not commit or permit the commission of waste against the Mortgaged Property. The Mortgagor shall promptly protect, repair, replace or rebuild any part of the Mortgaged Property that is damaged or destroyed by fire or other casualty, or that may be affected by any eminent domain or condemnation proceedings.
- 1.4.2 Failure, refusal or neglect of the Mortgagor to comply with subsection 1.4.1 or to pay any taxes or assessment or any utility rates levied, assessed or imposed upon the Mortgaged Property, and/or nonpayment of any premiums for insurance, shall constitute waste, and shall entitle the Lender to exercise the remedies provided in this Mortgage, as well as those afforded by law.
- 1.5 **Payment of Taxes; Discharge of Liens.** The Mortgagor shall pay of all imposition(s) levied, assessed or existing on the Mortgaged Property. In the event that sufficient funds have been deposited with the Lender to cover the amount of these Imposition(s) when they become due and payable, and they are not paid by Mortgagor, the Lender shall pay them. In the event that sufficient funds have not been

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deposited to cover the amount of these Imposition(s) before thirty (30) days after the time when they first become due and payable, the Mortgagor shall immediately pay the amount of the deficiency to the Lender. The Lender shall not be required to keep a separate account or to pay the Mortgagor any interest on the funds held by the Lender for the payment of the Imposition(s) pursuant to this Section 1.5 or for the payment of insurance premiums under Section 1.7 below, or on any other funds deposited with the Lender in connection with this Mortgage. The funds on deposit with the Lender are further security for the Indebtedness and if an Event of Default occurs under this Mortgage, any funds remaining on deposit with the Lender may be applied against the Indebtedness at any time after the Event of Default occurs, and without notice to the Mortgagor.

1.6 **Sale or Transfer of Mortgaged Property.** Without the prior written consent of the Lender, except as permitted under the Special Provisions section below, the Mortgagor will not (i) sell, assign, transfer or encumber all or any interest in the Mortgaged Property or (ii) enter into any agreement or grant an option for such purpose, or (iii) permit or suffer any change in the ownership of the Mortgaged Property. In the event ownership of the Mortgaged Property, or any part, becomes vested in any person(s) other than the Mortgagor, the Lender may deal with and may enter into any contract or agreement with the successor(s) in interest with reference to this Mortgage in the same manner as with the Mortgagor, without discharging or otherwise affecting the lien of this Mortgage or the Mortgagor's obligations under this Mortgage.

1.7 **Insurance.**

1.7.1 The Mortgagor shall keep the buildings and all other improvements on the Mortgaged Property insured for the benefit of the Lender against fire and other hazards and risks, including, without limit, vandalism and malicious mischief, as the Lender may require and shall further provide flood insurance. If the Mortgaged Property is situated in an area which is considered a flood risk area by the United States Department of Housing and Urban Development, and for which flood insurance is available under the National Flood Insurance Act of 1968, as amended, public liability and product liability insurance and any other insurance as the Lender may reasonably require from time to time. All insurance shall be in amounts and in forms and with companies satisfactory to the Lender, and in the case of fire and extended coverage (or builder's risk) insurance shall not be for less than 100% of the full insurable value of the Mortgaged Property. The Mortgagor shall deliver to the Lender the policies evidencing the required insurance with premiums fully paid for one year in advance, and with standard mortgagee clauses (making all losses payable to the Lender). Renewals of the required insurance (together with evidence of premium prepayment for one (1) year in advance) shall be delivered to the Lender at least thirty (30) days before the expiration of any existing policies. All policies and renewals shall provide that they may not be canceled or amended without giving the Lender thirty (30) days prior written notice of cancellation or amendment. The foregoing insurance requirements are in addition to those contained in the Loan Agreement and in the event of any conflict or inconsistency in the insurance requirements herein or in the Loan

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- Agreement, the requirements move favorable to the Lender, as determined by the Lender, in its sole and absolute discretion, shall apply.
- 1.7.2 Should the Mortgagor fail to insure or fail to pay the premiums on any required insurance or fail to deliver the policies or renewals as provided above, the Lender may have the insurance issued or renewed (and pay the premiums on it for the account of the Mortgagor) in amounts and with companies and at premiums as the Lender deems appropriate. If the Lender elects to have insurance issued or renewed to insure the Lender's interest, the Lender shall have no duty or obligation of any kind to also insure the Mortgagor's interest or to notify the Mortgagor of the Lender's actions. Any sums paid by the Lender for insurance, as provided above, shall be a lien upon the Mortgaged Property, added to the amount secured by this Mortgage, and payable immediately by the Mortgagor to the Lender, with interest on those sums at the highest rate charged by the Lender on any of the Indebtedness (but not to exceed the maximum interest rate permitted by law).
- 1.7.3 In the event of loss or damage, the proceeds of all required insurance shall be paid to the Lender. No loss or damage shall itself reduce the Indebtedness. The Lender or any of its employees is each irrevocably appointed attorney-in-fact for the Mortgagor and is authorized to adjust and compromise each loss without the consent of the Mortgagor, to collect, receive and receipt for the insurance proceeds in the name of the Lender and the Mortgagor and to endorse the Mortgagor's name upon any check in payment of the loss. The proceeds shall be applied first toward reimbursement of all costs and expenses of the Lender in collecting the proceeds (including, without limit, court costs and reasonable attorneys' fees), and then toward payment of the Indebtedness or any portion of it, whether or not then due or payable and in whatever order of maturity as the Lender may elect, or the Lender, at its option, may apply the insurance proceeds, or any part of them, to the repair or rebuilding of the Mortgaged Property. If the Lender elects to restore or repair the Mortgaged Property, the Mortgagor and the Lender shall enter into a written agreement satisfactory to the Lender providing for the terms under which the insurance proceeds shall be released. Application of proceeds by the Lender toward later maturing installments of the Indebtedness shall not excuse the Mortgagor from making the regularly scheduled installment payments nor shall such application extend or reduce the amount of any of these payments.
- 1.7.4 In the event of a foreclosure of this Mortgage, or the giving of a deed in lieu of foreclosure, the purchaser or grantee of the Mortgaged Property shall succeed to all of the rights of the Mortgagor under the insurance policies including, without limit, any right to unearned premiums and to receive the proceeds.
- 1.7.5 **[INTENTIONALLY OMITTED]**
- 1.7.6 The requirements regarding insurance in this Section 1.7 are in addition to any other similar requirements in any other document entered into by Mortgagor in connection with the Indebtedness and in the event of any conflict in such requirements the requirement(s) more favorable to Lender (determined by Lender in its sole and absolute discretion) shall govern and be applicable.

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- 1.7.7 Notwithstanding the foregoing provisions, for any loss or damage involving a cost of repair or restoration not exceeding Twenty -Five Thousand and 00/100 (\$25,000.00) Dollars, the Mortgagor may adjust or compromise any claim with the insurer and upon receipt of proceeds of insurance proceed with diligence to cause the necessary repairs to be made in a good and workmanlike manner and on a lien free basis.
- 1.7.8 Notwithstanding the foregoing provisions, for any loss or damage of more than Twenty -Five Thousand and 00/100 (\$25,000.00) Dollars, but not more than fifty percent (50%) of the value of the improvements, so long as there then exists no Event of default or condition which with notice or the passage of time could mature into an Event of Default, the Lender will permit the proceeds of insurance to be applied to repair or restoration subject to the following conditions:
- 1.7.8.1 The Mortgagor shall continue making (and prior to the proceeds of insurance being made available to repair or restore, Mortgagor shall demonstrate to Lender's reasonable satisfaction that it will have sufficient financial resources to continue to make) all payments under the Indebtedness as and when each becomes due and the repairs/restoration in Lender's opinion can be completed before the Indebtedness matures.
- 1.7.8.2 The loss or damage can be repaired and the buildings and other improvements can be restored so that the Mortgaged Property will be in substantially the same condition it had before the casualty.
- 1.7.8.3 The Mortgagor submit to the Lender plans, a construction schedule and a budget for restoration, obtains all required permits or licenses, and identifies a contractor(s), all of which are satisfactory to the Lender in all material respects.
- 1.7.8.4 The insurance proceeds together with other funds delivered to the Lender by the Mortgagor are sufficient to pay the cost of repair and restoration. Funds provided by Mortgagor shall be applied first.
- 1.7.8.5 All Mortgagor funds and insurance proceeds are advanced in accordance with such construction loan terms and conditions as Lender shall impose in its reasonable discretion.
- 1.7.8.6 The Mortgagor shall direct the repair or restoration in accordance with the plans, schedule and budget; the work shall be performed in a workmanlike manner, free from defects, and in compliance with applicable law; the Lender may inspect (or cause to be inspected) the work at any time and may stop work and order replacement or correction of any non -conforming work; and all repair and restoration shall be completed free of all construction liens.
- 1.7.8.7 All costs of Lender in connection with the adjustment, collection and making available proceeds of insurance for the repair/restoration of the Mortgaged Property shall be paid by Mortgagor to Lender upon demand.
- 1.8 **Compliance With Law and Other Matters.** The Mortgagor will comply with all federal, state and local laws, ordinances, rules, regulations and restrictions relating to the ownership, use, occupancy and operation of the Mortgaged Property and will not permit the use of the Mortgaged Property for unlawful purposes. Further, the

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Mortgagor will comply with, perform the Mortgagor's obligations under, and enforce the obligations of all other parties to all building and use restrictions, ground leases, leases, reservation and/or purchase agreements, condominium documents and/or other instruments, as applicable, affecting or relating to the use and/or occupancy of the Mortgaged Property.

- 1.9 **No Removal of Improvements.** Without the prior written consent of the Lender, the Mortgagor will not remove, demolish or materially alter or add to any building, structure or other improvement forming part of the Mortgaged Property nor otherwise reduce the value or usefulness of the Mortgaged Property, except for replacement, maintenance and renovation in the ordinary course of business.
- 1.10 **Recording.** The Mortgagor will cause this Mortgage, any supplemental mortgage and any financing and continuation statements required by the applicable Uniform Commercial Code to be recorded and filed at the Mortgagor's expense in such manner and in such place as may, in the Lender's opinion, be necessary or proper.
- 1.11 **Additional Assurances.** The Mortgagor will execute and deliver additional instruments and take additional actions as Lender may reasonably request to carry out the terms and conditions of this Mortgage.
- 1.12 **Books and Records; Inspection Rights.** The Mortgagor will at all times maintain accurate and complete books and records, and copies of all building and use restrictions, ground leases, leases, reservation and/or purchase agreements, condominium documents, contracts and/or other instruments with respect to the Mortgaged Property. The Lender may inspect and make copies of those books and records and any other data relating to the Mortgaged Property. The Lender may inspect and test the Mortgaged Property at such reasonable times as Lender shall determine, and the Mortgagor will permit the Lender and its representatives and inspectors all necessary access to the Mortgaged Property. The Mortgagor will promptly provide to the Lender reports concerning the income, expenses and financial and other conditions of the Mortgaged Property as may be required from time to time by the Lender as more particularly set forth in the Loan Agreement.
- 1.13 **Environmental Representation, Warranty and Indemnification.** Notwithstanding anything in this Mortgage to the contrary, the Mortgagor represents, covenants and warrants to the Lender as follows:
- 1.13.1 For the purpose of this Section the following terms shall have the given meanings:
- 1.13.1.1 "Relevant Environmental Laws" shall mean all applicable federal, state and local laws, rules, regulations, orders, judicial determinations and decisions or determinations by any judicial, legislative or executive body of any governmental or quasi - governmental entity, whether in the past, the present or the future, with respect to: (i) the installation, existence or removal of, or exposure to, Asbestos on the Mortgaged Property; (ii) the existence on, discharge from, or removal from the Mortgaged Property of Hazardous Materials; and/or (iii) the effects on the

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- environment of the Mortgaged Property or of any activity now, previously, or hereafter conducted on the Mortgaged Property.
- 1.13.1.2 "Asbestos" shall have the meanings provided under the Relevant Environmental Laws, and shall include, without limited, asbestos fibers and friable asbestos, as such terms are defined under the Relevant Environmental Laws.
- 1.13.1.3 "Hazardous Materials" shall mean any of the following (as defined by the Relevant Environmental Laws): solid wastes; toxic or hazardous substances, wastes, or contaminants, including, without limit, polychlorinated biphenyls, paint containing lead, and urea formaldehyde foam insulation; and discharges of sewage or effluent.
- 1.13.2 At all times since Mortgagor has acquired any interest or rights in the Mortgaged Property, whether through lease, land contract, deed or otherwise and, to Mortgagor's knowledge, after due inquiry, at all times prior to Mortgagor's acquisition of such interest or rights in the Mortgaged Property: there are no and have been no violations of the Relevant Environmental Laws at the Mortgaged Property and no consent orders have been entered with respect to the Mortgaged Property; there are no and have been no Hazardous Materials or Asbestos either at, upon, under or within, or released, discharged or emitted at or from, the Mortgaged Property; no Hazardous Materials or Asbestos have released, emitted or otherwise become present at the Mortgaged Property from neighboring land; and no Hazardous Materials or Asbestos have been removed from the Mortgaged Property, except in compliance with the Relevant Environmental Laws.
- 1.13.3 The Mortgagor, after due inquiry, is not aware of any claims of litigation, and has not received any communication, concerning the presence or possible presence of Hazardous Materials or Asbestos at the Mortgaged Property or concerning any violation or alleged violation of the Relevant Environmental Laws respecting the Mortgaged Property. The Mortgagor shall promptly notify the Lender of any such claims and shall furnish the Lender with a copy of any such communications received after the date of this Mortgage.
- 1.13.4 The Mortgagor shall ensure that the Mortgaged Property complies in all respects with the Relevant Environmental Laws, shall notify Lender promptly and in reasonable detail in the event that the Mortgagor becomes aware of the presence of Hazardous Materials or Asbestos or a violation of the Relevant Environmental Laws at the Mortgaged Property, and shall conduct all required clean-up, closure or other remediation of any condition necessary to maintain compliance with the Relevant Environmental Laws.
- 1.13.5 Should the Mortgagor use or permit the Mortgaged Property to be used or maintained so as to subject the Mortgagor, the Lender or the use of the Mortgaged Property to a claim of violation of the Relevant Environmental Laws (unless contested in good faith by appropriate proceedings satisfactory to the Lender), the Mortgagor shall immediately remedy and fully cure, at its own cost and expense, any conditions arising therefrom.
- 1.13.6 The Mortgagor shall pay immediately when due the cost of compliance with the Relevant Environmental Laws. Further, the Mortgagor shall keep the Mortgaged Property free of any lien imposed pursuant to the Relevant Environmental Laws.

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- 1.13.7 In the event that the Mortgagor fails to comply with any of the requirements of this Section 1.13, after notice to the Mortgagor and the earlier of the expiration of any applicable cure period under this Mortgage or the expiration of the cure period permitted under the Relevant Environmental Laws, if any, the Lender may exercise its right to do one or more of the following: (i) elect that such failure constitutes a default under this Mortgage; and/or (ii) take any and all actions, at the Mortgagor's expense, that the Lender deems necessary or desirable to cure such failure of compliance. Any costs incurred the Lender pursuant to this Section 1.13, shall become immediately due and payable without notice and with interest thereon at a rate equal to the highest interest rate charged on the Indebtedness (but not to exceed the maximum interest rate permitted by law), and such amount, including interest, shall, if incurred prior to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, be added to amounts owing under the Indebtedness and shall be secured by this Mortgage.
- 1.13.8 The Lender shall not be liable for and the Mortgagor shall immediately pay to and indemnify, defend and hold the Lender harmless from and against, all loss, cost, liability, damage and expense (including, without limit, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that the Lender may suffer or incur (as holder of this Mortgage, as mortgagee in possession or as successor in interest to the Mortgagor as owner of the Mortgaged Property by virtue of foreclosure or acceptance of a deed in lieu of foreclosure) as a result of or in connection in any way with the Mortgagor's failure to comply with the terms and provisions of this Section 1.13.
- 1.13.9 The provisions of this Section 1.13 shall survive the repayment of the Indebtedness and the performance of all duties and obligations related thereto, the foreclosure of this Mortgage, the delivery of a deed in lieu of foreclosure and/or the discharge of this Mortgage.
- 1.13.10 The provisions of this Section 1.13 are in addition to any similar provisions in any other documentation evidencing, securing or governing the Indebtedness, including, but not limited to, any environmental indemnification agreement executed in connection with the Indebtedness ("Indemnity"), and in the event of any conflict or inconsistency between the terms and conditions hereof and the Indemnity, the document containing the terms and conditions more favorable to Lender, as determined by Lender, in its sole and absolute discretion, shall be given priority and shall apply.
- 1.14 **Reporting Requirements.** The Mortgagor shall certify and furnish to the Lender, in form and detail satisfactory to the Lender those financial reports of the Mortgagor and each guarantor of the Indebtedness as required pursuant to the Loan Agreement.

2 **APPLICATION OF CONDEMNATION AWARDS.**

- 2.1 **Condemnation Award.** Any eminent domain or condemnation proceeds shall be paid directly to the Lender and applied toward reimbursement of all the Lender's costs and expenses incurred in connection with collecting the award (including, without limit, court costs and reasonable attorneys' fees), and the balance applied upon the Indebtedness whether or not then due or payable in whatever manner the Lender

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deems advisable. Application by the Lender of any condemnation award or portion of it toward the last maturing installments of the Indebtedness shall not excuse the Mortgagor from making the regularly scheduled payments nor extend or reduce the amount of these payments.

2.2 **Appointment of Lender.** The Lender or any of its employees is each irrevocably appointed attorney -in -fact for the Mortgagor and is authorized to receive, receipt for, discharge and satisfy any condemnation award or judgment, whether joint or several, on behalf of the Mortgagor, the Mortgagor's legal representatives, successors and assigns; provided, however, that the Lender shall not be liable for failure to collect any condemnation award.

3 **ADDITIONAL SECURITY.**

3.1 **Security Interest in Personal Property.** The Mortgagor grants the Lender a security interest in any present and future Equipment, fixtures, accounts, general intangibles, instruments, and other personal property included within the definition of Mortgaged Property. The Mortgagor agrees, upon request of the Lender, to promptly furnish a list of personal property owned by the Mortgagor and subject to this Mortgage and, upon request by the Lender, to immediately execute, deliver and/or file any mortgage and any amendments to this Mortgage, any separate security agreement and any financing statements to include specifically this list of personal property. The Lender or any of its employees is each irrevocably appointed attorney -in -fact and is authorized to execute, deliver and/or file any mortgage and any amendments to this Mortgage, any separate security agreement and any financing statements to include specifically the personal property described above.

3.2 **Licenses and Permits.** As additional security for the Indebtedness, the Mortgagor assigns to the Lender all of the Mortgagor's rights and interest in all licenses or permits affecting the Mortgaged Property. This assignment shall not impose upon the Lender any obligations with respect to any license or permit. The Mortgagor shall not cancel or amend any of the licenses or permits assigned (nor permit any of them to terminate if they are necessary or desirable for the operation of the Mortgaged Property) without first obtaining the written approval of the Lender.

3.3 **Contracts.** As additional security for payment of the Indebtedness, the Mortgagor assigns to and grants the Lender a security interest in all existing and future agreements and contracts for the design, development, improvement, construction, maintenance, alteration, repair, testing, operation and management of the Mortgaged Property.

3.4 **Deposits and Accounts.** As additional security for the payment of the Indebtedness and performance of this Mortgage, the Mortgagor grants a security interest to the Lender in all deposits or other accounts with the Lender.

3.5 **Assignment of Rents and Leases.**

3.5.1 As additional security for the payment of the Indebtedness and performance of this Mortgage, the Mortgagor assigns to the Lender all of the Mortgagor's right, title and interest in and to all existing and future written and oral leases and occupancy agreements covering the Mortgaged Property or any part of it

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(collectively, the "Leases") (but without an assumption by the Lender of liabilities of the Mortgagor under any of these Leases or occupancy agreements by virtue of this assignment), and the Mortgagor assigns to the Lender the leases, rents, issues and profits of the Mortgaged Property and any guaranties of any of the Leases; provided, however, the within assignment (the "Assignment") shall be terminated by written instrument executed by Lender when the Indebtedness has been irrevocably repaid in full. Until such time, the Assignment shall remain in full force and effect.

- 3.5.2 At least annually, and more frequently if applicable, and if requested by the Lender or required by the terms of the Loan Agreement, the Mortgagor shall provide the Lender with a certified rent roll and such other information regarding the Leases as the Lender may reasonably require.
- 3.5.3 If an Event of Default occurs under this Mortgage, the Lender may receive and collect the rents, issues and profits personally, or through a receiver, so long as the Event of Default exists and during the pendency of any foreclosure proceedings and during any redemption period. The Mortgagor consents to the appointment of a receiver.
- 3.5.4 The Lender shall at no time have any obligation whatever to attempt to collect rents or other amounts from any tenant of the Mortgaged Property. Further, the Lender shall have no obligation to enforce any other obligations owed by any tenant of the Mortgaged Property. No action taken by the Lender under this Mortgage shall make the Lender a "mortgagee in possession."
- 3.5.5 The Mortgagor shall not collect advance rent under any of the Leases in excess of one month (other than as a security deposit) and the Lender shall not be bound by any prepayment made or received in violation of this prohibition.
- 3.5.6 At the option of the Lender, this Mortgage shall become subordinate, in whole or in part (but not with respect to priority as to insurance proceeds or any condemnation award) to any or all Leases upon the execution and recording by the Lender of an affidavit to that effect.
- 3.5.7 The Mortgagor shall timely perform the obligations under the Leases and not permit or suffer any event or condition which gives any tenant a right to cancel, terminate, or assert any defense or offset under any of the Leases.
- 3.5.8 Without the Lender's prior written consent, the Mortgagor shall not materially modify or amend the Mortgagor's standard lease form or the terms of any of the Leases or enter into any lease for longer than one (1) year. The provisions of this Section 3.5 are in addition to any similar provisions in any documentation evidencing, securing or governing the Indebtedness, including, but not limited to, that certain Assignment of Leases and Rents executed by Mortgagor in favor of Lender concurrently herewith (the "Assignment"), and in the event of any conflict or inconsistency between the terms and conditions hereof and the Assignment, the document containing the terms and conditions more favorable to Lender, as determined by Lender, in its sole and absolute discretion, shall be given priority and shall apply.

4 EVENTS OF DEFAULT AND REMEDIES.

- 4.1 Events of Default. Any of the following events shall, for purposes of this Mortgage, constitute an "Event of Default":
- 4.1.1 Any amount owing on part of the Indebtedness is not paid when due whether by maturity, acceleration or otherwise.

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- 4.1.2 Any failure to comply with, or breach of, any of the terms, provisions, warranties or covenants of this Mortgage, or any other agreement or instrument which is part of the Indebtedness, any guaranty of any of the Indebtedness, or any other agreement or commitment between the Mortgagor or any guarantor and the Lender.
- 4.1.3 The occurrence of an Event of Default, as such term is defined in the Loan Agreement.
- 4.2 **Remedies Upon Event of Default.** Upon the occurrence of any Event of Default, the Lender shall have the following rights, power and authority:
- 4.2.1 Declare all or part of the Indebtedness immediately due and payable.
- 4.2.2 Demand that the Mortgagor immediately surrender the possession of the Mortgaged Property to the Lender and the Mortgagor consents to the Lender taking possession of the Mortgaged Property and the books and records relating to the Mortgaged Property.
- 4.2.3 Foreclose the interest of the Mortgagor in the Mortgaged Property by action pursuant to applicable law. Commencement of such an action shall be deemed a declaration of acceleration pursuant to clause 4.2.1 above.
- 4.2.4 The Lender is authorized and empowered to sell or cause to be sold the Mortgaged Property and to convey the same to the purchaser thereof, pursuant to the authority and power hereby granted and the provisions of applicable Illinois law, pertaining to foreclosure by advertisement, which statute does not require that the Mortgagor be personally notified of such sale or that a judicial hearing be held before the sale is conducted. The Lender may direct the sale of the Mortgaged Property to be in one parcel or several parcels and in any order as the Lender may elect in its sole discretion. The Mortgagor further agrees that the Lender is authorized and empowered to retain out of the sale proceeds such monies as are due under the terms of this Mortgage, including the costs and charges of such sale, including the attorney's fees and expenses, rendering the surplus moneys, if any, to the Mortgagor.
- 4.2.5 Collect and receive all payments, rents, profits and other amounts that are due or shall subsequently become due under the terms of any leases, land contract, or other agreements by which the Mortgagor is leasing or selling the Mortgaged Property or any interest in the Mortgaged Property. The Lender may also exercise any other rights or remedy of the Mortgagor under any or any lease, land contract or other agreement, and the costs and expenses thereof shall be for the account and expense of the Mortgagor. However, the Lender shall have no obligation to make any demand or inquiry as to the nature of sufficiency of any payment received or to present or file any claim or take any other action to collect or enforce the payment of any amounts to which the Lender may become entitled under this Mortgage. Similarly, the Lender shall not be liable for any of the Mortgagor's obligations under any such lease, land contract or other agreement.
- 4.2.6 Exercise all rights, remedies and privileges afforded a "secured party" under Uniform Commercial Code. Require the Mortgagor to assemble the personal property subject to this Mortgage and make it available to the Lender at a place to be designated by the Lender which is reasonably convenient to both parties. Collect all accounts receivable, take possession of the personal property with or without demand and with or without process of law, and sell

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and dispose of it and distribute the proceeds according to law. For these purposes, the Mortgagor agrees that any requirement of reasonable notice, if any, shall be met if the Lender sends notice to the Mortgagor at least five (5) days prior to the date of sale, disposition or other event giving rise to the required notice.

4.2.7 Enter upon the Mortgaged Property and take other actions as the Lender deems appropriate to perform the Mortgagor's obligations under this Mortgage to inspect, repair, protect or preserve the Mortgaged Property, to investigate or test for the presence of any Hazardous Materials, and/or to appraise the Mortgaged Property. All of the Lender's expenditures for these purposes shall be part of the Indebtedness and shall bear interest at the highest rate applicable to any of the Indebtedness.

4.2.8 Pursue any other available remedy at law or equity to enforce the payment of the Indebtedness.

4.3 Remedies Generally.

4.3.1 **WARNING: THIS MORTGAGE CONTAINS A POWER OF SALE AND UPON DEFAULT MAY BE FORECLOSED BY ADVERTISEMENT. IN FORECLOSURE BY ADVERTISEMENT AND THE RELATED SALE OF THE MORTGAGED PROPERTY, NO HEARING IS REQUIRED AND THE ONLY NOTICE REQUIRED IS TO PUBLISH NOTICE IN A LOCAL NEWSPAPER AND TO POST A COPY OF THE NOTICE ON THE MORTGAGED PROPERTY.**

4.3.2 **WAIVER: THE MORTGAGOR WAIVES ALL RIGHTS UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES AND UNDER THE CONSTITUTION AND LAWS OF THE STATE OF ILLINOIS TO A HEARING PRIOR TO SALE IN CONNECTION WITH ANY FORECLOSURE BY ADVERTISEMENT AND ALL NOTICE REQUIREMENTS EXCEPT AS SET FORTH IN THE STATUTE PROVIDING FOR FORECLOSURE BY ADVERTISEMENT.**

4.3.3 All remedies provided for in Section 4.2 shall be available to the extent not prohibited by law. Each remedy shall be cumulative and additional to any other remedy of the Lender at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of; or acquiescence in, any such default or Event of Default.

4.3.4 The Lender may waive any Event of Default and may rescind any declaration of maturity of payments on the Indebtedness. In case of such waiver or rescission the Mortgagor and the Lender shall be restored to their respective former positions and rights under this Mortgage. Any waiver by the Lender of any defaulter Event of Default shall be in writing and shall be limited to the particular default waived and shall not be deemed to waive any other default.

4.3.5 The Lender may release the obligation of any person liable for any of the Indebtedness and may extend time for payment or otherwise modify any terms of any of the Indebtedness without notice to or consent of the Mortgagor Or any other person and without impairing the lien or priority of lien of this Mortgage.

4.4 **Receivers.** Upon an Event of Default and commencement of foreclosure proceedings to enforce the rights of the Lender under this Mortgage, the Lender shall be entitled to

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the appointment of a receiver or receivers of the Mortgaged Property and of the rents, issues and profits of the Mortgaged Property, pending such proceedings.

- 4.5 **Application of Proceeds.** Any proceeds received by the Lender from the exercise of remedies pursuant to Section 4.2 of this Mortgage shall be applied as follows:
- 4.5.1 First, to pay all costs and expenses incidental to the leasing, foreclosure, sale or other disposition of the Mortgaged Property. These costs and expenses shall include, without limit, reasonable compensation to the Lender, its agents and attorneys and any taxes and assessments or other liens and encumbrances prior to the lien of this Mortgage.
- 4.5.2 Second, to all sums expended or incurred by the Lender directly or indirectly in carrying out any term, covenant or agreement under this Mortgage or any related document, together with interest as provided in this Mortgage.
- 4.5.3 Third, to the payment of the Indebtedness. If the proceeds are insufficient to fully pay the Indebtedness, then application shall be made first to late charges and interest accrued and unpaid, then to any applicable prepayment premiums, then to unpaid fees and other charges, and then, to the outstanding principal balance.
- 4.5.4 Fourth, any surplus remaining shall be paid to the Mortgagor or to whomsoever may be lawfully entitled.
- 4.6 **Marshalling.** In the event of foreclosure of this Mortgage or the enforcement by the Lender of any other rights and remedies under this Mortgage, the Mortgagor waives any right in respect to marshalling of assets which secure the Indebtedness or to require the Lender to pursue its remedies against any other assets or any other party which may be liable for any of the Indebtedness.
- 4.7 **Further Actions.** Promptly upon the request of the Lender, the Mortgagor shall execute, acknowledge and deliver any and all further conveyances, documents, mortgages and assurances, and do or cause to be done all further acts as the Lender may require to confirm and protect the lien of this Mortgage or otherwise to accomplish the purposes of this Mortgage.
- 4.8 **Attorneys Fees.** Any reference in this Mortgage to attorneys' fees shall refer to fees, charges, costs and expenses of in-house and outside attorneys and paralegals, whether or not a suit or proceeding is instituted, and whether incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding, in consultation with counsel, or otherwise. All costs, expenses and fees of any nature for which the Mortgagor is obligated to reimburse or indemnify the Lender are part of the Indebtedness secured by this Mortgage and are payable upon demand, unless expressly provided otherwise, with interest until repaid at the highest rate charged on any of the Indebtedness (but not to exceed the maximum rate permitted by law).

5 MISCELLANEOUS.

- 5.1 **Governing Law.** This Mortgage shall be construed in accordance with the laws of the State of Michigan.
- 5.2 **Successors and Assigns.** This Mortgage shall be binding upon the successors and assigns of the Mortgagor including, without limit, any debtor in possession or trustee

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in bankruptcy for the Mortgagor, and the rights and privileges of the Lender under this Mortgage shall inure to the benefit of its successors and assigns. This shall not be deemed a consent by the Lender to a conveyance by the Mortgagor of all or any part of the Mortgaged Property or of any ownership interest in the Mortgagor.

- 5.3 **Notices.** Notice from one party to another relating to this Mortgage shall be deemed effective if made in accordance with the notice requirements set forth in the Loan Agreement.
- 5.4 **Entire Agreement; Amendments.** This Mortgage and any agreement to which it refers state all rights and obligations of the parties and supersede all other agreements (oral or written) with respect to the lien granted by this Mortgage. Any amendment of this Mortgage shall be in writing and shall require the signature of the Mortgagor and the Lender. Any waiver or consent to departure from strict compliance with this Mortgage must be in writing and signed by the Lender.
- 5.5 **Partial Invalidity.** The invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of the remaining provisions of this Mortgage.
- 5.6 **Inspections.** Any inspection, audit, appraisal or examination by the Lender or its agents of the Mortgaged Property or of information or documents pertaining to the Mortgaged Property is for the sole purpose of protecting the Lender's interests under this Mortgage and is not for the benefit or protection of the Mortgagor or any third party.
- 5.7 **Joint and Several Liability.** In the event that more than one person or entity executes this Mortgage, the obligations of each person or entity shall be joint and several.
- 5.8 **Automatic Reinstatement.** Notwithstanding any prior revocation, termination, surrender or discharge of this Mortgage, the effectiveness of this Mortgage shall automatically continue or be reinstated, as the case may be, in the event that:
- 5.8.1 Any payment received or credit given by the Lender in respect of the Indebtedness is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of trust funds, or otherwise under any applicable state or federal law, including, without limit, laws pertaining to bankruptcy or insolvency, in which case this Mortgage shall be enforceable as if the returned, disgorged or rescinded payment or credit had not been received or given, whether or not the Lender relied upon this payment or credit or changed its position as a consequence of it.
- 5.8.2 Any liability is imposed, or sought to be imposed, against the Lender relating to the environmental condition of, or the presence of Hazardous Materials on, in or about the Real Estate, whether this condition is known or unknown, now exists or subsequently arises (excluding only conditions which arise after any acquisition by the Lender of any such property, by foreclosure, in lieu of foreclosure or otherwise, to the extent due to the wrongful acts or omissions of the Lender), in which case this Mortgage shall be enforceable to the extent of all liability, costs and expenses (including without limit reasonable attorneys fees)

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incurred by the Lender as the direct or indirect result of any environmental condition or Hazardous Materials.

5.8.3 In the event of continuation or reinstatement of this Mortgage, Mortgagor agrees upon demand by the Lender to execute and deliver to the Lender those documents which the Lender determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of the Mortgagor to do so shall not affect in any way the reinstatement or continuation. If Mortgagor does not execute and deliver to the Lender upon demand such documents, the Lender and each officer of the Mortgage is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of the Mortgagor (with full power of substitution) to execute and deliver such documents in the name and on behalf of the Mortgagor.

5.9 **WAIVER OF JURY TRIAL.** THE MORTGAGOR AND THE LENDER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY TURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS MORTGAGE OR THE INDEBTEDNESS.

6 **SPECIAL PROVISIONS.** None.

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This Mortgage is dated and effective on the date stated above.

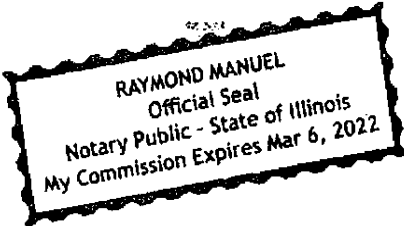
MORTGAGOR:

Patio Theater Holdings, LLC
a Illinois Limited Liability Company

By: [Signature]
Its: Managing Member

STATE OF ILLINOIS)
) ss.
COUNTY OF Winnetka)

This instrument was acknowledged before me on SEPTEMBER 30, 2019, by CHRISTOPHER BARNETT, Managing Member or authorized corporate officer of _____, a _____



[Signature]
Notary Public
DuPage County, Illinois
Acting in DuPage County, Illinois
My commission expires: 3-6-27

Prepared by and when recorded return to:

Red Oak Capital Fund II, LLC
625 Kenmoor Ave SE, Suite 211
Grand Rapids, MI 49546

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EXHIBIT "A" Property Description

Closing Date: September 30, 2019

Borrower(s): Patio Theater Holdings, LLC

Property Address: 6000-6012 W Irving Park Road, Chicago, IL 60634

PROPERTY DESCRIPTION:

LOT 10 TO 13 AND THE EAST 2 FEET OF LOT 14 AND LOT 9 (EXCEPT THE NORTH 16 FEET AND EXCEPT THE WEST 8 FEET THEREOF) TOGETHER WITH VACATED ALLEY SOUTH AND ADJACENT TO SAID LOT 9 (EXCEPT THE WEST 8 FEET THEREOF) AND NORTH OF AND ADJACENT TO LOTS 10 TO 13 IN W.H. ELDRED'S BOULEVARD SUBDIVISION OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 13-17-317-015-0000