

11 of 13  
CCH#2103763MS D6

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Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*2118745230\*

Doc# 2118745230 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 07/06/2021 04:18 PM PG: 1 OF 26

The property identified as: **PIN:** 20-05-311-014-0000

**Address:**

**Street:** 1356 W. 47TH STREET

**Street line 2:**

**City:** CHICAGO

**State:** IL

**ZIP Code:** 60609

**Lender:** PACIFIC PREMIER BANK

**Borrower:** BRODERSEN ACQUISITIONS LLC

**Loan / Mortgage Amount:** \$24,475,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

**Certificate number:** A37CF5D2-D620-4764-882D-13C92D720F6D

**Execution date:** 6/24/2021

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**THIS DOCUMENT WAS PREPARED BY,  
AND AFTER RECORDING, RETURN TO:**

David Weill, Esq.  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102-2186

**PERMANENT TAX INDEX NUMBER:**

\_\_\_\_\_  
(As set forth on Exhibit A attached hereto)

**PROPERTY ADDRESS:**

\_\_\_\_\_  
(As set forth on Exhibit A attached hereto)

## **MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of June **24**, 2021 by BRODERSEN ACQUISITIONS LLC, an Illinois limited liability company ("Borrower"), to and for the benefit of PACIFIC PREMIER BANK ("Lender").

### **PRELIMINARY STATEMENT:**

The capitalized terms used in this Mortgage, if not elsewhere defined herein, are defined as indicated in Article I. Borrower holds the fee simple interest in the Premises, subject to the Permitted Exceptions. Borrower is executing this Mortgage for the purpose of granting the interest of Borrower in and to the Collateral (as defined in the Granting Clauses below) as security for the payment of the Obligations. The Collateral shall be and remain subject to the lien of this Mortgage and shall constitute security for the Obligations so long as the Obligations shall remain outstanding.

THIS MORTGAGE COVERS EQUIPMENT AND GOODS WHICH ARE OR ARE TO BECOME FIXTURES, IS EFFECTIVE AS A FINANCING STATEMENT, AS A FIXTURE FILING AND IS TO BE FILED IN THE REAL ESTATE RECORDS.

### **GRANTING CLAUSES:**

Borrower, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby CREATE A SECURITY INTEREST IN, MORTGAGE, GRANT, BARGAIN, SELL, ASSIGN, PLEDGE, GIVE, TRANSFER, WARRANT, SET OVER AND CONVEY unto Lender and to its successors and assigns, for the benefit and security of Lender and its successors and assigns, all of Borrower's estate, right, title and interest in, to and under any and all of the following property (the "Collateral"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

#### **Premises, Rents and Derivative Interests**

The Premises, all rents, issues, profits, royalties, income and other benefits derived from the property comprising the Premises and the Personal Property (as defined below) or any portion thereof (collectively, the "Rents"); all leases or subleases covering the Premises and the Personal Property or any portion thereof now or hereafter existing or entered into, including without limitation, the Downstream Lease (collectively, "Leases" and

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individually, a "Lease"), including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature and all guaranties relating to the Leases; all options to purchase or lease the Premises and the Personal Property or any portion thereof or interest therein, and any greater estate in the Premises; all interests, estate or other claims, both in law and in equity, with respect to the Premises and the Personal Property or any portion thereof; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all land lying within the right-of-way of any street, open or proposed, adjoining the Premises and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

## Personal Property

All of Borrower's right, title and interest in the assets used in connection with the Premises, if any, whether now owned or hereafter acquired, including without limitation all goods (including inventory, equipment, furniture, trade fixtures and any accessions thereto), fixtures, instruments, documents, accounts, chattel paper, deposit accounts, letter-of-credit rights, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims, products and proceeds and all substitutions, replacements, attachments and replacements thereof (the "Personal Property");

## Intangibles

All existing and future accounts, contract rights, including, without limitation, with respect to equipment leases, general intangibles, files, books of account, agreements, distributor agreements, indemnity agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the property comprising the Premises and the Personal Property or any portion thereof, whether now existing or entered into or obtained after the date hereof, including, without limitation, all construction contracts, architect agreements, plans, specifications, drawings, permits, licenses, agreements, approvals, consents and warranties now or hereafter relating to the construction of the Improvements and all amendments and modifications thereto, all existing and future names under or by which the property comprising the Premises and the Personal Property or any portion thereof may at any time be operated or known, all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials, trademarks and good will in any way relating to the property comprising the Premises and the Personal Property or any portion thereof; and

## Claims and Awards

All the claims or demands with respect to the Premises and the Personal Property or any portion thereof, including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto, claims under any indemnity agreement, including, without limitation, any indemnity agreement executed for the benefit of the Premises and the Personal Property or any portion thereof with respect to Hazardous Materials or underground storage tanks, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises and the Personal Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The Collateral shall include all products and proceeds of the foregoing property.

TO HAVE AND TO HOLD the Collateral hereby granted or mortgaged or intended to be granted or mortgaged, unto Lender, and its successors and assigns, upon the terms, provisions and conditions set forth herein.

THIS MORTGAGE SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (the "Obligations"):

- (i) Payment of indebtedness evidenced by the Note together with all extensions, renewals, amendments and modifications thereof;
- (ii) Payment of all other indebtedness and other sums, with interest thereon, which may be

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owed under, and performance of all other obligations and covenants contained in, any Loan Document (other than the Environmental Indemnity Agreement), together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby; and

(iii) Payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in any Other Agreement, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured thereby.

It is the intention of the parties hereto that the Collateral shall secure all of the Obligations presently or hereafter owed, and that the priority of the security interest created by this Mortgage for all such Obligations shall be controlled by the time of proper recording of this Mortgage to the fullest extent permitted in accordance with the law of the State. In addition, this Mortgage shall also secure unpaid balances of advances made with respect to the Collateral for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Collateral, together with interest thereon until paid at the Default Rate, all as contemplated in this Mortgage, all of which shall constitute a part of the Obligations. This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Collateral subsequent to the date of recording of this Mortgage, that until this Mortgage is released, any debt owed Lender by Borrower, including advances made subsequent to the recording of this Mortgage, shall be secured with the priority afforded this Mortgage as recorded to the fullest extent permitted in accordance with the law of the State.

Notwithstanding the foregoing or any other provisions of this Mortgage to the contrary:

(x) in the event that the Loan becomes the subject of a Securitization, Participation or Transfer, this Mortgage shall only secure indebtedness and obligations relating to the Loan and any other loans between any of the Borrower Parties on the one hand and any of the Lender Entities on the other hand which are part of the same Loan Pool as the Loan; and

(y) in the event that any loans between any of the Borrower Parties on the one hand and any of the Lender Entities on the other hand (other than the Loan) become the subject of a Securitization, Participation or Transfer, this Mortgage shall not secure any indebtedness and obligations relating to such loans unless the Loan is part of the same Loan Pool as such loans

IT IS HEREBY COVENANTED, DECLARED AND AGREED that the Note and the other Loan Documents are to be executed, delivered and secured and that the Collateral is to be held and disposed of by Lender, upon and subject to the provisions of this Mortgage.

## ARTICLE I

### DEFINED TERMS

Section 1.01. *Incorporation of Definitions.* Initially capitalized terms not otherwise defined in this Mortgage shall have the meanings set forth in that certain Loan Agreement, dated as of the date of this Mortgage, between BRODERSEN PROPERTIES OF MILWAUKEE, LLC, a Wisconsin limited liability company, BRODERSEN PROPERTIES OF WISCONSIN, LLC, a Wisconsin limited liability company, BRODERSEN PROPERTIES OF ILLINOIS LLC, an Illinois limited liability company, BRODERSEN ACQUISITIONS LLC, an Illinois limited liability company and SOUTH STONY ISLAND INVESTMENTS LLC, an Illinois limited liability company (collectively, the "Additional Borrowers"), and Lender, as the same may be amended from time to time (the "Loan Agreement"), which definitions are hereby incorporated in this Mortgage by this reference. The Additional Borrowers, including the Borrower which is the mortgagor under this Mortgage, are each jointly and severally liable as a co-borrower of the obligations under the Loan Documents.

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Section 1.02. *Additional Definitions.* Unless the context otherwise specifies or requires, the following terms shall have the meanings specified (such definitions to be applicable equally to singular and plural nouns and verbs of any tense):

“*Default Rate*” shall have the meaning set forth in the Note which definition is hereby incorporated in this Mortgage by this reference.

“*Downstream Lease*” means that certain Operating Lease Agreement between Borrower, as lessor, and Lessee, as successor lessee by assignment, with respect to the Premises, as assigned and amended to date and as the same may be amended from time to time.

“*Environmental Indemnity Agreement*” means that certain Environmental Indemnity Agreement dated as of the date of this Mortgage executed by Additional Borrowers for the benefit of Lender and such other parties as are identified in such agreement with respect to the Premises, as the same may be amended from time to time.

“*Improvements*” means all buildings, fixtures and other improvements now or hereafter located on the Land (whether or not affixed to the Land).

“*Land*” means the parcel or parcels of real estate legally described on EXHIBIT “A”, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein, and all rights, privileges and appurtenances therewith.

“*Lessee*” means ZUBHA POP FOODS, LLC, a Delaware limited liability company, or its permitted successors and/or assigns under the Downstream Lease.

“*Loan*” means the loan made by Lender to Additional Borrowers which is evidenced by the Note and secured by this Mortgage.

“*Loan Agreement*” has the meaning set forth in Section 1.01.

“*Net Award*” has the meaning set forth in Section 4.01(b)(v).

“*Net Insurance Proceeds*” has the meaning set forth in Section 4.01(a)(iii).

“*Note*” means that certain Promissory Note dated as of the Closing Date in the original principal amount of TWENTY-FOUR MILLION FOUR HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$24,475,000.00) executed by the Additional Borrowers and payable to the order of Lender which is secured by this Mortgage and any amendments, extensions or modifications thereof.

“*Other Agreements*” means, collectively, all agreements and instruments between, among, or by (1) any of the Borrower Parties, and, or for the benefit of, (2) any of the Lender Entities, including, without limitation, promissory notes and guaranties; provided, however, the term “Other Agreements” shall not include the agreements and instruments defined in the Loan Agreement as the Loan Documents.

“*Premises*” means the Land and the Improvements.

“*Restoration*” means the restoration, replacement or rebuilding of the Premises, or any part thereof, as nearly as possible to its value, condition and character immediately prior to any damage, destruction or Taking.

“*State*” means the State in which the Premises is located.

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## ARTICLE II

### INCORPORATION OF REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

The representations, warranties and covenants of Borrower set forth in the Loan Agreement are incorporated by reference into this Mortgage as if stated in full in this Mortgage. All representations and warranties as incorporated herein shall be deemed to have been made as of the date of this Mortgage and all representations, warranties and covenants incorporated herein shall survive the execution and delivery of this Mortgage. Borrower warrants that this Mortgage is delivered in connection with a business or commercial loan transaction.

## ARTICLE III

### COVENANTS OF BORROWER

In addition to any covenants of Borrower set forth in the Loan Agreement or any other Loan Document, Borrower hereby covenants to Lender and agrees as follows until the Obligations are satisfied in full:

Section 3.01. *Recording.* Borrower shall, upon the execution and delivery hereof and thereafter from time to time, take such actions as Lender may commercially reasonably request to cause this Mortgage, each supplement and amendment to such instrument and financing statements with respect thereto and each instrument of further assurance (collectively, the "Recordable Documents") to be filed, registered and recorded as may be required by law to publish notice and maintain the first lien or security interest, as applicable, hereof upon the Collateral and to publish notice of and protect the validity of the Recordable Documents. Borrower shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments (including financing statements, continuation statements and similar statements with respect to any of said documents) as commercially reasonably requested by Lender for carrying out the intention of, or facilitating the performance of, this Mortgage. Lender shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Borrower to comply therewith (including the execution, delivery and filing of such financing statements and other instruments), which appointment is coupled with an interest; provided, however, Lender shall not exercise such power of attorney unless and until Borrower has first failed to comply with this Section after its receipt of written notice from Lender requesting same, and provided, further, that this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default. To the extent permitted by law, Borrower shall pay or cause to be paid recording taxes and fees incident thereto and all expenses, taxes and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgment of the Recordable Documents, any commercially reasonable instruments of further assurance and the Note.

Section 3.02. *Use; Maintenance and Repair; Leases.* (a) The Collateral shall be used solely for the operation of a Permitted Concept in accordance with the Franchise Agreement relating to the Premises and for no other purpose. Except as set forth below, and except during periods when the Premises is untenantable by reason of fire or other casualty or condemnation (provided, however, during all such periods while the Premises is untenantable, Borrower shall strictly comply with the terms and conditions of Section 4.01 of this Mortgage), Lessee shall at all times while this Mortgage is in effect occupy the Collateral and diligently operate its business on the Collateral. Lessee may cease diligent operation of business at the Collateral for a period not to exceed 90 days and may do so only once within any five-year period while this Mortgage is in effect. If Lessee does discontinue operation as permitted by this Section, Borrower shall (i) give written notice to Lender within 10 days after Borrower elects to cease operation, (ii) provide adequate protection and maintenance of the Collateral during any period of vacancy and (iii) pay all costs necessary to restore the Collateral to its condition on the day operation of the business ceased at such time as the Collateral is reopened for Borrower's business operations or other substituted use. Notwithstanding anything herein to the contrary, Borrower shall pay monthly the principal and interest due under the Note during any period in which Lessee discontinues operation.

Borrower shall not, and shall not permit any lessee to, by itself or through any lease or other type of transfer, convert the Premises to an alternative use while this Mortgage is in effect and without Lender's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Lender may consider any or all of the following in



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determining whether to grant its consent, without being deemed to be unreasonable: (i) whether the converted use will be consistent with the highest and best use of the Collateral, and (ii) whether the converted use will increase Lender's risks or decrease the value of the Collateral.

(b) Borrower shall (i) maintain or cause Lessee to maintain the Collateral in good condition and repair, subject to reasonable and ordinary wear and tear, free from actual or constructive waste, and (ii) pay or cause Lessee to pay all operating costs of the Premises in the ordinary course of business in accordance with the terms of the Downstream Lease.

(c) Borrower shall not (i) enter into any Leases without Lender's prior written consent (other than the Downstream Lease); (ii) modify or amend the terms of any Lease, without Lender's prior written consent which shall not be unreasonably withheld, conditioned or delayed; (iii) grant any consents under any Lease, including, without limitation, any consent to an assignment of any Lease, a mortgaging of the leasehold estate created by any Lease or a subletting by the lessee under any Lease, without Lender's prior written consent which shall not be unreasonably withheld, conditioned or delayed; (iv) terminate, cancel, surrender, or accept the surrender of, any Lease, or waive or release any person from the observance or performance of any obligation to be performed under the terms of any Lease or liability on account of any warranty given thereunder, without Lender's prior written consent; or (v) assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Lender, without Lender's prior written consent. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect. Unless Lender otherwise consents or elects, Borrower's title to the Collateral and the leasehold interest in the Collateral created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, Lender or any other person by purchase, operation of law, foreclosure of this Mortgage, sale of the Collateral pursuant to this Mortgage or otherwise. In no event shall Borrower enter into any Lease where Borrower is the lessor and an Affiliate of Borrower is the Lessee (each, an "Affiliate Lease"). Notwithstanding anything to the contrary in this Mortgage, (a) Borrower hereby collaterally assigns to Lender, its successors and assigns, and grants a security interest in, all of the right, title and interest of Borrower in and to any Affiliate Lease currently existing or subsequently entered into; (b) Borrower on behalf of itself and all Affiliates agrees that all Affiliate Leases and the leasehold estate created thereby are hereby declared to be, and hereafter shall continue at all times to be, junior, subject and subordinate, in each and every respect, to the lien of this Mortgage, including, without limitation, (i) any and all increases, renewals, modifications, extensions, substitutions, replacements and or consolidations of this Mortgage and the Obligations and (ii) any future mortgage, deed of trust, deed to secure debt or encumbrance affecting the Premises held by or made for the benefit of Lender and/or its successors and assigns. The foregoing subordination is effective and self-operative without the necessity for execution of any further instruments.

(d) Borrower shall (i) fulfill, perform and observe in all material respects each and every condition and covenant of Borrower contained in any Lease; (ii) give prompt notice to Lender of any material claim or material event of default under any Lease given to or by Borrower, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Borrower, enforce the performance and observance of each and every material covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Lender; (iv) appear in and defend any action challenging the validity, enforceability or priority of the lien created hereby or the validity or enforceability of any Lease; and (v) hold that portion of the Rents which is sufficient to discharge all current sums due under the Note for use in the payment of such sums.

**Section 3.03. Alterations and Improvements.** Except as permitted under the terms of the Downstream Lease, Borrower shall not permit Lessee to alter the exterior, structural, plumbing or electrical elements of the Collateral in any manner without the consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. For purposes of this Mortgage, alterations to the exterior, structural, plumbing or electrical elements of the Collateral shall mean:

- (i) alterations which affect the foundation or "footprint" of the Improvements;
- (ii) alterations which involve the structural elements of the Improvements, such as a load-

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bearing wall, structural beams, columns, supports or roof; or

(iii) alterations which materially affect any of the building systems, including, without limitation, the electrical systems, plumbing, HVAC and fire and safety systems.

If Lender's consent is required hereunder and Lender consents to the making of any such alterations, the same shall be made by Borrower at Borrower's sole expense (or by Lessee at Lessee's sole expense in accordance with the Downstream Lease) by a licensed contractor and according to plans and specifications approved by Lender and subject to such other conditions as Lender shall require. Any work at any time commenced on the Collateral shall be prosecuted diligently to completion, shall be of good workmanship and materials and shall comply fully with all the terms of this Mortgage. Upon completion of any alterations or any Restoration, Borrower shall promptly provide Lender with the following to the extent such documents are required to be delivered by Lessee to Borrower under the Downstream Lease: (i) evidence of full payment to all laborers and materialmen contributing to the alterations, (ii) an architect's certificate certifying the alterations to have been completed in conformity with the plans and specifications, (iii) a certificate of occupancy (if the alterations are of such a nature as would require the issuance of a certificate of occupancy), and (iv) any other documents or information commercially reasonably requested by Lender to the extent such documents are required to be provided by Lessee to Borrower under the Downstream Lease.

**Section 3.04. After-Acquired Property.** All right, title and interest of Borrower in and to all improvements, alterations, substitutions, restorations and replacements of, and all additions and appurtenances to, the Collateral, hereafter acquired by or released to Borrower, immediately upon such acquisition or release and without any further granting by Borrower, shall become part of the Collateral and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by Borrower and specifically described in the Granting Clauses hereof. Borrower shall execute and deliver to Lender any further assurances, mortgages, grants, conveyances or assignments thereof as the Lender may commercially reasonably require to subject the same to the lien hereof.

**Section 3.05. Taxes, Assessments, Charges and Other Impositions.** (a) Borrower shall do or cause to be done everything necessary to preserve the lien hereof without expense to Lender, including, without limitation, paying and discharging or causing to be paid and discharged, whether or not payable directly by Borrower or subject to withholding at the source, (i) all taxes, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general, special, ordinary or extraordinary, and all charges for utility or communications services, which may at any time be assessed, levied or imposed upon Borrower, the Collateral, this Mortgage, the Obligations or the Rents or which may arise in respect of the occupancy, use, possession or operation thereof, (ii) all income, excess profits, sales, gross receipts and other taxes, duties or imposts, whether similar or not in nature, assessed, levied or imposed by any Governmental Authority on Borrower, the Collateral or the Rents, and (iii) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a lien on the Collateral, or on the Rents, unless Borrower shall contest the amount or validity thereof in accordance with subsection (b). Notwithstanding the foregoing, the Borrower shall not be required to pay any income or franchise taxes of the Lender.

(b) Borrower may, at its own expense, contest or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any item specified in subsection (a) or lien therefor, provided that (i) Borrower shall provide written notice to Lender of any contest involving more than \$50,000.00, (ii) such proceeding shall suspend the collection thereof from the Collateral or any interest therein, (iii) neither the Collateral nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (iv) no Event of Default has occurred and is continuing, and (v) Borrower shall have deposited with Lender adequate reserves for the payment of the taxes, together with all interest and penalties thereon, unless paid in full under protest, or Borrower shall have furnished the security as may be required in the proceeding or as may be required by Lender to insure payment of any contested taxes. Notwithstanding the foregoing, so long as the Downstream Lease is in effect, then Lessee shall have the right to contest all taxes, assessments, charges and other impositions as provided in this Section 3.05 in accordance with the requirements of the Downstream Lease in lieu of the requirements contained in this Section 3.05(b).

**Section 3.06. Insurance.** (a) Borrower shall maintain with respect to the Collateral, at its sole expense (or



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cause Lessee to maintain at Lessee's sole expense), the following types and amounts of insurance (which may be included under a blanket insurance policy if all the other terms hereof are satisfied), in addition to such other insurance as Lender may reasonably require from time to time:

(i) Insurance against loss, damage or destruction by fire and other casualty, including theft, vandalism and malicious mischief, flood (if the Premises is in a location designated by the Federal Emergency Management Administration as a Special Flood Hazard Area), earthquake (if the Premises is in an area subject to destructive earthquakes within recorded history), boiler explosion (if there is any boiler upon the Premises), plate glass breakage, sprinkler damage (if the Premises have a sprinkler system), all matters covered by a standard extended coverage endorsement, special coverage endorsement commonly known as an "all risk" endorsement and such other risks as Lender may reasonably require, insuring the Collateral for not less than 100% of their full insurable replacement cost.

(ii) Commercial general liability and property damage insurance, including a products liability clause, covering Lender and Borrower against bodily injury liability, property damage liability and automobile bodily injury and property damage liability, including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Collateral or adjoining ways, streets or sidewalks and, if applicable, insurance covering Lender, against liability arising from the sale of liquor, beer or wine on the Premises. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Borrower's obligations under Section 7.09 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of either Borrower or Lender because of the negligence or other acts of the other, shall be in amounts of not less than \$1,000,000.00 per injury and occurrence with respect to any insured liability, whether for personal injury or property damage, or such higher limits as Lender may reasonably require from time to time, and shall be of form and substance reasonably satisfactory to Lender.

(iii) Business income insurance equal to 100% of the principal and interest payable under the Note for a period of not less than six months.

(iv) State Worker's compensation insurance in the statutorily mandated limits, employer's liability insurance with limits not less than \$500,000 or such greater amount as Lender may from time to time require and such other insurance as may be necessary to comply with applicable laws.

(b) All insurance policies shall:

(i) Provide for a waiver of subrogation by the insurer as to claims against Lender, its employees and agents and provide that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Borrower, its officers, directors, employees or agents;

(ii) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by Lender and that the insurance policy shall not be brought into contribution with insurance maintained by Lender;

(iii) Contain a standard without contribution mortgage clause endorsement in favor of Lender and its successors and assigns as their interests may appear and any other lender designated by Lender;

(iv) Provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least thirty (30) days' prior written notice to Lender and to any lender covered by any standard mortgage clause endorsement;

(v) Provide that the insurer shall not have the option to restore the Premises if Lender elects to terminate this Mortgage in accordance with the terms hereof;

(vi) Be issued by insurance companies licensed to do business in the state in which the Premises is located and which are rated A:VI or better by Best's Insurance Guide or otherwise approved by Lender;

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and

(vii) Provide that the insurer shall not deny a claim because of the negligence of Borrower, anyone acting for Borrower or any tenant or other occupant of the Collateral.

It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Borrower for its acts or omissions as provided in this Mortgage. All liability insurance policies (with the exception of worker's compensation insurance to the extent not available under statutory law) shall designate Lender and its successors and assigns as additional insureds as their interests may appear and shall be payable as set forth in Article IV hereof. All such policies shall be written as primary policies, with deductibles not to exceed 10% of the amount of coverage. Any other policies, including any policy now or hereafter carried by Lender, shall serve as excess coverage. Borrower shall procure policies for all insurance for periods of not less than one year and shall provide to Lender, certificates of insurance or, upon Lender's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Mortgage is in effect at all times. Borrower shall furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will, at its sole cost and expense, have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral.

Section 3.07. *(Intentionally Deleted.)*

Section 3.08. *Advances by Lender.* Lender may make advances to perform any of the covenants contained in this Mortgage on Borrower's behalf and all sums so advanced (and all sums advanced pursuant to any other provision hereof) by Lender shall be secured hereby. Borrower shall repay on demand all sums so advanced with interest thereon at the Default Rate, such interest to be computed from and including the date of the making of such advance to and including the date of such repayment, and at Lender's election, Lender may add the amount of such advance to the principal balance of the Loan.

Section 3.09. *Negative Covenants.* Without limiting the terms and conditions of Section 8 of the Loan Agreement, Borrower agrees that Borrower shall not, without the prior written consent of Lender (each, a "**Prohibited Transaction**"), sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Collateral or any part thereof or permit the Collateral or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than sales from inventory in the ordinary course of business and the replacement of obsolete Personal Property and as permitted in the following paragraph of this Section 3.09. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section shall be deemed to include, but not limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Collateral or any part thereof for a price to be paid in installments; and (b) an agreement by Borrower leasing all or any part of the Collateral (other than the Downstream Lease) or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Lease or any Rents.

Without the prior written consent of the Lender (such consent not to be unreasonably withheld, conditioned or delayed), Borrower shall not permit or cause any other Person to, record any map, plat, parcel map, lot line adjustment or other subdivision map, easement (other than customary utility easements that do not interfere with the operations of the Premises, do not affect the access of the Premises and which do not result in any encroachments by the existing improvements at the Premises over such utility easements), reciprocal easement agreement, declaration or any other recorded document covering any portion of the Premises, or any amendment to any of the foregoing except for landlord consents in connection with the Lessee's leasehold financing as provided in the Downstream Lease and amendments to memorandums of leases to reflect any amendments to and/or assignments of the Downstream Lease as permitted under the Loan Documents without Lender's consent.

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## ARTICLE IV

### POSSESSION, USE AND RELEASE OF THE COLLATERAL

Section 4.01. *Casualty or Condemnation.* Borrower, immediately upon obtaining knowledge of any casualty to any portion of the Collateral or of any proceeding or negotiation for the taking of all or any portion of the Collateral in condemnation or other eminent domain proceedings, shall notify Lender of such casualty, proceeding or negotiation. Any award, compensation or other payment resulting from such casualty or condemnation or eminent domain proceeding, as applicable, shall be applied as set forth below (the “**Proceeds**”). Lender may participate in any condemnation or eminent domain proceeding, and Borrower will deliver or cause to be delivered to Lender all instruments reasonably requested by Lender to permit such participation.

(a) *Casualty.* (i) In the event of any material damage to or destruction of the Collateral or any part thereof, Borrower will promptly give written notice to Lender, generally describing the nature and extent of such damage or destruction. No damage to or destruction of the Collateral shall relieve Borrower of its obligation to pay any monetary sum due under the Loan Documents at the time and in the manner provided in the Loan Documents.

(ii) In the event of any damage to or destruction of the Collateral or any part thereof, Borrower, whether or not the Proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, at its expense, shall promptly cause the Restoration to be commenced and completed, provided, however, so long as the Downstream Lease is in effect, then Borrower shall cause the Restoration to be commenced and completed by Lessee in accordance with and subject to the terms of the Downstream Lease governing Restoration.

(iii) Proceeds received by Lender and Borrower on account of any occurrence of damage to or destruction of the Collateral or any part thereof, less the costs, fees and expenses incurred by Lender and Borrower in the collection thereof, including, without limitation, adjuster’s fees and expenses and reasonable attorneys’ fees and expenses (the “**Net Insurance Proceeds**”), shall be paid to (1) Borrower, if the amount of such Net Insurance Proceeds is equal to or less than \$100,000 and applied by Borrower toward the cost of the Restoration, and (2) Lender, if the amount of such Net Insurance Proceeds exceeds \$100,000. Net Insurance Proceeds paid to Lender shall be held and disbursed by Lender, or as Lender may from time to time direct, as the Restoration progresses, to pay or reimburse Borrower for the cost of the Restoration, upon written request of Borrower accompanied by evidence, commercially reasonably satisfactory to Lender, that (aa) the Restoration is in compliance in all material respects with all Applicable Regulations and all private restrictions and requirements, (bb) the amount requested has been paid or is then due and payable and is properly a part of such cost, (cc) there are no mechanics’ or similar liens for labor or materials theretofore supplied in connection with the Restoration which has not been commercially reasonably satisfactorily reserved for in the event of a dispute and/or claim such as by a title indemnity issued by the title insurer which issued the Lender’s Loan Title Insurance Policy insuring the lien of this Mortgage, (dd) if the estimated cost of the Restoration exceeds the Net Insurance Proceeds (exclusive of Proceeds received from Borrower’s business income insurance), Borrower has deposited and/or caused Lessee to deposit into an escrow commercially reasonably satisfactory to Lender such excess amount, which sum will be disbursed pursuant to escrow instructions commercially reasonably satisfactory to Lender, and (ee) the balance of such Net Insurance Proceeds, together with the funds deposited into escrow, if any, pursuant to the preceding subsection (dd), after making the payment requested will be sufficient to pay the balance of the cost of the Restoration. Upon receipt by Lender of evidence reasonably satisfactory to it that the Restoration has been completed and the cost thereof paid in full, and that there are no mechanics’ or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such Net Insurance Proceeds shall be paid to Borrower. If at the time of the damage or destruction to the Collateral or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, all Net Insurance Proceeds shall be paid to Lender, and Lender may retain and apply the Net Insurance Proceeds toward the Obligations whether or not then due and payable, in such order, priority and proportions as Lender in its discretion shall deem proper, or to cure such Event of Default, or, in Lender’s discretion, Lender may pay such Net Insurance Proceeds in whole or in part to Borrower to be applied toward the cost of the Restoration. If Lender shall receive and retain Net Insurance Proceeds, the lien of this Mortgage shall be reduced only by the amount received and retained by Lender and applied by Lender in reduction of the Obligations pursuant to the terms of the Loan Documents.

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Notwithstanding anything contained herein to the contrary, so long as no Event of Default exists and is continuing at the time of the damage or destruction to the Collateral or at any time thereafter, Lender by its acceptance of this Mortgage agrees to make all Net Insurance Proceeds available to be used for the Restoration to be completed by Borrower or Lessee in accordance with the terms of the Downstream Lease so long as the Downstream Lease is in effect.

(b) *Condemnation.* (i) In case of a taking of all or any part of the Collateral or the commencement of any proceedings or negotiations which might result in a taking, for any public or quasi-public purpose by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Lender, Borrower and those authorized to exercise such right (“**Taking**”), Borrower will promptly give written notice thereof to Lender, generally describing the nature and extent of such Taking. Lender shall file and prosecute on behalf of Lender and Borrower any and all claims for Proceeds of a Taking, and all Proceeds on account of a Taking shall be paid to Lender.

(ii) In case of a Taking of the whole of the Collateral, other than for temporary use (“**Total Taking**”), or in case of a Taking of less than all of the Collateral (“**Partial Taking**”), the Loan Documents shall remain in full force and effect. In the case of a Partial Taking, Borrower, whether or not the Proceeds, if any, resulting from such Partial Taking are enough to complete the Restoration (but provided the Proceeds are made available by Lender for such purpose), at its own cost and expense, will promptly commence and complete the Restoration provided however, so long as the Downstream Lease is in effect, then Borrower shall cause Lessee to promptly commence and complete the Restoration in accordance with the Downstream Lease. In case of a Partial Taking, other than a temporary use, of such a substantial part of the Collateral as shall result in the Collateral remaining after such Partial Taking being unsuitable for use, such Taking shall be deemed a Total Taking.

(iii) In case of a temporary use of the whole or any part of the Collateral by a Taking, the Loan Documents shall remain in full force and effect without any reduction of any monetary sum payable under the Loan Documents. In any proceeding for such Taking, Lender shall have the right to intervene and participate; provided that, if such intervention shall not be permitted, Borrower shall consult with Lender, its attorneys and experts, and make all reasonable efforts to cooperate with Lender in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Collateral, Borrower will, at its own cost and expense, promptly commence and complete the Restoration.

(iv) Proceeds on account of a Taking, less the costs, fees and expenses incurred by Lender and Borrower in connection with the collection thereof, including, without limitation, reasonable attorneys’ fees and expenses, shall be applied in the following order:

(x) Proceeds received on account of a Total Taking shall be allocated as follows:

(aa) There shall be paid to the Lender an amount up to the sum of the outstanding principal, including all sums advanced by Lender hereunder, and interest (but expressly excluding any prepayment premium or fee under the Note which shall not apply to any prepayments of the Obligations made as a result of any casualty or Taking), all as of the date on which such payment is made, such amount shall be applied first against all sums advanced by Lender under this Mortgage, second against the accrued but unpaid interest on the Note, and third to the remaining unpaid principal amount of the Note. If the Proceeds received on account of a Total Taking are not sufficient to satisfy the outstanding principal balance of the Note, all accrued but unpaid interest on the Note, all other sums due under the Note, all sums advanced by Lender under this Mortgage and all other sums due and payable under this Mortgage and the other Loan Documents corresponding to the Premises (collectively, the “**Outstanding Obligations**”), Borrower shall pay to Lender simultaneously with the payment of such Proceeds to Lender the difference between the amount of such Proceeds and the amount of the Outstanding Obligations.

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(bb) Any remaining balance shall be paid to Borrower.

(y) Proceeds received on account of a Partial Taking shall be held and allocated as follows:

(i) first, toward the cost of the Restoration, such application of net awards and other payments to be made substantially in the manner provided in Section 4.01(a)(iii) of this Mortgage provided Lender by its acceptance of this Mortgage agrees that all such net awards or other payments shall be available to be used by Borrower or Lessee to complete the Restoration in accordance with the terms of the Downstream Lease; and

(ii) then, all or any portion of the balance of such proceeds shall, in Lender's sole discretion, either be paid to:

(1) Lender, as the holder of this Mortgage, and applied toward the Outstanding Obligations in such order, priority and proportion, and at such time on or prior to the Maturity Date (as defined in the Note), as Lender shall determine; or

(2) Borrower; provided, however, in Lender's sole discretion, such proceeds shall be pledged to Lender to secure the Outstanding Obligations pursuant to a security agreement reasonably satisfactory to Lender, or, with Lender's consent, Borrower shall provide Lender with alternative security satisfactory to Lender in its sole discretion.

Lender may deposit any funds held by it in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Lender. Interest or gains from such funds, if any, shall be the sole property of Lender.

(z) Proceeds received on account of a Taking for temporary use shall be held by Lender and applied to the payment of the monthly installments of combined interest and principal becoming due under the Note, until such Taking for temporary use is terminated and the Restoration, if any, has been completed; provided, however, that, if any portion of any such award or payment is made by reason of any damage to or destruction of the Collateral, such portion shall be held and applied as provided in Section 4.01(a)(iii) hereof provided Lender by its acceptance of this Mortgage agrees that all such net awards or other payments shall be available to be used by Borrower or Lessee to complete the Restoration in accordance with the terms of the Downstream Lease. The balance, if any, of such awards and payments shall be paid to Borrower.

(v) Notwithstanding the foregoing, if at the time of any Taking or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, Lender is hereby authorized and empowered, in the name and on behalf of Borrower and otherwise, to file and prosecute Borrower's claim, if any, for an award on account of any Taking and to collect such award and apply the same, after deducting all costs, fees and expenses incident to the collection thereof (the "Net Award"), toward the Obligations whether or not then due and payable, in such order, priority and proportions as Lender in its discretion shall deem proper, or to cure such Event of Default, or, in Lender's discretion, Lender may pay the Net Award in whole or in part to Borrower to be applied toward the cost of the Restoration. If Lender shall receive and retain the Net Award, the lien of this Mortgage shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Obligations.

Section 4.02. *Conveyance in Anticipation of Condemnation, Granting of Easements, Etc.* If no Event of Default shall have occurred and be continuing, Borrower may, from time to time with respect to its interest in the Collateral, and with Lender's prior written consent, (i) sell, assign, convey or otherwise transfer any interest therein to any person legally empowered to take such interest under the power of eminent domain, (ii) grant easements and other rights in the nature of easements, (iii) release existing easements or other rights in the nature of easements which are for the benefit of the Collateral, (iv) dedicate or transfer unimproved portions of the Collateral for road, highway or other public purposes, (v) execute petitions to have the Collateral annexed to any municipal corporation or utility



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district, and (vi) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers.

Section 4.03. **Lender's Power.** At any time, or from time to time, without liability therefor, Lender, without affecting the personal liability of any person for payment of the Obligations or the effect of this Mortgage upon the remainder of said Collateral, may from time to time without notice (i) release any part of said Collateral, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof, (v) release any person so liable, (vi) extend the maturity or alter any of the terms of any Obligations, (vii) grant other indulgences, (viii) take or release any other or additional security for any Obligations, (ix) make compositions or other arrangements with debtors in relation thereto, or (x) advance additional funds to protect the security hereof or to pay or discharge the Obligations in the event Borrower fails to do so, and all amounts so advanced shall be secured hereby and shall be due and payable upon demand by Lender.

## ARTICLE V

### SECURITY INTEREST

Section 5.01. **Security Agreement.** With respect to the Personal Property or any portion of the Collateral which constitutes fixtures or other property governed by the UCC, this Mortgage shall constitute a security agreement between Borrower, as the debtor, and Lender, as the secured party, and Borrower hereby grants to Lender a security interest in such portion of the Collateral. Cumulative of all other rights of Lender hereunder, Lender shall have all of the rights conferred upon secured parties by the UCC. Borrower authorizes Lender to file financing statements with respect to the security interest of Lender, continuation statements with respect thereto, and any amendments to such financing statements which may be necessitated by reason of any of the changes described in Section 6.C of the Loan Agreement. Furthermore, at any time, and from time to time, Borrower will execute and deliver to Lender all financing statements that may from time to time be required by Lender to establish and maintain the validity and priority of the security interest of Lender, or any modification thereof. Lender may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property in, upon the occurrence and during the continuance of an Event of Default, Lender proceeds to dispose of such property in accordance with the provisions of the UCC, 10 days' notice by Lender to Borrower shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Lender may at its option dispose of such property in accordance with Lender's rights and remedies with respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the UCC. Borrower represents that its exact legal name and state of formation or organization are as set forth in the first paragraph of this Mortgage. Borrower agrees that, notwithstanding any provision in the UCC to the contrary, Borrower shall not file a termination statement of any financing statement filed by Lender in connection with any security interest granted under this Mortgage if Lender reasonably objects to the filing of such termination statement.

Section 5.02. **Effective as a Financing Statement and Fixture Filing.** This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Collateral and is to be filed for record in the real estate records of each county where any part of the Collateral (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering any other portion of the Collateral and may be filed in any other appropriate filing or recording office. The mailing address of Borrower is the address of Borrower set forth in Section 7.04 of this Mortgage, and the address of Lender from which information concerning the security interests hereunder may be obtained is the address of Lender as set forth in the Section 7.04 of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

Section 6.01. **Events of Default.** Each of the following shall be an event of default under this Mortgage

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(each an "Event of Default"):

- (i) If any principal, interest or other monetary sum due under the Note, this Mortgage or any other Loan Document is not paid within seven (7) days after the date when due.
- (ii) Subject to the provisions of Section 3.05(b) of this Mortgage, if Borrower fails to pay, prior to delinquency, any taxes, assessments or other charges the failure of which to pay will result in the imposition of a lien against the Collateral pursuant to Applicable Regulations.
- (iii) If Borrower shall fail to maintain insurance in accordance with the requirements of Section 3.06 of this Mortgage.
- (iv) If Borrower fails to observe or perform any of the covenants, conditions, or obligations of this Mortgage, provided, however, if any such failure does not involve the payment of any principal, interest or other monetary sum due under the Note, is not willful or intentional, does not place any rights or interest in collateral of Lender in immediate jeopardy, and is within the commercially reasonable power of Borrower to promptly cure after receipt of notice thereof, all as determined by Lender in its commercially reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lender shall have given Borrower notice thereof and a period of 30 days shall have elapsed, during which period Borrower may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Lender in its commercially reasonable discretion, and Borrower is diligently pursuing a cure of such failure, then Borrower shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 90 days after receiving notice of the failure from Lender. If Borrower shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.
- (v) If there is any other "Event of Default" under the Loan Agreement.

Section 6.02. **Remedies.** Upon the occurrence and during the continuance of an Event of Default subject to the limitations set forth in Section 6.01, Lender may declare all or any part of the Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice (including notice of intent to accelerate and notice of acceleration) of any kind except as otherwise expressly provided herein. Furthermore, upon the occurrence and during the continuance of an Event of Default, Lender may:

- (i) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Collateral or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Collateral, or part thereof or interest therein, the income therefrom or protect the security hereof and, with or without taking possession of the Collateral, take any action described herein, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any Obligations, all in such order as Lender may determine. The entering upon and taking possession of the Collateral, the taking of any action described herein, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Collateral or the collection, receipt and application of Rents, Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon any Event of Default;
- (ii) Commence an action to foreclose this Mortgage in a single parcel or in several parcels, appoint a receiver or specifically enforce any of the covenants hereof;
- (iii) Exercise any or all of the remedies available to a secured party under the Uniform

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Commercial Code as adopted in the State ("UCC"), including, without limitation:

- (1) Either personally or by means of a court appointed receiver, commissioner or other officer, take possession of all or any of the Personal Property and exclude therefrom Borrower and all others claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower in respect of the Personal Property or any part thereof. In the event Lender demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Borrower promises and agrees to promptly turn over and deliver complete possession thereof to Lender;
  - (2) Without notice to or demand upon Borrower, make such payments and do such acts as Lender may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder and, in exercising any such powers or authority, to pay all expenses incurred in connection therewith;
  - (3) Require Borrower to assemble the Personal Property or any portion thereof, at the Premises, and promptly to deliver such Personal Property to Lender, or an agent or representative designated by it. Lender, and its agents and representatives, shall have the right to enter upon any or all of Borrower's premises and property to exercise Lender's rights hereunder;
  - (4) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Lender may determine. Lender may be a purchaser at any such sale; and
  - (5) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Borrower at least 10 days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be delivered to Borrower at the address set forth at the beginning of this Mortgage and shall be deemed to be given as provided herein.
- (iv) Exercise all of Borrower's rights and remedies under the indemnity agreements, including, without limitation, making demands and claims and receiving payments, under the indemnity agreements. Borrower hereby grants Lender a power of attorney (which grant shall be deemed irrevocable and coupled with an interest) to exercise such rights and remedies;
  - (v) Subject to the terms of the Downstream Lease, if held by Lender, sur under the insurance policies maintained pursuant to Section 3.06, collect the unearned insurance premiums and apply such sums as a credit on the Obligations in such priority and proportion as Lender in its sole discretion shall deem proper, 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 Lender to collect such insurance premiums; and

Section 6.03. **Appointment of Receiver.** If an Event of Default shall have occurred and be continuing, Lender, as a matter of right and without notice to Borrower or anyone claiming under Borrower, and without regard to the then value of the Collateral or the interest of Borrower therein, or the insolvency of Borrower or the then-owner of the Collateral, may seek the appointment of a receiver for the Collateral upon *ex parte* application to any court of the competent jurisdiction. Borrower waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver shall be empowered (a) to take possession of the Collateral and any businesses conducted by Borrower thereon and any business assets used in connection therewith, (b) to exclude Borrower and Borrower's agents, servants and employees from the Collateral, or, at the option of the receiver, in lieu of such exclusion, to collect a fair market rental from any such persons occupying any part of the Collateral, (c) to collect the Rents, (d) to complete any construction that may be in progress, (e) to continue the development, marketing and sale of the Collateral, (f) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (g) to use all stores of

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materials, supplies and maintenance equipment on the Collateral but only to the extent of Borrower's right, title and interest therein, if any and replace such items to the extent of Borrower's interest therein, if any at the expense of the receivership estate, (h) to pay all taxes and assessments against the Collateral, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, (i) to request that Lender advance such funds as may reasonably be necessary to the effective exercise of the receiver's powers, on such terms as may be agreed upon by the receiver and Lender, but not in excess of the Default Rate, and (j) generally to do anything that Borrower could legally do if Borrower were in possession of the Collateral. All expenses incurred by the receiver or his agents, including obligations to repay funds borrowed by the receiver, shall constitute a part of the Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including reasonable attorneys' fees incurred by the receiver and by Lender, together with interest thereon at the Default Rate as defined in the Note from the date incurred until repaid, and the balance shall be applied toward the Obligations or in such other manner as the court may direct.

Section 6.04. **Remedies Not Exclusive.** Lender shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Mortgage or under any Loan Documents or Other Agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender, or to which Lender may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender. Lender may pursue inconsistent remedies.

The acceptance by Lender of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a subsequent Event of Default as herein provided. The acceptance by Lender of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, and failure of Borrower to pay such entire sum then due shall be an Event of Default, notwithstanding such acceptance of such amount on account, as aforesaid. Lender shall be, at all times thereafter and until the entire sum then due as contemplated by the Loan Documents shall have been paid, and notwithstanding the acceptance by Lender thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default, or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Lender to any action or inaction of Borrower which is subject to consent or approval of Lender hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

Section 6.05. **Possession of Collateral.** In the event of a trustee's sale or foreclosure sale hereunder and after the time of such sale, Borrower occupies the portion of the Collateral so sold, or any part thereof, Borrower shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Collateral so occupied, such rental to be due and payable daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Collateral; and this Mortgage and a trustee's or sheriff's deed shall constitute a lease and agreement under which the tenant's possession arose and continued. Nothing contained in this Mortgage shall be construed to constitute Lender as a "mortgagee in possession" in the absence of its taking actual possession of the Collateral pursuant to the powers granted herein.

Section 6.06. **Waiver of Rights.** Borrower waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisal before sale of any portion of the Collateral, or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from



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any sale made in collecting the Obligations. Borrower agrees that Borrower will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, redemption or homestead exemption, and Borrower, for Borrower, Borrower's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Collateral, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, homestead exemption, notice of election to mature or declare due the whole of the Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Borrower expressly waives and relinquishes any and all rights, remedies and defenses that Borrower may have or be able to assert by reason of the laws of the State pertaining to the rights, remedies and defenses of sureties.

**Section 5.07. Relief From Stay.** In the event that Borrower commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, subject to court approval, Lender shall thereupon be entitled and Borrower irrevocably consents to relief from any stay imposed by Section 362 of the Code on or against the exercise of the rights and remedies otherwise available to Lender as provided in the Loan Documents and Borrower hereby irrevocably waives its rights to object to such relief. In the event Borrower shall commence a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, Borrower hereby agrees that no injunctive relief against Lender shall be sought under Section 105 or other provisions of the Code by Borrower or other person or entity claiming through Borrower, nor shall any extension be sought of the stay provided by Section 362 of the Code.

**Section 6.08. Cash Collateral.** Borrower hereby acknowledges and agrees that in the event that Borrower commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code: (i) that all of the Rents are, and shall for purposes be deemed to be, "proceeds, product, offspring, rents, or profits" of the Premises covered by the lien of this Mortgage, as such quoted terms are used in Section 552(b) of the Code; (ii) that in no event shall Borrower assert, claim or contend that any portion of the Rents are, or should be deemed to be, "accounts" or "accounts receivable" within the meaning of the Code and/or applicable state law; (iii) that the Rents are and shall be deemed to be in any such bankruptcy proceeding "cash collateral" of Lender as that term is defined in Section 363 of the Code; and (iv) that Lender has valid, effective, perfected, enforceable and "choate" rights in and to the Rents without any further action required on the part of Lender to enforce or perfect its rights in and to such cash collateral, including, without limitation, providing notice to Borrower under Section 546(b) of the Code.

**Section 6.09. Assignment of Rents and Leases.** (a) Borrower hereby assigns, transfers, conveys and sets over to Lender all of Borrower's estate, right, title and interest in, to and under the Leases, whether existing on the date hereof or hereafter entered into, together with any changes, extensions, revisions or modifications thereof and all rights, powers, privileges, options and other benefits of Borrower as the lessor under the Leases regarding the current tenants and any future tenants, and all the Rents from the Leases, including those now due, past due or to become due. Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender, at any time and from time to time upon the occurrence and during the continuance of an Event of Default, to take possession and control of the Premises, pursuant to Borrower's rights under the Leases, to exercise any of Borrower's rights under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Borrower or Lender, for all of the Rents. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment of all sums due Lender for all losses, costs, damages, fees and expenses whatsoever associated with the exercise of this power of attorney, and Borrower hereby releases Lender from all liability (other than as a result of the gross negligence or willful misconduct of Lender) whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto. The consideration received by Borrower to execute and deliver this assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Borrower. It is intended by Borrower and Lender that the assignment set forth herein constitutes an absolute assignment and not merely an assignment for additional security. Notwithstanding the foregoing, this assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions of Borrower contained in the Leases or otherwise to impose any obligation upon Lender, and, so long as no Event of Default shall have occurred and be continuing,



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Borrower shall have a license, revocable upon an Event of Default, to possess and control the Premises and collect and receive all Rents. Upon an Event of Default, such license shall be automatically revoked.

(b) Upon the occurrence and during the continuance of an Event of Default, Lender may, at any time without notice (except if required by applicable law), either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, and at its sole election (without any obligation to do so), enter upon and take possession and control of the Premises, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Premises, including, but not limited to, execute, cancel or modify the Leases, make repairs to the Premises, execute or terminate contracts providing for the management or maintenance of the Premises, all on such terms as are deemed best to protect the security of this assignment, and in Lender's or Borrower's name, sue for or otherwise collect such Rents as specified in this Mortgage as the same become due and payable, including, but not limited to, Rents then due and unpaid. Lender may so sue for or otherwise collect such Rents with or without taking possession of the Premises. Borrower agrees that upon the occurrence and during the continuance of an Event of Default, each tenant of the Premises shall make its rent payable to and pay such rent to Lender (or Lender's agents) on Lender's written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Borrower.

(c) Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Lender to the costs, if any, of taking possession and control of and managing the Premises and collecting such amounts, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Premises, premiums on insurance policies, taxes, assessments and other charges on the Premises, and the costs of discharging any obligation or liability of Borrower with respect to the Leases and to the sums secured by this Mortgage. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Premises and shall be liable to account only for those Rents actually received.

(d) Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Premises by reason of anything done or left undone by Lender hereunder, except to the extent of Lender's gross negligence or willful misconduct.

(e) Any entering upon and taking possession and control of the Premises by Lender or the receiver and any application of Rents as provided herein shall not cure or waive any Event of Default hereunder or invalidate any other right or remedy of Lender under applicable law or provided therein.

## ARTICLE VII

### MISCELLANEOUS

Section 7.01. *Satisfaction / Release of this Mortgage Pursuant to Partial Prepayment of Loan.* If and when the Obligations shall have become due and payable (whether by lapse of time or by acceleration or by the exercise of the privilege of prepayment), and Borrower shall pay or cause to be paid (provided such payment is permitted or required by the Note) the full amount thereof and shall also pay or cause to be paid all other sums payable by the Borrower Parties to the Lender Entities with respect to the Obligations, then this Mortgage shall be void (otherwise it shall remain in full force and effect in law and equity forever) and Lender agrees to execute an instrument evidencing the satisfaction of all obligations under this Mortgage and releasing this Mortgage which shall be prepared and recorded at Borrower's sole expense.

Notwithstanding anything contained herein to the contrary, Borrower has the right to obtain a release of this Mortgage and all other security instruments encumbering the Premises and the Collateral in connection with a sale of the Premises to an unaffiliated third party upon Borrower's satisfaction of the terms of a Partial Release as included in the Loan Agreement which is incorporated herein by this reference.

Section 7.02. *Limitation of Rights of Others.* Nothing in this Mortgage is intended or shall be construed to give to any person, other than Borrower and the holder of the Note, any legal or equitable right, remedy or claim under

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or in respect of this Mortgage or any covenant, condition or provision herein contained.

Section 7.03. **Severability.** In case any one or more of the provisions contained herein or in the Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Mortgage shall be construed as if such provision had never been contained herein or therein.

Section 7.04. **Notices; Amendments; Waiver.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Mortgage (collectively called "Notices") shall be in writing and given by (i) hand delivery, (ii) express overnight delivery service or (iii) certified or registered mail, return receipt requested and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) the next Business Day, if delivered by express overnight delivery service, or (c) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses specified below:

If to Borrower: 101 West Capitol Drive  
Milwaukee, WI 53212  
Attn: John R. Brodersen

With a copy to: Robbins, Salomon & Patt, Ltd.  
180 North LaSalle Street, Suite 3300  
Chicago, IL 60601  
Attn: Andrew W. Lapin, Esq. and Donna M. Shaw, Esq.

If to Lender: 123 Tice Blvd., Suite 102  
Woodcliff Lake, NJ 07677  
Telephone: (201) 746-6940  
Telecopy: (201) 746-6947

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. Whenever in this Mortgage the giving of Notice is required, the giving thereof may be waived in writing at any time by the person or persons entitled to receive such Notice. Except as in this Mortgage otherwise expressly provided, (i) this Mortgage may not be modified except by an instrument in writing executed by Borrower and Lender and (ii) no requirement hereof may be waived at any time except by a writing signed by the party against whom such waiver is sought to be enforced, nor shall any waiver be deemed a waiver of any subsequent breach or default.

Section 7.05. **Successors and Assigns.** All of the provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, to the same extent as if each such successor and assign were in each case named as a party to this Mortgage. Wherever used, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 7.06. **Headings.** The headings appearing in this Mortgage have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Mortgage.

Section 7.07. **Time of the Essence.** Time is of the essence in the performance of each and every obligation under this Mortgage.

Section 7.08. **Forum Selection; Jurisdiction; Venue; Choice of Law.** Borrower acknowledges that there are substantial contacts between the parties and the transactions contemplated herein and the State of New York. For purposes of any action or proceeding arising out of this Mortgage, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of New York. Borrower consents that it may be served with any process or paper by registered mail or by personal service within or without the State of New York in accordance with applicable law. Furthermore, Borrower waives and agrees not to assert in any such action, suit or proceeding that it

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is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. The creation of this Mortgage and the rights and remedies of Lender with respect to the Collateral, as provided herein and by the laws of the State, shall be governed by and construed in accordance with the internal laws of the State without regard to its principles of conflicts of law. With respect to other provisions of this Mortgage, this Mortgage shall be governed by the internal laws of the State of New York, without regard to its principles of conflicts of law. Nothing in this Section shall limit or restrict the right of Lender to commence any proceeding in the federal or state courts located in the State to the extent Lender deems such proceeding necessary or advisable to exercise remedies available under the Mortgage or the other Loan Documents.

Section 7.09. **Indemnification.** BORROWER SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE INDEMNIFIED PARTIES FOR, FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LIABILITIES (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITIES), ACTIONS, PROCEEDINGS, OBLIGATIONS, DEBTS, DAMAGES, LOSSES, COSTS, EXPENSES, DIMINUTIONS IN VALUE, FINES, PENALTIES, CHARGES, FEES, EXPENSES, JUDGMENTS, AWARDS, AMOUNTS PAID IN SETTLEMENT AND DAMAGES OF WHATEVER KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, COURT COSTS AND OTHER COSTS OF DEFENSE) (COLLECTIVELY, "LOSSES") (EXCLUDING ALL LOSSES SUFFERED BY AN INDEMNIFIED PARTY ARISING OUT OF SUCH INDEMNIFIED PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED, HOWEVER, THAT THE TERM "GROSS NEGLIGENCE" SHALL NOT INCLUDE GROSS NEGLIGENCE IMPUTED AS A MATTER OF LAW TO ANY OF THE INDEMNIFIED PARTIES SOLELY BY REASON OF BORROWER'S INTEREST IN THE COLLATERAL OR BORROWER'S FAILURE TO ACT IN RESPECT OF MATTERS WHICH ARE OR WERE THE OBLIGATION OF BORROWER UNDER THE LOAN DOCUMENTS) CAUSED BY, INCURRED OR RESULTING FROM BORROWER'S OPERATIONS OF, OR RELATING IN ANY MANNER TO, THE COLLATERAL, WHETHER RELATING TO ITS ORIGINAL DESIGN OR CONSTRUCTION, LATENT DEFECTS, ALTERATION, MAINTENANCE, USE BY BORROWER OR ANY PERSON THEREON, SUPERVISION OR OTHERWISE, OR FROM ANY BREACH OF, DEFAULT UNDER OR FAILURE TO PERFORM ANY TERM OR PROVISION OF THIS MORTGAGE BY BORROWER, ITS OFFICERS, EMPLOYEES, AGENTS OR OTHER PERSONS. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT BORROWER'S OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS MORTGAGE FOR ANY REASON.

Section 7.10. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** LENDER, BY ACCEPTING THIS MORTGAGE, AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE, THE RELATIONSHIP OF LENDER AND BORROWER, BORROWER'S USE OR OCCUPANCY OF THE COLLATERAL, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY BORROWER AND LENDER OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

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Section 7.11. *Lessee Performance/Borrower's Covenants Regarding The Premises To Be Interpreted Consistently With The Downstream Lease.* To extent that the Lessee under the Downstream Lease performs any obligation required of Borrower under this Mortgage within any applicable time period, Lender agrees to accept such performance as if Borrower had done so. Lender by its acceptance of this Mortgage acknowledges and agrees that Borrower's covenants with respect to the rights of access to the Premises are subject to the terms of the Downstream Lease and the rights, title and interest of the Lessee under the Downstream Lease.

## ARTICLE VIII

### STATE-SPECIFIC PROVISIONS

Section 8.01 *Principles of Construction.* In the event of any inconsistencies between the terms and conditions of this Article VIII and the terms and conditions of this Mortgage or any other Loan Document, the terms and conditions of this Article VIII shall control and be binding.

Section 8.02 *State Specific Provisions.*

(a) *Collateral Protection Act.* **UNLESS BORROWER PROVIDES LENDER WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THE LOAN DOCUMENTS, LENDER MAY PURCHASE INSURANCE AT BORROWER'S EXPENSE TO PROTECT LENDER'S INTERESTS IN THE COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT BORROWER'S INTERESTS. THE COVERAGE THAT LENDER PURCHASES MAY NOT PAY ANY CLAIM THAT BORROWER MAKES OR ANY CLAIM THAT IS MADE AGAINST BORROWER IN CONNECTION WITH THE COLLATERAL. BORROWER MAY LATER CANCEL ANY INSURANCE PURCHASED BY LENDER, BUT ONLY AFTER PROVIDING LENDER WITH EVIDENCE THAT BORROWER HAS OBTAINED INSURANCE AS REQUIRED. IF LENDER PURCHASES INSURANCE FOR THE COLLATERAL, BORROWER WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES LENDER MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO BORROWER'S TOTAL OUTSTANDING BALANCE OR OBLIGATIONS. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE THAT BORROWER MAY BE ABLE TO OBTAIN ON ITS OWN.**

(b) *Foreclosure Act.* When all or any part of the Obligations shall become due, whether by acceleration or otherwise, the Lender shall have the right to foreclose the lien hereof for such Obligations or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). Borrower and Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto, which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, Borrower and Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(c) *Compliance with Illinois Mortgage Foreclosure Law.*

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

(ii) If any provision of this Mortgage shall grant to the Lender (including the Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of

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Default which are more limited than the powers, rights or remedies that would otherwise be vested in the Lender or in such receiver under the Act in the absence of said provision, the Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(iii) Without limiting the generality of the foregoing, all expenses incurred by the Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, shall be added to the Obligations and/or by the judgment of foreclosure.

(d) *Waiver of Rights.* The Borrower hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(i) The Borrower hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Borrower and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15-1601 or other applicable law or replacement statutes;

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

(iii) The Borrower certifies and represents that the provisions of this section (including the waiver of reinstatement and redemption rights) were made at the express direction of the persons having the power of direction over the Borrower, and are made on behalf of the Borrower.

(e) *Protective Advances.* All advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings authorized by this Mortgage or by the Act (collectively, "**Protective Advances**"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional indebtedness secured by this Mortgage, 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 due and payable after a default under the terms of the Note. 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. 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:

(i) determination of the amount of indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to 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) if right of redemption has not been waived by the Borrower in this Mortgage,



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computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;

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

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

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

(f) *Maximum Indebtedness.* Notwithstanding anything contained herein to the contrary, in no event shall the total indebtedness secured by this Mortgage exceed an amount equal to FORTY-EIGHT MILLION NINE HUNDRED FIFTY SEVEN THOUSAND AND NO/100 DOLLARS (\$48,950,000.00); provided, however, in no event shall Lender be obligated to advance funds in excess of the face amount of the Note.

(g) *Subordination of Property Manager's Lien.* Borrower hereby represents and covenants to Lender that there is no property management agreement in existence for the Premises as of the date hereof. Any property management agreement for the Premises entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Premises shall be subject and subordinate to the lien of this Mortgage and shall provide that the Lender may terminate such agreement, without penalty or cost, at any time after the occurrence of an Event of Default hereunder.

(h) *Illinois Statutory Law.* Mortgagor acknowledges and agrees that the Premises does not constitute agricultural real estate (as defined in Section 15-1201 of the Act), or residential real estate (as defined in Section 15-1219 of the Act). The entire proceeds of the Loan constitute a "business loan" as that term is used in Illinois Compiled Statutes, Chapter 815, Act 205, Section 4 as amended from time to time.

(i) *Mortgagee-in-Possession.* Nothing herein contained shall be construed as constituting the Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Premises by the Lender pursuant to this Mortgage.

(j) *Complete Agreement.* This Mortgage, the Note, the Loan Agreement and the other Loan Documents and the Other Agreements constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Borrower and the Lender and the Other Agreements may not be modified except by an agreement in writing signed by both the applicable Borrower Parties and the applicable Lender Entities which are parties thereto. In the event of any inconsistency between the terms of this Mortgage and the terms of the Loan Agreement, the terms of the Loan Agreement shall govern.

(k) *Conflict.* If any conflict or inconsistency exists or arises between this Section 8.18 and the preceding Articles of this Mortgage, or the terms of any other Loan Documents, except as specifically provided to the contrary in this Section 8.18, the terms of this Section 8.18 shall govern and control this Mortgage or the other Loan Documents.

[SIGNATURE AND NOTARY PAGE IMMEDIATELY FOLLOWS]



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## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES

That part of Lots 9 and 10 and that part of the 30 feet private alley lying between said Lots 9 and 10 in J.D. Lehmer's Subdivision of the Southeast 1/4 of the Southwest 1/4 of Section 5, Township 38 North, Range 14, East of the Third Principal Meridian, described as follows:

Beginning at the Southwest corner of said Lot 10 and running thence North along the West Line of said Lots and Subdivision 341.16 feet; thence South 21 degrees, 18 minutes East from said West Line of Lots and Subdivision 69.70 feet to a point of curve; thence Southeasterly on the arc of a circle convex Southwesterly and having a radius of 383 feet and a central angle of 22 degrees 20 minutes 38 seconds for a distance of 149.36 feet to a point of intersection with a line drawn 105 feet East of and parallel with said West Line; thence South along said parallel line 151.10 feet to the South line of said Lot 10, said South Line of Lot 10 also being the North Line of West 47th Street in the City of Chicago; thence North 89 degrees 57 minutes West along the South Line of Lot 10 and North Line of West 47th Street 105 feet to point of beginning, in Cook County, Illinois.

Also

That part of Lots 9 and 10 and that part of the 30 foot private alley lying between said Lots 9 and 10 in J.D. Lehmer's Subdivision of the Southeast 1/4 of the Southwest 1/4 of Section 5, Township 38 North, Range 14, East of the Third Principal Meridian, described as follows:

Commencing at the Southwest Corner of said Lot 10 and running thence "North" along the West Line of said Lots and Subdivision 341.16 feet; thence South 21 degrees 18 minutes East from said West Line of said Lots and Subdivision 69.70 feet to a point of curve; thence Southeasterly on the arc of a circle convex Southwesterly and having a radius of 383 feet and a central angle of 22 degrees 20 minutes 38 seconds for a distance of 149.36 feet to a point of intersection with a line drawn 105 feet East of and parallel with the West Line of said Lots 9 and 10 in J.D. Lehmer's Subdivision, said point being the point of beginning of the following described tract; thence continuing Southeasterly along the arc of a circle having a radius of 583 feet and a central angle of 12 degrees 49 minutes 22 seconds for a distance of 85.72 feet to a point of compound curve; continuing thence Southeasterly on the arc of a circle convex Southwesterly and having a radius of 655 feet and a central angle of 18 degrees 40 minutes 30 seconds for a distance of 213.49 feet to a point of intersection with a line 364.45 feet East of and parallel with the West Line of said Lots 9 and 10 of J.D. Lehmer's Subdivision; thence "South" along the last described parallel line a distance of 9.30 feet to the South Line of said Lot 10 also being the North Line of West 47th Street in the City of Chicago, and also being the point of Intersection of the North Line of West 47th Street with the East Line of South Ada Street as laid out to the South in said City of Chicago and extended North; thence North 89 minutes 57 seconds West on the South Line of said Lot 10 and North Line of West 47th Street 259.46 feet, to a point 105 feet East of the Southwest corner of said Lot 10 in J.D. Lehmer's Subdivision as measured along the South Line of said Lot 10; thence North along a line drawn parallel with and 105 feet East of the West Line of said Lots 9 and 10, a distance of 151.10 feet to the point of beginning, in Cook County, Illinois.

Street Address for Reference: 1356 W. 47th Street Chicago, Cook County, IL  
PIN: 20-05-311-014-0000

60609