

UNOFFICIAL COPY



\*2125033039\*

Doc# 2125033039 Fee \$125.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 09/07/2021 11:14 AM PG: 1 OF 38

This document prepared by and after Recording return to:

Riemer & Braunstein LLP  
71 South Wacker Drive, Suite 3515  
Chicago, Illinois 60606  
Attn: Aleksia Z. Culafic, Esq.

Commonly known as:  
4800-4830 W. Diversey Ave., Chicago IL 60639;  
2820-2830 N. Cicero Ave, Chicago IL 60639;  
4817 W. Wolfram St., Chicago, IL;  
4815 W. Wolfram St., Chicago, IL.

PINs:

- 13-28-231-014-0000
- 13-28-231-015-0000
- 13-28-231-023-0000
- 13-28-231-036-0000
- 13-28-231-039-0000
- 13-28-231-040-0000
- 13-28-231-041-0000

**THIS AMENDED AND RESTATED MORTGAGE ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT AMENDS AND RESTATES IN ITS ENTIRETY AND CONTINUES THE PRIORITY OF THAT CERTAIN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (THE "ORIGINAL MORTGAGE") GRANTED BY GROCERY RETAIL HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN FAVOR OF CIBC BANK USA, AN ILLINOIS STATE CHARTERED BANK, WHICH WAS RECORDED ON MAY 19, 2021 IN THE COOK COUNTY, ILLINOIS RECORDS AS INSTRUMENT NO. 2113946021.**

**AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT**

**THIS AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT** (hereinafter referred to as this "*Mortgage*") is made and entered into as of this August 31, 2021, by **GROCERY RETAIL HOLDINGS, LLC**, a Delaware limited liability company, as grantor or mortgagor (hereinafter referred to as "*Mortgagor*"), in favor of **CIBC BANK USA**, an Illinois state chartered bank, as grantee and mortgagee herein (hereinafter in such capacity referred to as "*Mortgagee*").

Q 1019042 PE WJ3 B07

Chicago Title

# UNOFFICIAL COPY

## RECITALS:

A. WHEREAS, MIG ACQUISITION LLC, an Illinois limited liability company ("**MIG**"), B&B HARDY REAL ESTATE LLC, an Illinois limited liability company ("**B&B Hardy Real Estate**") and Mortgagee have previously entered into that certain Loan and Security Agreement dated as of October 15, 2019, pursuant to which Mortgagee agreed to make a certain loan to MIG and B&B Hardy Real Estate in the aggregate maximum principal amount of Eleven Million Eight Hundred Thousand and No/100 Dollars (\$11,800,000.00) (the "**Original Loan Arrangement**"), as amended by that certain Amendment No. 1 to Loan and Security Agreement dated as of April 15, 2021. MIG, B&B Hardy Real Estate and A-F ACQUISITION, LLC, a Delaware limited liability company ("**A-F**"); and together with MIG and B&B Hardy Real Estate, collectively, "**Borrower**") have requested that the Original Loan Arrangement be modified, amended and restated pursuant to that certain Amended and Restated Loan and Security Agreement dated as of August 31, 2021 by and between Borrower and Mortgagee (as amended, supplemented, restated, replaced, or otherwise modified from time to time, the "**Loan Agreement**"), pursuant to which Mortgagee has agreed to make a certain loan to Borrower in the maximum principal amount of up to Twenty-Three Million Three Hundred Thousand and No/100 Dollars (\$23,300,000.00) (the "**Loan**"). The Loan is evidenced by one or more certain promissory notes dated as of even date herewith, executed by Borrower in favor of Mortgagee (as amended, supplemented, restated, replaced, or otherwise modified from time to time, the "**Note**"). Capitalized terms used and not specifically defined herein shall bear the same meaning as in the Loan Agreement.

B. WHEREAS, the Loan is secured by, among other things, that certain Limited Recourse Guaranty, dated as of October 15, 2019, made by Mortgagor for the benefit of Mortgagee, as ratified by that certain Consent, Acknowledgment and Ratification Agreement dated as of August 31, 2021 (as amended, supplemented, restated, replaced, or otherwise modified from time to time, the "**Limited Recourse Guaranty**") which Mortgagor's obligations under said Limited Recourse Guaranty ("**Guaranteed Obligations**") are secured by this certain Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement (as amended, supplemented, restated, replaced, or otherwise modified from time to time, the "**Mortgage**") which grants the Mortgagee a first priority security interest in the real property described on Exhibit A attached thereto, and by certain other instruments (such other documents evidencing or securing the Loan, together with the Limited Recourse Guaranty, the Loan Agreement and this Mortgage, as the same may be amended, modified, replaced or restated from time to time, are hereinafter collectively referred to as the "**Loan Documents**"); and

C. The execution and delivery by the Mortgagor of this Mortgage is a condition precedent to the Mortgagee's extension of the Loan to the Borrower.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Mortgagor agrees as follows:

# UNOFFICIAL COPY

## AGREEMENTS:

In order to secure the Mortgagor's obligations under said Limited Recourse Guaranty and the performance of the obligations, covenants, agreements, warranties, and undertakings of the Mortgagor described in this Mortgage, the Mortgagor **GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, ASSIGNS, WARRANTS AND SETS OVER** to the Mortgagee, together with its successors and assigns, and grants to the Mortgagee a security interest in the following described property, rights, and interests (collectively referred to in this Mortgage as the "**Premises**"), all of which property, rights, and interests are granted and pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

(a) the real estate located in the County of Cook, State of Illinois, and legally described on **Exhibit "A"** attached to and made a part of this Mortgage (the "**Real Estate**"), including all easements and rights used in connection therewith or as a means of access thereto, together with all right, title and interest that Mortgagor now has or may hereafter acquire in the Premises;

(b) all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or after the date of this Mortgage owned by the Mortgagor and located on, or used in connection with, the Real Estate or the improvements on the Real Estate, or in connection with any construction on the Real Estate, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing and all of the right, title, and interest of the Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by the Mortgagor or on its behalf (the "**Improvements**");

(c) all of the Mortgagor's right, title, and interest in and to the easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way now or after the date of this Mortgage belonging, relating, or appertaining to the Real Estate, and the reversions, remainders, rents, issues, and profits thereof;

(d) all rents, revenues, issues, profits, proceeds, income, royalties, letters of credit, escrows, security deposits, impounds, reserves, tax refunds, and other rights to monies from the Premises and/or the businesses and operations conducted by the Mortgagor thereon, to be applied against the Indebtedness (as defined below); provided, however, that the Mortgagor, so long as no Event of Default (as defined below) has occurred under this Mortgage, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

(e) all interest of the Mortgagor in all leases now or hereafter in effect with respect to Premises, pursuant to that certain Amended and Restated Assignment of Leases and Rents dated as of the date hereof;

# UNOFFICIAL COPY

(f) all right, title, and interest of the Mortgagor in and to the fixtures and articles of personal property now or hereafter owned by the Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Premises, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or will be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by the Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, are deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and are appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute Goods (as such capitalized term is defined in the Uniform Commercial Code in effect in the state where the Real Estate is situated ("UCC")), this instrument constitutes a security agreement, creating a security interest in such goods, as collateral, in the Mortgagee, as a Secured Party, and the Mortgagor, as Debtor, all in accordance with the applicable UCC;

(g) all of the Mortgagor's interests in General Intangibles, including Payment Intangibles and Software (each as defined in the UCC) now owned or hereafter acquired and related to the Premises, including, without limitation, all of the Mortgagor's right, title, and interest in and to: (i) all agreements, licenses, permits, and contracts to which the Mortgagor is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to the Mortgagor thereunder; (iii) all intellectual property related to the Premises; and (iv) all choses in action and causes of action relating to the Premises;

(h) all of the Mortgagor's (i) rights in, to, and under all purchase orders for goods, services, or other property; (ii) rights to any goods, services, or other property represented by any of the foregoing; (iii) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (iv) all warranties, guarantees, permits, and licenses in favor of the Mortgagor with respect to the Premises; and

(i) all proceeds of the foregoing.

**TO HAVE AND TO HOLD** the Premises, together with all of the hereditaments and appurtenances thereunto belonging or in anywise appertaining, unto the Mortgagee and its successors and assigns, upon the terms, provisions and conditions herein set forth.

# UNOFFICIAL COPY

**FOR THE PURPOSE OF SECURING:** (i) Borrower's payment of the Loan and all interest, late charges, prepayment premium (if any), exit fee (if any), interest rate swap or hedge expenses (if any), reimbursement obligations, fees, and expenses for letters of credit issued by the Mortgagee for the benefit of any Borrower, if any, and other indebtedness evidenced by or owing under the Limited Recourse Guaranty, any of the other Loan Documents to which Mortgagor is a party, and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals, or refinancings of any of the foregoing; (ii) the obligations and liabilities of Mortgagor to the Mortgagee under and pursuant to any interest rate, currency, or commodity swap agreement, cap agreement, or collar agreement executed by and between the Mortgagor and the Mortgagee from time to time (collectively, "**Interest Rate Agreements**"), (iii) the performance and observance of the covenants, conditions, agreements, representations, warranties, and other liabilities and obligations of the Mortgagor or any other obligor to or benefiting the Mortgagee which are evidenced or secured by or otherwise provided in the Limited Recourse Guaranty, this Mortgage, or any of the other Loan Documents; and (iv) the reimbursement to the Mortgagee of any and all sums incurred, expended, or advanced by the Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, the Limited Recourse Guaranty, any of the other Loan Documents, or any Interest Rate Agreements or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, the "**Indebtedness**").

**IT IS FURTHER UNDERSTOOD AND AGREED THAT:**

**1. TITLE.** The Mortgagor represents, warrants and covenants that (a) the Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of the Mortgagee and as otherwise described on **Exhibit "B"** attached hereto and made a part hereof (the "**Permitted Exceptions**"); and (b) the Mortgagor has legal power and authority to encumber and convey the Premises.

**2. MAINTENANCE, REPAIR, RESTORATION, PRIOR LIENS, PARKING.** The Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, the Mortgagor will:

(a) promptly repair, restore, or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, to the extent proceeds of insurance (together with the Mortgagor's funds required to be deposited with the Mortgagee under **Section 4(d)** below) are available or sufficient for the purpose;

(b) keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's, or like liens or claims or other liens or claims for lien (subject to the Mortgagor's right to contest liens as permitted by the terms of **Section 20(c)** hereof);

(c) pay when due the Indebtedness in accordance with the terms of the Limited Recourse Guaranty and the other Loan Documents to which Mortgagor is a party and

# UNOFFICIAL COPY

duly perform and observe all of the terms, covenants, and conditions to be observed and performed by the Mortgagor under the Limited Recourse Guaranty, this Mortgage, and the other Loan Documents to which Mortgagor is a party;

(d) pay when due any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to, or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee (subject to the Mortgagor's right to contest liens as permitted by the terms of *Section 20(c)* hereof);

(e) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises, to the extent permitted by this Mortgage or by the Loan Agreement;

(f) comply with all requirements of law, municipal ordinances, or restrictions and covenants of record with respect to the Premises and the use thereof;

(g) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations, and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage;

(h) pay when due all operating costs of the Premises;

(i) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent;

(j) provide and thereafter maintain adequate parking areas within the Premises as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;

(k) comply, and cause the Premises at all times to be operated in compliance, with all applicable federal, state, local, and municipal environmental, health, and safety laws, statutes, ordinances, rules, and regulations; and

(l) without limiting the generality of subsection (k) above, (i) ensure, and cause each of its subsidiaries to ensure, that no person who owns twenty percent (20.00%) or more of the equity interests in the Mortgagor, or otherwise controls the Mortgagor or any of its subsidiaries is or becomes listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("*OFAC*"), the Department of the Treasury or included in any Executive Orders, (ii) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (iii) comply, and cause each of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

# UNOFFICIAL COPY

3. **PAYMENT OF TAXES AND ASSESSMENTS.** The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "**Taxes**"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to the Mortgagor's right to contest the same, as provided by the terms hereof; and the Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor within ten (10) days after the Mortgagee's written request.

4. **INSURANCE.**

(a) The Mortgagor must at all times keep all buildings, improvements, fixtures, and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by the Mortgagee, in accordance with the terms, coverages, and provisions described on **Exhibit "C"** attached to and made a part of this Mortgage, and such other insurance as the Mortgagee may from time to time reasonably require. In the event the Mortgagor fails to provide the Mortgagee evidence of the insurance coverages required under this Mortgage, the Mortgagee may purchase insurance at the Mortgagor's expense to cover the Mortgagee's interest in the Premises. The insurance may, but need not, protect the Mortgagor's interest. The coverages that the Mortgagee purchases may not pay any claim that the Mortgagor makes or any claim that is made against the Mortgagor in connection with the Premises. The Mortgagor may later cancel any insurance purchased by the Mortgagee, but only after providing the Mortgagee with evidence that the Mortgagor has obtained insurance as required by this Mortgage. If the Mortgagee purchases insurance for the Premises, the Mortgagor will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which the Mortgagee 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 obtained by the Mortgagee may be added to the Indebtedness. The cost of the insurance obtained by the Mortgagee may be more than the cost of insurance the Mortgagor may be able to obtain on its own.

(b) The Mortgagor must not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless the Mortgagee is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to the Mortgagee and such separate insurance is otherwise acceptable to the Mortgagee.

(c) In the event of loss, the Mortgagor must give prompt notice thereof to the Mortgagee, who, if such loss exceeds TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00) (the "**Threshold**"). Insurance proceeds will be made available to the Mortgagor by the Mortgagee as hereinafter provided, the Mortgagor must repair, restore, or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event of foreclosure of this Mortgage, all right, title, and interest of the

# UNOFFICIAL COPY

Mortgagor in and to any insurance policies then in force will pass to the purchaser at the foreclosure sale.

(d) When insurance proceeds are made available by the Mortgagee to the Mortgagor, the Mortgagor must comply with the following conditions:

(i) Before commencing to repair, restore, or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, the Mortgagor must obtain from the Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(ii) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Premises to the extent permitted in subsection (c) above (which payment or application may be made, at the Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to the Mortgagee and the cost of which is to be borne by the Mortgagor), the Mortgagee must be satisfied as to the following:

(A) no Event of Default or any event which, with the passage of time or giving of notice would constitute an Event of Default, has occurred;

(B) either such Improvements have been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore, or rebuild the Premises, free and clear of all liens, claims, and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, if such insurance proceeds will be insufficient to repair, restore, and rebuild the Premises, the Mortgagor has deposited with the Mortgagee such amount of money which, together with the insurance proceeds will be sufficient to restore, repair and rebuild the Premises; and

(C) prior to each disbursement of any such proceeds, the Mortgagee must be furnished with a statement of the Mortgagee's inspecting architect (the cost of which must be borne by the Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by the Mortgagee and with all statutes, regulations, or ordinances (including building and zoning ordinances) affecting the Premises; and the Mortgagee must be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(iii) If the Mortgagor fails to restore, repair, or rebuild the Improvements within a time deemed satisfactory by the Mortgagee, then the Mortgagee, at its option, may (A) commence and perform all necessary acts to restore, repair, or



# UNOFFICIAL COPY

rebuild the said Improvements for or on behalf of the Mortgagor, or (B) declare an Event of Default. If insurance proceeds exceed the amount necessary to complete the repair, restoration, or rebuilding of the Improvements, such excess will be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

5. **CONDEMNATION.** If all or any part of the Premises are damaged, taken, or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to the Mortgagee, who is empowered to collect and receive the same in the name of the Mortgagor and the same must be paid forthwith to the Mortgagee. Such award or monies will be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable and, at any time from and after the taking the Mortgagee may declare the whole of the balance of the Indebtedness to be due and payable. Notwithstanding the provisions of this *Section 5* to the contrary, if any condemnation or taking of less than the entire Premises occurs and provided that no Event of Default and no event or circumstance which with the passage of time, the giving of notice, or both would constitute an Event of Default then exists, and if such partial condemnation, in the reasonable discretion of the Mortgagee, has no material adverse effect on the operation or value of the Premises, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by the Mortgagor, and the Mortgagee hereby agrees that in such event it will not declare the Indebtedness to be due and payable, if it is not otherwise then due and payable.

6. **STAMP TAX.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Limited Recourse Guaranty, or any of the other Loan Documents to which Mortgagor is a party, the Mortgagor must pay such tax in the manner required by any such law. The Mortgagor further agrees to reimburse the Mortgagee for any sums which the Mortgagee may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, the Mortgagor will not be required to pay any income or franchise taxes of the Mortgagee.

7. **LEASE ASSIGNMENT.** The Mortgagor acknowledges that, concurrently herewith, the Mortgagor has executed and delivered to the Mortgagee, as additional security for the repayment of the Loan, an Assignment of Rents and Leases (the "**Assignment**") pursuant to which the Mortgagor has assigned to the Mortgagee interests in the Leases of the Premises and the rents and income from the Premises. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. The Mortgagor agrees to abide by all of the provisions of the Assignment.

8. **EFFECT OF EXTENSIONS OF TIME AND OTHER CHANGES.** If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment

# UNOFFICIAL COPY

of the Indebtedness is released, if the amounts charged under the Limited Recourse Guaranty is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in the Mortgage, will be held to assent to such extension, variation, release, or change and their liability and the lien and all of the provisions hereof will continue in full force, any right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation, release, or change.

**9. EFFECT OF CHANGES IN LAWS REGARDING TAXATION.** If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation, (b) the imposition upon the Mortgagee of the payment of the whole or any part of the Taxes, charges, or liens herein required to be paid by the Mortgagor, or (c) a change in the method of taxation of deeds of trusts or mortgages, or debts secured by deeds of trust or mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness or the holders thereof, then the Mortgagor, upon demand by the Mortgagee, must pay such Taxes or charges, or reimburse the Mortgagee therefor; provided, however that the Mortgagor will not be deemed to be required to pay any income or franchise taxes of the Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for the Mortgagee it is or may be unlawful to require the Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the Mortgagee may declare all of the Indebtedness to be immediately due and payable.

**10. MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS AND EXPENSES INCURRED BY MORTGAGEE.** If an Event of Default has occurred and remains continuing, the Mortgagee may, but need not, make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient by the Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of the Mortgagor in any Lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by the Mortgagee in regard to any tax referred to in *Section 6* above or to protect the Premises or the lien hereof, will be so much additional Indebtedness, and will become immediately due and payable by the Mortgagor to the Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the applicable interest rate set forth in the Loan Agreement. In addition to the foregoing, any costs, expenses, and fees, including reasonable attorneys' fees, incurred by the Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of the Mortgagee's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Limited Recourse Guaranty, this Mortgage, any of the other Loan Documents to which Mortgagor is a party, or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense, or participation in any threatened litigation or proceedings affecting the Limited Recourse

# UNOFFICIAL COPY

Guaranty, this Mortgage, any of the other Loan Documents to which Mortgagor is a party, or the Premises, will be so much additional Indebtedness, and will become immediately due and payable by the Mortgagor to the Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the applicable interest rate. The interest accruing under this *Section 10* will be immediately due and payable by the Mortgagor to the Mortgagee, and will be additional Indebtedness evidenced by the Limited Recourse Guaranty and secured by this Mortgage. The Mortgagee's failure to act will never be considered as a waiver of any right accruing to the Mortgagee on account of any Event of Default. Should any amount paid out or advanced by the Mortgagee hereunder, or pursuant to any agreement executed by the Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then the Mortgagee will be surrogated to any and all rights, equal or superior titles, liens, and equities, owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the order thereof upon payment.

**11. SECURITY AGREEMENT** The Mortgagor and the Mortgagee agree that this Mortgage constitutes a Security Agreement within the laws of the State of Illinois with respect to (a) all sums at any time on deposit for the benefit of the Mortgagor or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents to which Mortgagor is a party, and (b) any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "*Fixture*" (within the meaning of the UCC and which property is hereinafter referred to as "*Personal Property*"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "*Supporting Obligations*" (as defined in the UCC) (all of said Personal Property and the replacements, substitutions, and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "*Collateral*"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of the Mortgagor's right, title, and interest therein are hereby assigned to the Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this *Section 11* will not limit the applicability of any other provision of this Mortgage but will be in addition thereto:

(a) The Mortgagor (being the Debtor as that term is used in the UCC) is and will be the true and lawful owner of the Collateral, subject to no liens, charges, or encumbrances other than the lien hereof, other liens and encumbrances benefiting the Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(b) The Collateral is to be used by the Mortgagor solely for business purposes.

# UNOFFICIAL COPY

(c) The Collateral will be kept at the Real Estate and, except for Obsolete Collateral (as defined below), will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the UCC). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

(d) The only persons having any interest in the Premises are the Mortgagor, the Mortgagee, and holders of interests, if any, expressly permitted hereby.

(e) No financing statement (other than financing statements showing the Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and the Mortgagor, at its own cost and expense, upon demand, will furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statements and other documents in form satisfactory to the Mortgagee and will do all such acts as the Mortgagee may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting the Mortgagee and no other party, and liens and encumbrances (if any) expressly permitted hereby; and the Mortgagor will pay the cost of filing or recording such financing statements or other documents and this instrument, in all public offices wherever filing or recording is deemed by the Mortgagee to be desirable. The Mortgagor hereby irrevocably authorizes the Mortgagee at any time and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto, without the signature of the Mortgagor that (i) indicate the Collateral (A) is comprised of all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (B) as being of an equal or lesser scope or within greater detail as the grant of the security interest set forth herein, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether the Mortgagor is an organization, the type of organization and any organizational identification number issued to the Mortgagor, and (B) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Collateral relates. The Mortgagor agrees to furnish any such information to the Mortgagee promptly upon request. The Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by the Mortgagee in any jurisdiction prior to the date of this Mortgage.

(f) Upon an Event of Default hereunder, the Mortgagee will have the remedies of a secured party under the UCC, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof; and for that purpose, so far as the Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part

# UNOFFICIAL COPY

thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal will be subject to the conditions stated in the UCC); and the Mortgagee will be entitled to hold, maintain, preserve, and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to the Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations, as provided in the UCC. The Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. The Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by the Mortgagee which is reasonably convenient to both parties. The Mortgagee will give the Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice will be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of the Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. The Mortgagee may buy at any public sale. The Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If the Mortgagee so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling, and the reasonable attorneys' fees and legal expenses incurred by the Mortgagee will be applied against the Indebtedness in such order or manner as the Mortgagee selects. The Mortgagee will account to the Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this *Section 11*, unless the context otherwise requires, will have the meanings and be construed as provided in the UCC.

(h) The addresses of the Mortgagor (Debtor) and the Mortgagee (Secured Party) are set forth in *Section 19* below. This Mortgage is to be filed for recording with the Recorder of the county or counties where the Premises are located. The Mortgagor is the record owner of the Premises.

(i) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between the Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of the Mortgagor, as lessor thereunder.

(j) The Mortgagor represents and warrants that: (i) the Mortgagor is the record owner of the Premises; (ii) the Mortgagor's chief executive office is located in the State of Illinois; (iii) the Mortgagor's state of organization is the State of Illinois; and (iv) the Mortgagor's exact legal name is as set forth on the first (1<sup>st</sup>) page of this Mortgage.

# UNOFFICIAL COPY

(k) The Mortgagor hereby agrees that: (i) where Collateral is in possession of a third party, the Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of the Mortgagee; (ii) the Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights, and electronic chattel paper; and (iii) until the Indebtedness is paid in full, the Mortgagor will not change the state where it is located or change its name or form of organization without giving the Mortgagee at least thirty (30) days prior written notice in each instance.

## 12. RESTRICTIONS ON TRANSFER.

(a) The Mortgagor, without the prior written consent of the Mortgagee, and except as permitted in this Mortgage, must not effect, suffer, or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests constitutes a "**Prohibited Transfer**":

(i) the Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral no longer useful in connection with the operation of the Premises ("**Obsolete Collateral**"), provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

(ii) any shares of capital stock of a corporate Mortgagor, a corporation which is a general partner in a partnership mortgagor or a managing member or manager in a limited liability company Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subsection (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System);

(iii) all or any part of the managing member or manager interest, as the case may be, in a limited liability company Mortgagor or a limited liability company which is a general partner of a partnership Mortgagor, a manager or managing member of a limited liability company Mortgagor, or the owner of substantially all of the capital stock of any corporate Mortgagor;

(iv) all or any part of the general partner or joint venture interest, as the case may be, of a partnership Mortgagor or a partnership which is a manager or managing member of a limited liability company Mortgagor, or is the owner of substantially all of the capital stock of any corporate Mortgagor, or the conversion of a partnership Mortgagor to a corporation or limited liability company; or

# UNOFFICIAL COPY

(v) if there is any change in control (by way of transfers of stock, partnership, or member interests or otherwise) in any partner, member, manager, or shareholder, as applicable, which directly or indirectly controls the day to day operations and management of the Mortgagor and/or owns a controlling interest in the Mortgagor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance, or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this *Section 12* will not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, or personal representatives, (iv) to Leases permitted by the terms of the Loan Documents, if any, (v) to transfers of any non-controlling ownership interest in the Mortgagor, provided, that (A) the Mortgagee is notified of such proposed transfer and provided with such documentation evidencing the transfer and identity of the transferor and the transferee as reasonably requested by the Mortgagee.

(b) In determining whether or not to make the Loan, the Mortgagee evaluated the background and experience of the Mortgagor and its manager and members in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is the Mortgagee's security for the Limited Recourse Guaranty. The Mortgagor and its manager and members are well experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. The Mortgagor recognizes that the Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. The mortgagor further recognizes that any secondary junior financing placed upon the Premises (i) may divert funds which would otherwise be used to pay the Limited Recourse Guaranty; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force the Mortgagee to take measures and incur expenses to protect its security; (iii) would detract from the value of the Premises should the Mortgagee come into possession thereof with the intention of selling same; and (iv) would impair the Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by the Mortgagee would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (A) protecting the Mortgagee's security, both of repayment and of value of the Premises; (B) giving the Mortgagee the full benefit of its bargain and contract with the Mortgagor; (C) allowing the Mortgagee to raise the interest rate and collect assumption fees; and (D) keeping the Premises free of subordinate financing liens, the Mortgagor agrees that if this *Section 12* is deemed a restraint on alienation, that it is a reasonable one.

# UNOFFICIAL COPY

**13. EVENTS OF DEFAULT; ACCELERATION.** Each of the following constitutes an “*Event of Default*” for purposes of this Mortgage:

(a) the occurrence of an Event of Default under the Limited Recourse Guaranty, the Loan Agreement, or any of the other Loan Documents;

(b) the Mortgagor fails to perform or cause to be performed any obligation or observe any condition, covenant, term, agreement, or provision required to be performed or observed by the Mortgagor under this Mortgage and not referred to elsewhere in this *Section 13*; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity, and enforceability of the liens created by this Mortgage or any of the other Loan Documents and the value of the Premises are not impaired, threatened or jeopardized, then the Mortgagor will have a period (the “*Cure Period*”) of thirty (30) days after the Mortgagor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default will not be deemed to exist during the Cure Period (provided, however, such period shall be limited to five (5) days if such failure can be cured by the payment of money), provided further that if the Mortgagor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period will be extended for thirty (30) additional days, but in no event will the Cure Period be longer than ninety (90) days in the aggregate;

(c) the occurrence of a Prohibited Transfer;

(d) the occurrence of any default or event of default, after the expiration of any applicable periods of notice or cure, under any document or agreement evidencing or securing any other obligation or indebtedness of any Borrower and/or the Mortgagor to the Mortgagee.

If an Event of Default occurs, the Mortgagee may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to the Mortgagor, with interest thereon accruing from the date of such Event of Default until paid at the applicable interest rate per the Loan Agreement.

**14. REMEDIES AND APPLICATION OF PROCEEDS.** Upon the occurrence and during the continuance of an Event of Default, the Mortgagee may at any time, at its option and in its sole discretion, declare the whole of the Indebtedness to be immediately due and payable without further notice to the Mortgagor, with interest thereon accruing from the date of such Event of Default until paid at the applicable interest rate per the Loan Agreement. In addition to exercising any other remedy available at law, in equity and/or under the other Loan Documents upon the occurrence and during the continuance of an Event of Default, the Mortgagee may also do any or all of the following, concurrently or otherwise, at such time and in such order as the Mortgagee may determine, in its sole discretion, although it will have no obligation to do any of the following:



# UNOFFICIAL COPY

(a) With process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and exclude the Mortgagor and its employees, agents or servants therefrom, and the Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents. The Mortgagee will have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, the Mortgagee will have full power to:

(i) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same;

(ii) elect to disaffirm any Lease or sublease which is then subordinate to the lien of this Mortgage;

(iii) extend or modify any then existing Leases and to enter into new Leases, which extensions, modifications and Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, will be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien of this Mortgage and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(iv) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as the Mortgagee deems are necessary;

(v) insure and reinsure the Premises and all risks incidental to the Mortgagee's possession, operation and management thereof; and

(vi) receive all of such avails, rents, issues, and profits.

(vii) To the fullest extent permitted by applicable law, apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Premises. Such receiver and his agents will be empowered to collect the rents, issues, and profits of the Premises. Such receiver also will have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession upon obtaining prior court approval of such lease. All expenses incurred by the receiver or his agents will constitute a part of the Indebtedness. Any revenues

# UNOFFICIAL COPY

collected by the receiver will be applied first to the expenses of the receivership, including attorneys' fees incurred by the receiver and by the Mortgagee, together with interest thereon at the applicable interest rate per the Loan Agreement from the date incurred until repaid, and the balance will be applied toward the Indebtedness in such order or manner as the Mortgagee may in its sole discretion elect or in such other manner as the court may direct. Unless sooner terminated with the express consent of the Mortgagee, any such receivership will continue until the Indebtedness has been discharged in full or until title to the Premises has passed after foreclosure sale and all applicable periods of redemption have expired.

- (b) Intentionally Omitted.
- (c) Apply to the payment of the Indebtedness any sums then held in escrow or otherwise by the Mortgagee in accordance with the terms of this Mortgage or any other Loan Document.
- (d) Exercise all rights available to the Mortgagee under the Code.
- (e) Exercise each of its other rights and remedies under this Mortgage, the Limited Recourse Guaranty, or any other Loan Documents.
- (f) Except as otherwise required by law, apply the proceeds of any foreclosure or disposition under this Mortgage to payment of the following: (i) the expenses of such foreclosure or disposition, (ii) the cost of any search or other evidence of title procured in connection therewith and revenue stamps on any deed or conveyance, (iii) all sums expended under the terms of this Mortgage, not then repaid, with accrued interest in the amount provided herein, (iv) all other sums secured hereby, and (v) the remainder, if any, to the person or persons legally entitled thereto.
- (g) Upon any sale or sales made under or by virtue of this section, whether made under the power of sale or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Mortgagee may bid for and acquire the Premises or any part thereof. In lieu of paying cash for the Premises, the Mortgagee may make settlement for the purchase price by crediting against the Indebtedness the sales price of the Premises, as adjusted for the expenses of sale and the costs of the action and any other sums for which the Mortgagor is obligated to reimburse the Mortgagee under this Mortgage.
- (h) In the event that the Mortgagor has an equity of redemption and the Premises is sold pursuant to the power of sale or otherwise under or by virtue of this paragraph, the purchaser may, during any redemption period allowed, make such repairs or alterations (but not additions) on said Premises as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditures at the applicable interest rate per the Loan Agreement (if not

# UNOFFICIAL COPY

prohibited by law, otherwise at the highest lawful contract rate) will be added to and become a part of the amount required to be paid for redemption from such sale.

(i) The Mortgagor agrees that, in any assignments, deeds, bills of sale, notices of sale, or postings, given by the Mortgagee, any and all statements of fact or other recitals therein made as to the identity of the Mortgagee, or as to the occurrence or existence of any Event of Default, or as to the acceleration of the maturity of the Indebtedness, or as to the request to sell, posting of notice of sale, notice of sale, time, place, terms and manner of sale and receipt, distribution and application of the money realized therefrom, and, without being limited by the foregoing, as to any other act or thing having been duly done by the Mortgagee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state facts and are without further question to be so accepted, and the Mortgagor does hereby ratify and confirm any and all acts that the Mortgagee may lawfully do by virtue hereof.

**15. APPLICATION OF INCOME RECEIVED BY MORTGAGEE.** The Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, will have full power to use and apply the avails, rents, issues, and profits of the Premises to the payment of or on account of the following, in such order as the Mortgagee may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which must include compensation to the Mortgagee and its agent or agents, if management be delegated to an agent or agents, and must also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

**16. RIGHTS CUMULATIVE.** Each right, power, and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power, or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power, or remedy will not be a waiver of the right to exercise at the same time or thereafter any other right, power, or remedy, and no delay or omission of the Mortgagee in the exercise of any right, power, or remedy accruing hereunder or arising otherwise will impair any such right, power, or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

# UNOFFICIAL COPY

**17. MORTGAGEE'S RIGHT OF INSPECTION.** The Mortgagee and its representatives will have the right to inspect the Premises and the books and records with respect thereto at all reasonable times during normal business hours upon not less than twenty-four (24) hours prior notice to the Mortgagor, and access thereto, subject to the rights of tenants in possession, must be permitted for that purpose.

**18. RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS.** The Mortgagee will release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by the Mortgagee in connection with the execution of such release.

**19. NOTICES.** Any notices, communications, and waivers under this Mortgage must be in writing and must be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by overnight express carrier, addressed in each case as follows:

To the Mortgagee: CIBC BANK USA  
120 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Catherine Kelly

With a copy to: RIEMER & BRAUNSTEIN LLP  
71 South Wacker Drive, Suite 3515  
Chicago, Illinois 60606  
Attention: Aleksia Z. Canafic, Esq.

To the Mortgagor: GROCERY RETAIL HOLDINGS, LLC  
700 E. 107<sup>th</sup> Street  
Chicago, Illinois 60603  
Attention: Brian Boomsma

With copy to: COLLINS & COLLINS  
8 S. Michigan Ave., Suite 1414  
Chicago, Illinois 60603  
Attention: Michael R. Collins, Esq.

or to any other address as to any of the parties hereto, as such party designates in a written notice to the other party hereto. All notices sent pursuant to the terms of this *Section 19* will be deemed received when actually delivered or when delivery is refused by the addressee, as the case may be.

**20. WAIVER OF RIGHTS.** To the extent permitted by law, the Mortgagor 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

# UNOFFICIAL COPY

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 any 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 marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) the Mortgagor 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 Mortgagor and of all other persons are and will be deemed to be hereby waived to the full extent permitted by applicable law;

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

(c) to the fullest extent the Mortgagor may do so, the Mortgagor agrees that the Mortgagor will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, or redemption, and the Mortgagor, for the Mortgagor, the Mortgagor's representatives, successors, and assigns, and for any and all persons ever claiming any interest in the Premises, to the extent permitted by applicable law, waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness, and all rights to a marshaling of assets of the Mortgagor, including the Premises, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. The Mortgagor does not have and must not assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatever to defeat, reduce, or affect the right of the Mortgagee under the terms of this Mortgage to a sale of the Premises for the collection of the secured indebtedness without any prior or different resort for collection, or the right of the Mortgagee under the terms of this Mortgage to the payment of the secured indebtedness out of the proceeds of sale of the Premises in preference to every other claimant whatever.

**21. CONTESTS.** Notwithstanding anything to the contrary herein contained, the Mortgagor will have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (each, a "*Contested Lien*"), and no Contested Lien will constitute an Event of Default hereunder, if, but only if:

# UNOFFICIAL COPY

(a) the Mortgagor must forthwith give notice of any Contested Lien to the Mortgagee at the time the same is asserted;

(b) the Mortgagor must either pay under protest or deposit with the Mortgagee the full amount (the "*Lien Amount*") of such Contested Lien, together with such amount as the Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment the Mortgagor may furnish to the Mortgagee a bond, title indemnity, or such other security or assurance in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to the Mortgagee;

(c) the Mortgagor must diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and must permit the Mortgagee to be represented in any such contest and must pay all expenses incurred, in so doing, including fees and expenses of the Mortgagee's counsel (all of which will constitute so much additional Indebtedness bearing interest at the applicable interest rate per the Loan Agreement until paid, and payable upon demand);

(d) the Mortgagor must pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon: (i) if and to the extent that any such Contested Lien is determined adverse to the Mortgagor, or (ii) forthwith upon demand by the Mortgagee if, in the opinion of the Mortgagee, and notwithstanding any such contest, the Premises are in jeopardy or in danger of being forfeited or foreclosed; provided that if the Mortgagor fails so to do, the Mortgagee may, but will not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by the Mortgagee in so doing will be so much additional Indebtedness bearing interest at the applicable interest rate per the Loan Agreement until paid, and payable upon demand; and provided further that the Mortgagee may in such case use and apply monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

## 22. *EXPENSES RELATING TO LIMITED RECOURSE GUARANTY AND MORTGAGE.*

(a) The Mortgagor must pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Limited Recourse Guaranty, this Mortgage, or any of the other Loan Documents, including without limitation, the Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing, and enforcement of the Limited Recourse Guaranty, this Mortgage, and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage, and all federal, state, county, and municipal taxes, and other taxes (provided the Mortgagor will not be required to pay any income or franchise taxes of the Mortgagee), duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of the Limited Recourse Guaranty and this Mortgage. The Mortgagor recognizes that, during the term of this Mortgage, the Mortgagee:

# UNOFFICIAL COPY

(i) may be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority, and pollution control proceedings of any kind, to which the Mortgagee becomes a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) may make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) may make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, the Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

(iv) may make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) may enter into negotiations with the Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the Indebtedness or the transfer of the Premises in lieu of foreclosure; or

(vi) may enter into negotiations with the Mortgagor or any of its agents, employees, or attorneys pertaining to the Mortgagee's approval of actions taken or proposed to be taken by the Mortgagor which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs, and fees described in this *Section 22* will be so much additional Indebtedness, will bear interest from the date so incurred until paid at the applicable interest rate per the Loan Agreement, and must be paid, together with said interest, by the Mortgagor forthwith upon demand.

**23. STATEMENT OF INDEBTEDNESS.** The Mortgagor, within seven (7) days after being so requested by the Mortgagee, must furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid, and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

**24. FURTHER INSTRUMENTS.** Upon request of the Mortgagee, the Mortgagor must execute, acknowledge, and deliver all such additional instruments and further assurances of title and must do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

# UNOFFICIAL COPY

25. **ADDITIONAL INDEBTEDNESS SECURED.** All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures any and all other amounts which may become due under the Guaranteed Obligation or Limited Recourse Guaranty or any other Loan Document or instrument evidencing, securing, or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by the Mortgagee to operate, manage, or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

26. **INDEMNITY.** The Mortgagor hereby covenants and agrees that no liability will be asserted or enforced against the Mortgagee in the exercise of the rights and powers granted to the Mortgagee in this Mortgage, and the Mortgagor hereby expressly waives and releases any such liability, except to the extent resulting from the gross negligence or willful misconduct of the Mortgagee. The Mortgagor must indemnify and save the Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs, and expenses, including reasonable attorneys' fees and court costs (collectively, "**Claims**"), of whatever kind or nature which may be imposed on, incurred by or asserted against the Mortgagee at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which the Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation, or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to the Mortgagee in accordance with the terms of this Mortgage; provided, however, that the Mortgagor will not be obligated to indemnify or hold the Mortgagee harmless from and against any Claims directly arising from the gross negligence or willful misconduct of the Mortgagee. All costs provided for herein and paid for by the Mortgagee will be so much additional Indebtedness and will become immediately due and payable upon demand by the Mortgagee and with interest thereon from the date incurred by the Mortgagee until paid at the applicable interest rate per the Loan Agreement.

27. **SUBORDINATION OF PROPERTY MANAGER'S LIEN.** Any property management agreement for the Premises entered into hereafter with a property manager must 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 will be subject and subordinate to the lien of this Mortgage and must provide that the Mortgagee may terminate such agreement, without penalty or cost, at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at the Mortgagee's request, must be recorded with the Recorder of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, the Mortgagor must cause the property manager under such agreement to enter into a subordination of the management agreement with the Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.



# UNOFFICIAL COPY

28. **COMPLIANCE WITH ENVIRONMENTAL LAWS.** Concurrently herewith the Mortgagor and the Borrower have executed and delivered to the Mortgagee that certain Environmental Indemnity Agreement dated as of the date hereof (the "*Indemnity*") pursuant to which the Mortgagor and the Borrower have indemnified the Mortgagee for environmental matters concerning the Premises, as more particularly described therein. The provisions of the Indemnity are hereby incorporated herein and this Mortgage secures the obligations of the Mortgagor thereunder.

29. **STATE SPECIFIC PROVISIONS.** The provisions of *Exhibit "D"* are hereby incorporated and made a part hereof as if set forth here in full.

30. **ADDITIONAL AGREEMENTS.**

(a) Intentionally Omitted.

(b) The Mortgagee will furnish any statement required by law regarding the obligations secured by this Mortgage or regarding the amounts held in any trust or reserve fund under this Mortgage. For any such statement, the Mortgagee may charge a reasonable fee, not to exceed the maximum amount permitted by law at the time of the request thereof.

(c) It is expressly stipulated and agreed to be the intent of the Mortgagee and the Mortgagor, at all times to comply with applicable Illinois law governing the highest lawful rate or amount of interest payable on the Loan (or applicable United States federal law to the extent that it permits the Mortgagee to contract for, charge, take, reserve or receive a greater amount of interest than under Illinois law, to the extent applicable). If the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Mortgage, the Limited Recourse Guaranty or under any of the other Loan Documents, or contracted for, charged, taken, reserved or received with respect to the Loan, or if the Mortgagee's exercise of the option to accelerate the maturity of the Note or if any prepayment by the Mortgagor results in the Mortgagor having paid any interest in excess of that permitted by applicable law, then it is the Mortgagor's and the Mortgagee's express intent that all excess amounts theretofore collected by the Mortgagee be credited on the principal balance of the Note (or, if the Note and all other obligations have been or would thereby be paid in full, refunded to the Mortgagor), and the provisions of this Mortgage, the Limited Recourse Guaranty, the Note, and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to the Mortgagee for the use, forbearance or detention of the Loan will, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the usury ceiling from time to time in effect and applicable to the Loan for so long as the Loan is outstanding. Notwithstanding anything to the contrary contained in this Mortgage or in any of the other Loan Documents, it is not the intention of the Mortgagee to accelerate the maturity of

# UNOFFICIAL COPY

any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

31. *INTENTIONALLY OMITTED.*

32. *MISCELLANEOUS.*

(a) *Successors and Assigns.* This Mortgage and all provisions hereof are binding upon and enforceable against the Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof inures to the benefit of the Mortgagee, its successors and assigns, and any holder or holders, from time to time, of the Limited Recourse Guaranty.

(b) *Governing Law; Invalidity of Provisions.* **THIS MORTGAGE WILL BE GOVERNED BY, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES, PROVIDED, HOWEVER, THAT TO THE EXTENT THE MANDATORY PROVISIONS OF THE LAWS OF ANOTHER JURISDICTION RELATING TO (I) THE CREATION, VALIDITY, PRIORITY, PERFECTION, OR THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTERESTS IN ANY OF THE PREMISES, (II) THE LIEN, ENCUMBRANCE, OR OTHER INTEREST IN THE PROPERTY GRANTED OR CONVEYED BY THIS MORTGAGE OR THE ENFORCEMENT THEREOF, OR (III) THE AVAILABILITY OF AND PROCEDURES RELATING TO ANY REMEDY UNDER OR RELATED TO THIS MORTGAGE ARE REQUIRED TO BE GOVERNED BY SUCH OTHER JURISDICTION'S LAWS, THOSE OTHER LAWS WILL BE DEEMED TO GOVERN AND CONTROL. THE INVALIDITY, ILLEGALITY, OR UNENFORCEABILITY OF ANY PROVISION OF THIS MORTGAGE OR THE LOAN DOCUMENTS WILL NOT AFFECT OR IMPAIR THE VALIDITY, LEGALITY, OR ENFORCEABILITY OF THE REMAINDER OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS, AND TO THIS END, THE PROVISIONS OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS ARE DECLARED TO BE SEVERABLE.**

(c) *Municipal Requirements.* The Mortgagor must not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Mortgagor hereby assigns to the Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises will rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by the Mortgagor which would result in a violation of any of the provisions of this subsection will be void.

(d) *Rights of Tenants.* The Mortgagee will have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale

# UNOFFICIAL COPY

subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of the Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights must not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) **Option of Mortgagee to Subordinate.** At the option of the Mortgagee, this Mortgage will become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all Leases of all or any part of the Premises upon the execution by the Mortgagee of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder in and for the county wherein the Premises are situated.

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

(g) **Relationship of Mortgagee and Mortgagor.** The Mortgagee will in no event be construed for any purpose to be a partner, joint venturer, agent, or associate of the Mortgagor or of any lessee, operator, concessionaire, or licensee of the Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, the Mortgagee will not be deemed to be such partner, joint venturer, agent, or associate on account of the Mortgagee becoming a mortgagee-in-possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of the Mortgagor and the Mortgagee hereunder is solely that of debtor/creditor.

(h) **Time of the Essence.** Time is of the essence of the payment by the Mortgagor of all amounts due and owing to the Mortgagee under the Limited Recourse Guaranty and the other Loan Documents and the performance and observance by the Mortgagor of all terms, conditions, obligations, and agreements contained in this Mortgage, and the other Loan Documents.

(i) **No Merger.** The parties hereto intend that this Mortgage and the lien hereof will not merge in fee simple title to the Premises, and if the Mortgagee acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof will not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) **Consent to Jurisdiction.** TO INDUCE THE MORTGAGEE TO ACCEPT THE LIMITED RECOURSE GUARANTY, THE MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO THE MORTGAGEE'S SOLE AND

# UNOFFICIAL COPY

ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE LIMITED RECOURSE GUARANTY AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. THE MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON THE MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO THE MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

(k) *Waiver of Jury Trial.* THE MORTGAGOR AND THE MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT, OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE, OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES.

(l) *Complete Agreement.* This Amended and Restated Mortgage, the Limited Recourse Guaranty, and the other Loan Documents 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 Mortgagor and the Mortgagee.

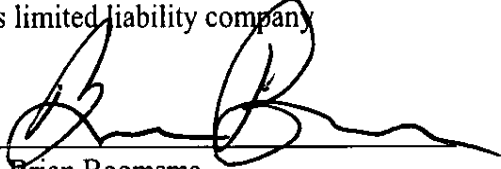
*[Remainder of Page Intentionally Left Blank—Signature Page Follows]*

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the Mortgagor has executed and delivered this Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement as of the day and year first above written.

**MORTGAGOR:**

**GROCERY RETAIL HOLDINGS LLC, an  
Illinois limited liability company**

By:   
Name: Brian Boomsma  
Title: Sole Member

Property of Cook County Clerk's Office

*[NOTARY BLOCK ON FOLLOWING PAGE]*

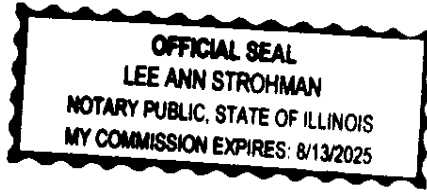
# UNOFFICIAL COPY

STATE OF Illinois )  
 ) ss.:  
COUNTY OF Will )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of August, 2021 by Brian Boomsma, sole member of **GROCERY RETAIL HOLDINGS LLC**, a Delaware limited liability company, on behalf of said limited liability company.

Lee Ann Strohman  
Notary Public

Commission Expires: 8/13/2025



This instrument was prepared by Aleksia Z. Culafic Esq., Attorney at Law, Riemer & Braunstein LLP, 71 South Wacker Drive, Suite 3515, Chicago, Illinois 60610.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

*EXHIBIT "A"*  
*LEGAL DESCRIPTION OF REAL ESTATE*

PARCEL 1:

LOTS 1, 2, D 20 IN BLOCK 4 IN FALCONER'S SECOND ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

AND ALL THAT PART OF THE NORTH-SOUTH 16 FOOT PUBLIC ALLEY LYING WEST OF THE WEST LINE OF LOTS 6 TO 10, BOTH INCLUSIVE; LYING EAST OF THE EAST LINE OF LOT 11; LYING NORTH OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF SAID LOT 10 TO THE SOUTHEAST CORNER OF SAID LOT 11; AND LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 11, ALL IN BLOCK 4 IN FALCONER'S SECOND ADDITION TO CHICAGO A SUBDIVISION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 41 IN BLOCK 4 IN FALCONER'S 2ND ADDITION TO CHICAGO, A SUBDIVISION OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 42 IN BLOCK 4 IN FALCONER'S 2ND ADDITION TO CHICAGO, A SUBDIVISION OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 2820-30 N. Cicero Ave. & 4800-30 W. Diversey Ave., Chicago, IL 60639  
4817 W. Wolfram St., Chicago, IL  
4815 W. Wolfram St., Chicago, IL

PPN: 13-28-231-014-0000  
13-28-231-015-0000  
13-28-231-023-0000  
13-28-231-036-0000  
13-28-231-039-0000  
13-28-231-040-0000  
13-28-231-041-0000

# UNOFFICIAL COPY

## *EXHIBIT "B"*

### *PERMITTED EXCEPTIONS*

1. General real estate taxes not yet due and payable.
2. Those Schedule B Exceptions contained in the Proforma Lender's ALTA Loan Policy of Title Insurance issued by Chicago Title Insurance Company as Order No. 21019042LFE in favor of and accepted by the Mortgagee.

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT "C"

### INSURANCE REQUIREMENTS

#### GENERAL INFORMATION

1. All insurance policies referred to herein must be in form and substance reasonably acceptable to the Mortgagee.
2. The mortgagee must receive evidence/certificates of insurance at least three (3) Business Days prior to closing. Original policies must be provided to the Mortgagee as soon as they are available from insurers. Certified copies should be available within sixty (60) to ninety (90) days.
3. Proof of coverage must be on an ACORD 28 - EVIDENCE OF PROPERTY INSURANCE form. Liability insurance must be written on ACORD 25 or its equivalent. NOTE: Please remove any "endeavor to" and "but failure to mail such notice shall impose .... representatives" language as it relates to notices. Initials by an authorized representative should appear next to any deletions on the certificates.
4. All property policies must contain a standard mortgage clause in favor of the Mortgagee and must provide for a thirty (30) day written notice to the Mortgagee of any material change or cancellation. Certificates with disclaimers will NOT be accepted.
5. The Mortgagor must be the named insured.
6. Property & Builders Risk certificates must show the Mortgagee as First Mortgagee and Lender's Loss Payee as follows:

CIBC BANK USA  
 120 SOUTH LASALLE STREET  
 CHICAGO, ILLINOIS 60603  
 ATTENTION: CATHERINE KELLY

(The Mortgagee may be shown as "Mortgagee and Lender's Loss Payee As Their Interests May Appear" until the insurance agent receives release of interest from the prior Mortgagee. At that time, the insurance policies will need to be endorsed to show the Mortgagee as First Mortgagee and Lender's Loss Payee).

7. The insured property must be identified as 4800-4830 W. Diversey Ave., Chicago IL 60639, 2820 to 2830 N. Cicero Ave, Chicago IL 60639, 4817 Wolfram St., Chicago, IL and 4815 Wolfram St., Chicago, IL.

# UNOFFICIAL COPY

8. All insurance companies must have a Policy Rating of "A" and a Financial Rating of "VIII" from AM Best's Rating Guide.
9. The insurance documentation must be signed by an authorized representative of the Insurer.

## *SPECIFIC REQUIREMENTS*

1. If the property policy is a blanket policy or limit, the Mortgagee must receive a schedule of the amount allocated to the property/rents or the amounts allocated to the property must be indicated on the certificate.
2. Coverage must be on an "all risk" (Special Perils), 100% replacement cost basis without deduction for foundations and footings, and WITHOUT co-insurance. The co-insurance must be waived or an Agreed Amount endorsement must be included and either "No Co-insurance" or "Agreed Amount" must be provided and indicated on the certificate.
3. Ordinance or Law coverage providing for demolition and increased cost of construction must be provided and indicated on the certificate.
4. Other coverages such as earthquake, boiler and machinery (which includes the mechanics of the building, such as elevators), and flood will be required when these risks are present.
5. Rent Loss or Business Income coverage must be in an amount equal to 100% of the projected annual rents or revenue with a minimum period of indemnity of 12 months, or such greater or lesser period or amounts as the Mortgagee may require. This coverage needs to be written on a Gross Rental Income, Gross Profits or Extended Period of Indemnity form, not on an actual loss sustained basis which may terminate as soon as the premises are tenantable or operational.
6. The Mortgagee must be named as an Additional Insured for all general liability coverage, with a minimum limit of \$2,000,000 for any one occurrence.

# UNOFFICIAL COPY

## EXHIBIT "D"

### STATE SPECIFIC PROVISIONS

In the event of any conflict or inconsistency between the provisions of this Exhibit D and any other provisions of this Mortgage, the provisions of this Exhibit D shall control.

1. Other Amounts Secured; Maximum Indebtedness. Mortgagor acknowledges and agrees that this Mortgage secures the all of the Mortgagor's Guaranteed Obligation under the Limited Recourse Guaranty, regardless of whether any or all of the Loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal under the Note is repaid in whole or part or are future advances made at a later date, all in accordance with the Loan Agreement. This Mortgage is given to, and the parties intend that it shall secure, among other items, a guaranty of indebtedness in a maximum principal amount of \$23,300,000.00 evidenced by the Note and the other Loan Documents which is guaranteed by the Limited Recourse Guaranty. The maximum principal amount of the unpaid balance of such indebtedness, in the aggregate and exclusive of interest thereon, which is or will be outstanding at any time, is that set forth above, provided that this Mortgage shall also secure a guaranty of unpaid balances of advances made by lenders for the payment of taxes, assessments, insurance premiums, and other costs incurred for the protection of the Premises.

2. Compliance with the Illinois Mortgage Foreclosure Law.

(i) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et. seq.* (as amended from time to time the "IMF Law"), the provision of the IMF Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Law.

(ii) Mortgagor and Mortgagee, shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is specifically referred to herein may be repealed, Mortgagee, 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.

(iii) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies during the continuance of an Event of Default of Mortgagor or otherwise which are more limited than the rights that would otherwise be vested in Mortgagee under the IMF Law in the absence of said provision, Mortgagee shall be vested with the rights granted in the IMF Law to the full extent permitted by law.

(iv) All advances, disbursements and expenditures made or incurred by Mortgagee 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, for the following purposes, in addition to those otherwise authorized by this

# UNOFFICIAL COPY

Mortgage, the other Loan Documents or by the IMF Law (collectively "*Protective Advances*"), shall have the benefit of all applicable provisions of the IMF Law, including, without limitation, those provisions of the IMF Law herein below referred to:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage or the other Loan Documents to: (1) preserve, maintain, repair, restore or rebuild the improvements upon the Premises; (2) preserve the lien of this Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the IMF Law;

(b) payments by Mortgagee of (1) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien or encumbrance); (2) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (3) other obligations authorized by this Mortgage; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the IMF Law;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien);

(d) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d) and 15-1510 of the IMF Law; (2) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (3) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Premises;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection 15-1508(b)(1) of the IMF Law;

(f) expenses deductible from proceeds of sales referred to in Subsections 15-1512(a) and (b) of the IMF Law; and

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by Subsection 15-1704(c)(1) of the IMF Law; (2) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (3) payments deemed by Mortgagee to be required for the

# UNOFFICIAL COPY

benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; and (4) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises.

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 rate of interest payable after an Event of Default.

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 15-1302 of the IMF Law.

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 IMF Law, apply to and be included in:

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

(B) the indebtedness found due and owing to Mortgagee 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;

(C) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections 5-1603(d)(2) and (e) of the IMF Law;

(D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMF Law;

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

(F) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2), 15-1508(e) and Section 15-1511 of the IMF Law.

(v) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Premises, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the IMF Law, during the continuance of an Event of Default, to be placed in possession of the Premises or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers,

# UNOFFICIAL COPY

immunities and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMF Law.

3. Collateral Protection Act. Unless Mortgagor provides Mortgagee with evidence of the insurance required by this Mortgage or any other Loan Document, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Premises or any other collateral for the Guaranteed Obligation. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises or any other collateral for the indebtedness secured hereby. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required under this Mortgage or the Loan Agreement. If Mortgagee purchases insurance for the Premises or any other collateral for the Guaranteed Obligation, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Guaranteed Obligation. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 *et. seq.*, Mortgagor hereby acknowledges Mortgagee's right pursuant to this Section 3 to obtain collateral protection insurance.

4. Business Loan. Mortgagor represents and warrants to Mortgagee (i) that the proceeds of the Loan that is guaranteed by the Limited Recourse Guaranty will be used for the purposes specified in 815 ILCS 205/4(1)(I) (or any substitute, amended or replacement statute), and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(I), and (ii) that the Loan is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 *et seq.*