

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Doc#: 2209428015 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 04/04/2022 09:31 AM Pg: 1 of 39

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN: 31-33-203-061-0000**

Address:

Street: 4871 SAUK TRAL

Street line 2:

City: RICHTON PARK

State: IL

ZIP Code: 60471

Lender: PAN AMERICAN BANK & TRUST

Borrower: 4871 SAUK TRAIL LLC

Loan / Mortgage Amount: \$1,687,500.00

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

Freedom Title Corporation
2000 W ATT Center Dr., Ste C205
Hoffman Estates, IL 60192

6719457 2/2

Certificate number: C964D971-5ECB-4AA8-A4E5-B0BA420D9055

Execution date: 3/30/2022

UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:

Chapman and Cutler, LLP
320 South Canal Street
Chicago, Illinois 60606
Attn: Kimberly K. Enders

Freedom Title Corporation
2000 W ATT Center Dr., Ste C205
Hoffman Estates, IL 60192

6719457 2/2

REAL ESTATE MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

By

4871 SAUK TRAIL LLC,
an Illinois limited liability company, as Mortgagor

to and for the benefit of

PAN AMERICAN BANK & TRUST,
an Illinois banking corporation organized under the Illinois Banking Act, as Mortgagee

COMMONLY KNOWN AS: 4871 Sauk Trail, Richton Park, IL 60471

PIN: 31-33-203-061

UNOFFICIAL COPY

TABLE OF CONTENTS

SECTION	HEADING	PAGE
SECTION 1.	TITLE	4
SECTION 2.	MAINTENANCE, REPAIR, RESTORATION, PRIOR LIENS, PARKING	4
SECTION 3.	PAYMENT OF TAXES AND ASSESSMENTS	5
SECTION 4.	TAX DEPOSITS	5
SECTION 5.	BUSINESS LOAN; LOAN NOT FOR RESIDENTIAL OR AGRICULTURAL PURPOSES.....	6
SECTION 6.	INSURANCE	6
SECTION 7.	CONDEMNATION	9
SECTION 8.	STAMP TAX.....	10
SECTION 9.	ASSIGNMENT OF RENTS	10
SECTION 10.	EFFECT OF EXTENSIONS OF TIME AND OTHER CHANGES	13
SECTION 11.	EFFECT OF CHANGES IN LAWS REGARDING TAXATION	13
SECTION 12.	MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS AND EXPENSES INCURRED BY MORTGAGEE.....	14
SECTION 13.	SECURITY AGREEMENT.....	14
SECTION 14.	RESTRICTIONS ON TRANSFER.....	18
SECTION 15.	SINGLE ASSET ENTITY	19
SECTION 16.	EVENTS OF DEFAULT; ACCELERATION	20
SECTION 17.	FORECLOSURE; EXPENSE OF LITIGATION.....	22
SECTION 18.	APPLICATION OF PROCEEDS OF FORECLOSURE SALE	22
SECTION 19.	APPOINTMENT OF RECEIVER.....	22
SECTION 20.	MORTGAGEE'S RIGHT OF POSSESSION IN CASE OF DEFAULT.....	23
SECTION 21.	APPLICATION OF INCOME RECEIVED BY MORTGAGEE	24

UNOFFICIAL COPY

SECTION 22.	COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW	24
SECTION 23.	RIGHTS CUMULATIVE	25
SECTION 24.	MORTGAGEE'S RIGHT OF INSPECTION	25
SECTION 25.	RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS.....	25
SECTION 26.	NOTICES.....	25
SECTION 27.	WAIVER OF RIGHTS	26
SECTION 28.	CONTESTS	27
SECTION 29.	EXPENSES RELATING TO NOTE AND MORTGAGE	28
SECTION 30.	FINANCIAL STATEMENTS	29
SECTION 31.	STATEMENT OF INDEBTEDNESS.....	29
SECTION 32.	FURTHER INSTRUMENTS	29
SECTION 33.	ADDITIONAL INDEBTEDNESS SECURED.....	29
SECTION 34.	INDEMNITY	29
SECTION 35.	SUBORDINATION OF PROPERTY MANAGER'S LIEN.....	30
SECTION 36.	COMPLIANCE WITH ENVIRONMENTAL LAWS	30
SECTION 37.	MISCELLANEOUS	31
EXHIBIT A	— Legal Description of Premises	

UNOFFICIAL COPY

REAL ESTATE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THIS REAL ESTATE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("*Mortgage*") is made as of April 1, 2022, by 4871 SAUK TRAIL LLC, an Illinois limited liability company ("*Mortgagor*"), to and for the benefit of PAN AMERICAN BANK & TRUST, an Illinois banking corporation organized under the Illinois Banking Act, its successors and assigns ("*Mortgagee*"), and provides as follows:

RECITALS:

(A) Pursuant to the terms and conditions of a Construction Loan Agreement dated as of April 1, 2022 (as amended, restated or replaced from time to time "*Loan Agreement*") between Mortgagor and Mortgagee, Mortgagee has agreed to loan to Mortgagor the principal amount of up to \$1,687,500.00 ("*Loan*"). The Loan shall be evidenced by a certain non-revolving Line of Credit Promissory Note (as amended, restated or replaced from time to time, "*Note*") dated as of April 1, 2022 made by Mortgagor payable to Mortgagee in the principal amount of \$1,687,500.00, bearing interest at a variable rate and other charges as provided therein and due on October 1, 2023 ("*Maturity Date*"), except as may be accelerated pursuant to the terms hereof or of the Note, the Loan Agreement or any other Loan Document (as defined in the Loan Agreement).

(B) A condition precedent to Mortgagee's extension of the Loan to Mortgagor is the execution and delivery by Mortgagor of this Mortgage.

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

Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns, and grants a security interest in the following described property, rights and interests (referred to collectively herein as "*Premises*"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

THE REAL ESTATE located in the State of Illinois and legally described on Exhibit A attached hereto and made a part hereof ("*Real Estate*");

TOGETHER WITH 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 hereafter owned by Mortgagor and on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of 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 Mortgagor or on its behalf, including all improvements described in any condominium declaration ("*Improvements*");

UNOFFICIAL COPY

TOGETHER WITH all 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 hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

TOGETHER WITH all rents, revenues, issues, profits, proceeds, income, royalties, "accounts," including "health-care-insurance receivables," escrows, letter-of-credit rights (each as defined in the Code hereinafter defined), security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by Mortgagor thereon, including all rents and revenue from the rental of condominium units at the Real Estate, whether or not subject to Leases (collectively "*Rents*"), to be applied against the Indebtedness (hereinafter defined); *provided, however*, that Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect and apply Rents hereunder;

TOGETHER WITH all interest of Mortgagor in all leases, subleases, licenses, tenancies and other use agreements now or hereafter on all or any portion of the Premises, whether written or oral and as further defined in Section 9 hereof ("*Leases*"), together with all security therefor and all monies payable thereunder, subject, however, to the rights given to Mortgagor hereunder, including without limitation the right to collect the Rents under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by 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, 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 shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid Premises owned by Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness (as hereinafter defined); notwithstanding the agreement hereinabove expressed that certain articles of the Premises form a part of the realty covered by this Mortgage and be 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 said term is used in the Uniform Commercial Code of the State of Illinois in effect from time to time ("*Code*"), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee, as a secured party, and Mortgagor, as Debtor, all in accordance with the Code; and

UNOFFICIAL COPY

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

TOGETHER WITH all of Mortgagor's accounts now owned or hereafter created or acquired as relate to the Premises, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) accounts, contract rights, health-care-insurance receivables, book debts, Note, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other Premises and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other Premises; (iii) the Mortgagor's rights to any goods, services or other Premises represented by any of the foregoing; (iv) monies due to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other Premises and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor); (v) "securities," "investment property," "financial assets," and "securities entitlements" (each as defined in the Code), and (vi) 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 all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Premises;

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

TO HAVE AND TO HOLD the Premises, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Event of Default; Mortgagee hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, reimbursement obligations, fees and expenses for letters of credit issued by Mortgagee for the benefit of Mortgagor, if any, and other indebtedness evidenced by or owing under the Note, the Loan Agreement, any of the other Loan Documents (as defined in the Loan Agreement), and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or re-financings of any of the foregoing; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Mortgagor or any other obligor to or benefiting Mortgagee which are evidenced or secured by or otherwise provided in the Note, the Loan Agreement, this Mortgage, or any of the other Loan Documents; and (iii) the reimbursement to Mortgagee of any and all sums incurred, expended or advanced by Mortgagee pursuant to any term or provision of or constituting

UNOFFICIAL COPY

additional indebtedness under or secured by this Mortgage, any of the other Loan Documents, with interest thereon as provided herein or therein (collectively, "Indebtedness").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

SECTION 1. TITLE.

Mortgagor represents, warrants and covenants that (a) 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 Mortgagee and as otherwise described on Exhibit B to the Loan Agreement; and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

SECTION 2. MAINTENANCE, REPAIR, RESTORATION, PRIOR LIENS, PARKING.

Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, 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, whether or not proceeds of insurance are available or sufficient for the purpose, unless Mortgagee retains the insurance proceeds applicable to such damage or destruction as provided in Section 6 hereof;

(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 Mortgagor's right to contest liens as permitted by the terms of Section 28 hereof;

(c) pay when due the Indebtedness in accordance with the terms of the Note and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Mortgagor under the Note, this Mortgage and the other Loan Documents;

(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 Mortgagor's right to contest liens as permitted by the terms of Section 28 hereof);

(e) complete any Improvements now or at any time in the process of erection upon the Premises in accordance with the terms of the Loan Agreement;

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

UNOFFICIAL COPY

(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 by any governmental authorities with respect to the Premises;

(h) other than in accordance with the Plans and Specifications (as defined in the Loan Agreement) make no material alteration to the Premises or demolish any portion of the Premises without Mortgagee's prior written consent, except as required by law or municipal ordinance;

(i) suffer or permit no change in the use or general nature of the occupancy of the Premises other than in accordance with the Plans and Specifications, without the Mortgagee's prior written consent;

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

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

(l) 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; and

(m) at all times conduct all business operations in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations.

SECTION 3. PAYMENT OF TAXES AND ASSESSMENTS.

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 Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to Mortgagor's right to contest the same, as provided by the terms hereof; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor within ten (10) days after Mortgagee's request.

SECTION 4. TAX DEPOSITS.

Until the Final Project Disbursement (as defined in the Loan Agreement), funds shall be disbursed from the Loan to pay annual Taxes on the Premises provided the Loan is In Balance (as defined in the Loan Agreement). Thereafter, Mortgagor must deposit with Mortgagee, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of 105% of the most recent ascertainable annual taxes on the Premises. Mortgagor must also deposit with

UNOFFICIAL COPY

Mortgagee an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as estimated by Mortgagee. Such deposits are to be held without allowance of interest and are to be used for the payment of Taxes next due and payable when they become due. If the funds so deposited are insufficient to pay any such Taxes for any year or installments thereof, as applicable when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee. Mortgagee, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

SECTION 5. BUSINESS LOAN; LOAN NOT FOR RESIDENTIAL OR AGRICULTURAL PURPOSES.

Mortgagor stipulates, represents, warrants, affirms and agrees that the Loan secured hereby constitutes a "business loan" within the meaning of 815 ILCS 205/4(1). Mortgagor acknowledges that the Premises does not constitute agricultural real estate or residential real estate as defined in 735 ILCS 5/15-1201 and 735 ILCS 5/15-1219. Mortgagor agrees that none or its owners nor any spouse or descendant of any owner will reside at the Premises.

SECTION 6. INSURANCE.

(a) Mortgagor will provide and maintain at all times during the process of building the Project (as defined in the Loan Agreement) and such other insurance as Mortgagee may from time to time require, and from time to time at the request of the Mortgagee furnish Mortgagee with proof of payment of premiums on:

(i) Builder's risk insurance, written on a so-called "Builder's Risk – Completed Value Basis," in an amount equal to 100% of the insurable value of the Premises at the date of completion of the Project without a coinsurance clause, and with coverage available on the so-called "All Risk," non-reporting form of policy. Mortgagee's interest shall be protected in accordance with a standard additional insured and mortgagee's clause in form and content satisfactory to Mortgagee;

(ii) Commercial general liability insurance protecting against claims arising from any accident or occurrence in or upon the Premises in an amount of \$1,000,000 per occurrence and \$3,000,000 aggregate limit;

(iii) In the event Mortgagor has employees, worker's compensation insurance, with statutory coverage;

UNOFFICIAL COPY

(iv) After construction of the Premises is completed, insurance against loss by fire and risks covered by an insurance policy issued on a Special Form Cause of Loss (“*All Risk*”) in amounts equal to the full replacement value of the Premises but not less than the amount of the Note;

(v) Commencing on the first day of the month in which possession of the Premises is delivered to a tenant of the Premises, rent loss or business interruption, as applicable, in an amount equal to 100% of the projected annual revenue, with a minimum period of indemnity for 12 months, written on Gross Rental Income, Gross Profits or Extended Period of Indemnity forms, and not an actual loss sustained basis;

(vi) Flood insurance if required by the Flood Disaster Protection Act of 1973 as a condition of receipt of federal or federally related financial assistance for acquisition and/or construction of buildings in amounts required by such Act.

The policies of insurance required above shall be in form and content satisfactory to Mortgagee and shall be placed with financially sound and reputable insurers licensed to transact business in the State of Illinois. The policy of insurance referred to in clause (i) above shall contain an agreement of the insurer to give not less than thirty (30) days advance written notice to Mortgagee in the event of cancellation of such policy or change affecting the coverage thereunder. Acceptance of insurance policies referred to above shall not bar Mortgagee from requiring additional insurance which it reasonably deems necessary.

(b) BORROWER IS HEREBY NOTIFIED PURSUANT TO INSURANCE AND ILLINOIS COLLATERAL PROTECTION ACT 815 ILCS 180/1 *ET SEQ.* AS FOLLOWS: UNLESS MORTGAGOR PROVIDES MORTGAGEE EVIDENCE OF THE INSURANCE COVERAGES REQUIRED HEREUNDER, MORTGAGEE MAY PURCHASE INSURANCE AT MORTGAGOR’S EXPENSE TO COVER MORTGAGEE’S INTEREST IN THE PREMISES. THE INSURANCE MAY, BUT NEED NOT, PROTECT MORTGAGOR’S INTEREST. THE COVERAGES THAT MORTGAGEE PURCHASES MAY NOT PAY ANY CLAIM THAT MORTGAGOR MAKES OR ANY CLAIM THAT IS MADE AGAINST MORTGAGOR IN CONNECTION WITH THE PREMISES. MORTGAGOR MAY LATER CANCEL ANY INSURANCE PURCHASED BY MORTGAGEE, BUT ONLY AFTER PROVIDING MORTGAGEE WITH EVIDENCE THAT MORTGAGOR HAS OBTAINED INSURANCE AS REQUIRED BY THIS MORTGAGE. IF MORTGAGEE PURCHASES INSURANCE FOR THE PREMISES, MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF SUCH INSURANCE, INCLUDING, WITHOUT LIMITATION, INTEREST AND ANY OTHER COSTS INCURRED BY MORTGAGEE 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 INDEBTEDNESS. THE COST OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE MORTGAGOR MAY BE ABLE TO OBTAIN ON ITS OWN.

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

UNOFFICIAL COPY

(d) In the event of loss, Mortgagor shall give prompt notice thereof to Mortgagee, who, if such loss exceeds Fifty Thousand Dollars (\$50,000) ("*Threshold*"), shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold, then Mortgagee, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and (ii) Mortgagee determines that the work required to complete the repair or restoration of the Premises necessitated by such loss can be completed no later than three (3) months prior to the Maturity Date, then Mortgagee shall endorse to Mortgagor any such payment and Mortgagor may collect such payment directly. Mortgagee shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Mortgagee pursuant to the terms of this Section, after the payment of all of Mortgagee's expenses, either (i) on account of the Indebtedness, irrespective of whether such principal balance is then due and payable, whereupon Mortgagee may declare the whole of the balance of Indebtedness to be due and payable, or (ii) to the restoration or repair of the Premises damaged as provided in subsection (c) below; *provided, however*, that Mortgagee hereby agrees to permit the application of such proceeds to the restoration or repair of the damaged Premises, subject to the provisions of subsection (e) below, if (i) Mortgagee has received satisfactory evidence that such restoration or repair shall be completed no later than the Maturity Date, and (ii) no Event of Default, or event that with the passage of time, the giving of notice or both would constitute an Event of Default, except for any default arising or occurring as a result of the loss at issue, then exists. If insurance proceeds are made available to Mortgagor by Mortgagee as hereinafter provided, Mortgagor shall 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 Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

(e) In the event of any loss that exceeds the Threshold, if insurance proceeds are made available by Mortgagee to Mortgagor, Mortgagor shall 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, Mortgagor shall obtain from 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 Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor, Mortgagee shall 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, except for any default arising or occurring as a result of the loss at issue, has occurred;

UNOFFICIAL COPY

(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 shall be insufficient to repair, restore and rebuild the Premises, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Premises; and

(c) prior to each disbursement of any such proceeds, Mortgagee shall be furnished with a statement of Mortgagee's architect (the cost of which shall be borne by 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 Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Mortgagee shall 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 Mortgagor shall fail to restore, repair or rebuild the Improvements within a time reasonably deemed satisfactory by Mortgagee, then Mortgagee, at its option, may (a) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of Mortgagor, or (b) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

(f) In the event of any loss that is equal to or less than the Threshold, all proceeds shall be paid to Mortgagor and applied to the restoration of the Premises.

SECTION 7. 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 in excess of the Threshold or, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee. Such award or monies shall 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 Mortgagee may declare the whole of the balance of the Indebtedness to be due and payable. Notwithstanding the provisions of this Section 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 Mortgagee, has no material adverse effect on the operation or value of the Premises, then the award

UNOFFICIAL COPY

or payment for such taking or consideration for damages resulting therefrom may be collected and received by Mortgagor, and Mortgagee hereby agrees that in such event it shall not declare the Indebtedness to be due and payable, if it is not otherwise then due and payable. If the amount of any award is equal to or less than the Threshold, it shall be paid to Mortgagor and applied as necessary to the restoration of the Premises.

SECTION 8. STAMP TAX.

If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, Mortgagor shall pay such tax in the manner required by any such law. Mortgagor further agrees to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any such tax.

SECTION 9. ASSIGNMENT OF RENTS.

(a) Mortgagor hereby absolutely and unconditionally assigns and grants to Mortgagee the following property, rights, interests and estates, now owned, or hereafter acquired by Mortgagor, all existing and future Leases (including the right to enforce, at law, in equity or by and other means, such Leases) affecting the use, enjoyment, or occupancy of all or any part of that certain lot or piece of land, more particularly described in Exhibit A annexed hereto and made a part hereof, or all or any part of the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon and the right, title and interest of Mortgagor, its successors and assigns, therein and thereunder (collectively this "*Assignment*"). The term "*Leases*" shall include all agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Premises or any portion thereof now or hereafter made, whether made before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 *et seq.*, as the same may be amended from time to time (the "*Bankruptcy Code*") together with any extension, renewal or replacement of the same, this Assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment.

(i) *Rents.* All Rents, which term shall include Rents paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code.

(ii) *Bankruptcy Claims.* All of Mortgagor's claims and rights (the "*Bankruptcy Claims*") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code.

(iii) *Lease Guaranties.* All of Mortgagor's right, title and interest in, and claims under, any and all lease guaranties, letters of credit and any other credit support (individually, a "*Lease Guaranty*," and collectively, the "*Lease Guaranties*") given by any guarantor in connection with any of the Leases or leasing commissions (collectively, the "*Lease Guarantors*") to Mortgagor.

UNOFFICIAL COPY

(iv) *Proceeds.* All proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and/or the Bankruptcy Claims.

(v) *Other.* All rights, powers, privileges, options and other benefits of Mortgagor as lessor under any of the Leases and beneficiary under any of the Lease Guaranties, including, without limitation, the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto and to apply the same to the payment of the Indebtedness, and to do all other things which Mortgagor or any lessor is or may become entitled to do under any of the Leases or Lease Guaranties.

(vi) *Entry.* The right, at Mortgagee's option, upon revocation of the license granted herein, subject to applicable law, to enter upon the Premises in person, by agent or by court-appointed receiver, to collect the Rents.

(vii) *Power of Attorney.* Mortgagor's irrevocable power of attorney, coupled with an interest, to, following the occurrence and during the continuance of an Event of Default, take any and all of the actions set forth in this Mortgage and any or all other actions designated by Mortgagee for the proper management and preservation of the Premises.

(viii) *Other Rights and Agreements.* Any and all other rights of Mortgagor in and to the items set forth in subsections (i) through (vii) above, and all amendments, modifications, replacements, renewals and substitutions thereof.

(b) It is intended by Mortgagor that this Assignment constitute a present, absolute assignment of the Leases, Rents, Lease Guaranties and Bankruptcy Claims, and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 9(b) and the Loan Agreement, so long as no Event of Default has occurred and is continuing, Mortgagee grants to Mortgagor a license to collect, receive, use and enjoy the Rents, as well as other sums due under the Lease Guaranties.

(c) Mortgagor hereby authorizes and directs the lessees named in the Leases or any other future lessees or occupants of the Premises and all Lease Guarantors to pay over to Mortgagee, or to such other party as Mortgagee directs, all Rents and all sums due under any Lease Guaranties, upon receipt from Mortgagee of written notice to the effect that Mortgagee is then the holder of this Assignment and that an Event of Default exists, and to continue so to do until otherwise notified by Mortgagee.

(d) Upon the occurrence of an Event of Default, the license granted to Mortgagor in Section 9(b) of this Assignment shall automatically be revoked (until such Event of Default is cured), and Mortgagee shall immediately be entitled to possession of all Rents and all sums due under any Lease Guaranties, whether or not Mortgagee enters upon or takes control of the Premises.

(e) During the continuation of an Event of Default, Mortgagee shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or

UNOFFICIAL COPY

proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(f) If there shall be filed by or against Mortgagor a petition under the Bankruptcy Code, and Mortgagor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Mortgagor shall give Mortgagee not less than ten (10) days' prior notice of the date on which Mortgagor shall apply to the bankruptcy court for authority to reject such Lease. Mortgagee shall have the right, but not the obligation, to serve upon Mortgagor within such ten (10) day period a notice stating that (i) Mortgagee demands that Mortgagor assume and assign the Lease to Mortgagee pursuant to Section 365 of the Bankruptcy Code and (ii) Mortgagee covenants to cure or provide adequate assurance of future performance under the Lease. If Mortgagee serves upon Mortgagor the notice described in the preceding sentence, Mortgagor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after Mortgagee's notice shall have been given, subject to the performance by Mortgagee of the covenant provided for in clause (ii) of the preceding sentence.

(g) This Assignment shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Mortgagee. Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from Mortgagee's failure to let the Premises after an Event of Default or from any other act or omission of Mortgagee in managing the Premises after an Event of Default unless such loss is caused by the gross negligence, willful misconduct or bad faith of Mortgagee. Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment, and Mortgagor shall indemnify Indemnified Parties for, and hold Indemnified Parties harmless from, any and all liability, loss or damage which may or might be incurred under the Leases, any Lease Guaranties, or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against any Indemnified Parties by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any Lease Guaranties except for any claims or demands (i) incurred as a result of Mortgagee's gross negligence or willful misconduct or (ii) incurred after title to the Premises is transferred by a foreclosure or deed-in-lieu or similar remedy. Should Mortgagee incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Mortgage and the other Loan Documents and Mortgagor shall reimburse such Indemnified Parties therefor promptly upon demand and upon the failure of Mortgagor so to do Mortgagee may, at its option, declare all sums secured by this Mortgage and the other Loan Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Premises upon Mortgagee, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Premises by the tenants or any other parties, or for any dangerous or defective condition of the Premises including, without limitation, the presence of any Hazardous Substances (as defined in the Indemnity), or for any negligence in the

UNOFFICIAL COPY

management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger. For purposes of this Section 9(g), the term "*Indemnified Parties*" means Mortgagee and any person who is or will have been involved in the origination of the Loan, any person who is or will have been involved in the servicing of the Loan secured hereby, any person in whose name the encumbrance created by this Assignment is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan as well as the respective directors, officers, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Mortgagee's assets and business). The provisions of this Section 9(g) shall survive any payment or prepayment of the Loan and any foreclosure or satisfaction of the Mortgage with respect to claims that arose prior to any foreclosure or satisfaction of the Mortgage.

SECTION 10. 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 of the Indebtedness is released, if the rate of interest charged under the Note 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 Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation, release or change.

SECTION 11. 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 or (b) the imposition upon Mortgagee of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or 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 Mortgagor, upon demand by Mortgagee, shall pay such Taxes or charges, or reimburse Mortgagee therefor; *provided, however*, that Mortgagor shall not be deemed to be required to pay any income, excise or franchise taxes of Mortgagee or any taxes that apply to Mortgagee generally and are not related to this Loan. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee it is or may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, and then Mortgagee may declare all of the Indebtedness to be immediately due and payable.

UNOFFICIAL COPY

SECTION 12. MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS AND EXPENSES INCURRED BY MORTGAGEE.

If an Event of Default has occurred, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by 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 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 Mortgagee in regard to any tax referred to in Section 8 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Mortgagee's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents 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 Note, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Section 12 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional Indebtedness evidenced by the Note and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by 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 Mortgagee shall be subrogated 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 holder thereof upon payment.

SECTION 13. SECURITY AGREEMENT.

Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by the Mortgagee whether deposited by or on behalf of Mortgagor or anyone else pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (b) with respect to 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 Section 9-102(41) of the Code) (which property is hereinafter referred to as "*Personal Property*"), and all replacements of, substitutions for, additions to, and the proceeds

UNOFFICIAL COPY

thereof, and the “supporting obligations” (as defined in the Code) (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 Mortgagor’s right, title and interest therein are hereby assigned to 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 shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor, being the Debtor as that term is used in the Code, is and will be the true and lawful owner of the Collateral and has rights in and the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents, including without limitation, the Permitted Exceptions.

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

(c) Except for Obsolete Collateral (as hereinafter defined), the Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of Mortgagee, being the Secured Party as that term is used in the Code. 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 Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby, including any interest without limitation, the Permitted Exceptions.

(e) No Financing Statement other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted by the Loan Documents, including, without limitation, the Permitted Exceptions, covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as 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 Mortgagee and liens and encumbrances (if any) expressly permitted by the Loan Documents, including, without limitation, the Permitted Exceptions; and 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 Mortgagee to be desirable. Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor or words of similar effect, regardless of whether any

UNOFFICIAL COPY

particular asset comprised in 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 as being of an equal or lesser scope or within greater detail, 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 whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and 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 real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Mortgage.

(f) Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, 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 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 thereof may be situated and remove the same therefrom, *provided* that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code; and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give 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 shall be met if such notice is mailed by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. 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 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 Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition, and pay the same to Mortgagor.

(g) The terms and provisions contained in this Section 13, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

UNOFFICIAL COPY

(h) This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are herein below set forth. This Mortgage is to be filed for recording with the appropriate real estate records of the county or counties where the Premises are located.

(i) This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures (as that term is defined in the Code) relating to the Premises, and for such purpose the following information is given. This Mortgage is to be filed for recording with the appropriate real estate records of the county or counties where the Premises are located.

Name of Debtor: 4871 SAUK TRAIL LLC

Address of Debtor: 226 N. Morgan Street, Suite 300
Chicago, Illinois 60607
Attn: Christopher Ilekis

Debtor's state of organization is the State of: Illinois

Description of the collateral: The Premises as defined above.

Description of real estate to which the collateral is attached or upon which it is or will be located: See Exhibit A attached hereto

Owner of real estate: 4871 SAUK TRAIL LLC

(j) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between 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 Mortgagor, as lessor thereunder.

(k) Mortgagor represents and warrants that:

(i) Mortgagor is the record owner of the Premises;

UNOFFICIAL COPY

- (ii) Mortgagor's chief executive office is located in the State of Illinois;
- (iii) Mortgagor's state of organization is the State of Illinois;
- (iv) Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage; and
- (v) Mortgagor's Illinois organizational identification number is 10775787.

(l) Mortgagor agrees that:

(i) Where Collateral is in possession of a third party, 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 Mortgagee;

(ii) 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, Mortgagor will not change its state of organization, the state where it is located or change its company name without giving the Mortgagee at least 30 days' prior written notice in each instance.

SECTION 14. RESTRICTIONS ON TRANSFER.

(a) Mortgagor, without the prior written consent of Mortgagee, shall 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 shall constitute a "Prohibited Transfer":

(i) The record title Premises or any part thereof, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, *provided* that if any such Obsolete Collateral is of a type necessary for Mortgagor's business operations then, such Obsolete Collateral shall be 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) All or any part of the member interests in the limited liability company which is Mortgagor; or

(iii) If there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or

UNOFFICIAL COPY

shareholder, as applicable, which directly or indirectly controls the day to day operations and management of Mortgagor and/or owns a controlling interest in 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 (collectively, "Transfers"); *provided, however*, that the foregoing provisions of this Section 14 shall not apply to any of the following (each a "Permitted Transfer") (i) to liens securing the Indebtedness, (ii) to any Permitted Exceptions, including, without limitation, 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 to another owner of a beneficial interest in Mortgagor or an owner who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, or (iv) to Leases permitted by Mortgagee.

(b) In determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Mortgagor and its 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 Mortgagee's security for the Note. Mortgagor and its 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. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates either by making a new loan at such rates or collecting assumption fees or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary junior financing placed upon the Premises: (a) may divert funds which would otherwise be used to pay the Note; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agree that if this Section 14 is deemed a restraint on alienation, that it is a reasonable one.

SECTION 15. SINGLE ASSET ENTITY.

Mortgagor shall not hold or acquire, directly or indirectly, any ownership interest, legal or equitable, in any real or personal property other than the Premises and the properties described in the Loan Agreement, or become a shareholder of or a member or partner in any entity which

UNOFFICIAL COPY

acquires any property other than the Premises and the properties described in the Loan Agreement, until such time as the Indebtedness has been fully repaid. Mortgagor covenants:

- (a) To conduct its own business in its own name, pay its own liabilities out of its own funds, allocate fairly and reasonably any overhead for shared employees and office space, and to maintain an arm's length relationship with its affiliates;
- (b) To hold itself out as a separate entity, correct any known misunderstanding regarding its separate identity, maintain adequate capital in light of its contemplated business operations, and observe all organizational formalities;
- (c) Not to guarantee or become obligated for the debts of any other entity or person or hold out its credits as being available to satisfy the obligations of others, including not acquiring obligations or securities of its partners, members or shareholders;
- (d) Not to pledge its assets for the benefit of any other entity or person or, make any Loan or advances to any person or entity;
- (e) Neither Mortgagor nor any constituent party of Mortgagor will seek the dissolution or winding up, in whole or in part, of Mortgagor, nor will Mortgagor merge with or be consolidated into any other entity;
- (f) Mortgagor now has and will hereafter have no debts or obligations other than normal accounts payable in the ordinary course of business, this Mortgage, and the Loan; and any other indebtedness or other obligation of Mortgagor has been paid in full prior to or through application of proceeds from the funding of the Loan.

SECTION 16. EVENTS OF DEFAULT; ACCELERATION.

Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

- (a) Mortgagor fails to pay (i) any installment of principal or interest payable pursuant to any of the Note within five (5) business days after the date when any such payment is due in accordance with the terms hereof or thereof, or (ii) within five (5) business days after the date when any such payment is due in accordance with the terms hereof or thereof, any other amount payable to Mortgagee under any of the Note, this Mortgage or any of the other Loan Documents after written notice thereof;
- (b) Mortgagor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under any of the Note, this Mortgage or any of the other Loan Documents;
- (c) The existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage or any of the other Loan Documents

UNOFFICIAL COPY

or of any certified statement or certification as to facts delivered to Mortgagee by Mortgagor or any guarantor of the Note;

(d) Any of Mortgagor or Guarantor described in the Loan Agreement (the "*Guarantor*") files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Mortgagor or of all or any substantial part of the Premises of Mortgagor or any Guarantor or any of the Premises or all or a substantial part of the assets of Mortgagor or any Guarantor are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within ninety (90) days;

(e) the commencement of any involuntary petition in bankruptcy against Mortgagor or any Guarantor or the institution against Mortgagor or any Guarantor of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the Premises of Mortgagor or any Guarantor which shall remain un-dismissed or undischarged for a period of ninety (90) days;

(f) the dissolution, termination or merger of Mortgagor;

(g) the death or legal disability of any Guarantor, *provided, however*, in such event, Mortgagor shall have the right to substitute a guarantor with a financial condition similar to the affected Guarantor within 60 days of such death or legal disability, who must be satisfactory to Mortgagee in its sole discretion;

(h) the occurrence of a Prohibited Transfer;

(i) the occurrence of an "Event of Default" under the Note, the Loan Agreement or any of the other Loan Documents after the expiration of any applicable periods of notice or cure; or

(j) 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 Mortgagor to Mortgagee.

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

UNOFFICIAL COPY

SECTION 17. FORECLOSURE; EXPENSE OF LITIGATION.

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, and Mortgagor fails to pay the Indebtedness, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (735 ILCS 5/15-1101 *et seq.*) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs, which may be estimated as to items to be expended after entry of the decree, of procuring all such abstracts of title, title searches and examinations, title insurance policies, surveys, environmental reports, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Section and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

SECTION 18. APPLICATION OF PROCEEDS OF FORECLOSURE SALE.

The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Mortgagee may determine in its sole and absolute discretion.

SECTION 19. APPOINTMENT OF RECEIVER.

Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Premises in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a

UNOFFICIAL COPY

deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall 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 during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises on market terms for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The receiver also shall have the power to market, sell and convey the Premises. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

SECTION 20. MORTGAGEE'S RIGHT OF POSSESSION IN CASE OF DEFAULT.

At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Premises. Mortgagee, in its discretion, may, 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 may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents. Mortgagee shall 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 avals, 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, Mortgagee shall have full power to:

- (a) cancel or terminate any Lease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- (b) elect to disaffirm any Lease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing Leases and to enter into new Leases, which extensions, modifications or market terms 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, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof 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;
- (d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee deems are necessary;

UNOFFICIAL COPY

- (e) insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof at the limits set forth in this Mortgage; and
- (f) receive all of such avails, rents, issues and profits.

SECTION 21. APPLICATION OF INCOME RECEIVED BY MORTGAGEE.

Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, after an Event of Default has occurred, shall 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 Mortgagee may determine:

- (a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof, which shall include compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall 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;
- (c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale; and
- (d) all excess amounts shall be paid to Mortgagor.

SECTION 22. COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW.

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

(b) If any provision of this Mortgage shall grant to the Mortgagee, including Mortgagee acting as a mortgagee-in-possession, or a receiver appointed pursuant to the provisions of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in the Mortgagee or in such receiver under the Act in the absence of said provision, the Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Section 12,

UNOFFICIAL COPY

17 or 29 of this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

SECTION 23. RIGHTS CUMULATIVE.

Each right, power and remedy herein conferred upon 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 Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall 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 Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

SECTION 24. MORTGAGEE'S RIGHT OF INSPECTION.

Mortgagee and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times upon not less than two (2) business days prior notice to Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

SECTION 25. RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS.

Mortgagee shall 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 Mortgagee in connection with the execution of such release.

SECTION 26. NOTICES.

Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee:	Pan American Bank & Trust 1440 W. North Avenue Melrose Park, Illinois 60160 Attn: Loan Operations
---------------	--

With a copy to:	Chapman and Cutler, LLP 320 South Canal Street Chicago, Illinois 60606 Attn: Kimberly K. Enders
-----------------	--

UNOFFICIAL COPY

To Mortgagor: 4871 SAUK TRAIL LLC
 226 N. Morgan Street, Suite 300
 Chicago, Illinois 60607
 Attn: Christopher Ileakis

With a copy to: Patzik, Frank & Samotny Ltd.
 200 South Wacker Drive, Suite 2700
 Chicago, Illinois 60606
 Attn: John W. Morse

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

SECTION 27. WAIVER OF RIGHTS.

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 Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the Premises 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 shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15-1601 and 735 ILCS 5/15-1602 or other applicable law or replacement statutes;

(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 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;

(c) If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section, including the waiver of reinstatement and redemption rights, were made at the express direction of Mortgagor's beneficiaries and the persons having the power of

UNOFFICIAL COPY

direction over Mortgagor, and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above;

(d) Mortgagor releases and waives all rights under and by virtue of the homestead exemption of the State of Illinois, all to the fullest extent permitted by law;

(e) To the extent permitted by applicable law, Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee arising out of or in any way connected with this Mortgage, the Loan Agreement, the Note, any of the other Loan Documents, or the Indebtedness; and

(f) To the fullest extent permitted by applicable law, Mortgagor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment of the Indebtedness or performance of its other obligations.

SECTION 28. CONTESTS.

Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any mechanics', materialmen's or other liens or claims for lien upon the Premises (all herein called "*Contested Liens*"), and no Contested Liens shall constitute an Event of Default hereunder, if, but only if:

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

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

(c) Mortgagor shall 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 shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of Mortgagee's counsel, all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and

(d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the reasonable opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; *provided* that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested

UNOFFICIAL COPY

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 Mortgagee in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and *provided further* that 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.

SECTION 29. EXPENSES RELATING TO NOTE AND MORTGAGE.

(a) Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, 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, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage and the other Loan Documents. Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

(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 Mortgagee shall be 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, 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 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 Mortgagor or any of its agents, employees or attorneys pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

UNOFFICIAL COPY

(b) All expenses, charges, costs and fees described in this Section 29 shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

SECTION 30. FINANCIAL STATEMENTS.

Mortgagor represents and warrants the financial statements for Mortgagor, all guarantors of the Note and the Premises previously submitted to Mortgagee are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Mortgagor or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of Mortgagor, such guarantors or the Premises from the dates of said financial statements until the date hereof. Mortgagor shall furnish to Mortgagee such financial information regarding Mortgagor, its constituent partners or members, as the case may be, the Premises and any guarantor of the Note as Mortgagee may from time to time reasonably request, which shall include, without any further request therefor, the financial information required pursuant to the Loan Agreement.

SECTION 31. STATEMENT OF INDEBTEDNESS.

Mortgagor, within seven days after being so requested by Mortgagee, shall 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.

SECTION 32. FURTHER INSTRUMENTS.

Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall 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.

SECTION 33. 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 more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Mortgagee to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

SECTION 34. INDEMNITY.

Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee, in the exercise of the rights and powers granted to Mortgagee in this Mortgage,

UNOFFICIAL COPY

and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses, including attorneys' fees and court costs (collectively, "*Claims*") of whatever kind or nature which may be imposed on, incurred by or asserted against 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 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 or control of the Premises to Mortgagee in accordance with the terms of this Mortgage. All costs provided for herein and paid for by Mortgagee shall be so much additional Indebtedness and shall become immediately due and payable upon demand by Mortgagee and with interest thereon from the date incurred by Mortgagee until paid at the Default Rate.

SECTION 35. SUBORDINATION OF PROPERTY MANAGER'S LIEN.

Any property management agreement for the Premises entered into hereafter with a property manager shall contain a provision (or property manager shall enter into a separate subordination agreement which contains a provision) whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Premises shall be subject and subordinate to the lien of this Mortgage and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the Recorder of Deeds 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, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with 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.

SECTION 36. COMPLIANCE WITH ENVIRONMENTAL LAWS.

Mortgagor acknowledges that concurrently herewith Mortgagor has executed and delivered to Mortgagee an Environmental Indemnity Agreement ("*Indemnity*") pursuant to which Mortgagor and Guarantor (as defined in the Loan Agreement) have fully indemnified Mortgagee for certain environmental matters as more particularly described therein concerning the Premises. The provisions of the Indemnity are hereby incorporated herein and this Mortgage shall secure the obligations of Mortgagor thereunder. Mortgagor agrees to abide by all of the provisions of the Indemnity.

UNOFFICIAL COPY

SECTION 37. MISCELLANEOUS.

(a) *Successors and Assigns.* This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) *Invalidity of Provisions; Governing Law.* In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

(c) *Municipal Requirements.* Mortgagor shall 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 Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. No building or other improvement on the Premises shall 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 Mortgagor which would result in a violation of any of the provisions of this subsection shall be void.

(d) *Rights of Tenants.* In the Event of Default, Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of 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 shall not be asserted by 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 Mortgagee, this Mortgage shall 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 Mortgagee of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

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

UNOFFICIAL COPY

(g) *Relationship of Mortgagee and Mortgagor.* Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of 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 Mortgagor and Mortgagee hereunder is solely that of debtor/creditor.

(h) *Time of the Essence.* Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the other Loan Documents and the performance and observance by 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 the Mortgage and the lien hereof shall not merge in fee simple title to the Premises, and if Mortgagee acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall 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) *Maximum Indebtedness.* Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to \$3,375,000.00; *provided, however,* in no event shall Mortgagee be obligated to advance funds in excess of the face amount of the Note.

(k) *Consent to Jurisdiction.* TO INDUCE MORTGAGEE TO ACCEPT THE NOTE, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS AND IN COOK COUNTY, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

(l) *Waiver of Jury Trial.* MORTGAGOR AND 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. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

UNOFFICIAL COPY

(m) *Complete Agreement.* This Mortgage, the Note 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 Mortgagor and Mortgagee.

(n) *Construction Loan.* The Note evidences a debt created by one or more disbursements made by Mortgagee to Mortgagor to finance the cost of the construction of certain improvements upon the Real Estate in accordance with the provisions of the Loan Agreement and this Mortgage is a construction mortgage as such term is defined in Section 9-313(1)(c) of the Code. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the Indebtedness immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage. This Mortgage secures, among other things, "lines of credit" as the term is defined and described in 815 ILCS 205/4.1, and will secure not only existing indebtedness, but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee or the secured parties, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of execution of this Mortgage, although there may be no advance made at the time of execution hereof, and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all such indebtedness and future advances from the time this Mortgage is recorded.

(o) *Defined Terms.* Any capitalized terms used herein but not defined herein shall have the meaning ascribed to them in the Loan Agreement.

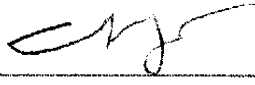
[SIGNATURE PAGE FOLLOWS]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage the day and year first above written.

MORTGAGOR:

4871 SAUK TRAIL LLC, an Illinois limited liability company

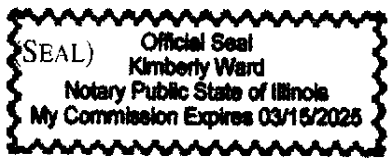
By: 
Chris Ilekis a/k/a Christopher Ilekis,
its Manager

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Kim Ward a Notary Public in and for said County, in the State aforesaid, do hereby certify CHRIS ILEKIS a/k/a CHRISTOPHER ILEKIS, manager of 4871 SAUK TRAIL LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for 4871 SAUK TRAIL LLC, an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 30 day of MARCH, 2022.


NOTARY PUBLIC



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PARCEL 1: LOT 2 OF ROSE SUBDIVISION, BEING A RESUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 33, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN RECORDED FEBRUARY 8, 2000 AS DOCUMENT NO. 00099338 IN COOK COUNTY ILLINOIS

PARCEL 2: NON-EXCLUSIVE EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN THE PLAT OF SUBDIVISION RECORDED FEBRUARY 8, 2000 AS DOCUMENT NO. 00099338 FOR INGRESS AND EGRESS, IN COOK COUNTY, ILLINOIS.

Commonly Known As: 4871 Sauk Trail, Richton Park, IL 60471

Permanent Index Number: 30-23-203-061