

# UNOFFICIAL COPY

Street Address of Property:  
4545 W. Lyndale Ave.  
Chicago, Illinois

Permanent Tax Number (P.I.N.):

13-34-112-013-0000	13-34-112-024-0000
13-34-112-014-0000	13-34-112-025-0000
13-34-112-015-0000	13-34-112-026-0000
13-34-112-016-0000	13-34-112-029-0000
13-34-112-019-0000	13-34-112-030-0000
13-34-112-020-0000	13-34-112-031-0000
13-34-112-021-0000	13-34-112-037-0000
13-34-112-022-0000	13-34-112-038-0000
13-34-112-023-0000	13-34-112-039-0000

96297949

DEPT-01 RECORDING \$99.00  
 T0012 TRAN 0238 04/19/96 15:29:00  
 \$1693 CG \*-96-297949  
 COOK COUNTY RECORDER

99,  
(Illinois)

---

LEASEHOLD MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,  
 SECURITY AGREEMENT AND FIXTURE FILING

---

Prepared by and after recording, please return to:

Helen D. Shapiro, Esq.  
 Winston & Strawn  
 35 West Wacker Drive  
 Chicago, Illinois 60601

1706453DN

96297949

UNOFFICIAL COPY

March 2011

Property of Cook County Clerk's Office

11/11/11 10:00 AM

# UNOFFICIAL COPY

## TABLE OF CONTENTS

	Page
RECITALS . . . . .	1
CONVEYANCE . . . . .	4
COVENANTS . . . . .	6
ARTICLE I      WARRANTIES, REPRESENTATIONS AND COVENANTS OF MORTGAGOR . . . . .	6
SECTION 1.1      Payment of Loans . . . . .	6
SECTION 1.2      Good Title . . . . .	6
SECTION 1.3      Further Documentation to Assure Lien; Fees and Expenses . . . . .	7
SECTION 1.4      Payment of Taxes, Insurance Premiums, Assessments; Compliance with Law and Insurance Requirements . . . . .	8
SECTION 1.5      Payment of Certain Taxes . . . . .	10
SECTION 1.6      Required Insurance Policies . . . . .	10
SECTION 1.7      Failure to Make Certain Payments . . . . .	12
SECTION 1.8      Inspection . . . . .	12
SECTION 1.9      Mortgagor to Maintain Improvements . . . . .	13
SECTION 1.10     Mortgagor's Obligations with Respect to Leases . . . . .	13
SECTION 1.11     Transfer Restrictions . . . . .	14
SECTION 1.12     Destruction; Condemnation . . . . .	14
SECTION 1.13     Operating Agreements . . . . .	18
SECTION 1.14     Alterations . . . . .	18
SECTION 1.15     Leasehold Estate . . . . .	19
SECTION 1.16     Payment of Master Lease Expenses . . . . .	19
SECTION 1.17     Mortgagor's Covenants with Respect to the Master Lease . . . . .	19
SECTION 1.18     Merger . . . . .	21
ARTICLE II      ASSIGNMENT OF RENTS; SECURITY AGREEMENT . . . . .	21
SECTION 2.1      Assignment of Leases, Rents, Issues and Profits . . . . .	21
SECTION 2.2      Security Interest in Personal Property . . . . .	22
ARTICLE III     EVENTS OF DEFAULT AND REMEDIES . . . . .	23
SECTION 3.1      Events of Default . . . . .	24
SECTION 3.2      Remedies in Case of an Event of Default . . . . .	24
SECTION 3.3      Sale of Mortgaged Property if Event of Default Occurs; Proceeds of Sale . . . . .	26
SECTION 3.4      Mortgagee's Additional Remedies in Case of an Event of Default . . . . .	28
SECTION 3.5      Legal Proceedings after an Event of Default . . . . .	28
SECTION 3.6      Remedies Not Exclusive . . . . .	29

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

ARTICLE IV	MISCELLANEOUS . . . . .	30
SECTION 4.1	Severability . . . . .	30
SECTION 4.2	Notices . . . . .	30
SECTION 4.3	Covenants to Run with the Mortgaged Property . . . . .	31
SECTION 4.4	Captions; Gender and Number . . . . .	31
SECTION 4.5	Limitation on Interest Payable . . . . .	31
SECTION 4.6	Indemnification; Reimbursement . . . . .	32
SECTION 4.7	Choice of Law . . . . .	33
SECTION 4.8	No Merger . . . . .	33
SECTION 4.9	Counterparts . . . . .	33
SECTION 4.10	Changes in Writing . . . . .	33
SECTION 4.11	Riders . . . . .	33
SECTION 4.12	Business Loans . . . . .	33
SECTION 4.13	Conflicts with the Loan Agreement . . . . .	34

Property of Cook County Clerk's Office

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(Illinois)

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

LEASEHOLD MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage"), dated as of April 17, 1996, made by ALPHA BAKING CO., INC. ("Mortgagor"), an Illinois corporation having its principal executive offices at 4545 W. Lyndale Ave., Chicago, Illinois 60639, as mortgagor, to BANK OF AMERICA ILLINOIS ("Mortgagee"), having its principal office at 231 South LaSalle Street, Chicago, Illinois 60697, who are parties to that certain Loan and Security Agreement, dated as of April 17, 1996 (the "Closing Date"), between Mortgagor and Mortgagee (as such agreement may at any time be amended or modified in accordance with the terms thereof and then in effect) (the "Loan Agreement").

### R E C I T A L S:

1. Mortgagor is the:

(a) tenant of the premises located in and collectively known as 4545 West Lyndale Avenue, Chicago, Illinois and legally described on Exhibit A attached hereto pursuant to that certain Agreement made between LaSalle National Bank, not personally but as Trustee under Trust Agreement dated October 15, 1984 and known as Trust No. 109044 ("LaSalle Trust No. 109044") and LaSalle National Bank, not personally but as Trustee under Trust Agreement dated October 15, 1984 and known as Trust No. 109028 ("LaSalle Trust No. 109028") (LaSalle Trust No. 109044 and LaSalle Trust No. 109028 herein collectively, the "Landlord") and Mortgagor modifying the following three leases:

(i) Industrial Building Lease dated September 25, 1969 between Louis Kuchuris as Trustee under Louis Kuchuris Trust No. 1 and Louis Kuchuris Trust No. 2, as lessor, and Mary Ann Baking Co., as lessee, for the premises at 4500-4550 West Palmer Street, Chicago, Illinois, as amended by Amendment to Industrial Building Lease dated November 8, 1979 and Amendment to Industrial Building Lease dated January 28, 1980;

(ii) Industrial Building Lease dated November 6, 1979 between the First Bank of Oak Park as trustee under Trust Agreement dated June 23, 1972 and known as Trust No. 9811, as lessor, and Mortgagor, as lessee, for the garage and parking area of the Premises (as such term is hereinafter defined), as amended by an Amendment to Industrial Building Lease dated January 28, 1980; and

(iii) Industrial Building Lease dated November 6, 1979 between The First Bank of Oak Park as Trustee under Trust Agreement dated November 15, 1966 and known as Trust No. 7720, as lessor, and Mortgagor, as lessee, as amended by Amendment to

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10/10/2018



# UNOFFICIAL COPY

Industrial Building Lease dated January 28, 1980, and Amendment to Lease dated October 1, 1984, between Landlord and Mortgagor,

the foregoing leases described in clauses (i), (ii) and (iii) of this Recital further amended by an Amendment to Industrial Building Lease dated March 28, 1996 (the foregoing leases, as so amended, collectively, the "Master Lease"), a Memorandum of Lease executed by Landlord and Mortgagor being recorded on 4-19, 1996 in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 96297948; and

(b) tenant of the Improvements and Personal Property (each as hereinafter defined).

2. Mortgagor and Mortgagee have entered into the Loan Agreement pursuant to which the Mortgagee has agreed to make loans (collectively, "Loans"; each, a "Loan") to Mortgagor in aggregate principal amounts not to exceed at any time Nineteen Million Four Hundred Thousand and 00/100 Dollars (\$19,400,000.00), upon the terms and subject to the conditions set forth in the Loan Agreement.

3. The Loans are in the form of (a) a term loan ("Term Loan") in the aggregate principal amount of Six Million Four Hundred Four Thousand and 00/100 Dollars (\$6,400,000.00) with a maturity date of the fifth (5th) anniversary of the Closing Date, evidenced by a term note dated the Closing Date, hereinafter called a "Term Note"; (b) a revolving loan ("Revolving Loan") in an aggregate principal amount not to exceed Six Million Dollars (\$6,000,000.00) at any time outstanding, under which advances, payments and readvances may be made from time to time, with a maturity date of the third (3rd) anniversary of the Closing Date, evidenced by a revolving note dated the Closing Date, hereinafter called a "Revolving Note"; (c) a construction loan ("Construction Loan") in the aggregate principal amount of Five Million and no/100 Dollars (\$5,000,000.00) with a maturity date of the earlier of (i) ninety days after the Closing Date or (ii) the occurrence of the Bond Purchase (as such term is defined in subparagraph 3(a) herein) and the recordation of an amendment to this Mortgage evidencing the occurrence of the same and such other terms and provisions as are required by all applicable laws in order to cause this Mortgage to also secure the obligations of Borrower with respect to the repayment of said Bonds evidenced by construction note hereinafter called a "Construction Note"; (d) the purchase by Mortgagee ("Bond Purchase") of up to Seven Million and no/100 Dollars (\$7,000,000.00) in industrial development revenue bonds issued by the City of La Porte, Indiana to be evidenced by said industrial development revenue bonds hereinafter called "Bonds", the proceeds of which Bonds, when issued, will be loaned to Mortgagor and used, among other things, to satisfy and pay off the Construction Loan,

UNOFFICIAL COPY

2011-2012

Property of Cook County Clerk's Office

2011-2012

# UNOFFICIAL COPY

and with the repayment of such Bonds being guaranteed by Mortgagor; and (e) other Liabilities (as defined in the Loan Agreement) which include, without limitation, any and all Letter(s) of Credit and Letter of Credit Obligations (as such terms are defined in the Loan Agreement). The Term Note, the Revolving Note and the Construction Note are hereinafter collectively called "Notes." Each of the Notes bears interest as therein provided.

4. This Mortgage is being given by Mortgagor to secure (a) payment by Mortgagor of all principal, interest and other sums due or becoming due in respect of the Loans, the Notes, the Bonds and all other Liabilities (including, without limitation, Letter(s) of Credit and Letter of Credit Obligations) all pursuant to the terms of the Loan Agreement, as the same may be amended, restated, modified, supplemented or extended from time to time; (b) the payment of any further or subsequent advances made to preserve the lien of this Mortgage; and (c) performance of all terms, covenants, conditions, agreements and liabilities contained in this Mortgage and the Loan Documents (as hereinafter defined in Section 3.1) including, without limitation, any guaranty by Mortgagor of the Bonds. All of the foregoing payment and performance obligations in clauses (a), (b) and (c) of the preceding sentence are hereinafter collectively called the "indebtedness."

5. The terms of the Loan Agreement are incorporated by reference herein as though set forth in full detail. In the event of any conflict between the terms and provisions of this Mortgage and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern and control.

6. This Mortgage is given in part to secure Revolving Loan and Construction Loan obligations as evidenced and witnessed by the Revolving Note and the Construction Note and secures not only the indebtedness from Mortgagor existing on the date hereof, but all such future advances, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise as are made from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, and although there may be no indebtedness outstanding at the time any advance is made. The parties hereby acknowledge and intend that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-132(b)(1) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15/-1101, et seq. [1994 State Bar Edition], as the same may be from time to time amended. The lien of this Mortgage as to third persons without actual notice thereof shall be valid as to all indebtedness and future advances from the time this Mortgage is filed for record in the Office of the Recorder of Deeds of the County ("Recorder") set forth on Exhibit A attached hereto. The total amount of the respective revolving and construction indebtedness that may be secured by this Mortgage may increase or decrease from time to time, but the total

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

unpaid balances of the respective Revolving Note and Construction Note secured at any one time shall not exceed the maximum principal amount of the aggregate of the Revolving Note or Construction Note, as the case may be (as amended, extended, substituted, restated, replaced or renewed from time to time), plus interest thereon and any disbursements made by the Mortgagee for the payment of taxes, special assessments, or insurance on the above described real estate, with interest on such disbursements.

## CONVEYANCE:

Mortgagor, to secure the payment of the Indebtedness to the Mortgagee and the performance of the covenants and agreements herein contained and in consideration of the further sum of One Dollar (\$1.00) unto Mortgagor in hand well and truly paid by the Mortgagee at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, and intending to be legally and firmly bound hereby, grants, bargains, sells, assigns, aliens, releases, transfers, remises, conveys and mortgages unto the Mortgagee and its successors and assigns forever, and hereby represents and warrants to the Mortgagee and grants to the Mortgagee and its successors and assigns forever a continuing security interest in and to all of the following rights, interests, claims and property (collectively, "Mortgaged Property"), whether now owned or held or hereafter acquired:

A. The leasehold estate created pursuant to the Master Lease, including any amendments and extensions thereof, together with any options to renew, extend, expand or purchase and any rights of first refusal in the Mortgaged Property, including all of Mortgagor's interest in the land legally described in Schedule A, together with any and all easements, rights-of-way, sidewalks, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, and reversions, remainder and remainders, income, rents, issues, revenues and profits thereof (collectively, the "Land");

B. The leasehold estate under the Master Lease in and to all buildings, structures and other improvements and any and all alterations or additions thereto now or hereafter located or erected on the Land, including, without limitation, attachments, walks, ways, parking facilities and light stanchions (collectively, the "Improvements") (the Improvements together with the Land, collectively the "Premises");

C. To the extent assignable and permitted under the Master Lease, any and all permits, certificates, approvals and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0000000000

# UNOFFICIAL COPY

authorizations however characterized, issued or in any way furnished, whether necessary or not for the operation and use of the Premises or the operation of Mortgagor's business, including, without limitation, building permits, certificates of occupancy, environmental certificates, licenses or permits, certificates of operation, warranties and guarantees;

D. To the extent assignable and permitted under the Master Lease, all of Mortgagor's interest, if any, in and to all machinery, apparatus, equipment, fittings, fixtures, improvements and articles of personal property of every kind and nature whatsoever now or hereafter attached or affixed to the Improvements or the Land or used primarily, from time to time, in connection with the use and enjoyment of the Premises or the maintenance or preservation thereof, 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 Land 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, 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 Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Land or the Improvements shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and 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), 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 said Uniform Commercial Code as more particularly set forth in Section 2.2 hereof (collectively, the "Personal Property");

E. To the extent assignable and permitted by the Master Lease, the Mortgagor's leasehold estate, right, title and interest in all leases of space, licenses, occupancy or concession agreements, if any, (collectively, "Leases," each, a "Lease") now existing or hereafter entered into relating to the Land or the Improvements and any and all amendments, modifications, supplements

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10/10/2018



# UNOFFICIAL COPY

and renewals of Leases, whether now in effect or hereafter coming into effect, including, without limitation, all rents, additional rents, cash or securities deposited thereunder to secure performance of the lessee's obligations thereunder, revenues, earnings, profits and income, advance rental payments, payments incident to assignment, sublease or surrender of a Lease, claims for forfeited deposits and claims for damages, now due or hereafter to become due, with respect to any Lease; and

F. To the extent permitted by the Master Lease, all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims including, without limitation, proceeds of insurance, and condemnation awards with respect thereto, including interest thereon and any and all awards or payments and interest thereon;

TO HAVE AND TO HOLD the Mortgaged Property unto itself; provided, however, that if Mortgagor shall cause to be paid in full all amounts secured by this Mortgage, the Mortgagee shall release the Mortgaged Property from the Lien (as hereinafter defined) of this Mortgage.

## C O V E N A N T S:

Mortgagor hereby covenants and agrees as follows:

### ARTICLE I

#### WARRANTIES, REPRESENTATIONS AND COVENANTS OF MORTGAGOR

SECTION 1.1 Payment of Loans. Mortgagor shall duly and punctually pay or cause to be paid in the manner specified in the Notes and the Bonds and the Liabilities, the principal, interest, and all other sums due or to become due or required to be paid under or in respect of any Liabilities, Bonds or Loan or the Loan Agreement.

SECTION 1.2 Good Title. Mortgagor represents, warrants and covenants that: (i) on and as of the date hereof, it has a good and valid leasehold interest in the Premises and good title to the Personal Property subject to no mortgage, pledge, security interest, encumbrance, lien or charge of any kind other than those financing statements filed with the Illinois Secretary of State and Cook County Recorder's Office as of the date hereof in favor of Universal Foods Corporation, First National Leasing Corporation, Capitol Bank and Trust, AT&T Credit Corporation and Capitol Bank of Westmont, including, without limitation, any conditional sale or other title retention agreement or lease in the nature thereof, any filing or agreement to file a financing statement as debtor under the Uniform Commercial Code or any similar statute other than to reflect ownership by a third party of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

100-111111-1111

# UNOFFICIAL COPY

property leased under a lease not in the nature of a conditional sale or title retention agreement, or any subordination arrangement in favor of any party other than Mortgagor (collectively, "Liens"; each, a "Lien"), except for those certain liens existing as of the date hereof including those liens listed as exceptions to Schedule B of the ALTA loan policy, if any, in favor of the Mortgagee insuring this Mortgage (herein referred to collectively as "Prior Liens") and other than those liens which do not interfere with or in any material way impair the utility, operation, value or marketability of the Premises and are otherwise not prohibited by the terms and provisions of the Loan Agreement (all of the foregoing in the clause (ii), together with the Prior Liens, the "Permitted Liens; (ii) it will keep in effect all rights and appurtenances to or that constitute a part of the Premises; and (iii) this Mortgage creates and constitutes a valid and enforceable first mortgage lien on and first security interest in the Mortgaged Property, subject only to Prior Liens (but not to extensions, amendments, supplements or replacements of Prior Liens unless consented to by Mortgagee) and Mortgagor does now and will forever warrant and defend to Mortgagee such title and the validity and priority of the Lien hereby created and evidenced against the claims of all persons and parties whomsoever.

SECTION 1.3 Further Documentation to Assure Lien: Fees and Expenses. (a) Mortgagor shall upon written request of Mortgagee, at the sole cost and expense of Mortgagor, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers, consents and assurances as the Mortgagee shall reasonably require from time to time, which are necessary in the judgment of the Mortgagee from time to time to assure, perfect, convey, assign, transfer and confirm unto Mortgagee the property and rights hereby conveyed or assigned, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee or to facilitate the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage, provided, however, that such further acts do not materially increase the scope of Mortgagor's obligations under this Agreement or the Loan Documents or diminish Mortgagor's rights and claims, if any, in and to the Premises except as otherwise set forth in the Loan Documents.

(b) Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Personal Property, any Uniform Commercial Code financing statements and continuation statements, and any instrument of further assurance required by Mortgagee to be filed, registered or recorded pursuant to this Mortgage.

SECTION 1.4 Payment of Taxes, Insurance Premiums, Assessments; Compliance with Law and Insurance Requirements.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(a) Unless contested in accordance with Section 1.4(e), Mortgagor shall pay and discharge, from time to time when the same shall become due, all real estate and other taxes, special assessments, levies, permits, inspection and license fees, all premiums for insurance, all water and sewer rents and charges, and all other public charges, imposed upon or assessed against the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property, including, without limitation, those arising in respect of the occupancy, use or possession thereof.

(b) At the option of Mortgagee, to be exercised by notice to Mortgagor upon the occurrence of an Event of Default, Mortgagor shall deposit with Mortgagee, on the first day of each month, an amount estimated by Mortgagee to be equal to one-twelfth (1/12th) of the annual taxes, assessments and other items required to be discharged by Mortgagor under Section 1.4(a). Such amounts shall be held by Mortgagee without interest to Mortgagor and applied to the payment of the obligations in respect of which such amounts were deposited, in such order or priority as Mortgagee shall determine, on or before the respective dates on which the same or any part thereof would become delinquent. Nothing contained in this Section 1.4 shall affect any right or remedy of Mortgagee under any provision of this Mortgage or under any provision of any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the Default Rate (as defined in the Loan Agreement), to the other amounts outstanding in respect of any Loan. Nothing contained in this Section 1.4 shall relieve Mortgagor of its obligations to make or provide for the payment of the annual taxes, assessments and other charges required to be discharged by Mortgagor under Section 1.4(a).

(c) Unless contested in accordance with Section 1.4(e), Mortgagor shall timely pay all lawful claims and demands of mechanics, materialmen, laborers, government agencies administering worker's compensation insurance, old age pensions, social security benefits and all other claims, judgments, demands or amounts of any nature which, if unpaid, might result in, or permit the creation of, a Lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom.

(d) Mortgagor has obtained and shall take all action necessary to maintain in force and effect all certificates, permits, consents, approvals, licenses, franchises or other instruments including those required by the Loan Agreement (collectively, the "Permits") required by any federal, state, municipal or local government or quasi-governmental agency or authority to operate or use and occupy the Premises or any lease held by Mortgagor. Unless contested in accordance with Section 1.4(e), Mortgagor shall comply promptly with all requirements set forth in any of the Permits and all requirements of any law,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/15/2011 10:00 AM

# UNOFFICIAL COPY

ordinance, rule, regulation or requirement of any federal, state, municipal or local government or quasi-governmental agency or authority applicable to all or any part of the Mortgaged Property or the condition, use or occupancy of all or any part thereof or any restriction imposed upon the Mortgaged Property by any duly recorded deed of restriction, declaration, covenant running with the land or otherwise, now or hereafter in force.

(e) Mortgagor may at its own expense contest the amount or applicability of any of the obligations described in Sections 1.4(a), 1.4(c), and 1.4(d) by appropriate legal proceedings, prosecution of which operates to prevent the collection and enforcement thereof or the sale or forfeiture or demolition of the Mortgaged Property or any part thereof to satisfy the same; ~~provided, however,~~ (i) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same before any such obligations have been increased by any interest, penalties, or costs; (ii) Mortgagor has obtained a title insurance endorsement over such contested obligations insuring the Mortgagee against loss or damage by reason of the existence of such contested obligations or Mortgagor has deposited with Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money or other security acceptable to Mortgagee that is sufficient in Mortgagee's judgment to pay in full such contested obligations (or to bring the Mortgaged Property in compliance with the obligations under Section 1.4(d)) and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Mortgagee's judgment, to pay in full such contested obligations, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's judgment, such increase is advisable; (iii) Mortgagor shall not be exposed to any criminal or civil liability by virtue of such contest and such contest shall, in the judgment of the Mortgagee, be reasonable; (iv) Mortgagor shall diligently prosecute the contest of such contested obligations by appropriate legal proceedings and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee 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 (v) in the event Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the monies and liquidate any securities deposited with Mortgagee, in payment of, or on account of, such contested obligations, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such contested obligations, together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, either deposit with Mortgagee a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Mortgagee has applied funds on deposit

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10/10/2014



# UNOFFICIAL COPY

on account of such contested obligations, restore such deposit to an amount satisfactory to Mortgagee. Mortgagee may, but shall not be required to, pay such deficiency in said deposit for contested obligations 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 contested obligations; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid. In any event, Mortgagor shall cause the contested obligations to be fully satisfied and discharged immediately upon final determination of the contest and prior to the time that any sale, forfeiture or demolition of all or any part of the Mortgaged Property could result.

(f) Mortgagor shall not in its use and occupancy of the Premises (including, without limitation, in the making of any Alterations (as hereinafter defined)) take any action that would be the basis for termination, revocation or denial of any insurance coverage required to be maintained under this Mortgage or that would be the basis for a successful defense to any claim under any insurance policy maintained in respect of the Premises.

(g) Mortgagor shall, immediately upon receipt of any written notice regarding any failure by Mortgagor to pay or discharge any of the obligations described in Section 1.4.(a), 1.4(c), 1.4(d) or 1.4(f), furnish a copy of such notice to Mortgagee.

(h) In addition to any other debt or obligation secured hereby, this Mortgage shall also secure unpaid balances of advances made by the holder hereof after this Mortgage is delivered to the Recorder for record for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Mortgaged Property.

SECTION 1.5 Payment of Certain Taxes. If the United States, the state in which the Land is located or any political subdivision thereof shall levy, assess or charge any tax, imposition or assessment upon this Mortgage, the Loan Agreement, the Notes, the Bonds, the Liabilities, or any other Loan Document or the interest of the Mortgagee in the Mortgaged Property other than income taxes levied or assessed upon the Mortgagee, Mortgagor shall pay all such taxes, assessments and impositions to, for, or on account of the Mortgagee when due and payable and shall furnish to the Mortgagee proof of such payment satisfactory to Mortgagee.

SECTION 1.6 Required Insurance Policies. The provisions of this Section 1.6 shall apply only to the extent permitted, and not otherwise provided for, under the Maser Lease.

(a) Mortgagor shall keep and maintain such insurance coverages in respect of the Improvements and Personal

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025/01/14 10:00 AM

# UNOFFICIAL COPY

Property as is required in the Loan Agreement including, without limitation:

(i) Fire, theft and physical hazard insurance on an "all risk" basis covering fire and extended coverage in an amount equal to the full replacement cost of the Improvements and Personal Property. "Full replacement cost" means the cost to replace the Improvements and the Personal Property, exclusive of architectural fees, excavation, foundation and footings, as determined from time to time (but not less frequently than once each eighteen (18) months) by a person reasonably satisfactory to the Mortgagee.

(ii) Liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises with such policy limits as are required in the Loan Agreement or such lesser amounts as the Mortgagee may from time to time reasonably require.

(iii) Worker's compensation, general liability and automobile liability insurance as required by the laws of each state where the Premises are located, or, to the extent permitted by local law, appropriate self insurance arrangements, to protect Mortgagor and Mortgagee against claims for injuries sustained in the course of employment at the Premises.

(iv) Explosion insurance in respect of any boilers and similar apparatus located on the Premises with such policy limits as are required in the Loan Agreement.

(v) If all or part of the Premises shall be leased to or occupied by a person or persons other than Mortgagor, rental value insurance in an amount necessary to provide full coverage of not less than one hundred ten percent (110%) of one year's base rental income for all Leases with terms in excess of one year and with annual base rentals in excess of \$100,000 which amount shall be revised annually to reflect any increase or decrease in such base rental income.

(vi) Business interruption insurance with such policy limits as are required in the Loan Agreement or such lesser amounts as Mortgagee may from time to time reasonably require.

(vii) Such other insurance, in such amounts and against such risks as is required in the Loan Agreement. To the extent any conflict arises between the foregoing provisions and the Loan Agreement, the provisions of the Loan Agreement regarding insurance shall govern and prevail.

(b) All insurance policies required by this Section 1.6 shall be in form and issued by Mortgagor's current insurers or companies reasonably satisfactory to Mortgagee and shall comply

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office

6/10/11 10:00 AM

# UNOFFICIAL COPY

with all provisions of the Loan Agreement. All insurance policies in respect of the coverages required by Section 1.6 shall contain an endorsement naming Mortgagee as loss payee and additional insured, shall be in amounts at least sufficient to prevent coinsurance and all losses thereunder shall be payable to Mortgagee as sole loss payee. Each policy of insurance required under this Section 1.6 shall provide that it may not be canceled or otherwise terminated without at least thirty (30) days' prior written notice to Mortgagee and shall permit Mortgagee to pay any premium therefor within thirty (30) days after receipt of any notice stating that such premium has not been paid when due. The policy or policies of such insurance or certificates of insurance evidencing the required coverages shall be delivered to Mortgagee. Settlement of any claim under any of the insurance policies to in this Section 1.6 shall be in accordance with the Loan Agreement and shall otherwise require Mortgagee's prior written approval.

(c) Mortgagor shall not purchase separate insurance policies concurrent in form or contributing in the event of loss with those policies required to be maintained under this Section 1.6, unless Mortgagee is included thereon as a named insured and, if applicable, with loss payable to Mortgagee as sole loss payee, under a standard mortgagee endorsement of the character described in Section 1.6(b) hereof and the policy evidencing such insurance otherwise complies with the requirements of Section 1.6(b). Mortgagor shall immediately notify Mortgagee whenever any such separate insurance policy is obtained and shall promptly deliver to Mortgagee the policy or certificate evidencing such insurance.

(d) Mortgagor shall, immediately upon receipt of any written notice of any failure by Mortgagor to pay any insurance premium in respect of any insurance required to be maintained under this Section 1.6, furnish a copy of such notice to Mortgagee.

**SECTION 1.7 Failure to Make Certain Payments.** If Mortgagor shall fail to perform any of the covenants contained in this Mortgage or any Loan Document, Mortgagee may make advances to perform the same on its behalf, and all sums so advanced shall be included in the Indebtedness and be secured hereby. Mortgagor shall repay on demand all sums so advanced by Mortgagee on behalf of Mortgagor, with interest at the Default Rate (as defined in the Loan Agreement) on the Term Loan. The provisions of this Section 1.7 or any action taken by Mortgagee pursuant to the provisions of this Section 1.7 shall not prevent any such failure to observe any covenant contained in this Mortgage from constituting an Event of Default.

**SECTION 1.8 Inspection.** Mortgagor shall permit Mortgagee upon written notice to Mortgagor, by its agents, accountants and attorneys, to visit and inspect the Premises at such times as may be reasonably requested by Mortgagee.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

SECTION 1.9 Mortgagor to Maintain Improvements. The provisions of this Section 1.9 shall apply only to the extent permitted, and not otherwise provided for, under the Master Lease. Mortgagor shall not commit any waste on the Premises or make any change in the use of the Improvements or Personal Property or use any of the Land for purposes not related to the current use of the Premises without the Mortgagee's prior written consent. Mortgagor shall, at all times (a) maintain the Premises in good operating order, condition and repair; (b) keep the Premises in good condition and free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any Improvements at any time in the process of erection upon the Premises; (e) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (g) comply with any restrictions of record with respect to the Premises and the use thereof and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy; and (h) cause the Premises to be managed in a competent and professional manner. Except as otherwise provided in Section 1.14, the Premises shall not be demolished or altered. No Personal Property shall be removed without the prior written consent of Mortgagee except to the extent specifically permitted under the Loan Agreement.

SECTION 1.10 Mortgagor's Obligations with Respect to Leases. The provisions of this Section 1.10 shall apply only to the extent permitted, and not otherwise provided for, under the Master Lease.

(a) Mortgagor shall not without the Mortgagee's prior written consent (i) execute any assignment of any Lease or of the rents or any part thereof from the Premises other than the assignment herein to Mortgagee, (ii) except where the lessee under any Lease is in default thereunder, terminate or consent to the cancellation or surrender of a Lease, (iii) modify any Lease having an unexpired term of two (2) years or more so as to shorten the unexpired term thereof or, in respect of the Leases, so as to decrease the amount of the rents payable thereunder, (iv) accept any prepayments, or make any prepayments, of any installment of rents to become due under any Lease, for a period exceeding one month, (v) permit the deferral of or waive or postpone the payment of any rental payment under any Lease, (vi) permit any transfer or assignment of any Lease or the sublease of the property subject to any Lease without the written consent of Mortgagee (except the Mortgagee's prior written consent shall not be required in such instances where the Mortgagor therein shall not be released), or (vii) modify any Lease in any fashion which will impair the value

UNOFFICIAL COPY

Property of Cook County Clerk's Office

COOK COUNTY CLERK



# UNOFFICIAL COPY

of the Mortgaged Property or the security provided by this Mortgage.

(b) Mortgagor shall at all times timely and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all Leases to be kept and performed thereunder and shall at all times do all things necessary to compel performance by the lessee under each Lease of all obligations, covenants and agreements by, such lessee to be performed thereunder.

(c) Mortgagor shall furnish to Mortgagee, within thirty (30) days after each request by Mortgagee to do so, a written statement in respect of any or all of the Leases setting forth the space occupied, the rentals payable thereunder, and such other information as the requesting party may reasonably request.

**SECTION 1.11 Transfer Restrictions.** Mortgagor may not, without Mortgagee's prior written consent, further mortgage, encumber, hypothecate, sell, convey or assign, whether by land installment contract or otherwise, all or any part of the Mortgaged Property or Mortgagor's interest in the Mortgaged Property or lease or sublease the Mortgaged Property or any part thereof or suffer any of the foregoing to occur.

Each of the Liens and other transfers permitted by this Section shall in all respects be subordinate in priority to the Lien of this Mortgage.

**SECTION 1.12 Destruction, Condemnation.** The provisions of this Section 1.12 shall apply only to the extent permitted, and not otherwise provided for, under the Master Lease.

(a) **Destruction; Assignment of Proceeds.** In case of any damage to, or loss or destruction of, Improvements and Personal Property or any part thereof (each, a "Destruction"), Mortgagor shall promptly send to Mortgagee a notice setting forth the nature and extent of such Destruction. The proceeds of any insurance payable in respect of such Destruction are hereby assigned and shall be paid to Mortgagee. All such proceeds, less the amount of any expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Destruction ("Net Proceeds"), shall be applied in accordance with the provisions of Sections 1.12(c) and 1.12(d).

(b) **Condemnation; Assignment of Award.** In the event of any taking of the Mortgaged Property or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law general or special, or by reason of the temporary requisition of the use or occupancy of the Mortgaged Property or any part hereof, by any governmental authority, civil or military (each, a "Taking"), Mortgagor shall immediately notify Mortgagee

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000000000

# UNOFFICIAL COPY

upon receiving notice of such Taking or commencement of proceedings therefor. All proceeds or any award or payment in respect of any Taking are hereby assigned and shall be paid to Mortgagee and Mortgagor shall take all steps necessary to notify the condemning authority of such assignment. Such award or payment, less the amount of any expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Taking ("Net Award"), shall be applied in accordance with the provisions of Sections 1.12(c) and 1.12(d).

(c) Restoration. In the event of a Taking or Destruction that occurs not less than six (6) months prior to the Maturity Date of the Notes, unless otherwise provided in the Loan Agreement, Mortgagor shall be required to restore or rebuild ("Restoration") any Personal Property or Improvement that is damaged, taken or destroyed under the terms and provisions hereinafter provided. All Restoration shall be of at least equal value and of substantially the same character as existed prior to the Taking or Destruction. The Net Award and Net Proceeds shall be paid to the Mortgagee, provided, however, that if no Event of Default or Unmatured Event of Default shall have occurred and be continuing, in the event there shall be a Net Award or Net Proceeds in an amount less than or equal to One Hundred Thousand and no/100 Dollars (\$100,000), Mortgagor shall have the right, at Mortgagor's option, to elect that such Net Award or Net Proceeds be applied to payment of amounts outstanding in respect of the Loans or to restore the Premises. If there shall be a Net Award or Net Proceeds in an amount greater than One Hundred Thousand and no/100 Dollars (\$100,000.00) and not in excess of Five Hundred Thousand and no/100 Dollars (\$500,000.00) and provided, Mortgagee has determined in accordance with the terms and provisions of Section 5.6(c) of the Loan Agreement to use the Net Award or Net Proceeds to restore the Premises, Mortgagor shall have the right, at Mortgagor's option, to elect that such Net Award or Net Proceeds be applied to payment of amounts outstanding in respect of the Loans or to restore the Premises. In all other occurrences of a Taking or Destruction, Mortgagee shall have the right in its sole discretion to apply the Net Proceeds and net Award to the prepayment of the Indebtedness in such order as Mortgagee shall determine.

In the event Mortgagor is permitted to, and elects to, restore the Premises, Mortgagor shall give written notice ("Restoration Election Notice") of such election to Mortgagee within ninety (90) days of the date of collection by Mortgagee of the Net Proceeds or Net Award, as the case may be. In the event Mortgagee does not receive a Restoration Election Notice within such ninety (90) day period, Mortgagee shall apply the Net Proceeds or Net Award to the prepayment of Loans in the manner set forth in the Loan Agreement. In the event Mortgagor shall elect to restore the Premises, Mortgagor shall, within thirty (30) days following the date of its Restoration Election Notice, commence and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025-01-15 10:00:00

# UNOFFICIAL COPY

diligently continue to perform the Restoration of that portion or portions of the Mortgaged Property subject to such Destruction or affected by such Taking and the Mortgagee shall release such Net Proceeds and Net Awards, to the Mortgagor when and as necessary to pay for the Restoration, provided that:

(i) at the time of any requested release of funds no Unmatured Event of Default or Event of Default shall have occurred and be continuing or result after giving effect thereto; and

(ii) each release of funds shall be conditioned upon receipt by the Mortgagee of those documents hereinafter required and such other documentation as the Mortgagee may reasonably request.

No payment made prior to the final completion of the Restoration shall exceed ninety-five percent (95%) of the value of the work performed from time to time, as such value shall be determined by Mortgagee in its sole judgment; funds other than Net Proceeds or Net Award shall be disbursed prior to disbursement of such proceeds, except as may otherwise be provided in the Loan Agreement; and at all times the undisbursed balance of such Net Proceeds or Net Award remaining in the hands of Mortgagee, together with funds deposited or irrevocably committed, to the satisfaction of Mortgagee, by or on behalf of Mortgagor to pay the cost of such Restoration, shall be sufficient in the reasonable judgment of Mortgagee to pay the entire unpaid cost of the Restoration, free of all liens or claims for lien. No interest shall be allowed to Mortgagor on account of any Net Proceeds or Net Award or other funds held by Mortgagee.

In the event the Net Proceeds or Net Award are used for Restoration, Mortgagee shall not release any part of the Net Award or the Net Proceeds except in accordance with the provisions of this Section 1.12(d). Prior to commencing any work to effect Restoration of the Premises, Mortgagor shall promptly (but in no event later than one hundred twenty (120) days following any Destruction or Taking) furnish to Mortgagee:

(i) complete plans and specifications ("Plans and Specifications") for the Restoration;

(ii) a certificate ("Architect's Certificate") of an independent, reputable architect, engineer, general contractor or other qualified professional licensed in the state where the Premises are located stating (a) that the Plans and Specifications have been reviewed and approved by the signatory thereof, and (b) such signatory's estimate ("Estimate") of the costs of completing the Restoration; and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/2011

# UNOFFICIAL COPY

(iii) if the Estimate exceeds the Net Proceeds or the Net Award, as the case may be, a surety bond for, guarantee of, or irrevocable letter of credit ("Letter of Credit") or other irrevocable and unconditional commitment to provide funds ("Commitment") for the payment of such Restoration, payable to or in favor of Mortgagee, which bond, guarantee, Letter of Credit or Commitment (a) shall be signed by a surety or sureties or guarantor(s), as the case may be, acceptable to Mortgagee, and, in the case of a Letter of Credit or Commitment, shall be provided by a bank or other financial institution having capital and surplus satisfactory to Mortgagee as shown in its most recent available statement of financial condition, and (b) shall be in the amount not less than the Estimate minus the amount of the Net Proceeds or the Net Award, as the case may be, then held by Mortgagee for application toward the cost of such Restoration.

Mortgagee shall have the right to review and approve the Plans and Specifications, such approval not to be unreasonably withheld. Promptly upon approval of the Plans and Specifications by Mortgagee, Mortgagor shall commence and diligently continue to perform the Restoration in accordance with such approved Plans and Specifications.

(d) Restoration Advances Following Destruction or Taking of Mortgaged Property. In the event the Net Proceeds or Net Award are used for restoration as provided in Section 1.12(c), Mortgagee shall apply the Net Proceeds or the Net Award held by Mortgagee on account of any Destruction or Taking to the payment of the cost of any Restoration and shall pay portions of the same, from time to time, to Mortgagor or, at Mortgagee's option, exercised from time to time, directly to the contractors, subcontractors, materialmen, laborers, engineers, architects, and other persons rendering services or material for such Restoration, subject to the following conditions:

(i) Mortgagor shall provide Mortgagee with a request setting forth the amount to be paid and to whom payment is to be made five (5) business days prior to the date such payment is to be made and each such request for payment shall be accompanied by an Architect's Certificate stating (a) that all the Restoration work then completed has been done substantially in compliance with the approved Plans and Specifications and in accordance with all provisions of law, (b) the sums requested are required to reimburse Mortgagor for payments by Mortgagor to, or are due to, the contractors, subcontractors, materialmen, laborers, engineers, architects, or other persons rendering services or materials for the Restoration, and that, when added to the sums, if any, previously paid out by Mortgagee, such sums do not exceed the cost of the Restoration to the date of such Architect's Certificate, (c) whether or not the Estimate continues to be accurate, and if not, what the entire cost of such Restoration is then estimated to be, (d) unless Mortgagee received a surety, guarantee, Letter of Credit

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

or Commitment as referred to in Section 1.12(c) that the amount of the Net Proceeds or Net Award, as the case may be, remaining after giving effect to such payment will be sufficient on completion of the Restoration to pay for the same in full (giving in reasonable detail, an estimate by trade of the remaining costs of completion), and (e) all affidavits, certificates, waivers and releases provided for by local law;

(ii) Each request for payment shall be accompanied by such lien waivers or other evidence as may be required by Mortgagee or, at Mortgagee's election, a title insurer reviewing the same pursuant to a construction escrow in order to confirm on a continuing basis throughout the Restoration that there has not been filed with respect to all or any parts of the Mortgaged Property any Lien, not discharged of record, in respect of any part of the Restoration; and

(iii) The final request for any payment after the Restoration has been completed shall be accompanied by an Opinion of Counsel listing all certificates, permits, licenses, waivers, other documents, or any combination of the foregoing required by law in connection with or as a result of such Restoration and stating that all of the same have been obtained.

In the event there shall be any surplus after application of the Net Award or the Net Proceeds to Restoration of the Premises, such surplus shall belong and be paid to Mortgagee to be credited against the amounts outstanding in respect of any Loans in accordance with the provisions of Section 2.14 of the Loan Agreement.

SECTION 1.13 Operating Agreements. Mortgagor shall provide to Mortgagee, from time to time as requested by Mortgagee, certified copies of every management, operating and other similar agreement covering all or substantially all of the Premises. Each such agreement shall be in form and substance acceptable to Mortgagee and shall be subordinate and subject to the Lien of this Mortgage.

SECTION 1.14 Alterations. The provisions of this Section 1.14 shall apply only to the extent permitted, and not otherwise provided for, under the Master Lease. Mortgagor shall have the right to make such additions, modifications or changes (each, an "Alteration") to the Premises in amounts not to exceed any amounts set forth in the Loan Agreement without Mortgagee's prior written consent as may be deemed necessary or desirable by Mortgagor; provided, however, that Mortgagor shall (i) complete all Alterations promptly, in a good and workmanlike manner and in compliance with all applicable local laws, ordinances and requirements; (ii) warrant that said Alteration shall not reduce or impair the value of the Mortgaged Property and (iii) pay when due all claims for labor performed and materials furnished in

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025-01-13 10:10:10

# UNOFFICIAL COPY

connection with any Alteration, unless contested in accordance with the provisions of Section 1.4(e). Mortgagor shall not remove or demolish the Improvements in whole or substantial part without the Mortgagee's prior written consent unless pursuant to performance of an Alteration. Any Alteration in excess of any amounts set forth in of the Loan Agreement shall require Mortgagee's prior written consent and shall be in accordance with such requirements as Mortgagee shall deem necessary including, without limitation, comparable documents, Plans and Specifications, Opinion of Counsel, Architect's Certificate, Estimate, Letter of Credit and Commitment as those contained in Section 1.12(c).

SECTION 1.15 Leasehold Estate. Mortgagor hereby represents and warrants that:

1. Mortgagor is presently the lessee under the Master Lease, and the Master Lease is in full force and effect and unmodified;

2. all rents (including additional rents and other charges) reserved in the Master Lease have been paid to the extent they were payable prior to the date hereof; and

3. there is no uncured default under the Master Lease or in the performance of any of the terms, covenants, conditions or warranties thereof to be observed and performed by Mortgagor, and no state of facts exists under the Master Lease which, with the lapse of time or giving of notice or both, would constitute a default thereunder.

Mortgagor hereby agrees to defend the leasehold estate created under the Master Lease for the entire remainder of the term set forth therein, against all and every person or persons lawfully claiming, or who may claim the same or any part thereof, subject to (i) the payment of the rents reserved in the Master Lease; and (ii) the performance and observance of all of the terms, covenants, conditions and warranties thereof.

SECTION 1.16 Payment of Master Lease Expenses. Mortgagor shall pay or cause to be paid all rents, additional rents, taxes, assessments, water rates, sewer rents and other charges and impositions payable by Mortgagor as lessee under the Master Lease for which provision has not been made hereinbefore, when and as often as the same shall become due and payable.

SECTION 1.17 Mortgagor's Covenants with Respect to the Master Lease.

1. Mortgagor shall at all times promptly and faithfully keep and perform all of its covenants under the Master Lease and in all respects conform to and comply with the terms and conditions of the Master Lease. Mortgagor also agrees that it shall not do or

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/20/2015 10:30 AM

# UNOFFICIAL COPY

permit anything which will be grounds under the terms of the Master Lease for declaring a forfeiture of the Master Lease.

2. Mortgagor shall not modify, extend or in any way alter any material term of the Master Lease, cancel or surrender the Master Lease, or waive, execute, condone or in any way release or discharge the Master Lessor of or from the obligations, covenants, conditions and agreements to be done and performed thereby without the prior written consent of Mortgagee which shall not be unreasonably withheld or delayed. Mortgagor expressly releases, relinquishes and surrenders unto Mortgagee all of its right, power and authority to cancel, surrender, amend, modify or alter in any way the material terms and provisions of the Master Lease. Any attempt on the part of Mortgagor to exercise any such right without the prior written consent of Mortgagee shall constitute an Event of Default.

3. Mortgagor shall: (i) give Mortgagee prompt notice of any default under the Master Lease or of the receipt by it of any notice of default from the Master Lessor; (ii) promptly furnish to Mortgagee any and all information which it may reasonably request concerning the performance by Mortgagor of the covenants of the Lease; and (iii) permit Mortgagee or its representative at all reasonable times and with reasonable notice to investigate or examine in its reasonable judgment any documents concerning the performance by Mortgagor of the Master Lease. Mortgagor shall deliver to Mortgagee a copy of the Master Lease, as well as any and all documentary evidence received by it showing compliance by Mortgagor with the Master Lease. Mortgagor shall also promptly deliver to Mortgagee an exact copy of any notice of default received or given by it in any way relating to or affecting the Master Lease.

4. In the event of any failure by Mortgagor to perform any covenant under the Master Lease, the performance thereof by Mortgagee on behalf of Mortgagor shall not remove or waive, as between Mortgagor and Mortgagee, the corresponding Event of Default under the terms hereof and any amount so advanced by Mortgagee or any costs incurred in connection therewith, shall constitute additional Indebtedness and shall be due and payable upon demand with interest at the Default Rate.

5. To the extent permitted by law, the price payable by Mortgagor, or by any other party so entitled, in the exercise of the right of redemption, if any, shall include all rents paid and other sums advanced by Mortgagee, on behalf of Mortgagor, as lessee under the Master Lease.

SECTION 1.18 Merger. So long as any of the Indebtedness shall remain unpaid, the fee title and the leasehold estate in the Premises shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10/10/2014 10:10:10 AM

# UNOFFICIAL COPY

either in the lessor or in the lessee, or in a third party, by purchase or otherwise. Mortgagor covenants and agrees that, if it shall acquire the fee title, or any other estate, title or interest in the Premises, then this Mortgage shall attach to and be a first lien upon such other estate so acquired, which estate shall be considered as mortgaged, assigned or conveyed to Mortgagee and the lien hereof shall cover such estate with the same force and effect as though specifically herein mortgaged, assigned or conveyed. The provisions of this paragraph shall not apply if Mortgagee acquires the fee of the Premises.

## ARTICLE II

### ASSIGNMENT OF RENTS; SECURITY AGREEMENT

SECTION 2.1 Assignment of Leases, Rents, Issues and Profits. The provisions of this Section 2.1 shall apply only to the extent permitted, and not otherwise provided for, under the Master Lease.

(a) Mortgagor hereby irrevocably grants, transfers and assigns to Mortgagee all of Mortgagor's right, title and interest, whether now existing or hereafter acquired, in the Leases, including, as applicable, the right, power and authority to collect the rents, issues, income and profits of the Mortgaged Property. The assignment set forth in the foregoing sentence shall be unconditional and irrevocable except as provided to the contrary in Section 2.1(b).

(b) Notwithstanding the provisions of Section 2.1(a), Mortgagor shall have the right, prior to occurrence of any Event of Default, to collect and retain all rents, issues and profits relating to the Mortgaged Property as the same become due and payable. Upon occurrence of any Event of Default, Mortgagee may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the Indebtedness, (i) enter upon and take possession of the Premises and/or (ii) in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, to all or any part of the Indebtedness, and in such order as Mortgagee may determine.

(c) Mortgagee's right to collect the rents, issues and profits upon default by Mortgagor pursuant to this Section 2.1 is in no manner conditional upon Mortgagee first taking possession of the Premises. Should Mortgagee enter and take possession of the Premises and/or collect the rents, issues and profits and apply the same as provided for herein, such act shall not cure or waive any Event of Default or notice thereof hereunder or invalidate any act

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

done pursuant to such notice. Nothing contained herein, nor any collection of rents, issues and profits by Mortgagee or a receiver, shall be construed to make Mortgagee a "mortgagee-in-possession" so long as Mortgagee has not itself entered into actual possession of the Premises.

(d) Nothing herein shall be construed to impose any liability or obligation on Mortgagee under or with respect to any Lease. Mortgagor shall indemnify and hold Mortgagee harmless from and against any and all liabilities, losses and damages (including, without limitation, reasonable attorneys' fees and the allocated costs of staff counsel) incurred under any Lease or by reason of the provisions of this Section 2.1.

## SECTION 2.2 Security Interest in Personal Property.

(a) This Mortgage shall constitute a security agreement for the purposes of the Uniform Commercial Code, as enacted in each state where Premises are located ("Code"), and shall create and evidence a security interest in all sums at any time on deposit for the benefit of the Mortgagee or held by the Mortgagee pursuant to this Mortgage, any Loan Document or the Loan Agreement as well as all of the Personal Property, which Personal Property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of the Code). Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Personal Property, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the Loan Agreement. The Personal Property is to be used by Mortgagor solely for business purposes. The Personal Property will be kept at the Land and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Personal Property may be affixed to the Land but will not be affixed to any other real estate.

(b) Mortgagor, immediately upon the execution and delivery of this Mortgage, and thereafter from time to time, shall cause this Mortgage, any security instrument creating or evidencing the Lien hereof in the Personal Property, and each instrument of further assurance, including Uniform Commercial Code financing statements and continuation statements, to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to perfect, preserve and protect the Lien hereof upon the Personal Property. Mortgagor hereby appoints and authorizes Mortgagee to act on behalf of Mortgagor upon Mortgagor's failure to comply with the provisions of this Section 2.2(b).

(c) Upon the occurrence and continuance of any Event of Default, in addition to the remedies set forth in Article

UNOFFICIAL COPY

Property of Cook County Clerk's Office

4-10-11 10:00 AM

# UNOFFICIAL COPY

III, Mortgagee shall have the power to foreclose Mortgagor's right of redemption in the Personal Property by sale of the Personal Property in accordance with the Uniform Commercial Code as enacted in each state where the Premises are located. It shall not be necessary that any Personal Property offered be physically present at any such sale or constructively in the possession of Mortgagee or the person conducting the sale.

(d) Mortgagee may sell the Personal Property or any part thereof at public or private sale with notice to Mortgagor as hereinafter provided. The proceeds of any such sale, after deducting all expenses of Mortgagee in taking, storing, repairing and selling the Personal Property (including, without limitation, reasonable attorneys' fees and the allocated costs of staff counsel) shall be applied in the manner set forth in Section 3.3(c). At any sale, public or private, of the Personal Property or any part thereof, Mortgagee may purchase any or all of the Personal Property offered at such sale.

(e) Mortgagee shall give Mortgagor reasonable notice of any sale of any of the Personal Property pursuant to the provisions of this Section 2.2. Notwithstanding the provisions of Section 5.2, any such notice shall conclusively be deemed, to the extent allowed by law, to be reasonable and effective if such notice is mailed at least four (4) business days prior to any sale, by first class or certified mail, postage prepaid, to Mortgagor at its address above set forth, or to such other addresses Mortgagor may hereafter designate in writing to Mortgagee.

(f) The terms and provisions contained in this Section 2.2 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(g) This Mortgage is intended to be a "fixture filing" within the purview of Sections 9-313 and 9-402 of the Code with respect to the Personal Property and the goods described herein upon recording in the real estate records of the proper office, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinabove set forth. This Mortgage is to be filed for record with the Recorder where the Premises are located.

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025/01/28 10:00 AM

# UNOFFICIAL COPY

## ARTICLE III

### EVENTS OF DEFAULT AND REMEDIES

SECTION 3.1 Events of Default. Each of the following shall constitute an "Event of Default":

(a) If (i) Mortgagor shall fail to make any payment of interest or principal, when and as the same shall become due and payable pursuant to the Loan Agreement or any Note, Bond or any of the other Liabilities (including, without limitation, the Letter(s) of Credit or Letter of Credit Obligations) or (ii) Mortgagor shall fail to make any other payment to be paid by it under the Loan Agreement, this Mortgage, the Notes, the Bonds, the Liabilities (including, without limitation, the Letter(s) of Credit and Letter of Credit Obligations), the Escrow Agreement (as defined in the Loan Agreement), or any other mortgage, deed of trust, security agreement, or other Related Agreement (as defined in the Loan Agreement) made by Mortgagor to secure payment of the Loans, the Bonds and the Liabilities (collectively, "Loan Documents", each, a "Loan Document") when and as the same shall become due and payable (taking into account any applicable grace period set forth therein if any).

(b) The occurrence of any other "Event of Default" (as such term is defined in the Loan Agreement) under the Loan Agreement.

SECTION 3.2 Remedies in Case of an Event of Default. If any Event of Default shall have occurred, Mortgagee may, in addition to any other action, take one or more of the following actions:

(a) by written notice to Mortgagor, declare the entire unpaid amount of the Indebtedness to be due and payable immediately;

(b) to the extent permitted by law, personally, or by its agents or attorneys, enter into and upon all or any part of the Premises and each and every part thereof, and exclude Mortgagor, its agents and servants wholly therefrom; and then use, operate, manage and control the Premises and conduct the business thereof, either personally or by its agents, attorneys or receivers or by a referee appointed by a duly acting court on the application of Mortgagee and on every such entry, from time to time, may maintain and restore the Mortgaged Property, and likewise, from time to time, Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful Alterations thereto and thereon as Mortgagee may deem advisable; and in every such case Mortgagee shall have the right to manage, lease and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Mortgagor with respect thereto

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

either in the name of Mortgagor or otherwise; and Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and its attorneys, counsel, agents, clerks, servants and other employees, Mortgagee shall apply the moneys arising as aforesaid, first, to the payments of any Indebtedness due other than principal and interest in respect of any Loan secured by this Mortgage; second, to the payment of the interest due in respect of Loan secured by this Mortgage; and third, to the outstanding principal amount of any Loans, Bonds or Liabilities (including, without limitation, any Letter(s) of Credit) secured by this Mortgage;

(c) with or without entry, personally or by its Mortgagees or attorneys, to the extent permitted by law, (i) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law, or (ii) institute and prosecute proceedings for the complete or partial foreclosure of this Mortgage under and pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101, et seq. [1994 State Bar Edition], as the same may be from time to time amended (the "Act");

(d) take such steps to protect and enforce its rights whether by action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement in the Loan Documents, or in aid of the execution of any power granted in this Mortgage, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect;

(e) upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may, upon application, appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after foreclosure sale pursuant to the Act; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Indebtedness; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; and without bond being required of the applicant, which receiver shall have all of the power and duties prescribed by the Act. Mortgagee or any employee or Mortgagee thereof may be appointed as such receiver. Such receiver shall have the power to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/15/11



# UNOFFICIAL COPY

take possession, control, and care of the Mortgaged Property and to collect all rents thereof during the pendency of such foreclosure suit and, in the event of a sale and a deficiency, where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, heirs, executors, administrators, legal representatives, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such rents and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management, and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may be authorized by the court with such rights and powers as are provided herein.

SECTION 3.3 Sale of Mortgaged Property if Event of Default Occurs; Proceeds of Sale. (a) On the completion of any sale or sales by Mortgagee made under or by virtue of this Article III, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or instruments conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. In the case of an Event of Default, Mortgagee is hereby irrevocably appointed the true and lawful agent and attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, and Mortgagor hereby ratifies and confirms all that Mortgagee, acting as its attorney, or any such substitute shall lawfully do by virtue hereof. This power of attorney is coupled with the interest of Mortgagee created by this Mortgage. Mortgagor shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser or purchasers all instruments as may be reasonably requested for such purpose. Any such sale or sales made under or by virtue of this Article III shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(b) In the event of any sale made under or by virtue of this Article III, the entire principal of, and interest in respect of all Loans, Notes, Bonds and other Liabilities (including, without limitation, Letter(s) of Credit), if not previously due and payable, and all other sums required to be paid by Mortgagor pursuant to the Loan Documents or otherwise, shall, at the option of Mortgagee, immediately become due and payable, anything in this Mortgage to the contrary notwithstanding.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/11 10:11 AM

# UNOFFICIAL COPY

(c) The proceeds of any sale made under or by virtue of this Article III, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Article III or otherwise, shall be applied as follows:

First: to the payment of the costs and expenses of such sale, including reasonable compensation to Mortgagee, its agents and attorneys, and of any judicial or private proceedings in which such sale may be made, and of all other expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest at the Default Rate for the Term Loan on such costs, expenses and liabilities and on all advances made by Mortgagee from the date any such cost, expense or liability is due, owing or unpaid or any such advance is made, in each case until paid in full;

Second: to the payment of any Indebtedness then due owing or unpaid other than interest and principal in respect of any Loan, Note, Bond or any other Liabilities (including, without limitation, Letter(s) of Credit and Letter of Credit Obligations) secured by this Mortgage and amounts payable under subparagraph "First" above, together with interest on each such amount at the Default Rate applicable to each such obligation from and after the date such amount is due, owing or unpaid until paid in full;

Third: to the payment of the interest then due, owing or unpaid in respect of any Loan, Note, Bond or any other Liabilities (including, without limitation, Letter(s) of Credit) secured by this Mortgage, together with, to the maximum extent permitted by law, interest thereon at the Default Rate applicable to each such obligation from the date such amount is due, owing or unpaid until paid in full;

Fourth: to the payment of the whole amount of principal then due, owing or unpaid in respect of any Loan, Note, Bond or any other Liabilities (including, without limitation, Letter(s) of Credit and Letter of Credit Obligations) secured by this Mortgage, to be applied in accordance with the Loan Agreement, with interest on such unpaid principal at the Default Rate applicable to each such obligation from and after the happening of any Event of Default until paid in full; and

Fifth: the surplus, if any, to be paid to whomever lawfully may be entitled to receive such surplus.

(d) Mortgagee may bid for and acquire the Mortgaged Property or any part thereof at any sale made under or by virtue of this Article III and, in lieu of paying cash therefor, may make

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

settlement for the purchase price by crediting against the purchase price the unpaid amounts due and owing in respect of any Loans, Notes, Bonds or any other Liabilities (including, without limitation, Letter(s) of Credit and Letter of Credit Obligations) after deducting from the sales price the expenses of the sale and the costs of the action or proceedings and any other sums that Mortgagee is authorized to deduct under this Mortgage.

(e) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and, except as otherwise provided by any applicable provisions of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

SECTION 3.4 Mortgagee's Additional Remedies in Case of an Event of Default. (a) Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage, and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure of the Lien of this Mortgage. In case of proceedings against Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, Mortgagee shall be entitled to prove the whole amount of principal and interest due in respect of the Indebtedness to the full amount thereof and all other payments, charges and costs due under this Mortgage without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property; provided, however, that in no case shall Mortgagee receive a greater amount than the aggregate of such principal, interest and such other payments, charges and costs (with interest at the Default Rate applicable to any such obligation) from the aggregate amount of the proceeds of the sale of the Mortgaged Property and the distribution from the estate of Mortgagor.

(b) The obtaining of any judgment by Mortgagee and any levy of any execution under any judgment upon the Mortgaged Property shall not affect in any manner or to any extent the Lien of this Mortgage upon the Mortgaged Property or any part thereof, or any Liens, powers, rights and remedies of Mortgagee hereunder, but such Liens, powers, rights and remedies shall continue unimpaired as before until the judgment or levy is satisfied.

(c) Any moneys collected by Mortgagee under this Section 3.4 shall be applied in accordance with the provisions of Section 3.3(c) hereof.

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025/01/15 10:00 AM

# UNOFFICIAL COPY

SECTION 3.5 Legal Proceedings after an Event of Default. (a) After the occurrence of any Event of Default and immediately upon the commencement of any action, suit or legal proceedings to obtain judgment for the Indebtedness or any part thereof, or of any proceedings to foreclose this Mortgage or of any other proceedings in aid of the enforcement of this Mortgage, Mortgagor shall enter its voluntary appearance in such action, suit or proceeding.

(b) Upon the occurrence and continuance of an Event of Default, Mortgagee shall be entitled forthwith as a matter of right, either before or after declaring the Indebtedness or any part thereof to be due and payable, to the appointment of a receiver without giving notice to any party and without regard to the adequacy or inadequacy of any security for the Indebtedness.

(c) Mortgagor shall not at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter, which may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist on any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales of the Mortgaged Property which may be made pursuant to this Mortgage, or pursuant to any decree, judgment or order of any court of competent jurisdiction. Mortgagor shall not, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof. Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power granted or delegated to Mortgagee by this Mortgage, but to suffer and permit the execution of every such power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives, to the extent permitted by law, all right to have the Mortgaged Property marshaled on any foreclosure of this Mortgage. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term may be defined in the Act or residential real estate as may be defined in the Act. Mortgagor hereby waives any and all right of redemption as may be provided under the Act.

SECTION 3.6 Remedies Not Exclusive. No remedy conferred upon or reserved to Mortgagee by this Mortgage is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Mortgage or now or hereafter existing at law or in equity. Any delay or omission of Mortgagee to exercise any right or power accruing on any Event of Default shall not impair any such right or power and shall not be construed

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/11 10:00 AM



# UNOFFICIAL COPY

to be a waiver of or acquiescence in any such Event of Default. Every power and remedy given by this Mortgage may be exercised from time to time as often as may be deemed expedient by Mortgagee. If Mortgagee accepts any moneys required to be paid by Mortgagor under this Mortgage after the same becomes due, such acceptance shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured by this Mortgage or to declare an Event of Default with regard to subsequent defaults. If Mortgagee accepts any moneys required to be paid by Mortgagor under this Mortgage in an amount less than the sum then due, such acceptance shall be deemed an acceptance on account only and on the condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay the entire sum then due shall be and continue to be an Event of Default notwithstanding acceptance of amount on account.

## ARTICLE IV

### MISCELLANEOUS

SECTION 4.1 Severability. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The invalidity of any provision of this Mortgage in any one jurisdiction shall not affect or impair in any manner the validity of such provision in any other jurisdiction.

SECTION 4.2 Notices. Except as provided in Section 2.2(e), all notices, demands, instructions and other communications required or permitted to be given to or made upon any party named herein shall be in writing and (except for written confirmations of telephonic instructions, which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by a reputable courier delivery service, or by prepaid telex, TWX or telegram (with messenger delivery specified in the case of a telegram), or by telecopier, and shall be deemed to be given for purposes of this Mortgage on the day that such writing is personally delivered or four (4) business days after mailing to the intended recipient thereof in accordance with the provisions of this Section 4.2. Unless otherwise specified in a notice sent or delivered in accordance with the foregoing provisions of this Section 4.2, notices, demands, instructions and other communications in writing shall be given to or made upon the respective parties named herein at their respective addresses (or to their respective telex, TWX or telecopier numbers) indicated

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/2011 10:00 AM

# UNOFFICIAL COPY

below and, in the case of telephonic instructions or notice, by calling the telephone number or numbers indicated for such party below:

(i) If to Mortgagor:

Alpha Baking Co., Inc.  
4545 W. Lyndale Avenue  
Chicago, Illinois 60639  
Attn: Robert Cruice  
Tel. No. (312) 489-5900 Ext. 39  
Telecopier No. (312) 489-4144

With a copy to:

Skadden, Arps, Slate, Meagher & Flom  
333 West Wacker Drive  
Chicago, Illinois 60606  
Attn: Alexandra Bergstein, Esq.  
Tel. No. (312) 407-0657  
Telecopier No. (312) 407-0411

(ii) If to Mortgagee:

Bank of America Illinois  
231 South LaSalle Street  
Chicago, Illinois 60697  
Attn: Thomas E. Hay  
Tel. No. (847) 952-1110  
Telecopier No. (847) 952-1136

with a copy to:

Winston & Strawn  
35 West Wacker Drive  
Chicago, Illinois 60601  
Attn: Richard E. Morgan  
Tel. No. (312) 558-5600  
Telecopier No. (312) 558-5700

SECTION 4.3 Covenants to Run with the Mortgaged Property. All of the grants, covenants, terms, provisions and conditions in this Mortgage shall run with the Mortgaged Property and shall apply to, bind and inure to the benefit of, the successors and assigns of Mortgagor.

SECTION 4.4 Captions: Gender and Number. The captions and section headings of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof. All terms contained herein shall be construed, whenever the context of this Mortgage so requires, so that the singular shall be

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

construed as the plural and so that the masculine shall be construed as the feminine.

SECTION 4.5 Limitation on Interest Payable. It is the intention of the parties to conform strictly to the usury laws, whether state or Federal, that are applicable to the respective Loan Documents. All agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid by Mortgagor for the use, forbearance or detention of the money to be loaned under any of the Loan Documents or otherwise, or for the payment or performance of any covenant or obligation contained herein, or in any Loan Document exceed the maximum amount permissible under applicable Federal or state usury laws. If under any circumstances whatsoever fulfillment of any provision hereof or of any Loan Document, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity. If under any circumstances Mortgagor shall have paid an amount deemed interest by applicable law, which would exceed the highest lawful rate, such amount that would be excessive interest under applicable usury laws shall be applied to the reduction of the principal amount owing in respect of any Loans, Notes, Bonds or any other Liabilities (including, without limitation, Letter(s) of Credit and Letter of Credit Obligations) and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal and any other amounts due hereunder, the excess shall be refunded to Mortgagor. All sums paid or agreed to be paid for the use, forbearance or detention of the principal under any Loans, Bonds or any other Liabilities (including, without limitation, Letter(s) of Credit) shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, prorated, allocated and spread from the date of this Mortgage until payment in full of the Indebtedness so that the actual rate of interest on account of such principal amounts is uniform throughout the term hereof. The terms and provisions of this Section 4.5 shall control and supersede every other provision of any Loan Document.

SECTION 4.6 Indemnification: Reimbursement. Mortgagor shall reimburse Mortgagee, upon demand, for all reasonable costs and expenses incurred by Mortgagee in connection with the administration and enforcement of this Mortgage, and shall indemnify and hold harmless Mortgagee, upon demand, from and against any and all losses, liability (including liabilities for penalties), actions, suits, proceedings, judgments, demands, costs and expenses (including, without limitation, reasonable attorneys' fees and the allocated costs of staff counsel) incurred by Mortgagee hereunder or in connection herewith, unless a court of competent jurisdiction shall determine such liability is properly

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2024-09-18 10:00 AM

# UNOFFICIAL COPY

due to the willful misconduct, gross negligence or bad faith of Mortgagee. In the event Mortgagor shall fail to perform any act or thing which it has covenanted to do hereunder or any warranty on the part of Mortgagor contained herein shall be breached, Mortgagee may (but shall not be under obligation to) do the same or cause it to be done or remedy any such breach, and may expend its funds for such purpose. Any and all amounts so expended by Mortgagee shall be repayable to it by Mortgagor upon demand therefor, with interest at the Default Rate. If any action or proceeding is commenced to which action or proceeding Mortgagee is made a party or in which it becomes necessary to defend or uphold the Lien of this Mortgage, Mortgagor shall, on demand, reimburse Mortgagee for all reasonable expenses (including, without limitation, reasonable attorneys fees and the allocated costs of staff counsel) incurred by Mortgagee in any such action or proceeding. In any action or proceeding to foreclose this Mortgage or to recover or collect the Indebtedness, the provisions of law relating to the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant. Mortgagor's obligations under this Section 4.6 shall survive the satisfaction of this Mortgage and the discharge of Mortgagor's other obligations hereunder. The provisions of this Section 4.6 shall not be construed in limitation of any other provision in any Loan Document.

SECTION 4.7 Choice of Law. The terms and provisions of this Mortgage and the enforcement thereof shall be governed by and construed in accordance with the laws of the state where the Premises are located.

SECTION 4.8 No Merger. The rights and estate created by this Mortgage shall not, under any circumstances, be held to have merged into any other estate or interest now owned or hereafter acquired by Mortgagee unless Mortgagee shall have consented to such merger in writing.

SECTION 4.9 Counterparts. This Mortgage may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original. All such counterparts shall together constitute but one and the same instrument.

SECTION 4.10 Changes in Writing. This Mortgage may not be modified, amended, discharged or waived in whole or in part except by an instrument in writing signed by (i) Mortgagor, to the extent any modification, amendment, discharge or waiver is sought to be enforced against Mortgagor, and (ii) the Mortgagee.

SECTION 4.11 Riders. Any and all riders attached hereto are incorporated in this Mortgage by this reference.

SECTION 4.12 Business Loans. Mortgagor certifies and agrees that the proceeds of the Note secured by this Mortgage will

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10/10/2014



# UNOFFICIAL COPY

be held for the purposes specified in Section 4 of the Illinois Interest Act (815 ILCS 205/1 et seq.), and that the principal obligation secured hereby constitutes a "business loan" within the definition and purview of that Section.

SECTION 4.13 Conflicts with the Loan Agreement. If this Agreement conflicts in any way with the terms of the Loan Agreement, the terms of the Loan Agreement control.

IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor as of the date first written above.

ALPHA BAKING CO., INC.,  
an Illinois corporation  
("Mortgagor")

By *Robert J. Quinn*  
Title: Treasurer

Property of Cook County Clerk's Office

96297949

HDS1595.2/April 11, 1996/NETWORK/jr IIIsi

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
                                  )     SS.:  
COUNTY OF COOK     )

On this 17 day of April, 1996, before me, the undersigned, a Notary Public in and for the State of Illinois, personally appeared Robert E. Cruice to me personally known, who, being by me duly sworn, did say that ~~he~~ he is the Treasurer of Alpha Baking Co., Inc., an Illinois corporation, that the instrument was signed and sealed on behalf of the corporation by authority of the Board of Directors; and that the foregoing officer acknowledged execution of the instrument to be the voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Judith A. Kara  
Notary Public

My term expires: 10/9/96

"OFFICIAL SEAL"  
Judith Ann Kara  
Notary Public, State of Illinois  
My Commission Expires: \_\_\_\_\_

PROPERTY OF COOK COUNTY CLERK'S OFFICE

96297949

UNOFFICIAL COPY

Property of Cook County Clerk's Office

100-10111-100

# UNOFFICIAL COPY

## EXHIBIT A

### Description of Leased Premises

PARCEL 1: Lot 11 (except the East 15 feet thereof) and all of Lot 12 in Block 2 in Patterson Sub. of the Southwest Quarter of the Northeast Quarter of the Northwest Quarter of Section 34, Town 40 North, Range 13, East of the Third Principal Meridian

PARCEL 2: Lots 13 to 18 inclusive in Block 2 in Patterson's Sub of the Southwest Quarter of the Northeast Quarter of the Northwest Quarter of Section 34, Township 40 North, Range 13, East of the Third Principal Meridian

PARCEL 3: Lots 19 through 30 inclusive in Block 2 in Patterson's Sub. of the Southwest Quarter of the Northeast Quarter of the Northwest Quarter of Section 34, Township 40 North, Range 13, East of the Third Principal Meridian

PARCEL 4: All of the vacated public alley lying South of and adjoining Lots 21 to 25 inclusive, and North of and adjoining Lots 26 to 30 inclusive in Block 2 in Patterson's Sub., aforesaid, as vacated by ordinance recorded April 1, 1954, as Document 15870594, in Cook County, Illinois

PARCEL 5: Lots 31, 32, 33, 34 and 35 in Block 2 in Patterson's Sub. of the Southwest Quarter of the Northeast Quarter of the Northwest Quarter of Section 34, Township 40 North, Range 13, East of the Third Principal Meridian, Cook County, Illinois

PARCEL 6: Lots 36 and 37 in Block 2 in Patterson's Sub. of the Southwest Quarter of the Northeast Quarter of the Northwest Quarter of Section 34, Township 40 North, Range 13, East of the Third Principal Meridian, Cook County, Illinois.

Lots 1 through 6 inclusive, the North 69 feet of the East 2 feet of Lot 7, and Lots 43 and 44 all in Block 2 in Patterson's subdivision of the Southwest 1/4, Section 34, Town 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(continued from previous page)

Lot 7, except the East 18 feet thereof, Lots 8, 9 and 10 the East 3 feet of Lot 39, Lots 40, 41 and 42, all in Block 2 in Patterson's subdivision of the Southwest 1/4, Section 34, Town 40 North, Range 13, East of the Third Principal Meridian.

Property is commonly known as: 4545 West Lyndale Ave., Chicago IL

Owner of Record: LaSalle National Bank, not personally, but solely as Trustee under Trust Agreement dated October 15, 1984 and known as Trust No. 109044 and LaSalle National Bank, not personally, but solely as Trustee under Trust Agreement dated October 15, 1984 and known as Trust No. 109028.

Tax Parcel Numbers: 13-34-112-013-0000 13-34-112-024-0000  
13-34-112-014-0000 13-34-112-025-0000  
13-34-112-015-0000 13-34-112-026-0000  
13-34-112-016-0000 13-34-112-029-0000  
13-34-112-019-0000 13-34-112-030-0000  
13-34-112-020-0000 13-34-112-031-0000  
13-34-112-021-0000 13-34-112-037-0000  
13-34-112-022-0000 13-34-112-038-0000  
13-34-112-023-0000 13-34-112-039-0000

UNOFFICIAL COPY

Property of Cook County Clerk's Office