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1999-08-10 14:44:28

Cook County Recorder 113.50



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THIS INSTRUMENT HAS
BEEN PREPARED BY:

Kutak Rock
Sixteenth Floor
3300 North Central Avenue
Phoenix, AZ 85012

THIS DOCUMENT IS
TO BE RETURNED TO:

~~FFCA Acquisition Corporation~~
~~17207 North Perimeter Drive~~
~~Scottsdale, AZ 85255~~

Tax Parcel Identification No. 29-25-410-028
177 Pl & Torrence Ave.
Lansing, IL 60438

When recorded mail to:
LandAmerica Financial Group, Inc.
attn: MARY GARCIA
3636 N. Central Avenue, Suite 850
Phoenix, AZ 85012
Escrow No. 99-16865



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

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of July 6, 1999 by OTG 3, L.L.C., a Delaware limited liability company ("Debtor"), whose address is 800 Roosevelt Road, Bldg. E - 2nd Floor, Glen Ellyn, Illinois 60137, to and for the benefit of FFCA ACQUISITION CORPORATION, a Delaware corporation ("Mortgagee"), whose address is 17207 North Perimeter Drive, Scottsdale, Arizona 85255.

PRELIMINARY STATEMENT:

The capitalized terms used in this Mortgage, if not elsewhere defined herein, have the meanings set forth in Article I. Debtor holds the fee simple interest in the Premises, subject to the Permitted Exceptions. Debtor is executing this Mortgage for the purpose of granting a lien, security interest and mortgage in and to the Mortgaged Property (as defined in the Granting Clauses below) as security for the payment of the Obligations. The Mortgaged Property shall be and remain subject to the lien of this Mortgage and shall constitute security for the Obligations so long as the Obligations shall remain outstanding or the lien of this Mortgage is otherwise released by Mortgagee.

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GRANTING CLAUSES:

Debtor, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby mortgage and warrant, create a security interest in, mortgage, grant, bargain, sell, assign, pledge, give, transfer, set over and convey unto Mortgagee and to its successors and assigns for the benefit and security of Mortgagee and its successors and assigns, all of Debtor's estate, right, title and interest in, to and under any and all of the following property (the "Mortgaged Property"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

Premises, Rents and Derivative Interests

The Premises; all rents, issues, profits, royalties, income and other benefits derived from the property comprising the Mortgaged Property (collectively, the "Rents"); all leases or subleases covering the Premises or any portion thereof now or hereafter existing or entered into, including the Permitted Lease (collectively, "Leases" and individually, a "Lease"), including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature; all options to purchase or lease the Premises or any portion thereof or interest therein, and any greater estate in the Premises; all interests, estate or other claims, both in law and in equity, with respect to the Premises; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights; all land lying within the right-of-way of any street, open or proposed, adjoining the Premises and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

Personal Property

All machinery, equipment, trade fixtures and furnishings which are owned by Debtor and now located at the Premises and any and all replacements of any such machinery, equipment, trade fixtures and furnishings (the "Personal Property");

Claims and Awards

All claims or demands with respect to the proceeds of insurance in effect with respect thereto, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

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

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

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

(i) Payment of indebtedness evidenced by the Note together with all extensions, renewals, amendments and modifications thereof;

(ii) Payment of indebtedness evidenced by the Additional Notes and the Other Notes, together with all extensions, renewals, amendments and modifications of any thereof;

(iii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants of Debtor contained in, any Loan Document, together with any other instrument given by Debtor to Mortgagee to evidence or further secure the payment and performance of any obligation secured hereby or thereby; and

(iv) Payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in, the Affiliated Entity Loan Documents.

This Mortgage is given for the purpose of securing: (a) loan advances which Mortgagee may make to or for Debtor pursuant and subject to the terms and provisions of the Loan Documents, (b) any future modifications, extensions and renewals of any Obligations, and (c) unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Mortgaged Property, together with interest thereon until paid at the rate provided for in Section 3.13 hereof, all as contemplated in this Mortgage. This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Mortgaged Property subsequent to the date of recording of this Mortgage, that until this Mortgage is released, any debt owed Mortgagee by any of the Debtor Entities, including advances made subsequent to the recording of this Mortgage, shall be secured with the priority afforded this Mortgage as recorded.

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

(x) the maximum principal amount of the Obligations secured by this Mortgage is \$195,000,000.00.

(y) in the event that the Loan becomes the subject of a Securitization, this Mortgage shall only secure indebtedness and obligations with respect to the Loan and any other loans between any of the Debtor Entities on the one hand and any of the Mortgagee Entities on the other hand which are part of the same Securitized Loan Pool as the Loan; and

(z) in the event that any loans between any of the Debtor Entities on the one hand and any of the Mortgagee Entities on the other hand (other than the Loan) become the subject of a Securitization, this Mortgage shall not secure any indebtedness and obligations relating to such loans unless the Loan is part of the same Securitized Loan Pool as such loans.

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

ARTICLE I

DEFINED TERMS

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

“*Action*” has the meaning set forth in Section 5.01(iv).

“*Additional Notes*” means, collectively, all promissory notes dated as of even date herewith (other than the Note) executed by Debtor and payable to Mortgagee and issued pursuant to the Loan Agreement.

“*Affiliate*” means any person or entity which directly or indirectly controls, is under common control with, or controlled by any other person or entity. For purposes of this definition “controls”, “under common control with” and “controlled by” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or otherwise.

“*Affiliated Entities*” means such of the following entities other than Debtor: OTG 1, L.L.C., a Delaware limited liability company, OTG 2, L.L.C., a Delaware limited liability company, OTG 3, L.L.C., a Delaware limited liability company, and OTG 4, L.L.C., a Delaware limited liability company.

“*Affiliated Entity Loan Agreements*” has the meaning set forth in the Loan Agreement.

“*Affiliated Entity Loan Documents*” has the meaning set forth in the Loan Agreement.

“*Applicable Regulations*” means all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders and approvals of each Governmental Authority having jurisdiction over the Mortgaged Property, including, without limitation, the Americans with Disabilities Act of 1990, codes, ordinances, requirements and standards, all requirements relating to all health, building, fire, safety and other codes, ordinances and requirements and all applicable standards of the National Board of Fire Underwriters and all policies or rules of common law, in each case, as amended, and any judicial or administrative interpretation thereof, including any judicial order, consent, decree or judgment applicable to Debtor or Lessee; provided, however, the term “Applicable Regulations” shall not include Environmental Laws.

“*Business Day*” means any day on which Mortgagee is open for business other than a Saturday, Sunday or a legal holiday, ending at 5:00 PM Phoenix, Arizona time.

“*Code*” means the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

“*Control Group*” has the meaning set forth in the Loan Agreement.

“*Date-Down Endorsements*” means endorsements issued to the Title Policy by Title Company dating-down the effective date of the Title Policy to the date of the applicable disbursement, which Date-Down Endorsements shall not take exception to any matter not excepted in the Title Policy (other than for then current taxes and assessments not yet due and payable and other Permitted Exceptions), including, without limitation, mechanics liens, and shall otherwise be in form and substance reasonably satisfactory to Mortgagee.

“*Debtor Entities*” means, collectively, Debtor and the Affiliated Entities.

“*Default Rate*” has the meaning set forth in the Note.

“*Disclosure Schedules*” has the meaning set forth in the Loan Agreement.

“*Environmental Condition*” means any condition with respect to soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air and any environmental medium comprising or surrounding the Premises, whether or not yet discovered, which is substantially likely to or does result in any damage, loss, cost, expense, claim, demand, order or liability to or against Debtor, Lessee or Mortgagee by any third party (including, without limitation, any Governmental Authority), including, without limitation, any condition resulting from the operation of business at the Premises and/or the operation of the business of any other property owner or operator in the vicinity of the Premises and/or any activity or operation formerly conducted by any person or entity on or off the Premises.

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

“*Environmental Insurer*” has the meaning set forth in the Loan Agreement.

“*Environmental Laws*” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, orders, injunctions and decrees of Governmental Authorities and common law, relating to Hazardous Materials, Regulated Substances or USTs and/or the protection of human health or the environment by reason of a Release or a Threatened Release of Hazardous Materials or Regulated Substances or relating to liability for or costs of Remediation or prevention of Releases. “*Environmental Laws*” includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations, rulings, orders or decrees promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations, standards, orders, injunctions and decrees of Governmental Authorities: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to USTs and 40 CFR CH1 § 280.21); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National

Environmental Policy Act; and the River and Harbors Appropriation Act. "Environmental Laws" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, orders, injunctions and decrees of Governmental Authorities and common law: conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of Releases or other environmental condition of the Mortgaged Property to any Governmental Authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements relating to Hazardous Materials, Regulated Substances or USTs in connection with permits or other authorizations required by Governmental Authorities; relating to the handling and disposal of Hazardous Materials or Regulated Substances; relating to nuisance, trespass or other causes of action related to Hazardous Materials; and relating to wrongful death, personal injury, or property or other damage in connection with the physical condition or use of the Mortgaged Property by reason of the presence of Hazardous Materials, Regulated Substances or USTs in, on, under or above the Mortgaged Property.

"*Environmental Liens*" means any lien or encumbrance imposed pursuant to any Environmental Law.

"*Event of Default*" has the meaning set forth in Section 5.01.

"*Franchise Finance*" means Franchise Finance Corporation of America, a Delaware corporation, and its successors.

"*GAAP*" has the meaning set forth in the Loan Agreement.

"*Governmental Authority*" means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi governmental authority of the United States, the state in which the Premises is located or any political subdivision thereof.

"*Hazardous Materials*" means (i) any toxic substance or hazardous waste, substance, solid waste or related material, or any pollutant or contaminant; (ii) radon gas, asbestos in any form which is or could reasonably become friable, urea formaldehyde foam insulation, transformers or other equipment which contains dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent, or any petroleum product; (iii) any substance, gas, material or chemical which is or may be defined as or included in the definition of "hazardous substances," "toxic substances," "hazardous materials," "hazardous wastes" or words of similar import under any Environmental Laws; and (iv) any other chemical, material, gas or substance the exposure to or release of which is or may be prohibited, limited or regulated by any Governmental Authority that asserts or may assert jurisdiction over the Mortgaged Property or the operations or activity at the Mortgaged Property, or any chemical, material, gas or substance that does or is substantially likely to pose a hazard to the health and/or safety of the occupants of the Mortgaged Property or the owners and/or occupants of property adjacent to or surrounding the Mortgaged Property.

"*Indemnified Parties*" means Mortgagee, Environmental Insurer and any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or

will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by this Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan (including, but not limited to, investors or prospective investors in any Securitization, Participation or Transfer, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, agents, representatives, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Mortgagee's assets and business).

"Lease" and "Leases" has the meaning set forth in the Granting Clause.

"Lessee" means OTG, Inc., a Delaware corporation.

"Loan" means the loan made by the Mortgagee to Debtor which is evidenced by the Note and secured by this Mortgage.

"Loan Agreement" means the Loan Agreement dated as of even date herewith between Debtor and Mortgagee, as the same may be amended from time to time.

"Loan Documents" means, collectively, this Mortgage, the Note, the Loan Agreement, the Environmental Indemnity Agreement, the UCC-1 Financing Statements and the Additional Notes, and such other notes, deeds of trust or mortgages, guaranties and other documents or instruments contemplated thereby between Debtor and Mortgagee, all as amended and supplemented.

"Losses" means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, reasonable attorneys' fees, court costs and other costs of defense). "Losses" specifically include costs of Remediation (if performed in accordance with the terms of this Mortgage), reasonable and actual engineers' fees, environmental consultants' fees, and costs of investigation including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas.

"Material Adverse Effect" means a material adverse effect on (i) the Mortgaged Property, including, without limitation, the operation of the business at the Mortgaged Property as a Permitted Concept and/or the value of the Mortgaged Property or (ii) Debtor's ability to perform its obligations under this Mortgage and the other Loan Documents.

"Member" means any member of Debtor other than a managing member.

"Mortgagee Entities" means, collectively, Mortgagee, Franchise Finance and any Affiliate of Mortgagee or Franchise Finance.

“*Mortgaged Property*” has the meaning set forth in the Granting Clause.

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

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

“*Note*” means the promissory note dated as of even date herewith, with a maturity date of August 1, 2019, in the amount of \$200,000.00 executed by Debtor and payable to Mortgagee which is secured by this Mortgage and any amendments, extensions or modifications thereof, including, without limitation, any amendment and restatement of the Note as a result of a prepayment contemplated by Section 10 of the Loan Agreement.

“*Obligations*” has the meaning set forth immediately after the Granting Clauses of this Mortgage.

“*Other Notes*” means, collectively, all promissory notes dated as of even date herewith with a maturity date of August 1, 2019 (other than the Note) executed by any Affiliated Entity and payable to Mortgagee and issued pursuant to any of the Affiliated Entity Loan Agreements.

“*Partial Taking*” has the meaning set forth in Section 4.01(b)(ii).

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

“*Permitted Amount*” has the meaning set forth in the Loan Agreement.

“*Permitted Concept*” has the meaning set forth in the Loan Agreement.

“*Permitted Exceptions*” has the meaning set forth in the Loan Agreement.

“*Permitted Lease*” means that certain Lease, dated as of the date of this Mortgage, between Debtor, as landlord, and Lessee, as tenant, for the lease of the Premises, as the same may be amended from time to time.

“*Permitted Sublease*” means, to the extent disclosed in the Disclosure Schedules, those subleases now in existence between Lessee, as landlord, and the applicable third-parties, as tenants, for the sublease of a portion of the Premises, as well as any other subleases that do not individually or in the aggregate materially interfere with the use of the Premises as a Permitted Concept.

“*Person or Persons*” means any individual, corporation, partnership, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

“*Personal Property*” has the meaning set forth in the Granting Clause.

“*Premises*” means the parcel or parcels of real estate legally described in Exhibit A attached hereto, all rights, privileges and appurtenances associated therewith and all buildings, fixtures and other improvements affixed to the real estate; provided, however, the term “Premises” does not include (i) modular car washes located on such real estate, and (ii) trade fixtures located on such real estate.

“*Rating Agencies*” means the rating agencies rating the securities issued in connection with one or more Securitizations of the Loan Documents

“*Regulated Substances*” means “petroleum”, “petroleum-based substances” or any similar terms described or defined in any of the Environmental Laws and any applicable federal, state, county or local laws applicable to or regulating USTs

“*Related Leases*” has the meaning set forth in the Loan Agreement.

“*Release*” means any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials or Regulated Substances.

“*Remediation*” means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Material, Regulated Substance or UST, any actions to prevent, cure or mitigate any Release, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or any evaluation relating to any Hazardous Materials, Regulated Substances or USTs.

“*Rents*” has the meaning set forth in the Granting Clause.

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

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

“*Securitized Loan Pool*” has the meaning set forth in the Loan Agreement.

“*Securitized Notes*” has the meaning set forth in the Loan Agreement.

“*Securitized Premises*” has the meaning set forth in the Loan Agreement.

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

“*Subject Transfer*” has the meaning set forth in the Loan Agreement.

“*Substitute Premises*” has the meaning set forth in the Loan Agreement.

“*Taking*” has the meaning set forth in Section 4.01(b).

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

“*Threatened Release*” means a substantial likelihood of a Release which requires action to prevent or mitigate damage to the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air or any other environmental medium comprising or surrounding the Premises which may result from such Release; provided, however, the term “Threatened Releases” shall not include the potential for Releases that may occur in the ordinary course of business as a result of customers of the Premises using gasoline pumps.

“*Title Company*” has the meaning set forth in the Loan Agreement.

“*Title Policy*” means the title insurance policy issued by Title Company to Mortgagee with respect to the Premises in connection with the closing of the Loan.

“*Total Taking*” has the meaning set forth in Section 4.01(b)(ii).

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

“*UCC*” has the meaning set forth in Section 5.02(iii).

“*UCC-1 Financing Statements*” means the UCC-1 Financing Statements executed by Debtor pursuant to the Loan Agreement.

“*USTs*” means any one or combination of tanks and associated product piping systems used in connection with the storage, dispensing and general use of Regulated Substances.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF DEBTOR

Debtor hereby represents and warrants to Mortgagee and, with respect to Section 2.03, Environmental Insurer as follows (which representations and warranties shall survive the execution and delivery of this Mortgage):

Section 2.01. **Title.** (a) Debtor has good and insurable fee simple title to the Premises and title to the Personal Property and the remainder of the Mortgaged Property, free and clear of all liens, encumbrances, charges and other exceptions to title except the Permitted Exceptions. Debtor has full power and lawful authority to grant the Mortgaged Property to Mortgagee in the manner and form herein done or intended and forever warrant and defend Debtor's title in the Mortgaged Property against the claims of all persons, subject to the Permitted Exceptions. Upon due execution and delivery, and upon proper recording, this Mortgage will constitute a valid first lien upon and security interest in the Mortgaged Property.

(b) Debtor has delivered to Mortgagee a true, correct and complete copy of the Permitted Lease. The Permitted Lease has not been modified, amended, supplemented or otherwise revised. The Permitted Lease is the only lease or agreement between Debtor and Lessee with respect to the Mortgaged Property. The Premises is not subject to any leases or subleases other than the Permitted Lease and the Permitted Subleases. The Permitted Lease is in full force and effect and constitutes the legal, valid and binding obligations of Debtor and Lessee, enforceable against Debtor and Lessee in accordance with its terms. Debtor has not assigned, transferred, mortgaged, pledged or hypothecated the Permitted Lease or any interest therein except as set forth herein. No event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default by Debtor or Lessee under the Permitted Lease.

(c) Debtor has delivered to Mortgagee a true, correct and complete copy of each Permitted Sublease which is in writing and listed in the Disclosure Schedules. No event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default by Lessee or the sublessees identified in the Permitted Subleases under the Permitted Subleases which could reasonably be likely to give rise to a Material Adverse Effect.

Section 2.02. **Organization and Status of Debtor.** (a) Debtor is not a "foreign corporation", "foreign partnership", "foreign limited liability company", "foreign trust" or "foreign estate", as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder. Debtor's United States tax identification number is correctly set forth on the signature page of this Mortgage. The person(s) who have executed this Mortgage on behalf of Debtor are duly authorized to do so.

(b) This Mortgage constitutes the legal, valid and binding obligation of Debtor, enforceable against Debtor in accordance with its terms.

ARTICLE III

COVENANTS OF DEBTOR

Debtor hereby covenants to Mortgagee and, with respect to Sections 3.07 agrees as follows until the Obligations are satisfied in full or otherwise released:

Section 3.01. **Payment of the Note.** Debtor shall punctually pay, or cause to be paid, the principal, interest and all other sums to become due in respect of the Note and the other Loan Documents in accordance with the Note and the other Loan Documents.

Section 3.02. **Title.** Debtor shall maintain good and insurable fee simple title to the Premises and title to the Personal Property (subject to dispositions of Personal Property in the ordinary course of business provided such Personal Property is promptly replaced with comparable Personal Property unless Debtor in its reasonable judgment deems such Personal Property is not reasonably necessary for the continued operation of the Premises as a Permitted Concept) and the remainder of the Mortgaged Property, free and clear of all liens, encumbrances, charges and other exceptions to title, except the Permitted Exceptions. Upon due execution and delivery, and upon proper recording, this Mortgage shall constitute a valid first lien upon and security interest in the Mortgaged Property.

Section 3.03. **Organization and Status of Debtor.** Debtor shall be validly existing and in good standing under the laws of its state of formation and qualified as a foreign limited liability company to do business in any jurisdiction where such qualification is required, except where the failure to so qualify could not reasonably be expected to result in a Material Adverse Effect.

Section 3.04. **Licenses and Permits.** Debtor or Lessee shall maintain all required licenses and permits, both governmental and private, to use and operate the Mortgaged Property as a Permitted Concept, except where the failure to maintain such licenses and permits does not result in the cessation of business as a Permitted Concept at the Mortgaged Property.

Section 3.05. **Recording.** Debtor shall, upon the execution and delivery hereof and thereafter from time to time, take such actions as Mortgagee may reasonably request to cause this Mortgage, each supplement and amendment to such instrument and financing statements with respect thereto and each instrument of further assurance (collectively, the "Recordable Documents") to be filed, registered and recorded as may be required by law to publish notice and maintain the first priority security interest hereof upon the Mortgaged Property and to publish notice of and protect the validity of the Recordable Documents. Debtor shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments (including financing statements, continuation statements and similar statements with respect to any of said documents) reasonably requested by Mortgagee for carrying out the intention of, or facilitating the performance of, this Mortgage. If Debtor shall fail to comply with this Section after written notice from Mortgagee and fail to cure the default described in such notice within thirty days of receiving such notice, Mortgagee shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Debtor to comply therewith (including the execution, delivery and filing of such financing statements and other instruments), which appointment is coupled with an interest, but this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default. To the extent permitted by law, Debtor shall pay or cause to be paid recording taxes and fees incident thereto and all expenses, taxes and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgment of the Recordable Documents, any instruments of further assurance and the Note.

Section 3.06. *Use; Maintenance and Repair; Leases.* (a) The Mortgaged Property shall be used solely for the operation of a Permitted Concept and for no other purpose. Except as set forth below, and except during periods when the Premises is untenable by reason of fire or other casualty or condemnation and except for temporary and infrequent closures not exceeding three consecutive days due to circumstances beyond Debtor's reasonable control (provided, however, during all such periods while the Premises is untenable, Debtor shall comply with the terms and conditions of Section 4.01 of this Mortgage), Debtor shall at all times while this Mortgage is in effect cause Lessee to occupy the Mortgaged Property and diligently operate its business during normal business hours on the Mortgaged Property. In addition to periods when the Premises is untenable by reason of fire or other casualty or condemnation (provided, however, during all such periods while the Premises is untenable, Debtor shall comply with the terms and conditions of Section 4.01 of this Mortgage), Lessee may cease diligent operation of business at the Mortgaged Property for a period not to exceed 120 days and may do so only once within any five-year period while this Mortgage is in effect. If Lessee does discontinue operation as permitted by this Section, Debtor shall (i) give written notice to Mortgagee within 10 days after Lessee elects to cease operation, (ii) provide adequate protection and maintenance of the Mortgaged Property during any period of vacancy and (iii) pay all costs necessary to restore the Mortgaged Property to its condition on the day operation of the business ceased at such time as the Mortgaged Property is reopened for Lessee's business operations or other substituted use. Notwithstanding anything herein to the contrary, Debtor shall pay monthly the principal and interest due under the Note during any period in which Lessee discontinues operation.

Neither Debtor nor Lessee shall, by itself or through any lease or other type of transfer, convert the Premises to a use that is not a Permitted Concept while this Mortgage is in effect without Mortgagee's consent, which consent shall not be unreasonably withheld or delayed. In determining whether to grant its consent, without being deemed to be unreasonable, Mortgagee may consider whether the converted use will increase Mortgagee's risks or decrease the value of the Mortgaged Property.

(b) Subject to the terms and conditions of this Mortgage, Debtor shall, or shall cause Lessee to, (i) maintain the Mortgaged Property in good condition and repair, subject to reasonable and ordinary wear and tear, free from actual or constructive waste, (ii) operate and maintain the Mortgaged Property in accordance with those standards adopted by Lessee from time to time on a system-wide basis for Permitted Concepts, and (iii) pay all operating costs of the Premises in the ordinary course of business.

(c) Neither Debtor nor Lessee shall (i) modify or amend the terms of the Permitted Lease without Mortgagee's prior written consent; (ii) grant any consents under the Permitted Lease without Mortgagee's prior written consent, except as otherwise contemplated by this Mortgage, including, without limitation, the terms and conditions of Section 3.14 of this Mortgage; (iii) terminate, cancel, surrender, or accept the surrender of, the Permitted Lease, or waive or release any person from the observance or performance of any obligation to be performed under the terms of the Permitted Lease or liability on account of any warranty given thereunder, without Mortgagee's prior written consent; or (v) assign, transfer, mortgage, pledge or hypothecate the Permitted Lease or any interest therein to any party other than Mortgagee and any UCC Financing Statements executed by Lessee for the benefit of Debtor with respect to the

Permitted Lease, without Mortgagee's prior written consent. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect. Unless Mortgagee otherwise consents or elects, Debtor's title to the Mortgaged Property and the leasehold interest in the Mortgaged Property created by the Permitted Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Debtor, Mortgagee or any other person by purchase, operation of law, foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to this Mortgage or otherwise.

(d) Neither Debtor nor Lessee shall (i) enter into any Leases without Mortgagee's prior written consent, other than the Permitted Lease, the Permitted Subleases and any subleases which are subordinate to this Mortgage; (ii) modify or amend the terms of any Lease without Mortgagee's prior written consent; (iii) grant any consents under any Lease, without Mortgagee's prior written consent and otherwise complying with the terms and conditions of this Mortgage, including, without limitation, the terms and conditions of Section 3.14 of this Mortgage, (iv) terminate, cancel, surrender, or accept the surrender of, any Lease, or waive or release any person from the observance or performance of any obligation to be performed under the terms of any Lease or liability on account of any warranty given thereunder, without Mortgagee's prior written consent; or (v) assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Mortgagee, without Mortgagee's prior written consent. Notwithstanding the foregoing, Debtor shall not be required to obtain Mortgagee's consent to any of the matters described in the preceding items (i) through (iv) if the subject of such matters involves Permitted Subleases, subleases or other Leases which are expressly subordinated to this Mortgage and/or concerns modifications, amendments or the granting of consents, terminations, cancellations, surrenders or waivers or releases which Debtor or Lessee, in its reasonable judgment, do not deem material and are undertaken in the ordinary course of business. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect. Unless Mortgagee otherwise consents or elects, Debtor's title to the Mortgaged Property and the leasehold interest in the Mortgaged Property created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Debtor, Mortgagee or any other person by purchase, operation of law, foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to this Mortgage or otherwise.

(e) Debtor shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Debtor contained in any Lease; (ii) give prompt notice to Mortgagee of any claim or event of default under any Lease given to or by Debtor, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Debtor, enforce the performance and observance of each and every material covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Mortgagee; and (iv) appear in and defend any action challenging the validity, enforceability or priority of the lien created hereby or the validity or enforceability of any Lease.

Section 3.07. **Compliance With Laws.** (a) *Applicable Regulations.* Debtor's and Lessee's use and occupation of the Mortgaged Property, and the condition thereof, including, without limitation, any Restoration, shall, at Debtor's and/or Lessee's sole cost and expense,

comply fully with all Applicable Regulations now or hereafter in effect, except where the failure to comply could not reasonably be expected to have a Material Adverse Effect.

(b) *Covenants*. Notwithstanding anything contained herein to the contrary, no covenants, terms or conditions contained in Article III of this Mortgage, other than the covenants, terms or conditions contained in Sections 3.07(b) through (f), shall relate to, cover, or otherwise be deemed to encompass any matter pertaining to any Environmental Condition, Hazardous Materials, Environmental Law or Environmental Lien.

Debtor covenants to Mortgagee and Environmental Insurer from and after the execution and delivery of this Mortgage that:

(i) All uses and operations on or of the Premises, whether by Debtor, Lessee or any other person or entity, shall be in compliance with all Environmental Laws and permits issued pursuant thereto, except where the failure to be in compliance therewith would not reasonably be likely to give rise to a Material Adverse Effect.

(ii) Upon any Release from any USTs or of any Hazardous Materials or Regulated Substances, Debtor shall immediately cause a Remediation of such situation in accordance with all Environmental Laws, except where the failure to do so would not reasonably be likely to have a Material Adverse Effect.

(iii) Debtor shall keep the Premises, or cause the Premises to be kept, free and clear of all Environmental Liens, whether due to any act or omission of Debtor, Lessee or any other person or entity.

(iv) Debtor shall comply with any nonappealable directive or order from any Governmental Authority directly applicable to the Premises and issued pursuant to Environmental Laws, except where the failure to do so would not reasonably be likely to have a Material Adverse Effect.

(v) Debtor shall immediately notify Mortgagee in writing upon Debtor obtaining actual knowledge of:

(1) any Releases from the Premises which would reasonably be likely to require Remediation under Environmental Law, except where the failure to do so would not reasonably be likely to have a Material Adverse Effect;

(2) any actual Environmental Lien related to the Premises; and

(3) any required Remediation of the Premises required under any Environmental Law which would reasonably be likely to give rise to a Material Adverse Effect.

(vi) Debtor shall have the Premises inspected as may be required by any Environmental Laws for seepage, spillage and other environmental concerns, except where the failure to perform any such inspections would not reasonably be likely to give rise to a Material Adverse Effect. All inspections performed on the Premises shall be in

compliance with all Environmental Laws, except where the failure to be in compliance would not reasonably be likely to give rise to a Material Adverse Effect.

(vii) Debtor shall maintain and monitor the USTs in accordance with all Environmental Laws, except where the failure to maintain or monitor any USTs shall not reasonably be likely to give rise to a Material Adverse Effect.

(viii) Debtor shall use its reasonable efforts to provide Mortgagee copies of all inspections performed on the Premises relating to the Environmental Conditions of the Premises which disclose any items which would reasonably be likely to give rise to a Material Adverse Effect. All costs and expenses associated with the inspection and preparation of results, shall be paid by Debtor.

(ix) Debtor shall, at its sole cost and expense, comply with all reasonable written requests of Mortgagee to comply with Debtor's covenants contained in the preceding subsections (i) through (viii) hereof. In the event that Debtor fails to comply with any such covenants after receiving written demand from Mortgagee and such failure continues for thirty (30) days following such written demand, then Mortgagee shall be permitted to take such actions in its reasonable discretion to remedy such situation and all reasonable actual costs and expenses incurred in connection therewith shall be paid by Debtor.

(x) Upon the occurrence and during the continuance of an Event of Default, Debtor shall, at its sole cost and expense:

(i) perform any environmental site assessment or other investigation of Environmental Conditions in connection with the Premises as may be reasonably requested by Mortgagee (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Mortgagee and Environmental Insurer the reports and other results thereof, and Mortgagee, Environmental Insurer and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; and

(ii) take any other reasonable action deemed necessary by Mortgagee or any Governmental Authority for protection of human health or the environment with respect to the Premises.

Notwithstanding the foregoing provisions of this subsection (b), an Event of Default shall not be deemed to have occurred under this Mortgage or any of the other Loan Documents as a result of Debtor's failure to comply with any of the foregoing covenants (i) through (viii) so long as Debtor undertakes and conducts all Remediations required by any Governmental Authorities at the Premises in substantial compliance with Environmental Laws.

(c) *Actions by Mortgagee.* Mortgagee, Environmental Insurer and any other agent of Mortgagee shall have the right, but not the obligation, to enter upon the Premises at all reasonable times and upon reasonable prior written notice to Debtor (including without limitation in connection with any Securitization, Participation or Transfer contemplated by the Loan Agreement or in

connection with the exercise of any remedies set forth in this Mortgage or the other Loan Documents) to assess in any noninvasive manner (including, without limitation, without any digging or effacement of soil) any and all aspects of the Environmental Condition of the Premises and its use, including but not limited to conducting any noninvasive environmental assessment or audit; provided, however, subject to subsection (f) hereof, upon the occurrence and during the continuance of an Event of Default, Mortgagee may perform invasive testing, including, taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Debtor shall cooperate with and provide access to Mortgagee, Environmental Insurer and any agent of Mortgagee in connection with the foregoing. Mortgagee shall be responsible for the cost of any assessment or investigation undertaken pursuant to this subsection (c) unless, at the time of any such assessment or investigation, subject to subsection (f) hereof, an Event of Default has occurred and is continuing.

(d) *Indemnification.* Excluding Losses suffered by an Indemnified Party arising out of such Indemnified Party's gross negligence or willful misconduct, Debtor shall, at its sole cost and expense, protect, defend, indemnify and hold harmless each of the Indemnified Parties for, from and against any and all Losses imposed upon or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following: (i) any presence of any Hazardous Materials, Regulated Substances or USTs in, on, above, or under the Premises; (ii) any past, present or threatened Release in, on, above, under or from the Premises; (iii) any activity by Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any tenant or other user of any of the Premises in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Premises of any Hazardous Materials, Regulated Substance or USTs at any time located in, under, on or above the Premises; (iv) any activity by Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any tenant or other user of the Premises in connection with any actual or proposed Remediation of any Hazardous Materials, Regulated Substances or USTs at any time located in, under, on or above the Premises, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (v) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Premises or operations thereon, including but not limited to any failure by Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any tenant or other user of the Premises to comply with any order of any Governmental Authority in connection with any Environmental Laws; (vi) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Premises; (vii) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in Section 3.07(b) of this Mortgage; (viii) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Premises, including but not limited to costs to investigate and assess such injury, destruction or loss; (ix) any acts of Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any tenant or other user of the Premises in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Materials, Regulated Substances or USTs owned or possessed by Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any tenant or other user, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials, Regulated Substances or USTs; (x) any acts of Debtor, Lessee, any person or entity affiliated with

Debtor or Lessee or any tenant or other user of the Premises, in accepting any Hazardous Materials, Regulated Substances or USTs for transport to disposal or treatment facilities, incineration vessels or sites selected by Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any tenant or other user of the Premises, from which there is a Release, or a Threatened Release of any Hazardous Materials, Regulated Substance or USTs which causes the incurrence of costs for Remediation; (xi) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Premises; and (xii) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to this Mortgage.

(e) *Independent Obligations; Survival of Agreement; Conflict.*

(i) The obligations of Debtor and the rights and remedies of Mortgagee set forth in this Mortgage are independent from those of Debtor pursuant to the Loan Agreement, the Environmental Indemnity Agreement, the Notes and the other Loan Documents.

(ii) Only the obligations of Debtor set forth in subsection (d) of this Section 3.07 shall survive the repayment of the Loan, the termination, expiration and/or release of the Loan Agreement, the Note, this Mortgage and the other Loan Documents and/or the judicial or nonjudicial foreclosure of the Mortgage by Mortgagee or the delivery of a deed-in-lieu of foreclosure by Debtor to Mortgagee.

(f) *Substitution of Premises.* Notwithstanding the occurrence of a breach or default by Debtor under this Section 3.07(b) through (e), such breach or default shall not be deemed an "Event of Default" under the Loan Agreement or this Mortgage if Debtor shall complete a substitution of a Substitute Premises for the Premises in accordance with the terms and conditions of Section 13 of the Loan Agreement.

(g) *Responsible Property Transfer Act.* If the disclosure requirements of the Illinois Responsible Property Transfer Act ("RPTA") apply to the loan transaction contemplated by this Mortgage, Debtor agrees to comply with RPTA and to timely execute and deliver to Mortgagee such disclosure documents as may be required by RPTA. Debtor agrees to place of record any disclosure statement furnished to Mortgagee pursuant to this paragraph and also file simultaneously therewith a true and correct copy of said disclosure statement with the Illinois Environmental Protection Agency.

Section 3.08. *Alterations and Improvements.* (a) Debtor may make any improvements or alterations to the Mortgaged Property which cost up to \$300,000.00 in the aggregate per project to complete without Mortgagee's prior written consent, subject to the provisions of subsection (b) below. Debtor shall not make any improvements or alterations to the Mortgaged Property which cost in excess of \$300,000.00 in the aggregate per project, without Mortgagee's prior written consent, which consent shall not be unreasonably withheld or conditioned. Subject to the provisions of subsection (b) below, Mortgagee's consent shall not be required for Debtor to undertake alterations to the Mortgaged Property which cost in excess of \$300,000.00 in the aggregate per project to complete provided Debtor provides prior notice to Mortgagee of such

intended improvements or alterations, such improvements or alterations will not result in a material adverse effect on the use of the Premises as a Permitted Concept and/or on the value or marketability of the Premises, and promptly following the completion of such improvements or alterations Debtor causes Title Company to issue Date-Down Endorsements.

(b) Notwithstanding the foregoing, if any improvements or alterations to the Mortgaged Property effect the foundation or "footprint" of the building, prior to undertaking such improvements or alterations Debtor shall provide prior notice to Mortgagee of such intended improvements or alterations and upon completion of such improvements or alterations Debtor shall provide Mortgagee with a then current as-built survey of the Mortgaged Property depicting the location of the improvements or alterations to the foundation or "footprint" and providing evidence that such improvements or alterations do not encroach upon any easements or setback lines applicable to the Mortgaged Property substantially different than encroachments of such easements or setback lines which existed as of the date of this Mortgage.

If Mortgagee's consent is required hereunder and Mortgagee consents to the making of any such alterations, the same shall be made by Debtor at Debtor's sole expense by a licensed contractor and according to plans and specifications approved by Mortgagee and subject to such other conditions as Mortgagee shall require. Any work at any time commenced by Debtor on the Mortgaged Property shall be prosecuted diligently to completion, shall be of good workmanship and materials and shall comply fully with all the terms of this Mortgage.

Section 3.09. *After-Acquired Property.* All right, title and interest of Debtor in and to all buildings, fixtures, and improvements which constitute real property or fixtures, all alterations, substitutions, restorations and replacements thereof, and all additions thereto which constitute real property or fixtures appurtenant to the Premises, and all replacements of the machinery, equipment, trade fixtures and furnishings comprising Personal Property, hereafter acquired by Debtor, immediately upon such acquisition and without any further granting by Debtor, shall become part of the Mortgaged Property and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by Debtor and specifically described in the Granting Clauses hereof. Debtor shall execute and deliver to Mortgagee any further assurances, mortgages, grants, conveyances or assignments thereof as the Mortgagee may reasonably require to subject the same to the lien hereof.

Section 3.10. *Taxes.* (a) Debtor shall do or cause to be done everything necessary to preserve the lien hereof without expense to Mortgagee, including, without limitation, paying and discharging or causing to be paid and discharged, whether or not payable directly by Debtor or subject to withholding at the source, (i) all taxes, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general, special, ordinary or extraordinary, and all charges for utility or communications services, which may at any time be assessed, levied or imposed upon Debtor, Lessee, the Mortgaged Property, this Mortgage, the Obligations or the Rents or which may arise in respect of the occupancy, use, possession or operation thereof, (ii) all income, excess profits, sales, gross receipts and other taxes, duties or imposts, whether similar or not in nature, assessed, levied or imposed by any Governmental Authority on Debtor, Lessee, the Mortgaged Property or the Rents, (iii) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a lien on the Mortgaged

Property, or on the Rents; unless in each case Debtor shall contest the amount or validity thereof in accordance with subsection (b).

(b) Debtor may, at its own expense, contest or cause to be contested (in the case of any item involving more than \$50,000.00, after prior written notice to Mortgagee), in good faith and with due diligence, the amount or validity or application, in whole or in part, of any item specified in subsection (a) or lien therefor, provided that (i) such proceeding shall suspend the collection thereof from the Mortgaged Property or any interest therein, (ii) neither the Mortgaged Property nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (iii) no Event of Default has occurred and is continuing, and (v) Debtor shall have furnished the security as may be required in the proceeding or as may be required by Mortgagee to insure payment of any contested taxes.

Section 5.1. **Insurance.** (a) Debtor shall maintain, or cause Lessee to maintain, with respect to the Mortgaged Property, at its or Lessee's sole expense, the following types and amounts of insurance (which may be included under a blanket insurance policy if all the other terms hereof are satisfied), in addition to such other insurance as Mortgagee may reasonably require from time to time which is reasonably obtainable by Debtor and the cost of which will not materially increase the premiums payable by Debtor for the insurance otherwise required to be maintained by Debtor pursuant to this Mortgage:

(i) Insurance against loss, damage or destruction by fire and other casualty, including theft, vandalism and malicious mischief, flood (if the Premises is in a location designated by the Federal Emergency Management Administration as a Special Flood Hazard Area), earthquake (if the Premises is in an area in which commercial lenders customarily require earthquake insurance), boiler explosion (if there is any boiler upon the Premises), plate glass breakage, sprinkler damage (if the Premises have a sprinkler system), all matters covered by a standard extended coverage endorsement, special coverage endorsement commonly known as an "all risk" endorsement and such other risks as Mortgagee may reasonably require (provided insurance against such other risks is reasonably obtainable by Debtor and the cost of which will not materially increase the premiums payable by Debtor for the insurance otherwise required to be maintained by Debtor pursuant to this Mortgage), insuring the Mortgaged Property for not less than 100% of their full insurable replacement cost; provided, however, the aggregate amount of insurance coverage which Debtor and the Affiliated Entities are required to maintain while the loans evidenced by the Securitized Notes are outstanding shall be equal to 50%, or at Debtor's election, a percentage in excess of 50%, of the then outstanding principal balance of such Securitized Notes (the "Coverage Limitation").

(ii) Comprehensive general liability and property damage insurance, including a products liability clause, covering Mortgagee, Franchise Finance, and Debtor against bodily injury liability, property damage liability and automobile bodily injury and property damage liability, including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Mortgaged Property or (if applicable) adjoining ways, streets or sidewalks and, if applicable, insurance covering Mortgagee and Franchise Finance, against liability arising from the sale of liquor, beer or wine on the Premises. Such insurance policy or policies shall contain a broad form contractual liability endorsement

under which the insurer agrees to insure Debtor's obligations under Section 6.15 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of either Debtor, Mortgagee or Franchise Finance because of the negligence or other acts of the other, shall be in amounts of not less than \$1,000,000.00 per injury and occurrence with respect to any insured liability, whether for personal injury or property damage, or such higher limits as Mortgagee may reasonably require from time to time, and shall be of form and substance satisfactory to Mortgagee.

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

(b) All insurance policies shall:

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

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

(iii) Contain a standard without contribution mortgage clause endorsement in favor of Mortgagee and Franchise Finance and any other lender designated by Mortgagee;

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

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

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

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

It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Debtor for its acts or omissions as provided in this Mortgage. All insurance policies (with the exception of worker's compensation insurance to the extent not available under statutory law) shall designate Mortgagee and Franchise Finance as additional insureds as their interests may appear and shall be payable as set forth in Article IV

hereof. All such policies shall be written as primary policies, with deductibles not to exceed \$250,000.00, or such higher amount as Mortgagee may reasonably approve, which approval shall not be unreasonably withheld or delayed. Any other policies, including any policy now or hereafter carried by Mortgagee or Franchise Finance, shall serve as excess coverage. Debtor shall procure policies for all insurance for periods of not less than one year and shall provide to Mortgagee certificates of insurance or, upon Mortgagee's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Mortgage is in effect at all times.

Section 3.12. **Impound Account.** After the occurrence of an Event of Default under this Mortgage or any other Loan Document as a result of a failure to pay taxes and/or assessments applicable to the Mortgaged Property (the "Impound Obligations") as required by this Mortgage, Mortgagee may require Debtor to pay to Mortgagee sums which will provide an impound account (which shall not be deemed a trust fund) for paying up to the next one year of Impound Obligations which were the basis of such Event of Default. Upon such requirement, Mortgagee will estimate the amounts needed for such purposes and will notify Debtor to pay the same to Mortgagee in equal monthly installments, as nearly as practicable, in addition to all other sums due under this Mortgage. Should additional funds be required at any time, Debtor shall pay the same to Mortgagee within 10 days of demand. If requested by Mortgagee, Debtor shall advise Mortgagee of all taxes and insurance bills applicable to the Mortgaged Property which are due. Mortgagee may deposit all impounded funds in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Mortgagee. Interest or other gains from such funds, if any, shall be the sole property of Mortgagee. Upon the occurrence of an Event of Default and following the acceleration by Mortgagee of the outstanding principal balance of the Note, Mortgagee may apply all impounded funds against any sums due from Debtor to Mortgagee. Mortgagee shall give to Debtor an annual accounting showing all credits and debits to and from such impounded funds, if any, received from Debtor.

Notwithstanding the foregoing or in any other Loan Document to the contrary:

(i) An Event of Default resulting from the failure of Debtor to pay any Impound Obligation with respect to the Premises shall not entitle Mortgagee to require Debtor to establish an impound to pay Impound Obligations at any Securitized Premises other than the Premises unless "Events of Default" have occurred and are continuing under any Securitized Mortgages as a result of the failure of Debtor to pay Impound Obligations involving, in the aggregate, at any one time more than the Permitted Amount.

(ii) Debtor shall only be required to establish an impound pursuant to this Section 3.12 following an Event of Default in the payment of any Impound Obligation if Mortgagee delivers notice to Debtor of such requirement within one year after the occurrence of such Event of Default.

Section 3.13. **Advances by Mortgagee.** Upon ten days prior written notice to Debtor and provided that Debtor is first given a reasonable opportunity to cure such default (provided that no such notice or opportunity to cure shall be required if, in Mortgagee's reasonable judgment, any material part of the Mortgaged Property is in immediate jeopardy), Mortgagee may make advances to perform any of the covenants contained in this Mortgage on Debtor's behalf, and all

sums so advanced shall be secured hereby prior to the Note. Debtor shall repay on demand all sums so advanced with interest thereon at the Default Rate, such interest to be computed from and including the date of the making of such advance to and including the date of such repayment.

Section 3.14 *Negative Covenants.* (a) Subject to the provisions of Section 11 of the Loan Agreement and the substitution provisions of Section 13 of the Loan Agreement, and except as otherwise expressly permitted by this Mortgage, no Subject Transfer shall occur without the prior written consent of Mortgagee, including, without limitation, any sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment or other transfer of the Mortgaged Property or any part thereof, other than the disposition of Personal Property as contemplated by Section 3.02 of this Mortgage. Notwithstanding anything to the contrary set forth in this Mortgage, no Subject Transfer otherwise permitted by the express terms of this Mortgage may be consummated if at the time of such proposed Subject Transfer an Event of Default shall have occurred and be continuing.

(b) Except as otherwise set forth in this Section and in the Loan Agreement, Mortgagee reserves the right to condition a consent in its commercially reasonable judgment, if required hereunder or under the Loan Agreement, upon a modification of the terms hereof, and on assumption of the Note, this Mortgage and the other Loan Documents, as so modified, by the proposed transferee, and payment of all of Mortgagee's reasonable expenses incurred in connection with such transfer, the approval by the Rating Agencies of the proposed transferee and the proposed transferee's continued compliance with the covenants set forth in this Mortgage, or such other conditions as Mortgagee shall reasonably require. Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon a Subject Transfer without Mortgagee's consent, as required hereunder. The provisions of this Section shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Mortgaged Property.

Section 3.15. *Financial Statements.* Within 45 days after the end of each of the first three quarters of each fiscal year, within 60 days after the end of the last quarter of each fiscal year for profit and loss statements only (subject to year-end adjustments), and within 120 days after the end of each fiscal year of Debtor, Debtor shall deliver to Mortgagee (i) a consolidated balance sheet, profit and loss statement and statement of cash flows of Debtor for the fiscal period then ended, which financial statements shall be prepared in accordance with GAAP, except for changes permitted or required by GAAP, and shall be certified to be accurate and complete by Debtor (or the Treasurer or other appropriate officer of Debtor) in all material respects; (ii) income statements for the business at the Mortgaged Property, which statements shall be prepared consistently from period to period, and shall be certified to be accurate and complete by Debtor (or the Treasurer or other appropriate officer of Debtor), and (iii) such other financial information as Mortgagee may reasonably request in order to establish the compliance of Debtor and Lessee with the financial covenants in the Loan Documents, including, without limitation, Section 7 of the Loan Agreement. Debtor understands that Mortgagee is relying upon such financial statements and Debtor represents that such reliance is reasonable. In the event that

Debtor's property and business at the Mortgaged Property is ordinarily consolidated with other business for financial statement purposes, such financial statements shall be prepared on a consolidated basis showing separately the sales and profits and losses pertaining to the Mortgaged Property with the basis for allocation of overhead or other charges being clearly set forth. The financial statements delivered to Mortgagee need not be audited, but Debtor shall deliver to Mortgagee copies of any audited financial statements of Debtor which may be prepared, as soon as they are available.

ARTICLE IV

POSSESSION, USE AND RELEASE OF THE MORTGAGED PROPERTY

Section 4.01. *Casualty or Condemnation.* Debtor shall, within 10 days after obtaining knowledge of any casualty to any material portion of the Mortgaged Property or of any proceeding or negotiation for the taking of all or any portion of the Mortgaged Property in condemnation or other eminent domain proceedings, notify Mortgagee of such casualty, proceeding or negotiation. Any award, compensation or other payment resulting from such casualty or condemnation or eminent domain proceeding, as applicable, shall be applied as set forth below. Mortgagee may participate in any material condemnation or eminent domain proceeding to the extent of its interest, and Debtor will deliver or cause to be delivered to Mortgagee all instruments reasonably requested by Mortgagee to permit such participation.

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

(ii) In the event of any material damage to or destruction of the Mortgaged Property or any part thereof, Debtor shall either:

(1) notify Mortgagee within 30 days of such damage or destruction of Debtor's election to substitute a Substitute Premises for the Mortgaged Property in accordance with the provisions of Section 13 of the Loan Agreement and complete such substitution in accordance with the terms and conditions of such Section 13;

(2) prepay the Note in whole, but not in part, and if the interest payable under the Note is calculated at a fixed rate, simultaneously with such prepayment Debtor shall pay the Yield Maintenance Amount payable under the Note; or

(3) cause the Restoration to be commenced and completed in a timely manner at Debtor's sole cost and expense, whether or not the insurance proceeds, if any, on account of such damage or destruction shall be sufficient to complete such Restoration.

(iii) Insurance proceeds received by Mortgagee and Debtor on account of any occurrence of damage to or destruction of the Mortgaged Property or any part thereof, less

the costs, fees and expenses incurred by Mortgagee and Debtor in the collection thereof, including, without limitation, adjuster's fees and expenses and attorneys' fees and expenses (the "Net Insurance Proceeds"), shall be paid to Debtor and if Debtor has made the election to restore applied by Debtor toward the cost of the Restoration; provided, however, if at the time of the damage or destruction to the Mortgaged Property or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, all Net Insurance Proceeds that have not been expended by Debtor toward the Restoration prior to the occurrence of such Event of Default shall be paid to Mortgagee, and Mortgagee may retain and apply the Net Insurance Proceeds toward the Obligations whether or not then due and payable, in such order, priority and proportions as Mortgagee in its discretion shall deem proper, or to cure such Event of Default, or, in Mortgagee's discretion, Mortgagee may pay such Net Insurance Proceeds in whole or in part to Debtor to be applied toward the cost of the Restoration. If Mortgagee shall receive and retain Net Insurance Proceeds, the lien of this Mortgage shall be reduced only by the amount received and retained by Mortgagee and actually applied by Mortgagee in reduction of the Obligations.

(b) *Eminent Domain.* (i) In case of a taking of all or any part of the Mortgaged Property or the commencement of any proceedings or negotiations which might result in a taking, for any public or quasi-public purpose by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Mortgagee, Debtor and those authorized to exercise such right ("Taking"), Debtor will give written notice thereof to Mortgagee within 10 days after Debtor receives notice of such Taking, generally describing the nature and extent of such Taking. Debtor shall jointly file and prosecute on behalf of Mortgagee and Debtor any and all claims for an award; provided, however, Debtor shall consult with Mortgagee and its attorneys and experts, and make all reasonable efforts to cooperate with Mortgagee in the prosecution or defense of all Total Takings and Partial Takings which effect a material portion of the Mortgaged Property. All awards and other payments on account of a Taking shall be paid to Mortgagee.

(ii) In case of a Taking of the whole of the Mortgaged Property, other than for temporary use ("Total Taking"), or in case of a Taking of less than all of the Mortgaged Property ("Partial Taking"), the Loan Documents shall remain in full force and effect. In the case of a Partial Taking, Debtor shall:

(1) notify Mortgagee within 30 days of such Partial Taking of Debtor's election to substitute a Substitute Premises for the Mortgaged Property in accordance with the provisions of Section 13 of the Loan Agreement and complete such substitution in accordance with the terms and conditions of such Section 13;

(2) prepay the Note in whole, but not in part, and if the interest payable under the Note is calculated at a fixed rate, simultaneously with such prepayment Debtor shall pay the Yield Maintenance Amount payable under the Note (except that if the Partial Taking will result, in Debtor's reasonable judgment, in a material adverse effect on the operation of the Mortgaged Property as a Permitted Concept, then Debtor shall not be required to pay the Yield Maintenance Amount); or

(3) cause the Restoration to be commenced and completed in a timely manner at Debtor's sole cost and expense, whether or not the awards or payments, if any, on account of such Partial Taking shall be sufficient to complete such Restoration.

(iii) In case of a temporary use of the whole or any part of the Mortgaged Property by a Taking (each, a "Temporary Taking"), the Loan Documents shall remain in full force and effect without any reduction of any monetary sum payable under the Loan Documents. In case of a Temporary Taking, the Loan Documents shall remain in full force and effect, and Debtor shall:

(1) notify Mortgagee within 30 days of such Temporary Taking of Debtor's election to substitute a Substitute Premises for the Mortgaged Property in accordance with the provisions of Section 13 of the Loan Agreement and complete such substitution in accordance with the terms and conditions of such Section 13;

(2) prepay the Note in whole, but not in part, and if the interest payable under the Note is calculated at a fixed rate, simultaneously with such prepayment Debtor shall pay the Yield Maintenance Amount payable under the Note; or

(3) upon completion of such Temporary Taking, cause the Restoration to be commenced and completed in a timely manner at Debtor's sole cost and expense, whether or not the awards or payments, if any, on account of such Temporary Taking shall be sufficient to complete such Restoration.

(iv) Awards and other payments on account of a Taking, less the costs, fees and expenses incurred by Mortgagee and Debtor in connection with the collection thereof, including, without limitation, attorneys' fees and expenses, shall be applied as follows:

(x) Net awards and payments received on account of a Total Taking shall be allocated as follows:

(aa) There shall be paid to the Mortgagee an amount up to the sum of the outstanding principal, including all sums advanced by Mortgagee hereunder, and interest under the Note, all as of the date on which such payment is made, such amount shall be applied first against all sums advanced by Mortgagee under this Mortgage, second against the accrued but unpaid interest on the Note, and third to the remaining unpaid principal amount of the Note (without penalty or premium, including without paying the Yield Maintenance Amount).

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

(y) Net awards and payments received on account of a Partial Taking shall be held and allocated as follows: (i) toward the cost of the Restoration if Debtor so elects, such application of net awards and other payments to be made substantially in the manner provided in Section 4.01(a)(iii) of this Mortgage; (ii) there shall be paid to Mortgagee, as the holder of this Mortgage, an amount

equal to that portion of any unpaid principal amount of the Note, and any interest accrued thereon, bearing the same relationship to the total unpaid principal amount of the Note, and any interest accrued thereon, all as of the date on which such payment is made, as the square footage in the Mortgaged Property taken on account of such Partial Taking, bears to the total square footage in the Mortgaged Property prior to such Partial Taking, and such amount shall be applied against the unpaid principal amount of the Note (without penalty or premium); and (iii) any remaining balance shall be paid to Debtor.

(z) Net awards and payments received on account of a Taking for temporary use shall be held by Mortgagee and applied to the payment of the monthly installments of combined interest and principal becoming due under the Note, until such Taking for temporary use is terminated and the Restoration, if any, has been completed; provided, however, that, if any portion of any such award or payment is made by reason of any damage to or destruction of the Mortgaged Property, such portion shall be held and applied as provided in Section 4.01(a)(iii) hereof. The balance, if any, of such awards and payments shall be paid to Debtor.

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

Section 4.02. **Conveyance in Anticipation of Condemnation, Granting of Easements, Etc.** If no Event of Default shall have occurred and be continuing, Debtor may, from time to time with respect to its interest in the Mortgaged Property, and with Mortgagee's prior written consent, not to be unreasonably withheld or delayed, (i) sell, assign, convey or otherwise transfer any interest therein to any person legally empowered to take such interest under the power of eminent domain, (ii) grant easements and other rights in the nature of easements, (iii) release existing easements or other rights in the nature of easements which are for the benefit of the Mortgaged Property, (iv) dedicate or transfer unimproved portions of the Mortgaged Property for road, highway or other public purposes, (v) execute petitions to have the Mortgaged Property annexed to any municipal corporation or utility district, and (vi) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers.

Section 4.03. **Mortgagee's Power.** At any time, or from time to time, without liability therefor, Mortgagee, without affecting the personal liability of any person for payment of the

Obligations or the effect of this Mortgage upon the remainder of said Mortgaged Property, may from time to time without notice (i) release any part of said Mortgaged Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof, (v) release any person so liable, (vi) extend the maturity or alter any of the terms of any Obligations, (vii) grant other indulgences, (viii) take or release any other or additional security for any Obligations, (ix) make compositions or other arrangements with debtors in relation thereto, or (x) upon ten days prior written notice to Debtor (provided such notice shall not be required if, in Mortgagee's reasonable judgment, the Mortgaged Property is in immediate jeopardy), advance additional funds to protect the security hereof or to pay or discharge the Obligations in the event Debtor fails to do so within a reasonable period of time after receiving such written notice, and all amounts so advanced shall be secured hereby and shall be due and payable upon demand by Mortgagee.

Section 4.04. **Release of Mortgaged Property Upon Payment of Note.** If no Event of Default has occurred and is continuing, and all principal, accrued but unpaid interest and all other sums due and owing under the Note (including, without limitation, any Yield Maintenance Amount which then may be due) and all sums advanced by Mortgagee pursuant to the Loan Documents for the protection of the Mortgaged Property have been satisfied in full, then Mortgagee shall immediately release this Mortgage and any other liens and security interests granted by Debtor with respect to the Mortgaged Property.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. **Events of Default.** Each of the following shall be an event of default under this Mortgage (each an "Event of Default"):

(i) If any representation or warranty of Debtor set forth in this Mortgage is false in any material respect when made.

(ii) If any principal, interest or other monetary sum due under the Note, this Mortgage, the Additional Notes, or any other Loan Document is not paid within five days from the date when due; provided, however, notwithstanding the occurrence of such an Event of Default, Mortgagee shall not be entitled to exercise its remedies set forth in Section 5.02 below unless and until Mortgagee shall have given Debtor notice thereof and a period of five days from the delivery of such notice shall have elapsed without such Event of Default being cured (any such Event of Default shall be deemed waived by Mortgagee if Debtor shall cure such Event of Default within five days from the delivery of such notice, but such waiver shall not limit Debtor's obligation to pay interest at the Default Rate (as defined in the Note) on such past-due payment from the due date of the payment through and including the date of the actual payment).

(iii) If Debtor fails to pay, prior to delinquency, any taxes, assessments or other charges the failure of which to pay will result in the imposition of a lien against the Mortgaged Property pursuant to Applicable Regulations, except to the extent Debtor is

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contesting such imposition in accordance with the terms of Section 5.10 of this Mortgage; provided, however, if any such failure is not willful or intentional and does not place any material part of the Mortgaged Property in immediate jeopardy of foreclosure, as determined by Mortgagee in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder unless and until Mortgagee shall have given Debtor notice thereof and a period of 30 days shall have elapsed following Debtor's receipt of such notice, during which period Debtor may correct or cure such failure, and if Debtor fails to make the requested payment within such 30 day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.

(iv) If Debtor becomes insolvent within the meaning of the Code, files or notifies Mortgagee that it intends to file a petition under the Code, initiates a proceeding under any similar law or statute relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts (collectively, hereinafter, an "Action"), becomes the subject of either a petition under the Code or an Action, or is not generally paying its debts as the same become due.

(v) If Debtor fails to observe or perform any of the covenants, conditions, or obligations of this Mortgage (other than a breach of the provisions of Section 6.12 of this Mortgage, which breach is addressed in subitem (viii) below), provided, however, if any such failure does not involve the payment of any principal, interest or other monetary sum due under the Note, is not willful or intentional, does not place any material part of the Mortgaged Property in immediate jeopardy, and is within the reasonable power of Debtor to promptly cure after receipt of notice thereof, all as determined by Mortgagee in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein unless and until Mortgagee shall have given Debtor notice thereof and a period of 30 days shall have elapsed, during which period Debtor may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Mortgagee in its reasonable discretion, and Debtor is diligently pursuing a cure of such failure, then Debtor shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 90 days after receiving notice of the failure from Mortgagee. If Debtor shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required, but if Debtor cures such failure within such 90-day period, no Event of Default shall be deemed to have occurred hereunder as a result of the occurrence of such failure.

(vi) If there is an "Event of Default" under the Loan Agreement or the Environmental Indemnity Agreement.

(vii) If a final, nonappealable judgment is rendered by a court against Debtor which has a material adverse effect on the Mortgaged Property, including, without limitation, the operation of the business at the Mortgaged Property as a Permitted Concept and/or the value of the Mortgaged Property.

(viii) If Debtor shall refuse or intentionally fail to sign a certificate in accordance with the provisions of Section 6.12.

Notwithstanding anything to the contrary contained in this Mortgage or the other Loan Documents:

(a) a breach or default, after the passage of all applicable notice and cure or grace periods, under any Loan Document, Affiliated Entity Loan Document or Related Lease or the Permitted Lease which relates to a loan which has not been the subject of a Securitization shall not constitute an Event of Default or a breach or default, as applicable, under any Loan Document or Affiliated Entity Loan Document which relates to a loan which has been the subject of a Securitization; and

(b) a breach or default, after the passage of all applicable notice and cure or grace periods, under any Loan Document, Affiliated Entity Loan Document, Related Lease or the Permitted Lease which relates to a loan which is included in any Securitized Loan Pool shall not constitute an Event of Default or a breach or default, as applicable, under any Loan Document or Affiliated Entity Loan Document which relates to a loan which is included in any other Securitized Loan Pool.

Section 5.02. **Remedies.** Upon the occurrence and during the continuance of an Event of Default, subject to the limitations set forth in Section 5.01, Debtor's right of substitution set forth in Section 13 of the Loan Agreement and the terms, provisions and limitations set forth in Section 10.A of the Loan Agreement, Mortgagee may declare all or any part of the Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice (including notice of intent to accelerate and notice of acceleration) of any kind except as otherwise expressly provided herein or required by law. Furthermore, upon the occurrence and during the continuance of an Event of Default, to the extent not prohibited by applicable law and without limiting Lessee's rights under the Lease or the applicable sublessee's rights under the Permitted Subleases, Mortgagee may in each case to the extent permitted by the law of the State:

(i) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, take any action described herein, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any Obligations, all in such order as Mortgagee may determine. The entering upon and taking possession of the Mortgaged Property, the taking of any action described herein, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of Rents, Mortgagee shall be

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entitled to exercise every right provided for in any of the Loan Documents or by law upon any Event of Default;

(ii) Commence an action under the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes, Chapter 735, Act 5, Section 15-1101, et seq., as from time to time amended (the "Foreclosure Law") or other applicable law to foreclose this Mortgage in a single parcel or in several parcels, appoint a receiver, specifically enforce any of the covenants hereof, sell Debtor's interest in the Mortgaged Property pursuant to the power of sale herein conferred (to the full extent permitted under the laws of the State); or take any other action which Mortgagee deems reasonably necessary to protect its rights and interest hereunder. Without limiting the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Section 15-1510 and 15-1512 under the Foreclosure Law, whether incurred before or after any decree or judgement of foreclosure, shall be added to the indebtedness secured by this Mortgage or by the judgement of foreclosure;

(iii) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code as adopted in the State ("UCC"), including, without limitation:

(1) Either personally or by means of a court appointed receiver, commissioner or other officer, take possession of all or any of the Personal Property and exclude therefrom Debtor and all others claiming under Debtor, subject to Lessee's rights under the Permitted Lease, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Debtor in respect of the Personal Property or any part thereof. In the event Mortgagee demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Debtor promises and agrees to promptly turn over and deliver complete possession thereof to Mortgagee;

(2) Without notice to or demand upon Debtor, make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder and, in exercising any such powers or authority, to pay all expenses incurred in connection therewith;

(3) Require Debtor to assemble the Personal Property or any portion thereof, at the Premises, and promptly to deliver such Personal Property to Mortgagee, or an agent or representative designated by it. Mortgagee, and its agents and representatives, shall have the right to enter upon any or all of Debtor's premises and property to exercise Mortgagee's rights hereunder;

(4) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Mortgagee may determine. Mortgagee may be a purchaser at any such sale;

(5) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give Debtor at least 10 days' prior written notice of the time and place of any private or public sale of the Personal Property or other intended disposition thereof. Such notice may be delivered to Debtor at the address set forth at the beginning of this Mortgage and shall be deemed to be given as provided herein; and

(6) Any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of all or a portion of the other Mortgaged Property upon giving the same notice with respect to the sale of the Personal Property hereunder as is required for such sale of the other Mortgaged Property under power of sale (to the full extent permitted under the laws of the State), and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the UCC.

(iv) Apply any sums then deposited in the impound account described in Section 3.12 toward payment of the taxes, assessment and insurance premiums for the Mortgaged Property and/or as a credit on the Obligations in such priority and proportion as Mortgagee may determine in its sole discretion; and

(v) If held by Mortgagee, surrender the insurance policies maintained pursuant to Section 3.11, collect the unearned insurance premiums and apply such sums as a credit on the Obligations in such priority and proportion as Mortgagee in its sole discretion shall deem proper, and in connection therewith, Debtor hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagee to collect such insurance premiums.

If Mortgagee elects to sell Debtor's interest in the Mortgaged Property to the full extent permitted by the laws of the State, Mortgagee shall cause such sale to be performed in the manner then required by law.

(a) Mortgagee shall cause to be recorded, published and delivered such notices of default and notices of sale as may then be required by law and by this Mortgage. Thereafter, to the extent permitted by the laws of the State, Mortgagee shall sell Debtor's interest in the Mortgaged Property at the time and place of sale fixed by it, either as a whole, or in separate lots or parcels or items as Mortgagee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Mortgagee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Debtor or Mortgagee, may purchase at such sale. To the extent permitted by the laws of the State, Mortgagee may sell not only the real property but also the Personal Property and other interests which are a part of the Mortgaged Property, or any part thereof, as a unit and as a part of a single sale, or may

sell any part of the Mortgaged Property separately from the remainder of the Mortgaged Property. To the extent permitted by the UCC and the other laws of the State, Mortgagee shall not be required to take possession of any part of the Mortgaged Property or to have any of the Personal Property present at any sale of the Mortgaged Property. To the extent permitted by the laws of the State, Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the posting of notices and the conduct of sale, but in the name and on behalf of Mortgagee. In the event any sale hereunder is not completed or is defective in the opinion of Mortgagee, to the extent permitted by the laws of the State, such sale shall not exhaust the power of sale hereunder, and Mortgagee shall have the right to cause a subsequent sale or sales to be made hereunder.

(b) To the extent permitted by law, Mortgagee shall apply the proceeds of sale (i) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by the Mortgagee in exercising the power of sale or foreclosing this Mortgage, (ii) second, to the payment of the Obligations (including, without limitation, the principal, accrued interest and other sums due and owing under the Securitized Notes and the amounts due and owing to Mortgagee under this Mortgage) in such manner and order as Mortgagee may elect, and (iii) third, the remainder, if any, shall be paid to Debtor, or to Debtor's heirs, devisees, representatives, successors or assigns, or such other persons as may be entitled thereto.

(c) To the full extent permitted under the laws of the State, Mortgagee may in the manner provided by law postpone sale of all or any portion of the Mortgaged Property.

Section 5.03. **Appointment of Receiver.** If an Event of Default shall have occurred and be continuing, Mortgagee, as a matter of right and, to the extent not prohibited by applicable law, without notice to Debtor or anyone claiming under Debtor and without regard to the then value of the Mortgaged Property or the interest of Debtor therein, or the insolvency of Debtor or the then-owner of the Mortgaged Property, may seek the appointment of a receiver for the Mortgaged Property upon *ex parte* application to any court of the competent jurisdiction (provided, however, before making any *ex parte* application, Mortgagee agrees to place a telephone call to Debtor's Chief Financial Officer at the telephone number indicated in Section 6.04 of this Mortgage to inform Debtor of such proposed application, and to send a teletype to such Chief Financial Officer notifying Debtor of Mortgagee's proposed application, but the inability of Mortgagee to make contact with Debtor's Chief Financial Officer at the time such call is placed shall not limit or impede Mortgagee's ability to make such application). To the extent permitted by the laws of the State, Debtor waives any right to any hearing or notice of hearing prior to the appointment of a receiver and hereby consents to such appointment. To the extent permitted by the laws of the State, such receiver shall be empowered, subject to Lessee's rights under the Lease and the applicable sublessee's rights under the Permitted Subleases, (a) to take possession of the Mortgaged Property and any businesses conducted by Debtor thereon and any business assets used in connection therewith, (b) to exclude Debtor and Debtor's agents, servants and employees from the Mortgaged Property, or, at the option of the receiver, in lieu of such exclusion, to collect a fair market rental from any such persons occupying any part of the Mortgaged Property, (c) to collect the Rents, (d) to complete any construction that may be in progress, (e) to continue the development, marketing and sale of the Mortgaged Property, (f) to

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

Section 5.04. **Remedies Not Exclusive.** Mortgagee shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Mortgage or under any Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained (to the full extent permitted under the laws of the State), shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgagee, or to which Mortgagee may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee. Mortgagee may pursue inconsistent remedies.

The acceptance by Mortgagee of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums then secured or to declare a subsequent Event of Default as herein provided. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Debtor to pay the entire sum then due, and failure of Debtor to pay such entire sum then due as contemplated by Section 5.01(ii) shall be an Event of Default, notwithstanding such acceptance of such amount on account, as aforesaid. Mortgagee shall be, at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default, or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding,

election or exercise. Consent by Mortgagee to any action or inaction of Debtor which is subject to consent or approval of Mortgagee hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

Section 5.05. Possession of Mortgaged Property. To the extent permitted by the laws of the State, in the event of a foreclosure sale hereunder and after the time of such sale, Debtor occupies the portion of the Mortgaged Property so sold, or any part thereof, Debtor shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. To the extent permitted by the laws of the State, an action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property; and this Mortgage and any deed issued in foreclosure shall constitute a lease and agreement under which the tenant's possession arose and continued. Nothing contained in this Mortgage including, without limitation, any provision for collection of Rents by Mortgagee or a receiver, shall be construed to constitute Mortgagee as a "mortgagee in possession" in the absence of its taking actual possession of the Mortgaged Property pursuant to the powers granted herein.

Section 5.06. Waiver of Right. To the extent permitted by the laws of the State, Debtor waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisalment before sale of any portion of the Mortgaged Property, or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made in collecting the Obligations. Debtor agrees that Debtor will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, extension, redemption (such waiver of the right or redemption being made pursuant to 735 ILCS 5/15-1601(b)) or homestead exemption, and Debtor, for Debtor, Debtor's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, homestead exemption, notice of election to mature or declare due the whole of the Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Debtor, Debtor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Debtor expressly waives and relinquishes any and all rights, remedies and defenses that Debtor may have or be able to assert by reason of the laws of the State pertaining to the rights, remedies and defenses of sureties. Debtor acknowledges that the Premises does not constitute agricultural real estate or residential real estate, as said terms may be defined in the Foreclosure Law.

Section 5.07. Relief From Stay. In the event that Debtor commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, subject to court approval, Mortgagee shall thereupon be entitled and Debtor irrevocably consents to relief from any stay imposed by Section 362 of the Code on or against the exercise of the rights and remedies otherwise available to Mortgagee as provided in the Loan Documents and Debtor hereby irrevocably waives its rights to object to such relief. In the event Debtor shall commence a case under the Code or is the subject of an involuntary case that results in an order

for relief under the Code, Debtor hereby agrees that no injunctive relief against Mortgagee shall be sought under Section 105 or other provisions of the Code by Debtor or other person or entity claiming through Debtor, nor shall any extension be sought of the stay provided by Section 362 of the Code.

Section 5.08. **Cash Collateral.** Debtor hereby acknowledges and agrees that in the event that Debtor commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code: (i) that all of the Rents are, and shall for purposes be deemed to be, "proceeds, product, offspring, rents, or profits" of the Premises covered by the lien of this Mortgage, as such quoted terms are used in Section 552(b) of the Code; (ii) that in no event shall Debtor assert, claim or contend that any portion of the Rents are, or should be deemed to be, "accounts" or "accounts receivable" within the meaning of the Code and/or applicable state law; (iii) that the Rents are and shall be deemed to be in any such bankruptcy proceeding "cash collateral" of Mortgagee as that term is defined in Section 363 of the Code; and (iv) that Mortgagee has valid, effective, perfected, enforceable and "choate" rights in and to the Rents without any further action required on the part of Mortgagee to enforce or perfect its rights in and to such cash collateral, including, without limitation, providing notice to Debtor under Section 546(b) of the Code.

Section 5.09. **Assignment of Rents and Leases.** (a) To the extent not prohibited by the law of the State, Debtor hereby assigns, transfers, conveys and sets over to Mortgagee all of Debtor's estate, right, title and interest in, to and under the Leases, whether existing on the date hereof or hereafter entered into, together with any changes, extensions, revisions or modifications thereof and all rights, powers, privileges, options and other benefits of Debtor as the lessor under the Leases regarding the current tenants and any future tenants, and all the Rents from the Leases, including those now due, past due or to become due. Debtor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee, at any time and from time to time upon the occurrence and during the continuance of an Event of Default, to take possession and control of the Premises, pursuant to Debtor's rights under the Leases, to exercise any of Debtor's rights under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Debtor or Mortgagee, for all of the Rents. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment of all sums due Mortgagee for all losses, costs, damages, fees and expenses whatsoever associated with the exercise of this power of attorney, and Debtor hereby releases Mortgagee from all liability (other than as a result of the gross negligence or willful misconduct of Mortgagee) whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto. The consideration received by Debtor to execute and deliver this assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Debtor. To the extent not prohibited by the law of the State, it is intended by Debtor and Mortgagee that the assignment set forth herein constitutes an absolute assignment and not merely an assignment for additional security. Notwithstanding the foregoing, this assignment shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions of Debtor contained in the Leases or otherwise to impose any obligation upon Mortgagee, and, so long as no Event of Default has occurred and is continuing, Debtor shall have a license, revocable upon an Event of Default and during the continuance thereof, to possess and control the Premises and collect and receive all Rents. Upon the occurrence and during the continuance of an Event of

Default, such license shall be automatically revoked. Upon satisfaction of the Obligations, Mortgagee shall assign the Leases and Rents to Debtor.

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

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

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

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

ARTICLE VI

MISCELLANEOUS

Section 6.01. **Satisfaction.** If and when (i) the Obligations shall have become due and payable (whether by lapse of time or by acceleration or by the exercise of the privilege of prepayment), and Debtor shall pay or cause to be paid (provided such payment is permitted or required by the Note and the Additional Notes and the Other Notes which are included with the Note in a Securitized Loan Pool, as applicable) the full amount thereof and shall also pay or cause to be paid all other sums payable by the Debtor Entities to the Mortgagee Entities with respect to the Obligations; (ii) the Note shall be satisfied in full in accordance with Section 4.04 of this Mortgage; or (iii) the Mortgaged Property shall be replaced by a Substitute Premise in accordance with the terms and conditions of Section 13 of the Loan Agreement, then this Mortgage shall be void (otherwise it shall remain in full force and effect in law and equity forever) and Mortgagee agrees to execute an instrument evidencing the satisfaction of all obligations under this Mortgage and releasing this Mortgage and any other liens and security interests on the Mortgaged Property, all of which shall be prepared and recorded at Debtor's sole expense.

Section 6.02. **Limitation of Rights of Others.** Nothing in this Mortgage is intended or shall be construed to give to any person, other than Debtor, Mortgagee, Environmental Insurer and the holder of the Note, any legal or equitable right, remedy or claim under or in respect of this Mortgage or any covenant, condition or provision herein contained.

Section 6.03. **Severability.** In case any one or more of the provisions contained herein or in the Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Mortgage shall be construed as if such provision had never been contained herein or therein.

Section 6.04. **Notices; Amendments; Waiver.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Mortgage (collectively called "Notices") shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) transmission, if delivered by facsimile, (c) the next Business Day, if delivered by express overnight delivery service, or (d) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

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If to Debtor:

c/o CM Acquisition, Inc.
Managing Member
800 Roosevelt Road
Building E-2nd Floor
Glen Ellyn, Illinois 60137
Attention: Chief Financial Officer
Telephone: (630) 942-5300
Telecopy: (630) 942-5400

If to Mortgagee:

Dennis L. Ruben, Esq.
Executive Vice President and General Counsel
FFCA Acquisition Corporation
17207 North Perimeter Drive
Scottsdale, AZ 85255
Telephone: (602) 585-4500
Telecopy: (602) 585-2226

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

Section 6.05. **Counterparts.** This Mortgage may be executed in any number of counterparts and each thereof shall be deemed to be an original; and all such counterparts shall constitute but one and the same instrument.

Section 6.06. **Successors and Assigns.** All of the provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, to the same extent as if each such successor and assign were in each case named as a party to this Mortgage. Wherever used, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 6.07. **Headings.** The headings appearing in this Mortgage have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Mortgage.

Section 6.08. **Security Agreement.** With respect to the Personal Property or any portion of the Mortgaged Property which constitutes fixtures or may become a fixture (within the meaning of the UCC) or other property governed by the UCC, this Mortgage shall constitute a security agreement between Debtor, as the debtor and Mortgagee, as the secured party, and Debtor hereby grants to Mortgagee a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Mortgagee hereunder, Mortgagee shall have all of the rights conferred upon secured parties by the UCC. Debtor will execute and deliver to Mortgagee all

financing statements that may from time to time be reasonably required by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all costs and expenses of any searches reasonably required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property, and it is expressly agreed that if upon the occurrence and during the continuance of an Event of Default, Mortgagee should proceed to dispose of such property in accordance with the provisions of the UCC, 10 days' notice by Mortgagee to Debtor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Mortgagee may at its option dispose of such property in accordance with Mortgagee's rights and remedies with respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the UCC.

Debtor shall give advance notice in writing to Mortgagee of any proposed change in Debtor's name, identity, or business form or structure and will execute and deliver to Mortgagee, prior to or concurrently with the occurrence of any such change, all additional financing statements that Mortgagee may require to establish and maintain the validity and priority of Mortgagee's security interest with respect to any of the Mortgaged Property described or referred to herein.

Section 6.09. **Effective as a Financing Statement.** This Mortgage shall be effective as a financing statement filed as a "fixture filing" (within the meaning of the UCC) with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering any other Mortgaged Property and may be filed in any other appropriate filing or recording office. The mailing address of Debtor is the address of Debtor set forth in the introductory paragraph of this Mortgage, and the address of the Mortgagee from which information concerning the security interests hereunder may be obtained is the address of Mortgagee as set forth in the introductory paragraph of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section. Debtor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, a separate security agreement, financing statement or other similar security instruments, in form satisfactory to Mortgagee, with respect to the Personal Property or any portion of the Mortgaged Property which constitutes a "fixture" (within the meaning of the UCC).

Section 6.10. **Characterization; Interpretation.** It is the intent of the parties hereto that the business relationship created by the Note, this Mortgage and the other Loan Documents is solely that of creditor and debtor and has been entered into by both parties in reliance upon the economic and legal bargains contained in the Loan Documents. None of the agreements contained in the Loan Documents is intended, nor shall the same be deemed or construed, to create a partnership between Mortgagee and Debtor, to make them joint venturers, to make Debtor an agent, legal representative, partner, subsidiary or employee of Mortgagee, nor to make Mortgagee in any way responsible for the debts, obligations or losses of Debtor.

Mortgagee and Debtor acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Mortgage after being fully advised by

said counsel as to its effect and significance. This Mortgage shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party.

Section 6.11. **Time of the Essence.** Time is of the essence in the performance of each and every obligation under this Mortgage; provided, however, the preceding provision shall not limit Debtor's right to notices and cure periods expressly provided for in this Mortgage and the other Loan Documents.

Section 6.12. **Estoppel Certificate.** At any time, and from time to time, Debtor agrees, promptly and in no event later than 10 days after a request from Mortgagee, to execute, acknowledge and deliver to Mortgagee a certificate in the form supplied by Mortgagee, certifying: (1) the date to which principal and interest have been paid under the Note and the amount thereof then payable; (2) that no notice has been received by Debtor of any default under this Mortgage which has not been cured, except as to defaults specified in the certificate; (3) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Debtor; and (4) any other information reasonably requested by Mortgagee in connection with the Loan Agreement. Mortgagee agrees at any time, and from time to time, promptly and in no event later than 10 days after a request from Debtor, to execute, acknowledge and deliver to Debtor a certificate in the form supplied by Debtor certifying: (1) the date to which principal and interest have been paid under the Note and the amount thereof then payable; (2) that no notice has been delivered by Mortgagee of any default under this Mortgage; (3) to Mortgagee's knowledge, there is no default hereunder which has not been cured, except as to defaults specified in the certificate; and (4) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Mortgagee.

Mortgagee agrees not to disturb Lessee's (or any sublessee's) tenancy under the Permitted Lease or Permitted Sublease upon a foreclosure by Mortgagee so long as Lessee or any such sublessee is not then in default under the Permitted Lease (or any sublessee is not in default under any Permitted Sublease) and Lessee and Debtor agree that the Permitted Lease is subordinate to this Mortgage and so long as Lessee agrees to attorn (and to cause any sublessee to attorn) to the purchaser of the Mortgaged Property upon a foreclosure of this Mortgage if such purchaser agrees not to disturb Lessee or any such sublessee (subject to Lessee or any such sublessee not then being in default under the Permitted Lease). Mortgagee agrees that Lessee is an intended third-party beneficiary of the provisions of this paragraph. While the provisions of this paragraph are intended to be self-operative, Mortgagee agrees at any time, and from time to time, promptly and in no event later than 10 days after a request from Debtor or Lessee, to execute, acknowledge and deliver to Lessee and Debtor a subordination, non-disturbance and attornment agreement in form and substance reasonably satisfactory to Mortgagee, Debtor and Lessee to evidence such provisions.

Section 6.13. **Limitation of Interest.** Notwithstanding anything to the contrary contained in any of the Loan Documents, the obligations of Debtor to Mortgagee under the Note, this Mortgage and any other Loan Documents are subject to the limitation that payments of interest and late charges to Mortgagee shall not be required to the extent that receipt of any such payment by Mortgagee would be contrary to provisions of applicable law limiting the maximum rate of interest that may be charged or collected by Mortgagee. The portion of any such payment

received by Mortgagee that is in excess of the maximum interest permitted by such provisions of law shall be credited (without premium or penalty) to the principal balance of the Note or if such excess portion exceeds the outstanding principal balance of the Note, then such excess portion shall be refunded to Debtor. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and/or spread throughout the full term of the Note (including, without limitation, the period of any renewal or extension thereof) so that interest for such full term shall not exceed the maximum amount permitted by applicable law.

Section 6.14. **Forum Selection; Jurisdiction; Venue; Choice of Law.** Debtor acknowledges that this Mortgage was substantially negotiated in the State of Arizona, this Mortgage was delivered in the State of Arizona, all payments under the Loan Documents will be delivered in the State of Arizona and there are substantial contacts between the parties and the transactions contemplated herein and the State of Arizona. For purposes of any action or proceeding arising out of this Mortgage, the parties hereto expressly submit to the non-exclusive jurisdiction of all federal and state courts located in the State of Arizona. Debtor consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Furthermore, Debtor waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. The creation of this Mortgage and the rights and remedies of Mortgagee with respect to the Mortgaged Property, as provided herein and by the laws of the State, shall be governed by and construed in accordance with the internal laws of the State without regard to principles of conflict of law. With respect to other provisions of this Mortgage, this Mortgage shall be governed by the internal laws of the State of Arizona, without regard to its principles of conflicts of law. Nothing in this Section shall limit or restrict the right of Mortgagee to commence any proceeding in the federal or state courts located in the State to the extent Mortgagee deems such proceeding necessary or advisable to exercise remedies available under the Mortgage or the other Loan Documents.

Section 6.15. **Indemnification.** Debtor shall indemnify and hold harmless each of the Indemnified Parties for, from and against any and all Losses (excluding Losses suffered by an Indemnified Party arising out of such Indemnified Party's gross negligence or willful misconduct) caused by, incurred or resulting from Debtor's operations of, or relating in any manner to, the Mortgaged Property, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Debtor or any person thereon, supervisor or otherwise, or from any breach of, default under or failure to perform any term or provision of this Mortgage by Debtor, its officers, employees, agents or other persons. It is expressly understood and agreed that Debtor's obligations under this Section shall survive the expiration or earlier termination of this Mortgage for any reason. Notwithstanding anything to the contrary set forth in this Section, this Section is not intended to, and does not, apply to any Losses caused by, incurred or resulting from Environmental Conditions, Hazardous Materials, Environmental Laws, Environmental Liens and/or Debtor's breach or default in its obligations under Section 3.07 of this Mortgage, which Losses are specifically addressed and included within the indemnification and hold harmless provisions of Section 3.07(d) of this Mortgage.

Section 6.16. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** MORTGAGEE, BY ACCEPTING THIS MORTGAGE, AND DEBTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS OR ASSIGNS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE, THE RELATIONSHIP OF MORTGAGEE AND DEBTOR, DEBTOR'S USE OR OCCUPANCY OF THE MORTGAGED PROPERTY, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, MORTGAGEE (BOTH FOR ITS OWN BEHALF AND ON BEHALF OF ALL OTHER INDEMNIFIED PARTIES), BY ACCEPTING THIS MORTGAGE, AND DEBTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES (BUT NOT ACTUAL DAMAGES) FROM THE OTHER AND ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER DEBTOR OR MORTGAGEE AGAINST THE OTHER OR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY MORTGAGEE AND DEBTOR OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES (BUT NOT ACTUAL DAMAGES) HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

Section 6.17. **Transfer of Loan.** Mortgagee may, at any time, sell, transfer or assign the Note, this Mortgage and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement as contemplated by the Loan Agreement.

Section 6.18. **Reliance By Environmental Insurer.** Debtor acknowledges and agrees that Environmental Insurer may rely on the representations, warranties and covenants set forth in Sections 2.03 and 3.07 of this Mortgage, that Environmental Insurer is an intended third-party beneficiary of such representations, warranties and covenants and that Environmental Insurer shall have, subject to all rights and defenses of Debtor against Mortgagee, if any, all rights and remedies available at law or in equity as a result of a breach of such representations, warranties and covenants, including, to the extent applicable, the right of subrogation.

Section 6.19. **Business Loan.** Debtor certifies and agrees that the proceeds of the Note and the Other Notes secured by this Mortgage will be held for the purposes specified in Section 4

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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.

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IN WITNESS WHEREOF, Debtor has executed and delivered as of the day and year first above written.

DEBTOR:

OTG 3, L.L.C., a Delaware limited liability company

By CM Acquisition, Inc., a Delaware corporation, its managing member

By



Forrest Laspe
Assistant Secretary

Taxpayer Identification Number: 36-4297491

Property of Cook County Clerk's Office

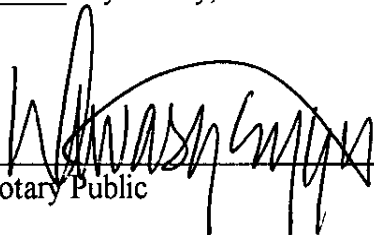
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STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

I, D. Iwasyszyn, a Notary Public in and for the City and State aforesaid, DO HEREBY CERTIFY that Forrest Laspe, personally known to me to be the same person whose name is subscribed to the foregoing instrument as Assistant Secretary of CM Acquisition, Inc., a Delaware corporation, managing member of OTG 3, L.L.C., a Delaware limited liability company, appeared before me this day in person and acknowledged to me that he, being therunto duly authorized, signed and delivered said instrument as the free and voluntary act of said corporation, and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1 day of July, 1999.



Notary Public

My Commission Expires _____

D. IWASYSZYN
Notary Public — Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: March 20, 2001

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Exhibit A

THE EAST 111 FEET OF THE SOUTH 132 FEET OF LOT 4 IN THE SUBDIVISION OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 AND THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 (EXCEPT THE NORTH 8 RODS OF THE EAST 80 RODS OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4) ALL IN SECTION 25, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office