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Cook County Recorder 123.00

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



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This MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF RENTS AND LEASES (as the same may be modified, extended, renewed or restated, this "Mortgage"), dated as of September 21, 1999, is granted by JEFFREY D. and BARBARA S. GARDNER, husband and wife (collectively, "Grantor"), whose address is 1307 Ridge Avenue, Evanston, Illinois 60201, to ZIONS FIRST NATIONAL BANK ("Mortgagee") whose address is 13545 Barrett Parkway Drive, Suite 335, St. Louis, Missouri 63021. The following recitals are made a material part of this Mortgage:

A. Hornbeck's LLC ("Borrower"), executed and delivered a promissory note (as amended, modified, renewed or extended from time to time, the "Note"), dated the same date as this Mortgage, payable to the order of Mortgagee, in the original principal amount of \$200,000. Borrower and Mortgagee, as lender, have entered into that certain security agreement (the "Loan Agreement"), dated as of the date of this Mortgage. The maturity date of the Note is anticipated to be October 1, 2006. Such maturity date, and any other term of the Note, may be extended, amended or modified by agreement of Borrower and Mortgagee without affecting the validity or priority of the lien created by this Mortgage, and without the necessity of amending this Mortgage. The Note provides, inter alia, for a variable rate of interest that may increase or decrease from time to time and contains an attorneys' fee clause.

Grantor has made and delivered to Mortgagee its guaranty (the "Guaranty") dated the same date as this Mortgage, the terms and provisions of which are hereby incorporated by reference herein, by which Grantor guaranteed all of the payment and performance obligations of Borrower to Mortgagee.

B. The total indebtedness and liabilities to be secured by this Mortgage are as follows (all such indebtedness and liabilities or the instruments evidencing same, as applicable, being herein collectively called the "Obligations"): JD

- (i) the aggregate of all principal and interest due under the Note and the Guaranty; plus
- (ii) all other amounts payable and all other obligations of the Grantor under the Note, under the Guaranty, the Loan Agreement, this Mortgage and any other document which relates to the Note or any of the security therefor (as the same may be amended, modified, extended, renewed, or supplemented from time to time, all of the foregoing being herein collectively called the "Loan Documents"); plus
- (iii) all other present and future amounts (whether relating to the Loan Documents or otherwise) other than those amounts referred to in (ii) above, but excluding any such amounts which if secured hereby would cause the rate of interest being charged on the amount owed thereunder to be usurious under applicable state or federal law.

C. It has been agreed that the payment and performance of the Obligations shall be secured by a mortgage affecting the Mortgaged Property (as defined below) on the terms and conditions below.

D. FUTURE ADVANCES AND FUTURE OBLIGATIONS ARE SECURED HEREBY PURSUANT TO THE LAWS OF THE STATE IN WHICH THE LAND IS LOCATED, AS AMENDED FROM TIME TO TIME, UP TO A MAXIMUM AMOUNT EQUAL TO TWICE THE ORIGINAL PRINCIPAL AMOUNT OF THE NOTE.

E. The address of the Premises (as defined below) is 1307 Ridge Avenue, Evanston, Illinois, and is located in Cook County.

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CONVEYANCE

BOX 169

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to secure the punctual payment by Grantor when due, whether at stated maturity, by acceleration or otherwise, of the Obligations and the performance and observance of all other covenants, obligations and liabilities of Grantor under this Mortgage, as the same may be extended, modified or renewed or re-pledged, Grantor does hereby MORTGAGE AND WARRANT, and grant, bargain, sell and convey, unto Mortgagee, upon the terms and conditions of this Mortgage, each and all of the real properties described below (which, together with all other property located therein or described herein, is hereinafter collectively called the "Mortgaged Property").



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A. Land. All the estate, right, title and interest of Grantor in, to and under, or derived from, the plots, pieces and parcels of land more particularly described in Exhibit A hereto (the "Land") with the tenements, hereditaments, appurtenances and all the estates and rights of Grantor in and to the Land.

B. Improvements. All buildings and improvements now or hereafter located on the Land (the "Improvements") and all right, title and interest, if any, of Grantor in and to the streets, roads, sidewalks and alleys abutting the Land, and strips and gores within or adjoining the Land, the air space and right to use said air space above the Land and any transferable development or similar rights appurtenant thereto, all rights of ingress and egress by motor vehicle to parking facilities on or within the Land, all rights of way, all easements now or hereafter affecting or benefiting the Land, royalties and all rights appertaining to the use and enjoyment of the Land, including without limitation alley, drainage, mineral, water, oil, hydrocarbon and gas rights, as well as all development rights and solar rights, and all crops, trees and agricultural products.

C. Fixtures. All fixtures and all appurtenances and additions thereto and substitutions or replacements thereof owned by Grantor and now or hereafter attached to the Premises (as defined herein).

D. Equipment. All property, tangible and intangible, and all additions thereto and substitutions or replacements thereof owned by Grantor and now or hereinafter contained in, or used in connection with the Premises or placed on any part thereof though not attached thereto, to the extent the same constitutes real property in the state in which the Mortgaged Property is located (all of the foregoing, including the items hereinafter enumerated, collectively referred to as the "Equipment"), including all removable window and floor coverings, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator plants, cooking facilities, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings and fixtures (the Land, together with the Improvements and the Equipment, are hereinafter collectively referred to as the "Premises").

E. Leases. All leases, subleases, lettings and licenses of, and all other contracts, bonds and agreements affecting the Premises or any part thereof now or hereafter entered into, and all amendments, modifications, supplements, additions, extensions and renewals thereof (all of the foregoing hereinafter collectively referred to as the "Leases"), and all right, title and interest of Grantor thereunder, including cash and securities deposited thereunder (as down payments, security deposits or otherwise), the right to receive and collect the rents, security deposits, income, proceeds, earnings, royalties, revenues, issues and profits payable thereunder (including without limitation under any existing or future oil, gas, mineral or other lease) and the rights to enforce, whether at law or in equity or by any other means, all provisions and options thereof or thereunder (all of the foregoing hereinafter collectively referred to as the "Rents") and the right to apply the same to the payment and performance of the Obligations.

F. Claims. All rights, dividends and/or claims of any kind whatsoever relating to the Premises (including damage, secured, unsecured, lien, priority and administration claims); together with the right to take any action or file any papers or process in any court of competent jurisdiction, which may in the opinion of Mortgagee be necessary to preserve, protect, or enforce such rights or claims, including the filing of any proof of claim in any insolvency proceeding under any state, Federal or other laws and any rights, claims or awards accruing to or to be paid to Grantor in its capacity as landlord under any Lease.

G. Proceeds. All unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Grantor and relating to the Premises and all proceeds of the conversion, voluntary or involuntary, of the Premises into cash or liquidated claims, including proceeds of liability, property and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Premises by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Premises or any easement therein, including awards for any change of grade of streets.

H. After Acquired Property. All right, title and interest of Grantor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, any of the foregoing hereafter acquired by, or released to, Grantor or constructed, assembled or placed by Grantor on the Premises and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assemblage, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Grantor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein.



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TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee and its successors and assigns forever for the uses and purposes set forth below.

ARTICLE I

1.1 Security for Obligations. This Mortgage is granted to secure the payment, when due, and the timely performance and observance of the Obligations.

This Mortgage shall be considered a financing statement and a fixture filing pursuant to the provisions of the Uniform Commercial Code (as adopted in the state where the Premises are located) covering the Fixtures, the Equipment and all other items of personal property now owned or hereafter attached to or to be used in connection with the Premises together with any and all replacements thereof, additions thereto, substitutions therefor and products thereof, and Grantor hereby grants Mortgagee a security interest therein to secure payment and performance of the Obligations. For such purposes, Grantor is the debtor and Mortgagee is the secured party. Upon demand, Grantor shall execute and deliver to Mortgagee such other security agreements as Mortgagee may deem appropriate. Grantor hereby authorizes Mortgagee to file financing statements with respect to the personal property collateral and Fixtures at any time, without the signature of Grantor. Grantor shall pay all related filing fees.

ARTICLE II

2.1 Obligations. Grantor shall punctually pay when due, and timely perform and observe, the Obligations, without any relief whatsoever, from valuation or appraisal laws of the state in which the Mortgaged Property is located.

2.2 Legal Status. Grantor represents and warrants that (i) Grantor has the full power and authority to own the Mortgaged Property and carry out Grantor's business in the state in which the Mortgaged Property is located; and (ii) there is no action, suit or proceeding, judicial, administrative or otherwise, pending or, to the best of Grantor's knowledge, threatened or contemplated against or affecting Grantor or the Mortgaged Property (or any part thereof).

2.3 Warranty of Title. Grantor represents and warrants to Mortgagee that Grantor (i) has good and marketable title to the Premises, free and clear of all liens, charges and encumbrances of every kind and character whatsoever, except for this Mortgage and for the lien of First Bank & Trust of Evanston for no more than \$350,000, which Grantor agrees to pay and perform in a timely manner; (ii) has and will continue to have full power and lawful authority to encumber and convey the Premises as provided herein; and (iii) owns all other Mortgaged Property free and clear of all liens, charges and encumbrances of every kind and character. Grantor covenants that this Mortgage is and will continue to remain a valid and enforceable priority lien on and security interest in the Mortgaged Property. Grantor further covenants that it will preserve such title and will forever warrant and defend the title to the Mortgaged Property unto Mortgagee against all lawful claims whatsoever and will forever warrant and defend the validity, enforceability and priority of the lien of this Mortgage against the claims of all persons and parties whomsoever.

(b) If there are any prior mortgages affecting the Premises, Grantor agrees to pay all amounts owed, and perform all obligations required under such mortgages and the indebtedness secured thereby, and further agrees that a default under any prior mortgage shall be a default under this Mortgage and shall entitle Mortgagee to all rights and remedies contained herein or in the Obligations to which Mortgagee would be entitled in the event of any other default.

2.4 Further Assurances. Grantor covenants that it will, at Grantor's sole cost and expense and at the request of Mortgagee, (i) promptly correct any defect or error which may be discovered in the Loan Documents, (ii) promptly do, execute, acknowledge and deliver, and record and re-record, file and re-file and register and re-register, any and all such instruments as Mortgagee may require from time to time in order to carry out more effectively the purposes of this Mortgage, and (iii) will promptly furnish Mortgagee with evidence satisfactory to Mortgagee of every such recording, filing or registration. Grantor shall promptly comply with all laws, ordinances, regulations and restrictions of any federal, state or local governmental body directly or indirectly affecting the Mortgaged Property or the use of same.

No action or proceeding is or shall be pending or threatened which might materially affect the Mortgaged Property in any way whatsoever. Grantor has not violated and shall not violate any statute, regulation, ordinance,



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rule of law, contract or other agreement which might materially affect the Mortgaged Property, or Mortgagee's rights or interests in the Mortgaged Property pursuant to this Mortgage.

2.5 The Premises.

(a) Repair and Maintenance. Grantor will operate and maintain or cause to be maintained the Premises in good order, repair and operating condition, will promptly make or cause to be made all necessary repairs, restorations, renewals, replacements, additions and improvements thereto, interior and exterior, structural and nonstructural, foreseen and unforeseen, or otherwise necessary to insure that the same as part of the security under this Mortgage shall not in any way be diminished or impaired, and will not cause or allow the Premises to be misused, wasted or deteriorated, normal wear and tear excepted. In the event of fire or other casualty, or in the event of a condemnation of a portion of the Premises, Grantor shall repair and restore the Premises to its condition prior to such casualty or condemnation, to the extent possible, promptly and in a workmanlike manner. No part of the Improvements shall be removed, demolished or structurally or materially altered nor shall any new building, structure, facility or other improvement be constructed on the Land without Mortgagee's prior written consent. Without limiting the foregoing, all alterations, additions and improvements made to the Premises shall be subject to Mortgagee's interest, shall not be removed without Mortgagee's prior written consent, and shall be made at Grantor's sole expense.

(b) Equipment. Grantor will keep the Premises fully equipped and will replace all worn out or obsolete Equipment with fixtures or personal property comparable thereto when new and will not, without Mortgagee's consent, remove any Equipment or other personal property from the Land or the Improvements unless Grantor replaces the same with an article of equal suitability and value when new, owned by Grantor free and clear of any lien or security interest.

(c) Zoning; Title Matters. Grantor will not, without the prior written consent of Mortgagee, (i) initiate or support any zoning reclassification of the Premises, seek any variance under existing zoning ordinances applicable to the Premises or use or permit the use of the Premises in a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances, (ii) impose any restrictive covenants, easements, rights-of-way or encumbrances upon the Premises, execute or file any subdivision plat affecting the Premises or consent to the annexation of the Premises to any municipality, or (iii) permit or suffer the Premises to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement. Grantor is and will continue to observe and comply in all material respects with all applicable federal, state and local zoning and building laws and regulations relating to the Premises, and all rights, licenses, permits, and certificates of occupancy shall be obtained, preserved and, where necessary, renewed. Grantor shall immediately provide Mortgagee with written notice of any proposed changes to the zoning provisions or private covenants affecting the Premises.

(d) Status of the Premises. Grantor represents and warrants that: (i) the Premises are not located in an area identified by the Secretary of Housing and Urban Development, or a successor thereto, as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968, or the Flood Disaster Protection Act of 1973, as amended, or any successor law or, if the Premises are located in such an area, Grantor will obtain and maintain insurance against damage or loss by flood on such basis and in such amounts as shall be required by Mortgagee; (ii) the Premises are served by all utilities required for the current use thereof (including, without limitation, electricity, water, gas, sanitary and storm sewers and telephone); (iii) all streets necessary to serve the Land and the Improvements for the current use thereof have been completed and are serviceable and have been dedicated or accepted by the appropriate governmental entities and Grantor has access from public roads to the Land and the Improvements; (iv) there is no condemnation or similar proceeding pending or threatened affecting any part of the Premises; and (v) the Premises are not subject to any loss or damage from fire or other casualty that has not been entirely repaired, and all portions thereof, including the roof, are in a state of good condition and repair.

(e) Environmental. Grantor represents and warrants to Mortgagee that Grantor is in compliance in all respects with all applicable federal, state and local laws and regulations, including without limitation those relating to "Hazardous Materials" or "Hazardous Substances" (as defined under federal law and as supplemented by the definitions thereof in the Indemnity Agreement Regarding Environmental Matters executed by Grantor contemporaneously with this Mortgage) and other environmental matters, and neither the federal government nor the state where the Premises are located nor any other governmental or quasi-governmental entity has filed a lien on the Premises, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of Grantor's knowledge, threatened, which involve the Premises. Neither Grantor, nor, to the best of Grantor's knowledge, any other party has used, generated, released, discharged, stored, or disposed of any



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Hazardous Substances or Materials in connection with the Premises or transported any of same to or from the Premises. Specifically, but not by way of limitation, the Premises have not emitted, do not contain and are not affected by asbestos, polychlorinated biphenyls (PCB's), underground storage tanks, petroleum products, radioactive materials, hazardous substances (as defined under Federal law), hazardous wastes (as defined under federal law and/or the laws of the state in which the Premises are located), hydrocarbon contamination, or other pollutants or contaminants and has not been used as a land fill or other waste disposal site. Grantor covenants and agrees that it shall not use, store or dispose of any hazardous substances, hazardous wastes, radioactive materials, explosives, asbestos, or PCB's and shall not store or dispose of any gasoline, petroleum products or any other toxic or hazardous material or other pollutants or contaminants. In the event any such condition is discovered to exist, Grantor shall cause the same to be remediated in compliance with all federal, state and local governmental laws and regulations including without limitation, those laws and regulations relative to the removal, handling and disposal of such substances. The foregoing covenants and obligations shall survive any sale of the Premises by foreclosure or deed in lieu thereof.

(f) Use. The Premises are and Grantor will use and cause the same to be occupied in compliance with all applicable governmental laws, rules, regulations, ordinances, codes and orders, rules of utility companies, requirements of the company providing property insurance for the Premises and restrictions and conditions affecting title to the Mortgaged Property (including without limitation the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq., as amended). Grantor agrees to make any changes or alterations to the Premises as may be required from time to time to cause the same to be in compliance with the foregoing. Grantor shall cause the Premises to be used in a manner consistent with the existing use thereof and for no other use unless consented to in writing by Mortgagee.

2.6 Insurance.

(a) Grantor will keep the Premises insured, for the benefit of Mortgagee, with such coverages, in such amounts and forms, and from such companies as shall be approved by Mortgagee, and shall obtain such additional coverages or increase the amounts of coverage or modify the forms thereof, as from time to time Mortgagee shall request and in any event shall cause the following insurance to be maintained:

(i) Fire, theft and physical hazard property insurance on an "all risk" basis covering fire and extended coverage risks (including without limitation, earthquake, flood and tornado) in an amount equal to the full replacement cost of the Improvements and Equipment bearing an agreed amount endorsement. Such insurance shall include explosion insurance if any boilers or similar apparatus are located on the Premises.

(ii) Comprehensive general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises or as a result of any activity on the Premises during the policy term, with such policy limits of not less than One Million Dollars (\$1,000,000) per occurrence and with aggregate limits of not less than One Million Dollars (\$1,000,000) or such greater amounts as Mortgagee may from time to time reasonably require.

(iii) Worker's compensation, general liability and automobile liability insurance as required by the laws of the state where the Premises are located to protect Grantor and Mortgagee against claims for injuries sustained in the course of employment at the Premises.

(iv) If all or part of the Premises shall be leased to or occupied by a person or persons other than Grantor, rent loss insurance in an amount necessary to provide full coverage of not less than one hundred percent (100%) of one year's base rental income for all Leases which amount shall be revised annually to reflect any increase or decrease in such base rental income.

(v) Such other insurance, in such amounts and against such risks, as may be reasonably required by Mortgagee.

(b) All insurance policies required by this Section shall be in form and issued by companies satisfactory to Mortgagee. All insurance policies in respect of the coverages required by this Section shall contain an endorsement naming Mortgagee as mortgagee, loss payee and additional insured, shall be in amounts at least sufficient to prevent coinsurance and all losses thereunder shall be payable to Mortgagee as sole loss payee, and shall provide that no act or omission of Grantor or any other person shall affect the right of Mortgagee to be paid the insurance proceeds pertaining to the loss or damage of the Mortgaged Property. Each policy of insurance required under this Section shall provide that it may not be altered, cancelled or otherwise terminated without written notice



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given to Mortgagee at least thirty (30) days prior to such alteration, cancellation or termination, and shall permit Mortgagee to pay any premium therefor within ten (10) days after receipt of any notice stating that such premium has not been paid when due. The policy or policies of such insurance evidencing the required coverages shall be delivered to Mortgagee. Settlement of any claim under any of the insurance policies referred to in this Section shall require Mortgagee's prior written approval. Grantor shall, immediately upon receipt of any written notice of any failure by Grantor to pay any insurance premium in respect of any insurance required to be maintained under this Section, furnish a copy of such notice to Mortgagee.

(c) Grantor shall not purchase separate insurance policies concurrent in form or contributing in the event of loss with those policies required to be maintained under this Section, unless Mortgagee is included thereon as a named insured, mortgagee and sole loss payee. Grantor shall immediately notify Mortgagee whenever any such separate insurance policy is obtained and shall promptly deliver to Mortgagee the policy or certificate evidencing such insurance. Upon the occurrence of any loss to the Mortgaged Property, Grantor shall give prompt notice of the loss to Mortgagee, describing in reasonable detail the date and nature of the loss.

(d) If Grantor fails to acquire or maintain insurance, Mortgagee (after providing such notice as may be required by law) may in its discretion procure appropriate insurance coverage upon the Mortgaged Property, and the insurance cost shall be added to the principal amount secured hereby, shall bear interest at the rate specified in the Note, and shall be secured hereby. Mortgagee may act as attorney-in-fact for Grantor in making and settling claims under insurance policies, canceling any policy or endorsing Grantor's name on any draft or negotiable instrument drawn by any insurer. All such insurance policies shall be immediately assigned, pledged and delivered to Mortgagee as further security for the Obligations.

(e) Notwithstanding anything in this Mortgage to the contrary, Grantor assigns to Mortgagee all rights, title and interests in all insurance proceeds from all policies required by this Mortgage or otherwise obtained by Grantor in any way in connection with the Mortgaged Property, whether required hereunder or not.

2.7 Liens. Grantor will not, without Mortgagee's consent, create, place or permit to be created or placed or allow to remain, and shall discharge and release within ten (10) days of the placing thereof, any deed of trust, mortgage, mechanic's lien, tax lien or other voluntary or involuntary lien, security interest or other encumbrance (collectively, "Liens") against or covering the Mortgaged Property, whether or not subordinate hereto. Grantor will pay, bond or otherwise discharge, from time to time when the same shall become due, all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property. Nothing in this Mortgage shall be deemed or construed in any way as constituting the consent or request by Mortgagee, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration or repair of the Premises. Grantor further agrees that Mortgagee does not stand in any fiduciary relationship to Grantor.

2.8 Taxes and Assessments. Grantor will promptly pay when due and before any penalty or interest may be added thereto, all general and special taxes and assessments, personal property taxes and assessments and any other ad valorem taxes, water and sewer rents, charges and assessments, levies, permits, inspection and license fees and other governmental and quasi-governmental charges and any penalties or interest for non-payment thereof, heretofore or hereafter imposed, or which may become a lien, upon the Mortgaged Property, or arising with respect to the occupancy, use or possession thereof (collectively, "Taxes"). Grantor will also pay any penalty, interest or cost for non-payment of Taxes that may become due and payable. Grantor will furnish to Mortgagee proof of payment at the time same is made, and thereafter, upon receipt, validated receipts showing payment in full of all Taxes. Grantor represents and warrants to Mortgagee that the Mortgaged Property constitutes a separate tax parcel from any adjacent land. Upon the request of Mortgagee, Grantor shall deposit with Mortgagee each month one-twelfth (1/12) of the estimated annual insurance premium, taxes and assessments pertaining to the Mortgaged Property. In the event of an Event of Default, Mortgagee shall have the right, at its sole option, to apply the funds so held to pay any taxes or against the Obligations. Any funds applied may, at Mortgagee's option, be applied in reverse order of the due date thereof.

2.9 Contest. Notwithstanding anything to the contrary contained herein, Grantor shall have the right to contest in good faith and at its own expense the validity or applicability of any duty or obligation described in Sections 2.7 or 2.8, the validity of any Lien, and any Taxes imposed upon the Premises (a "Contest") by an appropriate legal proceeding which proceeding must operate to prevent the collection of such Impositions or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same. During the pendency of such Contest, Grantor shall provide security satisfactory to Mortgagee, assuring the



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discharge of Grantor's obligations that are the subject of such Contest ("Contested Matters") and of any additional interest charge, penalty or expense arising from or incurred as a result of such Contest. If, at any time, payment or performance of such Contested Matters shall become necessary to prevent (i) the delivery of a tax deed conveying the Mortgaged Property because of non-payment or non-performance, (ii) the sale of the Premises to satisfy any lien or claim of lien, or (iii) the imposition of any civil or criminal penalty or liability on Mortgagee or the holders of the Obligations, Grantor shall pay the same in sufficient time to avoid the delivery of such tax deed or the imposition of any such penalty or liability.

2.10 Damage and Destruction.

(a) In the event of any damage to or loss or destruction of the Premises, Grantor shall (i) bear the entire risk of same regardless of the cause, (ii) promptly notify Mortgagee of such event and take such steps as shall be necessary to preserve any undamaged portion of the Premises and (iii) unless otherwise instructed by Mortgagee, regardless whether the insurance proceeds, if any, shall be sufficient for the purpose or shall be otherwise applied by Mortgagee as provided herein, promptly commence and diligently pursue to completion the restoration, replacement and rebuilding of the Premises to the condition of the Premises affected thereby immediately prior to such damage, loss or destruction in accordance with plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by Mortgagee.

(b) In the event that any portion of the Premises are so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance required by Section 2.6, then, (i) Mortgagee may, but shall not be obligated to, make proof of loss and is hereby authorized and empowered by Grantor to settle, adjust or compromise any claims for damage, destruction or loss thereunder, (ii) each insurance company concerned is hereby authorized and directed to make payment therefor directly to Mortgagee, and (iii) Mortgagee shall have the right to apply the insurance proceeds, first, to reimburse Mortgagee and the holders of the Obligations for all costs and expenses, including adjusters' and attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and, second, the remainder of such proceeds shall be applied, at Mortgagee's option, in payment of all or any part of the Obligations, in the order and manner determined by Mortgagee (provided that to the extent that any portion of the Obligations shall remain outstanding after such application, such unpaid portion of the Obligations shall continue in full force and effect and Grantor shall not be excused from the payment thereof), or to the cure of any then current default hereunder, or to the restoration, replacement or rebuilding, in whole or in part, of the portion of the Premises so damaged, destroyed or lost. Any insurance proceeds held by Mortgagee to be applied to the restoration, replacement or rebuilding of the Premises shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Grantor with such provisions and requirements as may be imposed by Mortgagee to assure the complete restoration of the Premises (pursuant to plans and specifications acceptable to Mortgagee) in a timely, lien-free, good and workmanlike manner. In the event that Grantor shall have received all or any portion of the insurance proceeds, Grantor, upon demand from Mortgagee, shall pay to Mortgagee an amount equal to the amount so received by Grantor, to be applied as Mortgagee shall have the right pursuant to this subsection. Notwithstanding anything herein or at law or in equity to the contrary, no insurance proceeds or payments in lieu thereof paid to Mortgagee shall be deemed trust funds, and Mortgagee shall be entitled to dispose of such proceeds as provided in this Section.

(c) Notwithstanding any loss, damage or destruction referred to in this Section, Grantor shall continue to pay and perform the Obligations as provided herein. Any reduction in the Obligations resulting from such application shall be deemed to take effect only on the date of receipt by Mortgagee of such insurance proceeds and application against the Obligations, provided that if prior to the receipt by Mortgagee of such insurance proceeds the Mortgaged Property shall have been sold on foreclosure of this Mortgage, or shall have been transferred by deed in lieu of foreclosure of this Mortgage, Mortgagee shall have the right to receive the same to the extent of any deficiency found to be due upon such sale, with interest thereon at the Default Rate together with attorneys' fees and disbursements incurred by Mortgagee in connection with the collection thereof.

2.11 Condemnation.

(a) Grantor, promptly upon obtaining knowledge of any pending or threatened institution of any proceedings for the condemnation of the Premises, or of any right of eminent domain, or of any other proceedings arising out of injury or damage to or decrease in the value of the Premises, including a change in grade of any street, will notify Mortgagee of the threat or pendency thereof. Mortgagee may participate in any such proceedings, and Grantor from time to time will execute and deliver to Mortgagee all instruments requested by Mortgagee or as may be required to permit such participation. Grantor shall, at its expense, diligently prosecute any such proceedings,



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shall deliver to Mortgagee copies of all papers served in connection therewith and shall consult and cooperate with Mortgagee, its attorneys and agents, in the carrying on and defense of any such proceedings; provided that no settlement of any such proceeding shall be made by Grantor without Mortgagee's consent.

(b) All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Premises (collectively, "Awards") are hereby assigned and shall be paid to Mortgagee. Grantor authorizes Mortgagee to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any Awards.

(c) Mortgagee shall have the right to apply any Awards, first, to reimburse Mortgagee for all costs and expenses, and, second, the remainder thereof in the manner provided in clause second of Section 2.10(b)(iii). In the event that Grantor shall have received all or any portion of such Awards, Grantor, upon demand from Mortgagee, shall pay to Mortgagee an amount equal to the amount so received by Grantor, to be applied as Mortgagee shall have the right pursuant to this subsection. Notwithstanding anything herein or at law or in equity to the contrary, none of the Awards paid to Mortgagee under this Section shall be deemed trust funds and Mortgagee shall be entitled to dispose of the same as provided in this Section.

(d) Notwithstanding any condemnation, taking or other proceeding referred to in this Section, Grantor shall continue to pay and perform the Obligations as provided herein. Any reduction in the Obligations resulting from such application shall be deemed to take effect only on the date of receipt by Mortgagee of such Awards and application against the Obligations, provided that if prior to the receipt by Mortgagee of such Awards the Mortgaged Property shall have been sold on foreclosure of this Mortgage, or shall have been transferred by deed in lieu of foreclosure of this Mortgage, Mortgagee shall have the right to receive the same to the extent of any deficiency found to be due upon such sale, with legal interest thereon together with attorneys' fees and disbursements incurred by Mortgagee in connection with the collection thereof.

2.12 Inspection. Grantor shall permit Mortgagee, by its agents, engineers, appraisers, accountants and attorneys, to visit and inspect the Premises and to visit, inspect and make copies of the books and records relative thereto at such times as may be requested by Mortgagee. Grantor shall provide any assistance required by Mortgagee for such purposes. All of the signatures and information contained in Grantor's books and records shall be genuine, true, accurate and complete and kept current and in accordance with generally acceptable accounting principles, consistently applied, for Grantor's type of business, in all respects. Grantor shall, report, in a form acceptable to Mortgagee, such information as Mortgagee may request regarding Grantor's financial condition or the Mortgaged Property.

2.13 Mortgage Taxes. In the event of the enactment after the date hereof of any applicable law deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Grantor, or changing in any way the laws relating to the taxation of deeds of trust or debts secured by deeds of trust or the interest of Mortgagee in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then and in any such event Grantor shall, upon demand by Mortgagee, pay such taxes or assessments or reimburse Mortgagee therefor; provided, however, that, if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Grantor to make such payment, or (b) the making of such payment might be construed as imposing a rate of interest beyond the maximum permitted by law, then and in such event Mortgagee may elect to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of written notice of such election to Grantor.

2.14 Additional Advances and Disbursements.

(a) Grantor agrees that if an Event of Default shall occur hereunder, then Mortgagee shall have the right without notice to Grantor to advance all or any part of amounts owing or to perform any or all required actions. No such advance or performance shall be deemed to have cured such default by Grantor or any Event of Default with respect thereto. All sums advanced and all expenses incurred by Mortgagee in connection with such advances or actions, and all other sums advanced or expenses incurred by Mortgagee hereunder or under applicable law (whether required or optional and whether indemnified hereunder or not) shall be part of the Obligations, shall bear interest at the default rate, as provided in the Note, and shall be secured by this Mortgage.

(b) This Mortgage secures not only existing indebtedness, but also future or additional advances made pursuant hereto, regardless of whether such advances are obligatory or optional, up to the maximum amount stated on the front page hereto.



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2.15 Other Expenses. Grantor will pay or, on demand, reimburse Mortgagee or any holder of the Obligations for the payment of any and all costs or expenses (including attorneys' fees and disbursements) incurred in connection with (i) any default or Event of Default by Grantor hereunder, (ii) the exercise or enforcement by or on behalf of Mortgagee or any holder of the Obligations of any of its rights or of Grantor's obligations under any of the Loan Documents and (iii) the granting, administration, enforcement and closing of the transactions contemplated hereunder. Mortgagee, at Mortgagee's option, may expend funds to perform any act required to be taken by Grantor or to exercise any right or remedy of Mortgagee under this Mortgage. Upon demand, Grantor shall immediately reimburse Mortgagee for all such amounts expended by Mortgagee together with interest thereon at the rate described in the Note from the date of payment until the date of reimbursement, except where such reimbursement would cause a violation of applicable state law. These sums shall be included in the definition of Obligations herein and shall be secured by the beneficial interest granted herein.

2.16 Indemnity. Grantor agrees to indemnify, defend (by counsel acceptable to Mortgagee) and hold harmless Mortgagee, the holders of the Obligations and their respective officers, directors, partners, employees, agents and shareholders (the "indemnified parties") from and against any and all losses, damages, claims, causes of action, judgment, settlements, fines, penalties and expenses (including attorneys' fees and disbursements) which may be imposed on, incurred by or asserted against any of the indemnified parties resulting from (i) any misrepresentation or breach of any covenant or warranty of Grantor herein or in the Loan Documents, (ii) any Event of Default, (iii) any personal injury, death or property damage arising out of the ownership, use or occupation of the Mortgaged Property (including without limitation any involving hazardous materials or substances), (iv) any condition of the Mortgaged Property or Collateral, including, without limitation, those conditions regulated by environmental, health and/or safety laws, rules, regulations, ordinances or codes, or (v) any transaction in any way connected with the Mortgaged Property, the Collateral or the Loan Documents, except to the extent any such loss, damage, claim, cost or expense is the result of the willful misconduct or gross negligence of the indemnified party. Mortgagee shall not assume or be responsible for the performance of any of Grantor's obligations with respect to the Mortgaged Property under any circumstances whatsoever. Any amount payable under this Section shall be deemed a demand obligation, shall be added to and become a part of the Obligations, shall bear interest at the rate provided in the Note, and shall be secured by this Mortgage. The foregoing obligation of Grantor shall survive any foreclosure of the Mortgaged Property under this Mortgage or any deed in lieu thereof.

2.17 Transfer Restrictions. Grantor acknowledges that the continuous ownership of the Mortgaged Property by Grantor is a material inducement to Mortgagee in making the loans evidenced by the Note. Any one or more of the following (collectively referred to as "Transfers") shall constitute an Event of Default hereunder if the Mortgagee's prior written consent thereto has not been obtained: (i) any sale, grant, conveyance, assignment, lease or other transfer, by operation of law or otherwise, voluntary or involuntary, of the Mortgaged Property, or any legal, beneficial or equitable interest therein or the entering into of an agreement, grant of an option or other action which may result in any such transaction; (ii) any sale, assignment or other transfer (whether voluntary or involuntary or by operation of law or otherwise) of more than 20%, in the aggregate, of the issued and outstanding capital stock of Grantor, if Grantor is a corporation; (iii) any sale, assignment or other transfer (whether voluntary or involuntary or by operation of law or otherwise) of any membership interests of any limited liability company shareholder or member of Grantor (if applicable) or the assignment, sale or other transfer (whether voluntary or involuntary or by operation of law or otherwise) of any general partnership interests of Grantor (as applicable); (iv) any withdrawal of any member from the Grantor or from any limited liability company which is a member of Grantor or any withdrawal of any general partner from any partnership which is a member of Grantor, whether voluntary or involuntary, by operation of law or otherwise; (v) a merger, consolidation or other form of reorganization of Grantor, whether voluntary or involuntary, by operation of law or otherwise; (vi) the entry into any easement or other agreement granting rights in or restricting the use or development of the Mortgaged Property; (vii) the further encumbrance, alienation, granting of a lien or granting of any other interest in the Mortgaged Property or any part thereof (including any partnership or other ownership interest in Grantor), whether voluntary or involuntary; or (viii) the death or incompetency of any individual comprising Grantor, if Grantor is comprised of one or more individuals. In addition, the execution and delivery of any documentation relating to a transfer of, or the granting of a right to utilize, any development rights appurtenant to the Mortgaged Property shall be deemed a Transfer of the Mortgaged Property. Any person or legal representative of Grantor to whom Grantor's interest in the Mortgaged Property passes by operation of law, or otherwise, shall be bound by the provisions of this Mortgage. The provisions of this Section shall apply to each and every such Transfer of all or any portion of the Mortgaged Property or any legal or equitable interest therein, regardless whether or not Mortgagee has consented to, or waived by its action or inaction its rights hereunder with respect to any previous Transfer of all or any portion of the Mortgaged Property or any legal or equitable interest therein.

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2.18 Waiver of Offset. All sums payable by Grantor under this Mortgage shall be paid without notice, demand, counterclaim, set off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations shall in no way be released, discharged or otherwise affected (except as expressly provided in this Mortgage) by reason of (i) any damage to or destruction of, or any condemnation or similar taking of all or any portion of, the Mortgaged Property, (ii) any restriction or prevention of, or interference with, any use of all or any portion of the Mortgaged Property, (iii) any title defect or encumbrance, (iv) any eviction from all or any portion of the Mortgaged Property by title paramount or otherwise, (v) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding, (vi) any claim which Grantor has or might have against Mortgagee, (vii) any default or failure on the part of Mortgagee to perform or comply with any of the terms of this Mortgage or of any other agreement with Grantor, or (viii) any other occurrence whether similar or dissimilar to the foregoing. Except as expressly provided in this Mortgage, Grantor waives all rights now or subsequently conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any Obligation secured by this Mortgage.

2.19 Waiver Regarding Leases of Property. Mortgagee shall not be liable for any loss sustained by Grantor resulting from Mortgagee's failure to let the Mortgaged Property after default or from any other act or omission of Mortgagee in managing the Mortgaged Property after default unless such loss is caused by the willful misconduct of Mortgagee. Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability under any lease of the Mortgaged Property. This Mortgage (i) shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Property upon Mortgagee, and (ii) shall not operate to make Mortgagee responsible or liable for any waste committed on the Mortgaged Property by the tenants under any lease or other parties, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss, injury or death to any person.

ARTICLE III

3.1 Assignment of Leases and Rents. Grantor does hereby grant, bargain and sell, transfer, assign and set over to Mortgagee, as further security for the payment of the Obligations, all of Grantor's rights, title and interests in and to the Leases and the Rents payable thereunder and any and all deposits held as security under the Leases, whether before or after foreclosure or during the full period of redemption, if any, and shall, upon demand, deliver to Mortgagee an executed counterpart of each Lease. The assignment of the Leases and Rents, and of the aforesaid rights with respect thereto, is intended to be and is an absolute present assignment from Grantor to Mortgagee and not merely the passing of a security interest. Such assignment and grant shall continue in effect until the Obligations are paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of Grantor to the entry upon and taking possession of the Premises by Mortgagee pursuant to such grant, regardless of whether foreclosure has been instituted and without applying for a receiver. Until the occurrence of an Event of Default hereunder, Grantor shall be entitled to collect and receive the Rents and agrees to hold the same in trust, however, Mortgagee may at any time require Grantor to deposit all Rents into an account maintained by Grantor or Mortgagee at Mortgagee's institution.

Such right of Grantor to collect and receive said Rents shall be automatically revoked upon the occurrence of an Event of Default and thereafter Mortgagee shall have the right and authority to exercise any of the remedies granted to it under this Mortgage. In addition, upon such an Event of Default, Grantor shall promptly pay to Mortgagee all rent prepayments and security or other deposits paid to Grantor pursuant to any Lease assigned hereunder. Upon an Event of Default, Mortgagee may at its option take possession of the Mortgaged Property and have, hold, manage, lease and operate the Mortgaged Property on terms and for a period of time that Mortgagee deems proper. Mortgagee may proceed to collect and receive all Rents from the Mortgaged Property, and Mortgagee shall have full power to make alterations, renovations, repairs and/or replacements to the Mortgaged Property as Mortgagee may deem proper. Mortgagee may apply all Rents in its sole discretion to payment of the Obligations or to the payment of the cost of such alterations, renovations, repairs and replacements and any expenses incident to taking and retaining possession of the Mortgaged Property periodically and the management and operation of the Mortgaged Property. Mortgagee may keep the Mortgaged Property properly insured and may discharge any taxes, charges, claims, assessments and other liens which may accrue. The expense and cost of these actions may be paid from the Rents received, and any unpaid amounts shall be added to the principal of the Obligations. These amounts, together with other costs, shall become part of the Obligations secured by this Mortgage.

Nothing contained in this Section shall be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any Lease or otherwise to impose any obligation on Mortgagee



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(including any liability under the covenant of quiet enjoyment contained in any Lease or under any applicable law in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Premises), except that Mortgagee shall be accountable for any money actually received pursuant to such assignment. Immediately upon entering into a new Lease, Grantor shall notify Mortgagee in writing of such tenant's name and address.

Grantor shall not take or fail to take any action that may cause or permit the termination or the withholding of any payment in connection with any Lease pertaining to the Mortgaged Property. In addition, Grantor, without Mortgagee's prior written consent, shall not: (a) collect any monies payable under any Lease more than one month in advance; (b) modify any Lease; (c) assign or allow a lien, security interest or other encumbrance to be placed upon Grantor's rights, title and interests in and to any Lease or the amounts payable thereunder; or (d) terminate or cancel any Lease except for the nonpayment of any sum or other material breach by the other party thereto. If Grantor receives at any time any written communication asserting a default by Grantor under a Lease or purporting to terminate or cancel any Lease, Grantor shall promptly forward a copy of such communication (and any subsequent communications) to Mortgagee.

Mortgagee shall be entitled to notify or require Grantor to notify any third party (including without limitation lessees, licensees, governmental authorities and insurance companies) to pay Mortgagee any indebtedness or obligation owing to Grantor with respect to the Mortgaged Property whether or not a default exists under this Mortgage. Mortgagee shall be entitled to apply any payments received from third parties to the Obligations. Grantor shall diligently collect such amounts owing to Grantor from third parties until the giving of such notification. Mortgagee shall not be liable to Grantor for any action, error, mistake, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom.

ARTICLE IV

4.1 Creation of Security Interest. Grantor hereby grants to Mortgagee a security interest in, and does hereby collaterally assign, pledge, mortgage, convey and set over unto the Mortgagee, all the property, whether presently owned by Grantor or hereafter acquired, described as the "Collateral" in Exhibit B attached hereto, and all of Grantor's present and hereafter acquired right, title and interest in and to the Collateral, for the purpose of securing payment and performance of all the Obligations.

This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law with respect to the Collateral. To this end, Grantor grants to Mortgagee, a first and prior security interest in the Collateral and all other Mortgaged Property which is personal property to secure the payment of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Grantor at least five (5) days prior to any action under the UCC shall constitute reasonable notice to Grantor.

Grantor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

The security interest herein granted shall in no event cause Mortgagee to be deemed or construed as a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the leases or otherwise.

This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Grantor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

It is expressly agreed that until such time as the Obligations have been paid and performed in full, or until the security interest granted hereby has been released in writing by Mortgagee, this Mortgage shall remain fully



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effective as a security agreement, notwithstanding that the lien on real property that is created by this Mortgage may be extinguished or released, by foreclosure of this Mortgage or otherwise.

4.2 Warranties, Representations and Covenants of Grantor. Grantor hereby warrants, represents and covenants as follows:

(a) Grantor is and will be the sole owner of the Collateral, which is and shall be kept free from any lien, security interest, encumbrance or adverse claim of any kind. Grantor will not permit any financing statement to be filed with respect to the Collateral or any portion thereof except in favor of Mortgagee. Grantor will notify Mortgagee of, and will defend the Collateral against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) The Collateral will not be used and was not purchased for personal, family or household purposes.

(c) The Collateral will be kept on the Premises and Grantor will not remove the Collateral from the Premises without the prior written consent of Mortgagee.

(d) At the request of Mortgagee, Grantor has or will execute one or more financing statements identifying the Collateral and evidencing the security interest of Mortgagee in the Collateral pursuant to the requirements of Uniform Commercial Code and in form satisfactory to Mortgagee. Grantor will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable.

(e) Without the prior written consent of Mortgagee, Grantor will not sell, exchange, dispose of, lease, or otherwise transfer or otherwise deal with the Collateral or any portion or interest therein. All after-acquired property of the Grantor located on the Premises shall immediately be and become, without any other act on the part of the Grantor, subject to the security interest and lien of the security interest granted in this Mortgage, which security interest shall be prior to any other security interest or lien on such property. Unless expressly recited or provided to the contrary in this Mortgage or in the other Loan Documents, Grantor may not hereafter acquire any personal property subject to prior security interests. If the Collateral or any part thereof is sold, transferred, exchanged, or otherwise disposed of, the security interest of Mortgagee shall extend to the proceeds of such sale, transfer, exchange or other disposition.

(f) Grantor will keep the Collateral free from any lien, security interest or encumbrance and in good condition and repair. From time to time and at the request of Mortgagee, Grantor will make necessary or desirable repairs, replacements, renewals and additions to the Collateral which may be required by reason of use, wear, obsolescence, damage or destruction, however caused, to the end that the efficiency of the business conducted on the Premises shall not be impaired. Grantor will not misuse, abuse, allow to deteriorate, waste or destroy the Collateral or any part thereof, except for ordinary wear and tear in the course of its normal and expected use. Grantor will not use the Collateral in violation of any statute or governmental rule, regulation or ordinance.

(g) Grantor will pay prior to delinquency all taxes and assessments assessed against the Collateral, imposed on account of its use or operation or imposed upon the Mortgagee's Note ("Impositions") and shall deliver to Mortgagee, within ten (10) days after the due date of each Imposition a receipt, or other evidence satisfactory to Mortgagee, of the payment thereof.

(h) At the Mortgagee's request, Grantor will execute any document, will procure any document and will do all other acts which from the character or use of the Collateral may be reasonably necessary to protect the Collateral against the rights, claims or interests of third persons, and will otherwise preserve the Collateral as security hereunder.

(i) Grantor shall furnish promptly to Mortgagee such information concerning the Collateral as Mortgagee may from time to time request. Grantor shall permit and hereby authorizes Mortgagee to examine and inspect the Collateral and any portion thereof wherever the same may be located. Grantor shall, at the request of Mortgagee, assemble the Collateral or such portion thereof as may be designated by Mortgagee, together with all documents and records pertaining thereto, at such place as Mortgagee may designate.

4.3 Preservation of Collateral by Mortgagee. Should Grantor fail or refuse to make any payment, perform or observe any other covenant, condition or obligation, or take any other action required by the terms of this Mortgage at the time or in the manner herein provided, then Mortgagee may, at Mortgagee's sole discretion, without



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notice to or demand upon Grantor, and without releasing Grantor from any obligation, covenant or condition hereof, make, perform, observe, take or do the same in such manner and to such extent as Mortgagee may deem necessary to protect its security interest in or the value of the Collateral. Furthermore, Mortgagee may commence, defend, appeal or otherwise participate in any action or proceeding purporting to affect its security interest in or the value of the Collateral. Grantor hereby agrees to reimburse Mortgagee on demand for any payment made, or any expense incurred by Mortgagee pursuant to the foregoing authorization (including court costs and reasonable attorneys' fees and disbursements), and agrees further to pay interest thereon from the date of said payment or expenditure at the rate specified in the Note as the Default Rate.

4.4 Use of Collateral by Grantor. Until default be made hereunder, Grantor may have possession of the Collateral and use it in any lawful manner contemplated in the Loan Agreement and consistent with this Mortgage and any policy of insurance affecting the Collateral.

ARTICLE V

5.1 Events of Default. An "Event of Default" as that term is used in this Mortgage shall occur if Grantor, borrower or any guarantor of the Obligations:

- (a) fails to pay any of the Obligations (including without limitation any principal, interest or other amounts due under the Note) when and as the same shall become due; or
- (b) fails to observe or perform any of the Obligations (including without limitation any of the covenants or obligations to be observed or performed under this Mortgage or any of the Loan Documents); or
- (c) breaches any representation or warranty of Grantor in this Mortgage or in any of the other Loan Documents or in any other present or future agreement; or
- (d) destroys, loses or damages the Mortgaged Property, or any portion thereof, or subjects the Mortgaged Property, or any portion thereof, to seizure, confiscation or condemnation; or
- (e) abandons the Premises or ceases to do business or terminates its business for any reason whatsoever; or
- (f) seeks to revoke, terminate or otherwise limit its liability under any guaranty to Mortgagee; or
- (g) permits any claim of priority to this Mortgage or any other document or instrument securing the Obligations by title, lien or otherwise to be upheld by any court of competent jurisdiction or consents to same; or
- (h) fails to cure any default under any Lease within the shorter of thirty (30) days following the giving of notice of default by the lessor thereunder or the applicable grace period set forth therein; or
- (i) notifies Mortgagee of Grantor's election to terminate the operation of this Mortgage as security for future advances or future obligations; or
- (j) permits the occurrence of any Transfer; or
- (k) dies, becomes legally incompetent, is dissolved or terminated, becomes insolvent, makes an assignment for the benefit of creditors, fails to pay debts as they become due, files a petition under the federal bankruptcy laws, has an involuntary petition in bankruptcy filed in which Grantor, borrower or any guarantor is named, or has property taken under any writ or process of court; or
- (l) allows goods to be used, transported or stored on the Premises, the possession, transportation, or use of which is illegal; or
- (m) allows any party other than Grantor or borrower to assume or undertake any or all of the Obligations without the written consent of Mortgagee; or
- (n) causes Mortgagee to deem itself insecure due to a significant decline in the value of the Premises, or if Mortgagee, in good faith, for any reason, believes that the prospect of payment or performance of any Obligations is impaired.

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5.2 Remedies. Upon the occurrence of any one or more Events of Default, or any Transfer without the consent of Mortgagee, Mortgagee may, in addition to any rights or remedies available to it hereunder or under the other Loan Documents and to the extent permitted by applicable law, take such action personally or by its agents or attorneys, with or without entry, and without notice, demand, presentment or protest (each and all of which are hereby waived), as it deems necessary or advisable to protect and enforce its rights and remedies against Grantor and in and to the Mortgaged Property, including any one or more of the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting its other rights or remedies:

(a) Accelerate Debt. Declare the entire balance of the Obligations to be immediately due and payable, and upon any such declaration, the entire unpaid balance of the Obligations shall become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Grantor, anything in any other Loan Documents to the contrary notwithstanding.

(b) Foreclosure. Institute a proceeding or proceedings, judicial or otherwise, for the complete or partial foreclosure of this Mortgage under any applicable provision of law. Mortgagee may sell all or any of the Mortgaged Property as one unit or in separate units, parcels or divisions, in any combination of real and/or personal property, as solely determined by Mortgagee.

(c) Power of Sale. To the extent permitted by applicable law, sell the Mortgaged Property, and all estate, right, title, interest, claim and demand of Grantor therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real and/or personal property, at public venue at such place as may be proper for the conduct of such sale in the jurisdiction in which the Mortgaged Property is located to the highest bidder for cash at such time and place and upon such terms as it may deem expedient, or as may be required by applicable law, after first giving notice as required by applicable law, and in the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue in full force and effect.

(d) Specific Performance. Institute an action, suit or proceeding in equity for the specific performance of any of the provisions contained in the Loan Documents.

(e) Receiver. Apply for the appointment of a receiver, custodian, trustee, liquidator or conservator of the Mortgaged Property, to be vested with the fullest powers permitted under applicable law, as a matter of right and without regard to, or the necessity to disprove, the adequacy of the security for the Obligations or the solvency of Grantor or any other person liable for the payment of the Obligations, and Grantor and each other person so liable waives or shall be deemed to have waived such necessity and consents or shall be deemed to have consented to such appointment.

(f) Right of Entry. Enter upon the Premises, and exclude Grantor and its agents and servants wholly therefrom, without liability for trespass, damages or otherwise, and take possession of all books, records and accounts relating thereto and all other Mortgaged Property, and Grantor agrees to surrender possession of the Mortgaged Property and of such books, records and accounts to Mortgagee on demand after the occurrence of any Event of Default; and having and holding the same may use, operate, manage, preserve, control and otherwise deal therewith and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers, without interference from Grantor; and upon each such entry and from time to time thereafter may, at the expense of Grantor and the Mortgaged Property, without interference by Grantor and as Mortgagee may deem advisable, (i) insure or reinsure the Premises, (ii) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon and (iii) in every such case in connection with the foregoing have the right to exercise all rights and powers of Grantor with respect to the Mortgaged Property, either in Grantor's name or otherwise.

(g) Collect Rent. With or without the entrance upon the Premises, collect, receive, sue for and recover in its own name all rents and cash collateral derived from the Mortgaged Property, and after deducting therefrom all costs, expenses and liabilities of every character incurred by Mortgagee in collecting the same and in using, operating, managing, preserving and controlling the Mortgaged Property, and otherwise in exercising Mortgagee's rights under subsection (g) of this Section, including all amounts necessary to pay taxes, insurance premiums and other charges in connection with the Premises, as well as compensation for the services of Mortgagee and their respective attorneys, agents and employees, to apply the remainder as provided in Section 3.4.



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(h) Substitution of Collateral. Release any portion of the Mortgaged Property for such consideration as Mortgagee may require without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release and applied to the Obligations, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder.

(i) Interest After Default. If any payment due hereunder or under the other Loan Documents is not paid in full when due, whether by acceleration or otherwise, then the same shall bear interest hereunder at the default rate of interest as provided in the Note, and such interest shall be added to and become a part of the Obligations and shall be secured hereby.

(j) Other Action. Take any other action, or pursue any other right or remedy, as Mortgagee may have under applicable law, and Grantor does hereby grant the same to Mortgagee.

(k) Security Agreement. Exercise any remedies of a secured creditor under the Uniform Commercial Code or any other applicable law.

(l) Set-Off. Set-off Grantor's Obligations against any amounts owed Grantor by Mortgagee including without limitation monies, instruments, and deposit accounts maintained with Mortgagee or any currently existing or future affiliate of Mortgagee.

(m) Collection Costs. To the extent permitted by applicable state law, Grantor agrees to pay Mortgagee's fees and costs, including without limitation fees and costs of attorneys and other agents who are not salaried employees of Mortgagee, which are incurred by Mortgagee in collecting any amount due or enforcing any right or remedy under this Mortgage, whether or not suit is brought, including without limitation all fees and costs incurred on appeal, in bankruptcy, and for post-judgment collection actions.

In the event that Mortgagee shall exercise any of the rights or remedies set forth in subsections (f) and (g) of this Section, Mortgagee shall not be deemed to have entered upon or taken possession of the Mortgaged Property except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose, nor shall it be deemed a Mortgagee in possession by reason of such entry or taking possession. Mortgagee shall not be liable to account for any action taken pursuant to any such exercise other than for Rents actually received by Mortgagee, nor liable for any loss sustained by Grantor resulting from any failure to let the Premises, or from any other act or omission of Mortgagee except to the extent such loss is caused by the willful misconduct or bad faith of Mortgagee.

5.3 Expenses. In any proceeding, judicial or otherwise, to foreclose this Mortgage or enforce any other remedy of Mortgagee under the Loan Documents, there shall be allowed and included as an addition to and a part of the Obligations in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred in connection with the exercise by Mortgagee of any of its rights and remedies provided or referred to in Section 3.2, or any comparable provision of any other Loan Document, together with interest thereon at the default rate under the Note, and the same shall be part of the Obligations and shall be secured by this Mortgage.

5.4 Application of Proceeds. The purchase money, proceeds or avails of any sale referred to in Section 5.2, together with any other sums which may be held by Mortgagee hereunder, whether under the provisions of this Article or otherwise, shall, except as herein expressly provided to the contrary, be applied as follows:

First: To the payment of the costs and expenses of any such sale, including compensation to Mortgagee, their agents and counsel, and of any judicial proceeding wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee hereunder, including, without limitation, the cost of obtaining title reports and/or insurance, together with interest thereon as provided herein, and all taxes and other charges, except any taxes or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment in full of the monetary Obligations (including principal, interest, premium and fees) in such order as Mortgagee may elect.

Third: To the payment of any other sums secured hereunder or required to be paid by Grantor pursuant to any provision of the Loan Documents.



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Fourth: To the extent permitted by applicable law, to be set aside by Mortgagee as adequate security in its judgment for the payment of sums which would have been paid by application under clauses First through Third above to Mortgagee, arising out of an obligation or liability with respect to which Grantor has agreed to indemnify Mortgagee, but which sums are not yet due and payable or liquidated.

Fifth: To the payment of any withholding tax in accordance with applicable Federal, state or local law.

Sixth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

5.5 Additional Provisions as to Remedies. No delay or omission by Mortgagee to exercise any right or remedy hereunder upon any default or Event of Default shall impair such exercise, or be construed to be a waiver of any such default or Event of Default. The failure, refusal or waiver (by consent, waiver or otherwise) of Mortgagee to assert any right or remedy hereunder upon any default or Event of Default or other occurrence shall not be construed as waiving such right or remedy upon any other or subsequent default or Event of Default or other occurrence. Mortgagee shall not have any obligation to pursue any rights or remedies it may have under any other agreement prior to pursuing its rights or remedies hereunder or under the other Loan Documents. Acceptance of any payment after the occurrence of any default or Event of Default shall not be deemed a waiver or a cure of such default or Event of Default, and acceptance of any payment less than any amount then due shall be deemed an acceptance on account only. In the event that Mortgagee shall have proceeded to enforce any right or remedy hereunder by foreclosure, sale, entry or otherwise, and such proceeding shall be discontinued, abandoned or determined adversely for any reason, then Grantor and Mortgagee shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property, subject to the lien hereof.

5.6 Waiver of Rights and Defenses. To the full extent Grantor may lawfully do so, Grantor agrees with Mortgagee as follows:

(a) Grantor will not claim or take the benefit of any statute or rule of law now or hereafter in force providing for any appraisal, valuation, stay, extension, moratorium, reinstatement or redemption, or of any statute of limitations, and Grantor, for itself and its heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming an interest in the Mortgaged Property (other than Mortgagee), hereby waives and releases all rights of redemption, homestead, dower, valuation, appraisal, notice of intention to mature or declare due the whole of the Obligations, and all rights to a marshaling of the assets of Grantor, including the Mortgaged Property, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created hereunder.

(b) Grantor shall not have or assert and hereby waives any right under any statute or rule of law pertaining to any of the matters set forth in subsection (a) of this Section, to the administration of estates of decedents or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Mortgagee hereunder.

(c) To the extent permitted by applicable law, Grantor hereby expressly consents to a deficiency judgment for any Obligations secured by this Mortgage which is not paid or satisfied by the sale of the Property, and Grantor waives any defense to the recovery by Mortgagee of any deficiency after such a sale.

(d) If Mortgagee institutes an action seeking the recovery of any of the Mortgaged Property by way of a prejudgment remedy in an action against Grantor, Grantor waives the posting of any bond which might otherwise be required.

ARTICLE VI

6.1 Release of Lien. If all of the Obligations shall be fully satisfied, paid and performed, then and in that event only all rights and obligations hereunder (except for the rights and obligations set forth in Sections 2.5(e) and 2.17) shall terminate and the Mortgaged Property shall become wholly released and cleared of the liens, security interests, conveyances and assignments evidenced hereby. In such event Mortgagee shall, at the request of Grantor, deliver to Grantor, in recordable form, all such documents as shall be necessary to release the Mortgaged Property from the liens, security interests, conveyances and assignments created or evidenced hereby. Grantor shall be responsible to pay any costs of recordation.



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ARTICLE VII

7.1 Provisions as to Payments, Advances. To the extent that any part of the Obligations is used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Mortgaged Property or to pay in whole or in part the purchase price therefor, Mortgagee shall be subrogated to any and all rights, security interests and liens held by any owner or holder of the same, whether or not the same are released. Grantor agrees that, in consideration of such payment by Mortgagee, effective upon such payment Grantor shall and hereby does waive and release all demands, defenses and causes of action for offsets and payments with respect to the same.

7.2 Separability. Whenever possible, each provision of this Mortgage shall be interpreted so as to be effective and valid under applicable state law. If all or any portion of any provision of this Mortgage or any other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

7.3 Notices. Any notice, demand, consent, approval, direction, agreement or other communication (any "Notice") required or permitted hereunder or under any other documents evidencing or securing the Note shall be in writing and shall be validly given when received if personally delivered, one (1) business day after deposit with Federal Express or other reputable national overnight delivery service, if sent by such means, or two (2) business days after deposit in the U.S. mails if mailed by United States mail, certified or registered mail, return receipt requested, postage prepaid, addressed as follows to the person entitled to receive the same at their addresses set forth on the first page of this Mortgage. Any person shall have the right to change, from time to time, its address or addresses for the receipt of Notices by the giving of a Notice thereof as provided herein.

7.4 Right to Deal. In the event that ownership of the Mortgaged Property becomes vested in a person other than Grantor, Mortgagee may, without notice to Grantor, deal with such successor or successors in interest with reference to this Mortgage or the Obligations in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the Obligations or being deemed a consent to such vesting. To the extent permissible by applicable law, Grantor authorizes Mortgagee to contact any third party and make any inquiry pertaining to Grantor's financial condition or any of the Mortgaged Property. Mortgagee shall be entitled to notify or require Grantor to notify any third party to pay Mortgagee any indebtedness or obligation owing to Grantor with respect to the Mortgaged Property whether or not a default exists under this Mortgage. Grantor shall diligently collect all such indebtedness until the giving by Mortgagee of such notice. Grantor shall immediately provide Mortgagee with written notice of any actual or threatened action, suit or other proceeding affecting any of the Mortgaged Property.

7.5 Continuation of Lease.

(a) Upon the foreclosure of the lien created hereby on the Mortgaged Property, as herein provided, any Lease then existing which is subordinate or has been subordinated to this Mortgage shall be terminated as a result of such foreclosure unless Mortgagee has entered into a written nondisturbance agreement with the tenant thereunder or unless Mortgagee has subordinated, in writing, this Mortgage to such Lease.

(b) If both the lessor's and the lessee's interest under any Lease which constitutes a part of the Premises shall at any time become vested in any one person, this Mortgage and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee hereunder as to each separate estate.

(c) If any Lease which is or has been subordinated to this Mortgage contains an option or right in favor of the tenant thereunder to purchase all or any portion or interest in the Mortgaged Property, such option or right shall be subordinate in all respects to this Mortgage and the rights of Mortgagee hereunder, and the exercise of any such option or right shall not affect, release or terminate this Mortgage.

7.6 Applicable Law. This Mortgage shall be governed by, and construed in accordance with, the law of the State in which the Premises are located.



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7.7 Provisions as to Covenants and Agreements. All of Grantor's covenants and agreements hereunder shall run with the land and time is of the essence with respect thereto.

7.8 Amendments and Waivers. This Mortgage cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought. To the extent permissible under applicable law, any amendments or modifications hereof or of the Obligations shall not affect the priority of the lien of this Mortgage. A waiver by Mortgagee on any occasion of any of its rights shall not constitute a waiver on any other occasion. Grantor's obligations under this Mortgage shall not be affected if Mortgagee amends, compromises, exchanges, fails to exercise, impairs or releases any of the Obligations belonging to any Grantor, Borrower or third party or any of its rights against any Grantor, borrower or third party or any of the Mortgaged Property. Mortgagee's failure to insist upon strict performance of any of the Obligations shall not be deemed a waiver, and Mortgagee shall have the right at any time thereafter to insist upon strict performance.

7.9 Successors and Assigns. The provisions hereof shall be binding upon Grantor and the heirs, devisees, representatives, successors and permitted assigns of Grantor, including successors in interest of Grantor in and to all or any part of the Mortgaged Property, and shall inure to the benefit of Mortgagee, the holders of the Obligations and their respective heirs, successors, legal representatives, substitutes and assigns. Where two or more persons have executed this Mortgage, (a) the obligations of such persons shall be joint and several, and (b) all references to the singular shall be read as if in the plural. The term "Mortgagee" shall include any payee of the Obligations or any assignee or transferee of Mortgagee whether by operation of law or otherwise.

7.10 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

7.11 Agency. Mortgagee may deal with the Mortgaged Property and may issue as applicable, any release to be given hereunder pursuant to Section 6.1 or grant any consent or approval or take any other action as applicable, required or permitted hereunder, without reference to or the approval of the holders of the Obligations and any third party (including any title insurance company issuing a title insurance policy, or a commitment to issue a title insurance policy, in connection with the Mortgaged Property) may conclusively rely on the due authority of Mortgagee to do any or all of the foregoing.

7.12 Sole Discretion of Mortgagee. Whenever Mortgagee's judgment, consent or approval is required hereunder for any matter, or either shall have an option or election hereunder, such judgment, the decision whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Mortgagee, as the case may be.

7.13 SBA. In compliance with section 101.1(d) of the Rules and Regulations of the Small Business Administration [13 C.F.R. 101.1(d)], this Mortgage is to be construed and enforced in accordance with applicable Federal law.

7.14 Non-Usurious. Interest on the indebtedness secured by this Mortgage shall not exceed the maximum amount of interest that may be contracted for, charged or received under applicable law. It is the intent of the parties to comply strictly with all applicable usury laws. Any interest collected in excess of that maximum amount shall be credited on the principal of the debt, or if that has been paid, refunded. This section shall control all Loan Documents. On any acceleration or prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment, or if already paid, credited on the principal of the debt, or if that has been paid, refunded.



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7.15. Excess Amounts. Nothing in this Mortgage shall be interpreted to allow Mortgagee to collect any amounts in excess of that allowed by applicable Federal or state law. Any sums collected which may exceed such allowable amounts shall be presumed a clerical error and shall, within thirty (30) days after Mortgagee's confirmation of such excess, be credited on the principal of the debt, or if already paid, refunded to Grantor.

7.16. Homestead. Notwithstanding anything in this Mortgage to the contrary, and to the extent legally permissible, Grantor hereby waives all homestead exemptions in the Mortgaged Property to which Grantor would otherwise be entitled under any applicable law, and Grantor warrants and represents to Mortgagee that neither the Mortgaged Property, nor any portion thereof, is homestead or otherwise exempt from the claims of creditors.

7.17. Redemption. Notwithstanding anything in this Mortgage to the contrary, and to the extent legally permissible, Grantor hereby waives all any and all rights to redeem all or any of the Mortgaged Property sold under an order of sale pursuant to foreclosure proceedings, and hereby waives the period of redemption, and any and all rights which would have accrued during such redemption period but for this waiver.

7.18. Estoppel Certificates. Within 10 days after any request by Mortgagee, Grantor shall deliver to Mortgagee, or any intended transferee of Mortgagee's rights with respect to the Obligations, a signed and acknowledged statement specifying (a) the outstanding balance on the Obligations, and (b) whether Grantor possesses any claims, defenses, set-offs or counterclaims with respect to the Obligations and, if so, the nature of same.

7.19. Power of Attorney. Grantor hereby appoints Mortgagee as its attorney-in-fact to endorse Grantor's name on all instruments and other documents pertaining to the Obligations or Mortgage. In addition, Mortgagee shall be entitled, but not required, to perform any action or execute any document required to be taken or executed by Grantor under this Mortgage. In addition, Mortgagee may commence, intervene in and defend any actual or threatened action, suit or other proceeding affecting any of the Mortgaged Property, and may compromise or settle any claim or controversy affecting any of the Mortgaged Property. Mortgagee shall not be liable to Grantor for any action, error, mistake, omission or delay pertaining to the actions described herein or any damages resulting therefrom. Mortgagee may take any such actions in its own name. Mortgagee's performance of such action or execution of such documents shall not relieve Grantor from any Obligation or cure any default under this Mortgage. All powers of attorney described in this Mortgage are coupled with an interest and are irrevocable.

ARTICLE VIII

8.1 Fixture Filing. A portion of the Mortgaged Property is or is to become fixtures upon the Premises. To the extent permitted by applicable law, Grantor covenants and agrees that the filing of this Mortgage in the real estate records of the county in which the Mortgaged Property is located shall also operate from the time of filing as a fixture filing with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein. This document covers goods which are or are to become fixtures.

8.2 SBA. The loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

- (a) When SBA is the holder of the Note, this document and all documents evidencing or securing this loan will be construed in accordance with federal law; and
- (b) Mortgagee or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No borrower or guarantor or Mortgagor may claim or assert against SBA any local or state law to deny any obligation of Mortgagor or borrower or guarantor, or defeat any claim of SBA with respect to this loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

8.3 WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY LAW, GRANTOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN



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CONNECTION WITH THIS MORTGAGE, THE NOTE, OR ANY OTHER LOAN DOCUMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THIS MORTGAGE, THE NOTE, OR ANY OTHER LOAN DOCUMENT OR IN ANY WAY RELATING TO THE LOAN OR THE MORTGAGED PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS MORTGAGE, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS MORTGAGE WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO ENTER THIS MORTGAGE.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Mortgage as of the day first above written.


JEFFREY D. GARDNER


BARBARA S. GARDNER

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 21 day of September, 1999, before me personally appeared Jeffrey D. Gardner, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

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

My commission expires:

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)


Notary Public



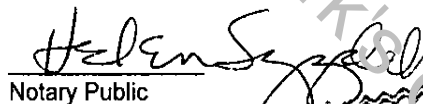
On this 21 day of September, 1999, before me personally appeared Barbara S. Gardner, to me known to be the person who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

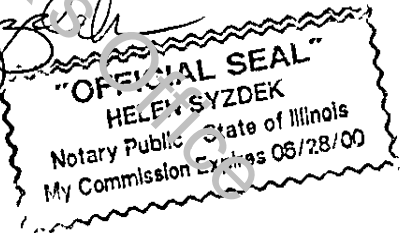
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My commission expires:

After Recording, Return to:

Zions First National Bank
Attn: Closing Dept.
13545 Barrett Parkway Drive, Suite 335
St. Louis, MO 63021


Notary Public



99928880

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EXHIBIT A TO MORTGAGE AND SECURITY AGREEMENT
From Jeffrey and Barbara Gardner to Zions First National Bank
Description of Land

Lot 8 in Catherine M. White's resubdivision of Block 43 in Village of Evanston in Section 13, Township 41 North, Range 13 and Sections 7, 18 and 19, Township 41 North Range 14 East of the Third Principal Meridian, in Cook County, Illinois, East of the Third Principal Meridian, in Cook County, Illinois.

PROPERTY INDEX NUMBER: 11-18-326-006-0000

Property of Cook County Clerk's Office

99928880



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EXHIBIT B TO MORTGAGE AND SECURITY AGREEMENT From Jeffrey and Barbara Gardner to Zions First National Bank

All of the following property now or at any time hereafter owned by Grantor or in which the Grantor may now or at anytime hereafter have any interest or rights, together with all of Grantor's right, title and interest therein:

1. All fixtures and personal property now or hereafter owned by Grantor and attached to or contained in and used or useful in connection with the Premises or any of the improvements now or hereafter located thereon, including without limitation any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, kitchen equipment and utensils, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, all renewals or replacements thereof or articles in substitution therefor, and all Premises owned by Grantor and now or hereafter used for similar purposes in or the Premises;
2. Articles or parts now or hereafter affixed to the property described in Paragraph 1 of this Exhibit or used in connection with such property, any and all replacements for such property, and all other property of a similar type or used for similar purposes now or hereafter in or on the Premises or any of the improvements now or hereafter located thereon;
3. Grantor's right, title, and interest in all personal property used or to be used in connection with the operation of the Premises or the conduct of business thereon, including without limitation business equipment and inventories located on the Premises or elsewhere, together with files, books of account, and other records, wherever located;
4. Grantor's right, title, and interest in and to any and all contracts now or hereafter relating to the Premises executed by any architects, engineers, or contractors, including all amendments, supplements, and revisions thereof, together with all Grantor's rights and remedies thereunder and the benefit of all covenants and warranties thereon, and also together with all drawings, designs, estimates, layouts, surveys, plats, plans, specifications and test results prepared by any architect, engineer or contractor, including any amendments, supplements, and revisions thereof and the right to use and enjoy the same, as well as all building permits, environmental permits, approvals and licenses, other governmental or administrative permits, licenses, agreements and rights relating to construction or the Premises;
5. Grantor's right, title, and interest in and to any and all contracts now or hereafter relating to the operation of the Premises or the conduct of business thereon, including without limitation all management and other service contracts, the books and records, and the right to appropriate and use any and all trade names used or to be used in connection with such business;
6. Grantor's right, title, and interest in the rents, issues, deposits (including security deposits and utility deposits), and profits in connection with all leases, contracts, and other agreements made or agreed to by any person or entity (including without limitation Grantor and Mortgagee under the powers granted by this Mortgage made between Grantor and Mortgagee and the other Loan Documents) with any person or entity pertaining to all or any part of the Premises, whether such agreements have been heretofore or are hereafter made;
7. Grantor's right, title, and interest in all sale contracts, earnest money deposits, proceeds of sale contracts, accounts receivable, and general intangibles relating to the Premises;
8. All rights in and proceeds from all fire and hazard, loss-of-income, and other non-liability insurance policies now or hereafter covering improvements now or hereafter located on the Premises or described in this Mortgage, the use or occupancy thereof, or the business conducted thereon;
9. All awards or payments, including interest thereon, that may be made with respect to the Premises, whether from the right of the exercise of eminent domain (including any transfer made in lieu of the exercise of said right) or for any other injury to or decrease in volume of the Premises; and
10. All proceeds from the sale, transfer, or pledge of any or all of the foregoing property.

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