Recorded: 9/30/2020 at 9:56:24.0 AM
County Recording Fee: $252.00
Iowa E-Filing Fee: $3.00
Combined Fee: $255.00
Revenue Tax:
Delaware County, Iowa
Daneen Schindler RECORDER
BK: 2020 PG: 3416

RECORDING COVER SHEET
MORTGAGE

Prepared by/Return to
Thomas J Irons, 12655 N Central Expressway, Suite 1016, Dallas, TX 75243, Ph. 972-248-3900

Grantor: Shree Jay Ambe LLC, 1020 W Main St, Manchester, IA 52057

Grantee: First Western SBLC, Inc., 17950 Preston Red, Ste 600, Dallas, TX 75252

Taxpayer: Shree Jay Ambe LLC, 1020 W Main St, Manchester, IA 52057

Legal Description: See page **47**

Related Documents: None

When recorded, return to:
Thomas J. Irons, Esq.
12655 North Central Expressway, Suite 1016
Dallas, Texas 75243

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (herein referred to as the "Mortgage"), entered into as of September 25, 2020, by SHREE JAY AMBE LLC, an Iowa limited liability company (the "Mortgagor"), whose mailing address for notice hereunder is at 1020 West Main Street, Manchester, Iowa 52057, to FIRST WESTERN SBLC, INC., a Florida corporation, having an address at 17950 Preston Road, Suite 600, Dallas, Texas 75252 ("Mortgagee").

W I T N E S S E T H:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is located.

Constituent Party: Any signatory to this Mortgage that signs on Mortgagor's behalf that is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, limited liability company, or other type of business organization.

Contracts: All of the right, title, and interest of Mortgagor in, to, and under any and all (i) contracts for the purchase of all or any portion of the Mortgaged Property, whether such Contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the Contracts, including all amendments and supplements to and renewals and extensions of the Contracts at any time made, and together with all payments, earnings, income, and profits arising from sale of all or any portion of the Mortgaged Property or from the Contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the Contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to, or connected with, the development of the Mortgaged Property, whether limitation, any and all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits,

and no-action letters from each governmental authority required: (a) to evidence compliance by Mortgagor and all improvements constructed or to be constructed on the Mortgaged Property with all legal requirements applicable to the Mortgaged Property, and (b) to develop and/or operate the Mortgaged Property as a commercial and/or residential project; (iii) any and all right, title, and interest Mortgagor may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; and (iv) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, management or ownership of the Mortgaged Property (save and except any and all leases, subleases or other agreements pursuant to which Mortgagor is granted a possessory interest in the Land), including but not limited to maintenance and service contracts, management and operation agreements, franchise/license agreements and any applicable estoppel agreements.

Debtor Relief Laws: Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

Default Rate: The rate of interest specified in the Note to be paid by the maker of the Note from and after the occurrence of a default in payment under the provisions of the Note and Loan Documents but not in excess of the Maximum Lawful Rate.

Disposition: Any sale, lease (except as permitted under this Mortgage), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest in Mortgagor (if Mortgagor is a corporation, partnership, general partnership, limited partnership, limited liability company, joint venture, trust, limited liability company, or other type of business association or legal entity) or any Constituent Party, without Mortgagee's consent (provided, however, no consent shall be necessary for transfers between members).

Event of Default: Any happening or occurrence described in Article VI hereof.

Environmental Law: Any federal, state, or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Mortgaged Property, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. § 9601 the Resource, Conservation and Recovery Act (as now or hereafter amended) et seq. ("RCRA"), 42 U.S.C. § 6901 et seq. and regulations, rules, guidelines, or standards promulgated pursuant to such laws, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Mortgagor and are now or hereafter attached to the Land or the Improvements, and including but not limited to any and all

partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

Guarantor (individually and/or collectively, as the context may require): Those persons, firms, or entities, if any, designated as Guarantor in the Guaranty.

Guaranty (individually and/or collectively, as the context may require): That or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor to Mortgagee guaranteeing the repayment of all or any part of the Indebtedness or the satisfaction of, or continued compliance with, the Obligations, or both.

Hazardous Substance: Hazardous Substance is any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) asbestos; (iv) polychlorinated biphenyls; (v) petroleum products; (vi) underground storage tanks, whether empty, filled or partially filled with any substance.

Impositions: (i) All real estate and personal property taxes, hotel occupancy taxes, sales taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, permit, or agreement (written or oral, either prior, now, or hereafter in effect) maintained for the benefit of the Mortgaged Property; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Mortgaged Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property.

Improvements: Any and all buildings, covered garages, air conditioning towers, open parking areas, structures and other improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

Indebtedness: (i) The principal of, interest on, or other sums evidenced by the Note or the Loan Documents; (ii) any other amounts, payments, or premiums payable under the Loan Documents; (iii) such additional sums, with interest thereon, as may hereafter be borrowed from Mortgagee, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by Mortgagor and Mortgagee that such future indebtedness may be incurred); and (iv) any and all other indebtedness, obligations, and liabilities of any kind or character of the Mortgagor to Mortgagee, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, or direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations, and liabilities to Mortgagee of the Mortgagor as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Mortgagor as principal, surety, endorser, guarantor, accommodation party or otherwise, it being contemplated by Mortgagor and Mortgagee that Mortgagor may hereafter become indebted to Mortgagee in further sum or sums. Notwithstanding the foregoing provisions of this definition, this Mortgage shall not secure any such other loan, advance, debt, obligation or liability with respect to which Mortgagee is by applicable law prohibited from obtaining a lien on real estate, nor shall this definition operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt or obligation of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law.

Land: The real property or interest therein described in Exhibit "A" attached hereto and incorporated herein by this reference, together with all right, title, interest, and privileges of Mortgagor in and to (i) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber and crops pertaining to such real estate; and (iv) all appurtenances and all reversions and remainders in or to such real property.

Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (written or oral, now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith.

Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Mortgagor, any Guarantor or the Mortgaged Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession,

operation, maintenance, alteration, repair, or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use, or occupancy thereof, and handicap or disability legislation (including without limitation, the American with Disabilities Act of 1990, P.L. 101-336, 104 Stat. 327, July 26, 1990. T.R. 42, U.S.C.A §§12101-12213 ("ADA") (iii) Mortgagor's or any Guarantor's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust, articles of organization, operating agreement, or other form of business association agreement, (iv) any and all Leases, (v) any and all Contracts, and (vi) any and all leases, other than those described in (iv) above, and other contracts (written or oral) of any nature that relate in any way to the Mortgaged Property and to which Mortgagor or any Guarantor may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Mortgagor is granted a possessory interest in and to the Land and/or the Improvements.

Licensor: Any person or entity, or successor or assign thereof whom Mortgagor contracts for the use of or providing of any franchise, license, sublicense, trade name, trade mark, service mark, reservation system, advertising, marketing, training or any other service related to the operation of the Mortgaged Property, including, but not limited to the franchisor for the operation of a SureStay by Best Western franchise at the Mortgaged Property.

Loan Documents: The Note, this Mortgage, the Guaranty, if any, and any and all other documents now or hereafter executed by the Mortgagor, Guarantor, or any other person or party in connection with the loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations.

Material Adverse Effect: Any material and adverse effect on (i) the business condition (financial or otherwise), operations, prospects, results of operations, capitalization, liquidity or any properties of the Mortgagor, taken as a whole, (ii) the value of the Mortgaged Property, (iii) the ability of Mortgagor (or if the Mortgagor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Mortgagor or of the ground lessor if the estate held by Mortgagor in the Land is a leasehold estate) to pay and perform the Indebtedness and the Obligations, respectively, or (iv) the validity, enforceability or binding effect of any of the Loan Documents.

Maximum Lawful Rate: The rate utilized by Mortgagee pursuant to either (i) the indicated (weekly) rate ceiling from time to time in effect as provided in Chapter 303 of the Texas Finance Code, or (ii) United States federal law which permits Mortgagee to contract for, charge, or receive a greater amount of interest than that provided by Chapter 303 of the Texas Finance Code, as amended, for the purpose of determining the maximum lawful rate allowed by applicable laws. Additionally, to the extent permitted by applicable law now or hereafter in effect, Mortgagee may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under such Chapter 303 of the Texas Finance Code, as amended, or under other applicable law by giving notice, if required, to Mortgagor as provided by applicable law now or hereafter in effect.

Minerals: All substances in, on, or under the Land which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, and which now or may be in the future enjoyed through extraction or removal from the property, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores.

Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, and any interest of Mortgagor now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. As used in this Mortgage, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Mortgagee: The entity described as Mortgagee in the initial paragraph of this Mortgage, and the subsequent holder or holders, from time to time, of the Note.

Mortgagor: The individual or entity described as Mortgagor in the initial paragraph of this Mortgage and any and all subsequent owners of the Mortgaged Property or any part thereof (without hereby implying Mortgagee's consent to any Disposition of the Mortgaged Property.)

Note: That certain Promissory Note of even date herewith, incorporated herein by this reference, executed by Mortgagor, and payable to the order of Mortgagee in the principal amount of SEVEN HUNDRED SIXTY-SIX THOUSAND AND NO/100 DOLLARS ($766,000.00), bearing interest as therein specified, containing an attorneys' fee clause, interest and principal being payable as therein specified, and finally maturing on the date which is twenty-five (25) years from the date hereof, and secured by, among other things, this Mortgage; and any and all renewals, modifications, rearrangements, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, substitution or replacement therefor.

Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor, Guarantor, or any other person or party to the Loan Documents to Mortgagee or others as set forth in the Loan Documents, the Leases, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Mortgagor is granted a possessory interest in the Land.

Personalty: All of the right, title, and interest of Mortgagor in and to (i) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and extracted Minerals); (ii) general intangibles (including, but not limited to, all permits, licenses and franchises), money, insurance proceeds, accounts (including, but not limited to, hotel guest receipts and revenues), contract and subcontract rights, trademarks, trade name and inventory; (iii) all refundable, returnable,

or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (iv) all revenues, receipts, income, accounts, accounts receivable and other receivables including, without limitation, revenues, receipts, income receivables and accounts relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, food and beverage facilities, vending machines, telephone and television systems, guest laundry, off-site catering, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System of Accounts for Hotels, 8th Edition, International Association of Hospitality Accountants (1986), as from time to time amended, arising from or related to the Mortgaged Property; and (v) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Mortgagor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof. Without limiting the foregoing, Personalty shall include all of the personal property listed on Exhibit B attached hereto.

Release: "Release," "removal," "environment," and "disposal" shall have the meanings given such terms in CERCLA, and the term "disposal" shall also have the meaning given it in RCRA; provided that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided further that to the extent the laws of the State of Iowa establish a meaning for "release," "removal," "environment," or "disposal," which is broader than that specified in either CERCLA and RCRA, such broader meaning shall apply.

Remedial Work: Any investigation, site monitoring, containment, cleanup, removal, restoration, or other work of any kind or nature reasonably necessary or desirable under any applicable Environmental Law in connection with the current or future presence, suspected presence, release, or suspected release of a Hazardous Substance in or into the air, soil, ground water, surface water, or soil vapor at, on, about, under, or within the Mortgaged Property, or any part thereof.

Rents: All of the rents, revenues, income, proceeds, profits, security and other types of deposits (after Mortgagor acquires title thereto), and other benefits paid or payable by parties to the Contracts and/or Leases, other than Mortgagor for using, leasing, licensing,

possessing, operating from, residing in, selling, or otherwise enjoying all or any portion of the Mortgaged Property.

Subordinate Mortgage: Any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, covering all or any portion of the Mortgaged Property executed and delivered by Mortgagor, the lien of which is subordinate and inferior to the lien of this Mortgage.

ARTICLE II

GRANT

2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor hereby GIVES, GRANTS, BARGAINS, SELLS, WARRANTS, ALIENS, REMISES, RELEASES, CONVEYS, ASSIGNS, TRANSFERS, MORTGAGES, HYPOTHECATES, DEPOSITS, PLEDGES, SETS OVER AND CONFIRMS unto Mortgagee and Mortgagee's successors and assigns, with MORTGAGE COVENANTS, the Mortgaged Property, TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee and Mortgagee's successors and assigns, forever, and Mortgagor does hereby bind itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee and Mortgagee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Mortgagor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interests, estates, and rights granted by the Loan Documents shall terminate, in accordance with the provisions hereof, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Mortgagee confirming that the Indebtedness has not been fully paid or the Obligations have not been fully performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

ARTICLE III

WARRANTIES AND REPRESENTATIONS

Mortgagor hereby unconditionally warrants and represents to Mortgagee, as of the date hereof and at all times during the term of this Mortgage, as follows:

3.1 Organization and Power. If Mortgagor or any Constituent Party is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business association, as the case may be, Mortgagor and any Constituent Party, if any, (a) is either a corporation or limited liability company duly incorporated with a legal status separate from its affiliates, or a partnership or trust, joint venture or other type of business association duly organized, validly existing, and in good standing under the laws of the state of its formation or existence, and has complied with all conditions prerequisite to its doing business in the state in which

the Mortgaged Property is located, and (b) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications, and documentation to own, lease, and operate its properties and to carry on its business as now being, and as proposed to be, conducted. Mortgagor and each Constituent Party is in good standing under the laws of the State of Iowa.

3.2 Validity of Loan Documents. The execution, delivery, and performance by Mortgagor of the Loan Documents (other than the Guaranty), (a) if Mortgagor, or any signatory who signs on its behalf, is a corporation, general partnership, limited partnership, joint venture, trust, or other type of business association, as the case may be, are within Mortgagor's and each Constituent Party's powers and have been duly authorized by Mortgagor's and each Constituent Party's board of directors, shareholders, partners, venturers, trustees, or other necessary parties, and all other requisite action for such authorization has been taken, (b) have received any and all requisite prior governmental approvals in order to be legally binding and enforceable in accordance with the terms thereof, and (c) will not violate, be in conflict with, result in a breach of, or constitute (with due notice or lapse of time, or both) a default under or violation of any Legal Requirement or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of Mortgagor's and any Constituent Party's or Guarantor's property or assets, except as contemplated by the provisions of the Loan Documents. The Loan Documents constitute the legal, valid, and binding obligations of Mortgagor, Guarantor, and others obligated under the terms of the Loan Documents, enforceable in accordance with their respective terms.

3.3 Information. All information, financial statements, reports, papers, and data given or to be given to Mortgagee with respect to Mortgagor, each Constituent Party, Guarantor, others obligated under the terms of the Loan Documents, or the Mortgaged Property are, or at the time of delivery will be, accurate, complete, and correct in all material respects and do not, or will not, omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being materially misleading. Since the date of the financial statements of Mortgagor, any Constituent Party, or of any Guarantor or other party liable for payment of the Indebtedness or performance of the Obligations or any part thereof heretofore furnished to Mortgagee, no Material Adverse Effect has occurred, and except as heretofore disclosed in writing to Mortgagee, Mortgagor, each Constituent Party, each Guarantor, or any other such party has not incurred any material liability, direct or indirect, fixed or contingent.

3.4 Title and Lien. Mortgagor has good and indefeasible title to the Land in fee simple and Improvements, and good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests, claim, easements, restrictions, options, leases (other than the Leases), covenants, and other rights, titles, interests, or estates of any nature whatsoever. This Mortgage constitutes a valid, subsisting first lien on the Land, the Improvements, and the Fixtures; a valid, subsisting first priority security interest in and to the Personalty, Contracts, and to the extent that the terms Leases and Rents include items covered by the Code, in and to the Leases and Rents; and a valid, subsisting first priority assignment of the Leases and Rents not covered by the Code, all in accordance with the terms hereof.

3.5 Business Purposes. The loan evidenced by the Note is solely for the purpose of carrying on or acquiring a business of Mortgagor, and is not for personal, family, household, or agricultural purposes.

3.6 Taxes. Mortgagor, each Constituent Party, and Guarantor have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Mortgagor, any Constituent Party, nor Guarantor knows of any basis for any additional assessment in respect of any such taxes and related liabilities.

3.7 Mailing Address. Mortgagor's mailing address, as set forth in the opening paragraph hereof or as changed pursuant to the provisions hereof, is true and correct.

3.8 Relationship of Mortgagor and Mortgagee. The relationship between Mortgagor and Mortgagee is solely that of debtor and creditor, and Mortgagee has no fiduciary or other special relationship with the Mortgagor, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Mortgagor and Mortgagee to be other than that of debtor and creditor.

3.9 No Reliance on Mortgagee. Mortgagor is experienced in the ownership and operation of properties similar to the Mortgaged Property, and Mortgagor and Mortgagee have and are relying solely upon Mortgagor's expertise and business plan in connection with the ownership and operation of the Mortgaged Property. Mortgagor is not relying on Mortgagee's expertise or business acumen in connection with the Mortgaged Property.

3.10 Environmental and Hazardous Substances. To the best of Mortgagor's knowledge after due inquiry, the Mortgaged Property and the operations conducted thereon do not violate any applicable law, statute, ordinance, rule, regulation, order, or determination of any Governmental Authority or any restrictive covenant or deed restriction (recorded or otherwise), including without limitation all applicable zoning ordinances and building codes, flood disaster laws and Environmental Laws. To the best of Mortgagor's knowledge after due inquiry, all notices, permits, licenses, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Mortgaged Property, including, without limitation, the past or present generation, treatment, storage, disposal, or release of a Hazardous Substance into the environment have been duly obtained or filed. To the best of Mortgagor's knowledge after due inquiry, the Mortgaged Property does not contain any Hazardous Substance. Mortgagor has not received any notice, and has no actual or constructive knowledge, that any Governmental Authority or any employee or agent thereof has determined, or threatens to determine, or is investigating any allegation that there is a presence, release, threat of release, placement on, under, from or about the Mortgaged Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, under, from or about the Mortgaged Property, or the transportation to or from the Mortgaged Property, of any Hazardous Substance.

3.11 No Litigation. There are no (i) actions, suits, or proceedings, at law or in equity, before any Governmental Authority or arbitrator pending or (to the best of Mortgagor's knowledge) threatened against or affecting Mortgagor, Guarantor, or any Constituent Party or involving the Mortgaged Property, (ii) outstanding or unpaid judgments against the Mortgagor, any Guarantor, any Constituent Party, or the Mortgaged Property, or (iii) defaults by Mortgagor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator.

3.12 OFAC. Mortgagor and all beneficial owners of Mortgagor are in compliance with all laws, statutes, rules and regulations of any federal, state or local governmental authority in the United States of America applicable to such person, including the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) ("Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of The Treasury ("OFAC") and in any enabling legislation or other Executive Orders in respect thereof.

ARTICLE IV

AFFIRMATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged as follows:

4.1 Payment and Performance. Mortgagor will pay the Indebtedness as and when specified in the Loan Documents, and will perform and discharge all of the Obligations, in full and on or before the dates same are to be performed.

4.2 Existence. Mortgagor will and will cause each Constituent Party to preserve and keep in full force and effect its existence (separate and apart from its affiliates), rights, franchises, and trade names.

4.3 Compliance with Legal Requirements. Mortgagor will promptly and faithfully comply with, conform to, and obey all Legal Requirements, whether the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

4.4 First Lien Status. Mortgagor will protect the first lien and security interest status of this Mortgage and the other Loan Documents and will not permit to be created or to exist in respect of the Mortgaged Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof.

4.5 Payment of Impositions. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier to occur of (i) the due date thereof, (ii) the day any fine, penalty, interest, or cost may be added thereto or imposed, or (iii) the day any lien may be filed for the nonpayment thereof (if such day is used to determine the due date of the respective item), and Mortgagor shall deliver to Mortgagee a written receipt evidencing the payment of the respective Imposition. In no way limiting this Section 4.5, Mortgagor shall deliver to Mortgagee on a calendar quarter basis, a true and complete copy of the written receipt evidencing the payment of any local and state hotel occupancy taxes, taxes on liquor sales, if any, and any other sales taxes.

4.6 Repair. Mortgagor will keep the Mortgaged Property in first-class order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same

in such order and condition. Mortgagor will prevent any act, occurrence, or neglect which might impair the value or usefulness of the Mortgaged Property for its intended usage.

4.7 Insurance. Mortgagor will obtain and maintain insurance upon and relating to the Mortgaged Property or Mortgagor or others, with such insurers, in such amounts and covering such risks as shall be satisfactory to Mortgagee, from time to time, including but not limited to: (i) owner's and contractors' policies of comprehensive general public liability insurance (including automobile coverage); (ii) hazard insurance against all risks of loss, including collapse, in an amount not less than the full replacement cost of all Improvements, including the cost of debris removal, with annual agreed amount endorsement and sufficient at all times to prevent Mortgagor from becoming a coinsurer; (iii) business interruption or rental loss insurance; (iv) if the Mortgaged Property is in a "Flood Hazard Area," a flood insurance policy, or binder therefor, in an amount equal to the principal amount of the note or the maximum amount available under the Flood Disaster Protection Act of 1973, and regulations issued pursuant thereto, as amended from time to time, whichever is less, in form complying with the "insurance purchase requirement" of that Act; (v) worker's compensation insurance for Mortgagor and any general contractor performing any work on or with respect to the Mortgaged Property; (vi) insurance for "dram shop" liability or otherwise relating to the sale, distribution, furnishing of service of alcoholic beverage; (vii) broad form boiler and machinery insurance (without exclusion for explosion), if Mortgagee requests such coverage covering all boilers or other pressure vessels, machinery and equipment located in, or about the Mortgaged Property and insurance against loss of occupancy or use arising from any such breakdown in such amounts as are generally available at premiums and are generally required by institutional lenders for properties similar to the Mortgaged Property; (viii) earthquake insurance, if Mortgagee requests such coverage; and (ix) such other insurance, if any, as Mortgagee may require from time to time. Each insurance policy issued in connection herewith shall provide by way of endorsements, riders or otherwise that (a) with respect to liability insurance, it shall name Mortgagee as an additional insured, with respect to the other insurance, it shall be payable to Mortgagee as a mortgagee and not as a coinsured, and with respect to all policies of insurance carried by each Lessee for the benefit of the Mortgagor, it shall be payable to Mortgagee as Mortgagee's interest may appear; (b) the coverage of Mortgagee shall not be terminated, reduced, or affected in any manner regardless of any breach or violation by Mortgagor of any warranties, declarations, or conditions in such policy; (c) no such insurance policy shall be canceled, endorsed, altered, or reissued to effect a change in coverage for any reason and to any extent whatsoever unless such insurer shall have first given Mortgagee thirty (30) days' prior written notice thereof; and (d) Mortgagee may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration, or reissuance, and such payments shall be accepted by the insurer to prevent same. Mortgagee shall be furnished with the original of each such initial policy coincident with the execution of this Mortgage and the original of each renewal policy not less than ten (10) days prior to the expiration of the initial, or each immediately preceding renewal policy, together with receipts or other evidence that the premiums thereon have been paid for one (1) year. Mortgagor shall furnish to Mortgagee, on or before thirty (30) days after the close of each of Mortgagor's fiscal years, a statement certified by Mortgagor or a duly authorized officer of Mortgagor of the amounts of insurance maintained in compliance herewith, of the risks covered by such insurance and of the insurance company or companies which carry such insurance.

In addition, Mortgagor shall obtain and maintain at all times during the term of the Note life insurance on Pratik Patel in the amount of $200,000.00, such life insurance policy collaterally

assigned to Mortgagee to secure payment of the Note. In the event of a payment on such policy as a result of the death of the foregoing insured, such payment shall be made to Mortgagee and applied against the outstanding indebtedness, but shall not relieve the obligation of any monthly payment due under the Note unless such Note is paid in full. The original life insurance policy, together with evidence of the acceptance of the collateral assignment of the issuing insurance company, shall be deposited with Mortgagee until all Obligations are satisfied and the Note is paid in full.

In the event that any of the foregoing insurance lapses, the Mortgagor agrees that the Note shall bear interest at the Maximum Lawful Rate from the date of the lapse.

4.8 Inspection. Mortgagor will permit Mortgagee, the United States Small Business Administration (the "SBA") and their agents, representatives, and employees, to inspect the Mortgaged Property at all reasonable times, with reasonable prior notice to Mortgagor.

4.9 Property Reports. Mortgagor will maintain full and accurate books of account and other records reflecting the results of the operations of the Mortgaged Property upon Mortgagee's or SBA's request, and will furnish, or cause to be furnished, to Mortgagee and the SBA: an operating statement for the Mortgaged Property, such reports to be in such form and in reasonable detail as Mortgagee or SBA may request, setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar month or fiscal year, as applicable, and a certificate executed by Mortgagor certifying that such report has been prepared in accordance with the industry standard method of accounting for hotels, applied on a consistent basis and fairly presents the results of the Mortgaged Property's operations for the period covered thereby. At any time and from time to time Mortgagor shall deliver to Mortgagee and SBA such other financial data as Mortgagee or SBA shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property, and Mortgagee and SBA shall have the right, at reasonable times and upon reasonable notice, to audit, examine, and make copies or extracts of Mortgagor's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Mortgagee, SBA and their representatives for such purpose at the address specified herein for Mortgagor or at such other location as Mortgagee or SBA may approve. Upon Mortgagee's or SBA's request, Mortgagor shall also furnish Mortgagee and SBA with convenient facilities and all books and records necessary for an audit of such statements.

4.10 Financial Statements. Mortgagor shall maintain full and accurate books of accounts and other records reflecting Mortgagor's financial conditions and transactions, and shall furnish, or cause to be furnished, to Mortgagee and SBA: (i) within sixty (60) days after the end of each calendar quarter and fiscal year of Mortgagor, financial statements (which shall mean and include a balance sheet, statement of cash flow and income statement for Mortgagor, such reports to be in such form and in reasonable detail as Mortgagee may request, setting forth the financial condition (including all contingent liabilities), cash flow and the income and expenses [including monthly revenue reports] for Mortgagor for the immediately preceding calendar quarter and/or fiscal year, as applicable) of Mortgagor and each Guarantor, prepared in accordance with sound accounting principles consistently applied, and which fairly present the financial condition and transactions of Mortgagor and Guarantor as of the date thereof or for the period covered thereby, and certified to by Mortgagor and each Guarantor; (ii) a tax return for each fiscal year of Mortgagor and each Guarantor from and after the date hereof, within thirty (30) days after same has been filed with the

Internal Revenue Service; and (iii) immediate notice of any material adverse changes in the financial condition or business prospects of Mortgagor and each Guarantor.

4.11 Payment for Labor and Materials. Mortgagor will promptly pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Mortgaged Property and never permit to exist in respect of the Mortgaged Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Mortgaged Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof.

4.12 Further Assurances and Corrections. From time to time, at the request of Mortgagee, Mortgagor will (i) promptly correct any defect, error, or omission which may be discovered in the contents of this Mortgage or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Mortgagee's opinion, to carry out more effectively the purposes of this Mortgage and the Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property; (iii) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by Mortgagee to protect the liens and the security interests herein granted against the rights or interests of third persons; and (iv) pay all costs connected with any of the foregoing.

4.13 Tax on Mortgage. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof, Mortgagor will immediately pay all such taxes, provided that if such law as enacted makes it unlawful for Mortgagor to pay such tax, Mortgagor shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Mortgagor to pay such taxes, then Mortgagor must prepay the Indebtedness in full within sixty (60) days after demand therefor by Mortgagee.

4.14 Statement of Unpaid Balance. At any time and from time to time, Mortgagor will furnish promptly, upon the request of Mortgagee, a written statement or affidavit, in form satisfactory to Mortgagee, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

4.15 Expenses. Subject to the provisions of Section 12.11 hereof, Mortgagor will pay on demand all reasonable and bona fide out-of-pocket costs, fees, and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Mortgagee to third parties incident to this Mortgage or any other Loan Document (including without limitation, reasonable attorneys' fees and expenses in connection with the negotiation, preparation, and execution hereof and of any other Loan Document and any amendment hereto or thereto, any release

hereof, any consent, approval or waiver hereunder or under any other Loan Document, the making of any advance under the Note, and any suit to which Mortgagee is a party involving this Mortgage or the Mortgaged Property) or incident to the enforcement of the Indebtedness or the exercise of any right or remedy of Mortgagee under any Loan Document.

4.16 Address. Mortgagor shall give written notice to Mortgagee of any change of address of Mortgagor at least five (5) days prior to the effective date of such change of address. Absent such official written notice of a change in address for Mortgagor, then Mortgagee shall be entitled for all purposes under the Loan Documents to rely upon Mortgagor's address as set forth in the initial paragraph of this Mortgage, as same may have been theretofore changed in accordance with the provisions hereof.

4.17 Disclosures. If at any time Mortgagor shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which might have a Material Adverse Effect, Mortgagor shall promptly notify Mortgagee of the existence or occurrence thereof and of Mortgagor's opinion as to what effect such may have on the Mortgaged Property or Mortgagor.

4.18 Delivery of Contracts. Mortgagor will deliver to Mortgagee a copy of each Contract promptly after the execution of same by all parties thereto. Within twenty (20) days after a request by Mortgagee, Mortgagor shall prepare and deliver to Mortgagee a complete listing of all Contracts, showing date, term, parties, subject matter, concessions, whether any defaults exist, and other information specified by Mortgagee, of or with respect to each of such Contracts, together with a copy thereof (if so requested by Mortgagee).

4.19 License Reports. Mortgagor shall maintain a franchise for the operation of a SureStay by Best Western at the Mortgaged Property at all times while this Mortgage is in effect. Mortgagor shall maintain such franchise in good standing, and shall provide copies of all notices from franchisor to Mortgagee immediately upon receipt thereof, including, but not limited to, any quality inspection reports. In the event that Mortgagor fails to provide the required notices (including the quality inspection reports), the Note shall bear interest at the Maximum Rate (as defined in the Note). Further, in the event that (i) Mortgagor fails to provide the required notices (including the quality inspection reports), (ii) the quality inspection report gives a failing rating, or a rating decline of ten percent or more in any one year from the previous year's rating, (iii) if the quality inspection report score falls below "B" for two consecutive inspections, or (iv) the improvements located on the Property suffer a consistent decline (as determined in Mortgagee's sole discretion), then, in any such event, Mortgagor shall pay to Mortgagee an inspection fee of $1,000.00 per annum to cover Mortgagee's costs associated with Mortgagee's inspection of the Property, and Mortgagor shall establish and maintain with Mortgagee a Replacement Reserve Account. The Replacement Reserve Account shall be funded by a payment by Mortgagor each month equal to five percent (5%) of the monthly gross motel room revenues of the Property for each month thereafter until all Obligations are satisfied. The proceeds of the Replacement Reserve Account shall be for the sole purpose of repairing and renovating the Property, as well as replacing the Personalty. Mortgagor may present a detailed budget in form and substance satisfactory to Mortgagee in its sole discretion, detailing the proposed disbursement of the Replacement Reserve Account. Mortgagee may approve or reject such proposal in its sole discretion. Further, Mortgagee may disburse the proceeds of the Replacement Reserve Account for the foregoing purposes at any time in Mortgagee's sole discretion, and

Mortgagor agrees to hold Mortgagee harmless for any such disbursement, including, but not limited to, the acquisition of defective Personalty. Payments into the Replacement Reserve Account shall be on a monthly basis, due within fifteen days of the close of the applicable month, with the first payment being due for the month during which the applicable trigger event occurs. The Replacement Reserve Account is hereby pledged as additional security for the Note and shall be a part of the Collateral (as defined herein). Mortgagee shall not be required to hold the Replacement Reserve Account in an interest bearing account, nor pay interest thereon, it being agreed that Mortgagee's sole purpose in holding the Replacement Reserve Account shall be for the purpose of insuring that the funds are used for the purpose of repairing and renovating the Property and acquiring Personal Property. Mortgagor hereby releases Mortgagee, its parent, subsidiary and affiliate corporations, and their respective officers, directors, shareholders, agents, attorneys, employees, and their successors, heirs, and assigns, from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasance, malfeasance, cause of action, debts, sums of money, accounts, compensations, contracts, controversies, promises, damages, costs, losses and expenses of every type, kind, nature, description or character and irrespective as to how, why, or by reason of what facts, whether heretofore now existing or hereafter arising or which could, might, or may be claimed to exist, of whatever kind, name, or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length, which in any way arise out of or is connected with or related in any way to the Replacement Reserve Account or the disbursement thereof, unless due to the gross negligence or wilful misconduct or omissions of Mortgagee, its parent, subsidiary and affiliate corporations, and their respective officers, directors, shareholders, agents, attorneys, employees, and their successors, heirs, and assigns. Mortgagor hereby agrees to indemnify Mortgagee and hold Mortgagee harmless from and against any and all loss, liability, claim, damage, cost and expense whatsoever arising out of or related to the Replacement Reserve Account, including, but not limited to, attorneys' fees or any other costs incurred by Mortgagee, unless due to the gross negligence or wilful misconduct or omissions of Mortgagee, its parent, subsidiary and affiliate corporations, and their respective officers, directors, shareholders, agents, attorneys, employees, and their successors, heirs, and assigns.

4.20 Replacement Reserve Account. Mortgagor shall provide to Mortgagee within fifteen days of the conclusion of each calendar quarter, or at such other times as requested by Mortgagee, evidence that five percent (5%) of the monthly gross motel room revenues of the motel located on the Mortgaged Property are being spent on ordinary and customary capital improvements to the Mortgaged Property. The evidence of such expenditures and the verification of the monthly revenues shall be in form and substance acceptable to Mortgagee in its reasonable discretion. In the event Mortgagor fails to provide the required evidence, or is unable to verify that expenditures equal or exceed the required five percent of the monthly gross motel room revenues of the motel located on the Mortgaged Property, Mortgagor shall establish with Mortgagee the Replacement Reserve Account, to be governed by Section 4.19 hereinabove.

4.21 Environmental and Hazardous Substances. Mortgagor will:

(a) not use, generate, manufacture, produce, store, release, discharge, treat, or dispose of on, under, from or about the Mortgaged Property or transport to or from the

Mortgaged Property any Hazardous Substance in violation of any Environmental Law or allow any other person or entity to do so;

(b) keep and maintain the Mortgaged Property in compliance with, and shall not cause or permit the Mortgaged Property to be in violation of, any Environmental Law;

(c) give prompt written notices to Mortgagee of: (i) any proceeding or inquiry by any governmental or nongovernmental entity or person with respect to the presence of any Hazardous Substance on, under, from or about the Mortgaged Property, the migration thereof from or to other property, the disposal, storage, or treatment of any Hazardous Substance generated or used on, under or about the Mortgaged Property in violation of any Environmental Law, (ii) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property or any other owner or operator of the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance, and (iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any investigation or cleanup of the Mortgaged Property pursuant to any Environmental Law;

(d) permit Mortgagee to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any Environmental Law or Hazardous Substance, and Mortgagor shall pay all attorneys' fees incurred by Mortgagee in connection therewith;

(e) **PROTECT, INDEMNIFY, AND HOLD HARMLESS MORTGAGEE, THEIR PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL ACTUAL LOSS, DAMAGE, COSTS, EXPENSE, ACTION, CAUSES OF ACTION, OR LIABILITY (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) DIRECTLY OR INDIRECTLY ARISING FROM OR ATTRIBUTABLE TO THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF A HAZARDOUS SUBSTANCE ON, UNDER OR ABOUT THE MORTGAGED PROPERTY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE EXECUTION HEREOF, INCLUDING WITHOUT LIMITATION (I) ALL FORESEEABLE CONSEQUENTIAL DAMAGES OF ANY SUCH USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE, AND (II) THE COSTS OF ANY REQUIRED OR NECESSARY ENVIRONMENTAL INVESTIGATION OR MONITORING, ANY REPAIR, CLEANUP, OR DETOXIFICATION OF THE MORTGAGED PROPERTY, AND THE PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL, OR OTHER REQUIRED PLANS; AND**

(f) Notwithstanding anything to the contrary contained elsewhere in this Section 4.21, the indemnity provided for hereunder shall, subject to the immediately following

sentence, terminate and be of no further force and effect when all of the following conditions are satisfied in full:

(i) all principal, interest and other sums evidenced or secured by the Loan Documents and other costs and expenses in connection with the Loan are paid in full by Mortgagor or by any guarantors of the Loan,

(ii) neither Mortgagee nor any affiliate of Mortgagee has at any time or in any manner participated in the management or control of, taken possession of, or title to, the Mortgaged Property or any portion thereof whether by foreclosure, deed in lieu of foreclosure, sale under power of sale pursuant to the Mortgage, or otherwise,

(iii) there has been no change, between the date hereof and prior to the date all principal, interest and any other sums evidenced or secured by the Loan Documents is paid in full as provided in (i) above, in any Environmental Laws, the effect of which change may be to make a lender or mortgagee liable in respect of any indemnified matters notwithstanding the fact that no event, circumstance or condition of the nature described in clause (ii) above ever occurred, and

(iv) there exist no pending indemnified matters.

Notwithstanding that immediately preceding sentence, Mortgagor agrees that Mortgagor shall continue to be liable and shall pay for any and all litigation costs and expenses (including, without limitation, attorneys' and experts' reasonable and actual fees and disbursements) incurred by Mortgagee in connection with any claims, litigation, demands, defenses, judgments, suits and proceedings which may thereafter be asserted against Mortgagee arising from or out of Hazardous Substance existing on, in, under or affecting all or any portion of the Mortgaged Property or any surrounding areas at or prior to the date of payment in full of all principal, interest and any other sums evidenced or secured by the Loan Documents as provided in clause (i) above.

(g) in the event that any Remedial Work is necessary or desirable, Mortgagor shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under any Legal Requirement). All Remedial Work shall be performed by contractors approved in advance by Mortgagee, and under the supervision of a consulting engineer approved by Mortgagee. All reasonable costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, Mortgagee's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the Indebtedness.

4.22 Advertising by Mortgagee. Mortgagor agrees that during the term of the Loan, Mortgagee may use both the name of the Mortgagor and name of Mortgaged Property in

Mortgagee's advertisements indicating that the financing for the Mortgagor and Mortgaged Property has been furnished by Mortgagee.

ARTICLE V

NEGATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged as follows:

5.1 Use Violations. Mortgagor will not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, the Mortgaged Property in any manner which (i) violates any Legal Requirement, (ii) may be dangerous unless safeguarded as required by law and/or appropriate insurance, (iii) constitutes a public or private nuisance, or (iv) makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto.

5.2 Waste; Alterations. Mortgagor will not commit or permit any waste or impairment of the Mortgaged Property and will not (subject to the provisions of Sections 4.3 and 4.6 hereof), without the prior written consent of Mortgagee, make or permit to be made any alterations or additions to the Mortgaged Property of a material nature.

5.3 Replacement of Fixtures and Personalty. Mortgagor will not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest except as may be approved in writing by Mortgagee.

5.4 Change in Zoning. Mortgagor will not seek or acquiesce in a zoning reclassification of all or any portion of the Mortgaged Property or grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or any amendment or modification thereof, covering all or any portion of the Mortgaged Property, without Mortgagee's prior written consent.

5.5 No Drilling. Mortgagor will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

5.6 No Disposition. Mortgagor will not make a Disposition without obtaining Mortgagee's prior written consent to the Disposition.

5.7 No Subordinate Mortgages. Mortgagor will not create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain any Subordinate Mortgage regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents with respect to the Mortgaged Property, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld.

5.8 Additional Obligations. Mortgagor shall not guarantee, endorse or otherwise become contingently liable in connection with any obligations of any other person or entity, and shall not create or incur any additional liability, whether contingent or non-contingent, with respect to either Mortgagor or the Mortgaged Property, except as specifically allowed or contemplated pursuant to the Loan Documents, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld.

5.9 Business Change. Mortgagor shall not make or permit to occur or exist a material change in the character of its business activities as such existed on the date hereof, without Mortgagee's prior written consent.

5.10 No Equipment Leases. Mortgagor shall not enter into any lease transactions with respect to any personal property, equipment or fixtures to be used in connection with the operation of the Mortgaged Property without the prior written consent of Mortgagee. Nothing contained herein shall be deemed to subordinate Mortgagee's interest under this Mortgage to any such leases, and Mortgagor, upon the request of Mortgagee, shall cause any lessor of any such leased personal property or fixtures to enter into a subordination agreement or estoppel agreement in a form and content satisfactory to Mortgagee.

ARTICLE VI

EVENTS OF DEFAULT

The term "Event of Default," as used herein and in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

6.1 Payment of Indebtedness. Mortgagor shall fail, refuse, or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise.

6.2 Performance of Obligations. Mortgagor shall fail, refuse or neglect or cause the failure, refusal, or neglect to comply with, perform and discharge fully and timely any of the Obligations as and when called for, after the expiration of ten (10) days from the delivery of notice by Mortgagee to Mortgagor of such failure, refusal or neglect to comply with, perform and discharge fully and timely any of the Obligations.

6.3 False Representation. Any representation, warranty, or statement made by Mortgagor, Guarantor, or others in, under, or pursuant to the Loan Documents or any affidavit or other instrument executed or delivered with respect to the Loan Documents or the Indebtedness is determined by Mortgagee to be false or misleading in any material respect as of the date hereof or thereof or, if it shall become so at any time prior to the repayment in full of the Indebtedness, Mortgagor shall fail to take such action to make such representation, warranty or statement not false or misleading in any material respect within twenty days of notice by Mortgagor to Mortgagee.

6.4 Default Under Other Lien Document. Mortgagor shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property, after expiration of any applicable notice and cure period.

6.5 Insolvency; Bankruptcy. Mortgagor (i) shall execute an assignment for the benefit of creditors or an admission in writing by Mortgagor of Mortgagor's inability to pay, or Mortgagor's failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within sixty (60) days after the levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Mortgagor or of the Mortgaged Property or any part thereof, which receiver, trustee or custodian is not discharged within sixty days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of any Debtor Relief Law, or takes any action in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Mortgagee granted in the Note, herein or in any Loan Document; or (vi) allows the filing of a petition, case, proceeding or other action against Mortgagor as a debtor under any Debtor Relief Law or seeks appointment of a receiver, trustee, custodian or liquidator of Mortgagor or of the Mortgaged Property, or any part thereof, or of any significant portion of Mortgagor's other property; and (a) Mortgagor admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Mortgagor, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of filing.

6.6 Dissolution; Disability. Mortgagor, any Constituent Party, or any Guarantor, shall die, dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or become permanently disabled.

6.7 No Further Encumbrances. Mortgagor creates, places, or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any Subordinate Mortgage, regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents, with respect to the Mortgaged Property.

6.8 Disposition of Mortgaged Property and Beneficial Interest in Mortgagor. Mortgagor makes a Disposition, without the prior written consent of Mortgagee.

6.9 Condemnation. Any condemnation proceeding is instituted or threatened which would, in Mortgagee's sole judgment, materially impair the use and enjoyment of the Mortgaged Property for its intended purposes.

6.10 Destruction of Improvements. The Mortgaged Property is demolished, destroyed, or substantially damaged so that, in Mortgagee's reasonable judgment, it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time.

6.11 Material Adverse Change. Mortgagee reasonably determines that any event shall have occurred that could be expected to have a Material Adverse Effect.

6.12 Abandonment. Mortgagor abandons all or any portion of the Mortgaged Property.

6.13 Event of Default in Loan Documents. An Event of Default as defined in any of the Loan Documents.

ARTICLE VII

REMEDIES

7.1 Mortgagee's Remedies Upon Default. Upon the occurrence of an Event of Default (including the expiration of any applicable notice and cure period), Mortgagee may, at Mortgagee's option, do any one or more of the following:

(a) Right to Perform Mortgagor's Covenants. If Mortgagor has failed to keep or perform any covenant whatsoever contained in this Mortgage or the other Loan Documents, Mortgagee may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness, and Mortgagor promises, upon demand, to pay to Mortgagee, at the place where the Note is payable, all sums so advanced or paid by Mortgagee, with interest from the date when paid or incurred by Mortgagee at the Default Rate. No such payment by Mortgagee shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Mortgagee shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Mortgagee may make an advance, or which Mortgagee may pay.

(b) Right of Entry. Mortgagee may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to rent the same for the account of Mortgagor and to deduct from such Rents all costs, expenses, and liabilities of every character incurred by the Mortgagee in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property and to apply the remainder of such Rents on the Indebtedness in such manner as Mortgagee may elect. All such reasonable costs, expenses, and liabilities incurred by the Mortgagee in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Mortgagor and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, the Mortgagee may invoke any and all legal remedies to dispossess Mortgagor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by the Mortgagee pursuant to this subsection, the Mortgagee shall not be liable

for any loss sustained by Mortgagor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of the Mortgagee in managing the Mortgaged Property unless such loss is caused by the gross negligence or willful misconduct of the Mortgagee, nor shall the Mortgagee be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. Mortgagor shall and does hereby agree to indemnify the Mortgagee for, and to hold the Mortgagee harmless from, any and all liability, loss, or damage, which may or might be incurred by the Mortgagee under any such Lease or under or by reason hereof or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against the Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any such Lease, unless such liability, loss or damage is caused by the gross negligence or wilful misconduct of Mortgagee. Should the Mortgagee incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, and Mortgagor shall reimburse the Mortgagee therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon the Mortgagee for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make the Mortgagee responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties (other than Mortgagee), or for any Hazardous Substance on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Mortgagor hereby assents to, ratifies, and confirms any and all actions of the Mortgagee with respect to the Mortgaged Property taken under this subsection.

The remedies in this subsection are in addition to other remedies available to the Mortgagee and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to the Mortgagee. Any receipt of consideration received by Mortgagee pursuant to this subsection shall be immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

(c) Right to Accelerate. Mortgagee may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Mortgagor and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to the Mortgagee shall not be deemed to be a waiver of any rights or remedies of the Mortgagee under the Loan Documents, at law or in equity.

(d) Foreclosure - Power of Sale. Mortgagee may institute a proceeding or proceedings, judicial, by advertisement or otherwise, for the complete or partial foreclosure

of this Mortgage or the complete or partial sale of the Mortgaged Property under the power of sale contained herein or under any applicable provision of law. Mortgagee may sell the Mortgaged Property, and all estate, right, title, interest, claim and demand of Mortgagor 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, and at such time and place and upon such terms as it may deem expedient, or as may be required by applicable law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Mortgaged Property.

(e) Rights Pertaining to Sales. Subject to the provisions or other requirements of law and except as otherwise provided herein, the following provisions shall apply to any sale or sales of all or any portion of the Mortgaged Property under or by virtue of Section 7.1(d), whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(i) Mortgagee may conduct any number of sales from time to time. The power of sale set forth in Section 7.1(d) hereof shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale which is not completed or is defective in Mortgagee's opinion, until the Indebtedness shall have been paid in full.

(ii) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice. Without limiting the foregoing, in case Mortgagee shall have proceeded to enforce the right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings have been discontinued or abandoned for any reason or shall have been determined adversely to Mortgagee then in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken.

(iii) After each sale, Mortgagee or an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Mortgagor in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as herein provided. Mortgagee is hereby appointed the true and lawful attorney-in-fact of Mortgagor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Mortgagor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Mortgagor, if requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or such purchaser or purchasers all such instruments as may

be advisable, in Mortgagee's judgment, for the purposes as may be designated in such request.

(iv) Any and all statements of fact or other recitals made in any of the instruments referred to in subsection (iii) of this Section 7.1(e) given by Mortgagee as to nonpayment of the Indebtedness, or as to the occurrence of any Event of Default, or as to Mortgagee having declared all or any part of the Indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the property or rights to be sold having been duly given, or as to any act or thing having been duly done by Mortgagor or Mortgagee, shall be taken as conclusive and binding against all persons as to evidence of the truth of the facts so stated and recited. Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale so held, including the posting of notices and the conduct of sale, but in the name and on behalf of Mortgagee

(v) The receipt by Mortgagee of the purchase money paid at any such sale, or the receipt by any other person authorized to receive the same, shall be sufficient authority therefor to any purchaser of any property or rights sold as aforesaid, and no such purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Mortgage or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(vi) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and any and all persons claiming or who may claim the same, or any part thereof or any interest therein, by, through or under Mortgagor to the fullest extent permitted by applicable law.

(vii) Upon any such sale or sales, Mortgagee may bid for and acquire the Mortgaged Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Indebtedness the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder, and any other sums which Mortgagee is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid.

(viii) Upon any such sale, it shall not be necessary for Mortgagee or any public officer acting under execution or order of court to have present or constructively in its possession any of the Mortgaged Property.

(f) Mortgagee's Judicial Remedies. Mortgagee may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the Obligations in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to the Mortgagee with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of the Mortgagee.

(g) Mortgagee's Right to Appointment of Receiver. Mortgagee, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Mortgagor and without any showing of insolvency, fraud, or mismanagement on the part of Mortgagor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of the Rents, and Mortgagor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(h) Mortgagee's Uniform Commercial Code Remedies. The Mortgagee may exercise its rights of enforcement with respect to Fixtures and Personalty under the Code, and in conjunction with, in addition to or in substitution for the rights and remedies under the Code:

(i) the Mortgagee may, without demand or notice to Mortgagor, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable; and

(ii) the Mortgagee may require Mortgagor to assemble the Personalty and make it available at a place the Mortgagee designates which is mutually convenient to allow the Mortgagee to take possession or dispose of the Personalty; and

(iii) written notice mailed to Mortgagor as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice; and

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of all or a portion of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under of the Code; and

(v) in the event of a foreclosure sale, whether made by Mortgagee itself, or otherwise under the terms hereof, or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of the Mortgagee, be sold as a whole; and

(vi) it shall not be necessary that the Mortgagee take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; and

(vii) prior to application of proceeds of disposition of the Personalty to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by the Mortgagee; and

(viii) after notification, if any, hereafter provided in this subsection, Mortgagee may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Mortgagee's offices or elsewhere, for cash, on credit, or for future delivery. Upon the request of Mortgagee, Mortgagor shall assemble the Personalty and make it available to Mortgagee at any place designated by Mortgagee that is reasonably convenient to Mortgagor and Mortgagee. Mortgagor agrees that Mortgagee shall not be obligated to give more than ten (10) days' written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters. Mortgagor shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Mortgagee in connection with the collection of the Indebtedness and the enforcement of Mortgagee's rights under the Loan Documents. Mortgagee shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of Section 7.4 of this Mortgage. Mortgagor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Mortgagor waives all rights of marshalling in respect of the Personalty; and

(ix) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Indebtedness, the occurrence of any Event of Default, the Mortgagee having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by the Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(x) the Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by the Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of the Mortgagee.

(i) Rights Relating to Leases and Rents. Mortgagor has, pursuant to Article IX of this Mortgage, assigned, as collateral, to Mortgagee all Rents under each of the Leases covering all or any portion of the Mortgaged Property. Mortgagee may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. Mortgagor hereby agrees with Mortgagee, upon notice from Mortgagee to Mortgagor of the occurrence of an Event of Default, terminate the limited license granted to Mortgagor in Section 9.2 hereof, and thereafter direct the lessees under the Leases to pay direct to Mortgagee the Rents due and to become due under the Leases and attorn in respect of all other obligations thereunder direct to Mortgagee, without any obligation on their part to determine whether an Event of Default does in fact exist or has in fact occurred. All Rents collected by Mortgagee shall be applied as provided for in Section 7.4 of this Mortgage; provided, however, that if the costs, expenses, and attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Rate, and shall be immediately due and payable. The entering upon and taking possession of the Mortgaged Property, the collection of Rents, and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such default is fully cured. Failure or discontinuance by Mortgagee, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Mortgagee of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Mortgagee shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Mortgage, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any other collateral given by Mortgagor to Mortgagee. In addition, from time to time Mortgagee may elect, and notice hereby is given to each lessee under any Lease, to subordinate the lien of this Mortgage to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election the lien of this Mortgage shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance such subordination will not affect or be applicable to, and expressly excludes any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant and other rights, titles, interests or estates of any nature whatsoever with respect to all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Mortgage and the execution of the Lease identified in such instrument of subordination.

(j) Other Rights. Mortgagee (i) may surrender the insurance policies maintained pursuant to Section 4.7 hereof or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 7.4 hereof, and, in connection therewith, Mortgagor hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagor to collect such premiums; and (ii) apply the reserve for Impositions and insurance premiums, if any, required by the provisions of this Mortgage, toward payment of the Indebtedness; and (iii) shall have and may exercise any and all other rights and remedies which Mortgagee may

have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

(k) Mortgagee as Purchaser. Mortgagee may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under the power of sale or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Mortgagee shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Indebtedness and Mortgagee elects that no merger occur. The Mortgagee, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of the Mortgagee's purchase shall be applied in accordance with Section 7.4 of this Mortgage.

7.2 Other Rights of Mortgagee. Should any part of the Mortgaged Property come into the possession of Mortgagee, whether before or after default, Mortgagee may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Mortgagee may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Mortgagee may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Mortgagee in respect of the Mortgaged Property. Mortgagor covenants to promptly reimburse and pay to Mortgagee on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Mortgagee in connection with Mortgagee's custody, preservation, use, or operation of the Mortgaged Property, together with interest thereon from the date incurred by Mortgagee at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by the Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Mortgagee's possession.

7.3 Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Mortgagor or Mortgagor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Mortgagor and Mortgagor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.4 Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this Article VII, or the proceeds from the surrender of any insurance policies pursuant hereto, or any Rents collected by Mortgagee from the Mortgaged Property, or the reserve for Impositions and insurance premiums, if any, required by the provisions of this Mortgage or sums received pursuant to Section 8.1 hereof, or proceeds from insurance which Mortgagee elects to apply to the Indebtedness pursuant to Section 8.2 hereof, shall be applied by Mortgagee, as the case may be, to the Indebtedness in the following order and priority: (i) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums, or other sums including reasonable attorneys' fees and a reasonable fee or commission to a trustee, if any, not to exceed five percent (5%) of the proceeds thereof or sums so received; (ii) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (iii) the balance, if any and to the extent applicable, remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or beneficiary of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (Mortgagee shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (iv) the cash balance, if any, to the Mortgagor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

7.5 Abandonment of Sale. In the event a foreclosure hereunder is commenced by Mortgagee, or on behalf of Mortgagee accordance with Subsection 7.1(d) hereof, at any time before the sale, Mortgagee may abandon the sale, and Mortgagee may then institute suit for the collection of the Indebtedness and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Mortgagee should institute a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests, Mortgagee may, at any time before the entry of a final judgment in said suit, dismiss the same and sell the Mortgaged Property or any part thereof in accordance with the provisions of this Mortgage.

7.6 Payment of Fees. If the Note or any other part of the Indebtedness shall be collected or if any of the Obligations shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to the Mortgagee to mature same, or if Mortgagee becomes a party to any suit where this Mortgage or the Mortgaged Property or any part thereof is involved, Mortgagor agrees to pay Mortgagee's attorneys' fees and expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Rate.

7.7 Miscellaneous.

(a) In case Mortgagee shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Mortgagee shall have the unqualified right so to do and, in

such event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if same had never been invoked.

(b) In addition to the remedies set forth in this Article, upon the occurrence of an Event of Default, the Mortgagee shall, in addition, have all other remedies available to them at law or in equity.

(c) All rights, remedies, and recourses of Mortgagee granted in the Note, this Mortgage, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Mortgagor, the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Mortgagee exercising or pursuing any remedy in relation to the Mortgaged Property prior to Mortgagee bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Mortgagee elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Mortgagor prior to exercising any remedies in relation to the Mortgaged Property, all liens and security interests, including the lien of this Mortgage, shall remain in full force and effect and may be exercised at Mortgagee's option.

(d) Mortgagee may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Mortgage or the other Loan Documents or affecting the obligations of Mortgagor or any other party to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Mortgagee may resort to any of the collateral therefor in such order and manner as Mortgagee may elect. No collateral heretofore, herewith, or hereafter taken by Mortgagee shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(e) Mortgagor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; and (ii) any right to a marshalling of assets or a sale in inverse order of alienation.

(f) Mortgagor and Mortgagee mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Mortgage and the other Loan Documents. All agreed contractual duties are set forth in this Mortgage, the Note, and the other Loan Documents.

(g) Mortgagor hereby waives any defense to the recovery by Mortgagee hereunder against Mortgagor or the Mortgaged Property of any deficiency after a nonjudicial sale. Without limiting the foregoing, Mortgagor waives any defense arising out of any such nonjudicial sale even though such sale operates to impair or extinguish any right of reimbursement or subrogation or any other right or remedy of Mortgagor against Mortgagor or any subsidiary of Mortgagor or against any collateral security.

(h) Until the Indebtedness has been fully paid and the Obligations have been fully performed, Mortgagee's rights hereunder shall continue even to the extent that a suit for collection of the Indebtedness, or part thereof, is barred by an applicable statute of limitations. Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Indebtedness or performance of the Obligations.

(i) Mortgagor acknowledges, warrants and represents in connection with each waiver of any right or remedy of Mortgagor contained in this Mortgage or the Loan Documents that it has been represented by counsel of its choice and fully informed in relation to such waivers, Mortgagor has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, waived or relinquished such rights and remedies to the full extent specified in each waiver.

ARTICLE VIII

SPECIAL PROVISIONS

8.1 Condemnation Proceeds. Mortgagee shall be entitled to receive any and all sums which may be awarded and become payable to Mortgagor for condemnation of the Mortgaged Property or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Mortgagee, and Mortgagor shall, upon request of Mortgagee, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Mortgagee to collect and receipt for any such sums. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. At Mortgagee's sole discretion, any sums received by Mortgagee as a result of condemnation may be applied to the Indebtedness in accordance with the provisions of Section 7.4 hereof or towards the restoration of the remainder of the Mortgaged Property.

8.2 Insurance Proceeds. The proceeds of any and all insurance upon the Mortgaged Property shall be collected by Mortgagee, and Mortgagee shall have the option, in Mortgagee's sole discretion, to apply any proceeds so collected either to the restoration of the Mortgaged Property, in the amounts, manner, method and pursuant to such requirements and documents as Mortgagee may require, or to the liquidation of the Indebtedness in accordance with the provisions of Section 7.4 hereof.

8.3 Reserve for Impositions and Insurance Premiums. At Mortgagee's request after the occurrence of an Event of Default, Mortgagor shall create a fund or reserve for the payment of all insurance premiums and Impositions against or affecting the Mortgaged Property by paying to Mortgagee, on the first day of each calendar month prior to the maturity of the Note until such Event of Default is cured, a sum equal to the premiums that will next become due and payable on the insurance policies covering Mortgagor, the Mortgaged Property or any part thereof or such other insurance policies required hereby or by the Loan Documents, plus Impositions next due on the Mortgaged Property or any part thereof as estimated by Mortgagee, less all sums paid previously to Mortgagee therefor, divided by the number of months to elapse before one month prior to the date when each of such premiums and Impositions will become due, such sums to be held by Mortgagee without interest to Mortgagor, unless interest is required by applicable law, for the purposes of paying such premiums and Impositions. Any excess reserve shall be credited by Mortgagee on subsequent reserve payments, and any deficiency shall be paid by Mortgagor to Mortgagee on or before the date when Mortgagee demands such payment to be made, but in no event after the date when such premiums and Impositions shall become delinquent. In the event there exists a deficiency in such fund or reserve at any time when Impositions or insurance premiums are due and payable, Mortgagee may, but shall not be obligated to, advance the amount of such deficiency on behalf of Mortgagor and such amounts so advanced shall become a part of the Indebtedness, shall be immediately due and payable, and shall bear interest at the Default Rate from the date of such advance through and including the date of repayment. Transfer of legal title to the Mortgaged Property shall automatically transfer to the holder of legal title to the Mortgaged Property the interest of Mortgagor in all sums deposited with Mortgagee under the provisions hereof or otherwise.

8.4 INDEMNITY. **MORTGAGOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS MORTGAGEE FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM OR DISPUTE INCURRED OR SUFFERED BY MORTGAGEE, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN RESPECT OF THE FOLLOWING:**

(i) ANY LITIGATION CONCERNING THIS MORTGAGE, THE OTHER LOAN DOCUMENTS OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF MORTGAGOR OR MORTGAGEE THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY MORTGAGOR OR MORTGAGEE, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT;

(ii) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF MORTGAGOR IF MORTGAGOR IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS OR SHAREHOLDERS OF MORTGAGOR IF MORTGAGOR IS A CORPORATION, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF MORTGAGOR IS AN ASSOCIATION, TRUST OR OTHER ENTITY;

(iii) ANY ACTION TAKEN OR NOT TAKEN BY MORTGAGEE WHICH IS ALLOWED OR PERMITTED UNDER THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO MORTGAGOR, THE MORTGAGED PROPERTY, ANY CONSTITUENT PARTIES OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS; AND

(iv) ANY ACTION BROUGHT BY MORTGAGEE IN GOOD FAITH AGAINST MORTGAGOR UNDER THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT.

MORTGAGEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTEST OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND MORTGAGEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. MORTGAGOR SHALL REIMBURSE MORTGAGEE FOR THEIR RESPECTIVE REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING REASONABLE EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY MORTGAGEE. ANY PAYMENTS NOT MADE WITHIN FIFTEEN (15) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 8.4 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS MORTGAGE, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE) AND THE EXERCISE BY MORTGAGEE OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN THE LOAN DOCUMENTS.

8.5 Subrogation. Mortgagor waives any and all right to claim, recover, or subrogation against Mortgagee or its officers, directors, employees, agents, attorneys, or representatives for loss or damage to Mortgagor, the Mortgaged Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of the Loan Documents.

8.6 Waiver of Setoff. The Indebtedness, or any part thereof, shall be paid by Mortgagor without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by reason of: (i) any damage to, destruction of, or any condemnation or similar taking of the Mortgaged Property; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property; (iii) any title defect or encumbrance or any eviction from the Mortgaged Property by superior title or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating

to Mortgagee, or Mortgagor, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee or Mortgagor, or by any court, in any such proceeding; (v) any claim which Mortgagor has or might have against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of the Indebtedness.

8.7 Setoff. Mortgagee shall be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Mortgagor in and to each and every account and other property of Mortgagor which are in the possession of Mortgagee to the full extent of the outstanding balance of the Indebtedness.

8.8 Consent to Disposition. It is expressly agreed that Mortgagee may predicate Mortgagee's decision to grant or withhold consent to a Disposition on such terms and conditions as Mortgagee may require, such consent not to be unreasonably withheld, including without limitation (i) consideration of the creditworthiness of the party to whom such Disposition will be made and its management ability with respect to the Mortgaged Property, (ii) consideration of whether the security for repayment of the Indebtedness and the performance and discharge of the Obligations, or Mortgagee's ability to enforce its rights, remedies, and recourses with respect to such security, will be impaired in any way by the proposed Disposition, (iii) reimbursement of Mortgagee for all costs and expenses incurred by Mortgagee in investigating the creditworthiness and management ability of the party to whom such Disposition will be made and in determining whether Mortgagee's security will be impaired by the proposed Disposition, (iv) payment to Mortgagee of all of Mortgagee's out-of-pocket expenses incurred in connection with such Disposition, (v) payment of an assumption fee to Mortgagee in the amount of two percent (2.00%) of the outstanding principal balance of the Note, (vi) payment of Mortgagee's reasonable attorneys' fees in connection with such Disposition, (vii) the express assumption of payment of the Indebtedness and performance and discharge of the Obligations by the party to whom such Disposition will be made (with or without the release of Mortgagor from liability for such Indebtedness and Obligations), (viii) the execution of assumption agreements, modification agreements, supplemental loan documents, and financing statements, satisfactory in form and substance to Mortgagee, and (ix) endorsements (to the extent available under applicable law) to any existing mortgagee title insurance policies insuring Mortgagee's liens and security interests covering the Mortgaged Property.

8.9 Consent to Subordinate Mortgage. In the event of consent by Mortgagee to the granting of a Subordinate Mortgage, or in the event the above-described right of Mortgagee to declare the Indebtedness to be immediately due and payable upon the granting of a Subordinate Mortgage without the prior written consent of Mortgagee is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, Mortgagor will not execute or deliver any Subordinate Mortgage unless (i) it shall contain express covenants to the effect: (a) that the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by this Mortgage and each term and provision hereof; (b) that if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any

action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Mortgagee; (c) that the rents and profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations; and (d) that if any action or proceeding shall be brought to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), written notice of the commencement thereof will be given to Mortgagee contemporaneously with the commencement of such action or proceeding; and (ii) a copy thereof shall have been delivered to Mortgagee not less than ten (10) days prior to the date of the execution of such Subordinate Mortgage.

ARTICLE IX

ASSIGNMENT OF LEASES AND RENTS

9.1 Assignment. For Ten Dollars ($10.00) and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged and confessed, Mortgagor has MORTGAGED, WARRANTED, GRANTED, BARGAINED, SOLD, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER and SET OVER unto Mortgagee, as security for the payment of the Indebtedness and the performance and discharge of the Obligations, the Leases and the Rents subject only to the License (herein defined); TO HAVE AND TO HOLD the Leases and the Rents unto Mortgagee, forever, and Mortgagor does hereby bind itself, its successors, and assigns to warrant and forever defend the title to the Leases and the Rents unto Mortgagee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Mortgagor shall pay or cause to be paid the Indebtedness as and when same shall become due and payable and shall perform and discharge or cause to be performed and discharged the Obligations on or before the date same are to be performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles, and interests conveyed pursuant to this assignment shall become vested in Mortgagor without the necessity of any further act or requirement by Mortgagor or Mortgagee.

9.2 Limited License. Mortgagee hereby grants to Mortgagor a limited license (the "License"), nonexclusive with the rights of Mortgagee reserved in Section 9.4 hereof, until the occurrence of an Event of Default, to exercise and enjoy all incidences of the status of a lessor of the Leases and the Rents, including without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents, and to give proper receipts, releases, and acquittances therefor. Mortgagor hereby agrees to receive all Rents and hold the same as a trust fund to be applied, and to apply the Rents so collected, first to the payment of the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations. Thereafter, Mortgagor may use the balance of the Rent collected in any manner not inconsistent with the Loan Documents.

9.3 Enforcement of Leases. So long as the License is in effect, Mortgagor shall (i) submit any and all proposed Leases to Mortgagee for approval prior to the execution thereof, (ii) duly and punctually perform and comply with any and all representations, warranties, covenants, and

agreements expressed as binding upon the lessor under any Lease, (iii) maintain each of the Leases in full force and effect during the term thereof, (iv) appear in and defend any action or proceeding in any manner connected with any of the Leases, (v) deliver to Mortgagee copies of all Leases, and (vi) deliver to Mortgagee such further information, and execute and deliver to Mortgagee such further assurances and assignments, with respect to the Leases as Mortgagee may from time to time request. Without Mortgagee's prior written consent, Mortgagor shall not (i) do or knowingly permit to be done anything to impair the value of any of the Leases, (ii) except for security or similar deposits, collect any of the Rent more than one (1) month in advance of the time when the same becomes due under the terms of any Lease, (iii) discount any future accruing Rents, (iv) amend, modify, or terminate any of the Leases, or (v) assign or grant a security interest in or to the License or any of the Leases and/or Rents.

9.4 No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee, or any third party purchaser or otherwise.

ARTICLE X

SECURITY AGREEMENT

10.1 Security Interest. This Mortgage shall also be construed and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Mortgage shall terminate as provided in Article II hereof, a first and prior security interest under the Code as to property within the scope thereof and in the state where the Mortgaged Property is located with respect to the Personalty, Fixtures, Contracts, Leases and Rents. To this end, Mortgagor has MORTGAGED, WARRANTED, GRANTED, BARGAINED, SOLD, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Mortgagee, a first and prior security interest and all of Mortgagor's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Contracts, Leases, and Rents to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Mortgagor and Mortgagee that this Mortgage encumber all Leases and Rents, that all items contained in the definition of "Leases" and "Rents" which are included within the Code be covered by the security interest granted in this Article X, and that all items contained in the definition of "Leases" and "Rents" which are excluded from the Code be covered by the provisions of Article II and Article IX hereof.

10.2 Financing Statements. Mortgagor hereby agrees with Mortgagee to 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 herein granted, 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.

10.3 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the Code. All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest herein granted may be obtained from the parties at the address of the parties set forth herein. For purposes of the security interest herein granted, the address of debtor (Mortgagor) is set forth in the first paragraph of this Mortgage and the address of the secured party (Mortgagee) is set forth in Article I hereof.

ARTICLE XI

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ARTICLE XII

MISCELLANEOUS

12.1 Release. If the Indebtedness is paid in full in accordance with the terms of this Mortgage, the Note, and the other Loan Documents, and if Mortgagor shall well and truly perform each and every of the Obligations to be performed and discharged in accordance with the terms of this Mortgage, the Note and the other Loan Documents, then this conveyance shall become null and void and be released at Mortgagor's request and expense, and Mortgagee shall have no further obligation to make advances under and pursuant to the provisions hereof or in the other Loan Documents.

12.2 Performance at Mortgagor's Expense. Subject to the provisions of Section 12.11 hereof, Mortgagor shall (i) pay all reasonable and actual legal fees incurred by Mortgagee in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (ii) reimburse Mortgagee, promptly upon demand, for all amounts expended, advanced, or incurred by Mortgagee to satisfy any obligation of Mortgagor under the Loan Documents, which amounts shall include all court costs, reasonable attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), fees of auditors and accountants and other investigation expenses reasonably incurred by Mortgagee in connection with any such matters; and (iii) any and all other reasonable costs and expenses of performing or complying with any and all of the Obligations. Except to the extent that costs and expenses are included within the definition of "Indebtedness," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

12.3 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this Section 12.3 shall limit the obligations of Mortgagor as otherwise set forth herein.

12.4 Recording and Filing. Mortgagor will cause the Loan Documents (requested by the Mortgagee) and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and refiled in such manner and in such places as Mortgagee shall reasonably

request, and will pay all such recording, filing, re-recording and refiling taxes, documentary stamp taxes, fees, and other charges.

12.5 Notices. All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (iv) by prepaid telegram, telex, or telefacsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth on page 1 of this Mortgage; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

12.6 Covenants Running with the Land. All Obligations contained in this Mortgage and the other Loan Documents are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Mortgage has been fully released by Mortgagee.

12.7 Successors and Assigns. Subject to the provisions of Section 6.8 hereof, all of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through, or under them.

12.8 No Waiver; Severability. Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by Mortgagor or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.9 Counterparts. To facilitate execution, this Mortgage may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Mortgage to produce

or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

12.10 APPLICABLE LAW. THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF TEXAS FROM TIME TO TIME IN EFFECT EXCEPT TO THE EXTENT PREEMPTED BY UNITED STATES FEDERAL LAW, EXCEPT TO THE EXTENT THAT THE REAL AND PERSONAL PROPERTY LAWS OF THE STATE OF IOWA, INCLUDING LAWS GOVERNING FORECLOSURE, SHALL NECESSARILY GOVERN. MORTGAGOR REPRESENTS THAT (A) MORTGAGOR APPLIED FOR THE LOAN EVIDENCED BY THE NOTE IN DALLAS, TEXAS, AND ALL LOAN DOCUMENTS, INCLUDING THE NOTE AND THIS MORTGAGE WERE ACCEPTED BY MORTGAGEE IN DALLAS, TEXAS, (B) ALL NEGOTIATIONS RELATING TO THE LOAN HAVE TAKEN PLACE IN DALLAS, TEXAS, (C) MORTGAGOR WILL MAKE ALL PAYMENTS TO THE MORTGAGEE ON THE LOAN AND THE NOTE IN DALLAS, TEXAS, AND (D) THE ONLY CONTACT BETWEEN THIS TRANSACTION AND THE STATE OF IOWA IS THAT THE MORTGAGED PROPERTY IS LOCATED IN IOWA.

12.11 Controlling Agreement. It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under applicable state law) and that this section shall control every other covenant and agreement in this Mortgage and the other Loan Documents. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Indebtedness, or if Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Mortgagor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. In no event shall the provisions of Article 5069, ch. 15 of the Revised Civil Statutes of Texas (which regulates certain revolving credit loan accounts and revolving triparty accounts), or any successor statute, apply to the loan evidenced by the Loan Documents and/or secured hereby. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Mortgagee to accelerate the maturity of any interest

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

12.12 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the performance and discharge of the Obligations.

12.13 Rights Cumulative. Mortgagee shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Mortgaged Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Mortgagor or others obligated for the Indebtedness or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Mortgagee, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Mortgagee hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

12.14 Payments. Remittances in payment of any part of the Indebtedness other than in the required amount in funds immediately available at the place where the Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Mortgagee in funds immediately available at the place where the Note is payable (or such other place as Mortgagee, in Mortgagee's sole discretion, may have established by delivery of written notice thereof to Mortgagor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Mortgagee of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

12.15 Exceptions to Covenants. Mortgagor shall not be deemed to be permitted to take any action or to fail to take any action with respect to any particular covenant or condition contained herein or in any of the Loan Documents if the action or omission would result in the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Mortgagee, nor shall Mortgagee be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Indebtedness as a result of the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Mortgagee.

12.16 Reliance. Mortgagor recognizes and acknowledges that in entering into the loan transaction evidenced by the Loan Documents and accepting this Mortgage, Mortgagee is expressly

and primarily relying on the truth and accuracy of the foregoing warranties and representations set forth in Article III hereof without any obligation to investigate the Mortgaged Property and notwithstanding any investigation of the Mortgaged Property by Mortgagee; that such reliance exists on the part of Mortgagee prior hereto; that such warranties and representations are a material inducement to Mortgagee in making the loan evidenced by the Loan Documents and accepting of this Mortgage; and that Mortgagee would not be willing to make the loan evidenced by the Loan Documents and accept this Mortgage in the absence of any of such warranties and representations.

12.17 Change of Security. Any part of the Mortgaged Property may be released, regardless of consideration, by Mortgagee from time to time without impairing, subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder. The lien, security interest, and other rights granted hereby shall not be affected by any other security taken for the Indebtedness or Obligations, or any part thereof. The taking of additional collateral, or the amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall not release or impair the lien, security interest, and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any junior lienholder; and this Mortgage, as well as any instrument given to secure any amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is fully paid and the Obligations are fully performed and discharged.

12.18 Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

12.19 Entire Agreement; Amendment. THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions of this Agreement and the Loan Documents may be amended or waived only by an instrument in writing signed by the Mortgagor and Mortgagee.

12.20 Dishonored Checks. In the event that Mortgagor presents for payment on the Note to Mortgagee checks which are dishonored twice, Mortgagor shall make all future payments on the Note by cashier's check or wire transfer to Mortgagee.

12.21 Waiver of Right to Trial by Jury. MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY MORTGAGEE IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.

12.22 Venue. **MORTGAGOR HEREBY IRREVOCABLY SUBMITS ITSELF TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE OF TEXAS AND AGREES AND CONSENTS THAT SERVICE OF PROCESS MAY BE MADE UPON IT IN ANY LEGAL PROCEEDING RELATING TO THIS AGREEMENT OR THE OBLIGATION(S) BY ANY MEANS ALLOWED UNDER TEXAS OR FEDERAL LAW. VENUE FOR ANY LEGAL PROCEEDING SHALL BE COLLIN COUNTY, TEXAS; PROVIDED, THAT MORTGAGEE MAY CHOOSE ANY VENUE IN ANY STATE WHICH IT DEEMS APPROPRIATE IN THE EXERCISE OF ITS SOLE DISCRETION.**

12.23 Mortgagor. Any reference to "Mortgagor" herein shall mean both parties comprising Mortgagor individually and collectively. Without limiting the foregoing, any representation, warranty or covenant made by "Mortgagor" shall be deemed made by each such party.

12.24 Notice. The Loan secured by the lien of this Mortgage is 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:

i. 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.

ii. 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 Mortgagor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Grantor, 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.

12.25 Texas Finance Code Notice. **TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION NOTICE: (A) MORTGAGOR IS REQUIRED TO: (i) KEEP THE MORTGAGED PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT MORTGAGEE SPECIFIES; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF IOWA OR TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME MORTGAGEE AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) MORTGAGOR MUST, IF REQUIRED BY MORTGAGEE, DELIVER TO MORTGAGEE A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS, AND (C) IF MORTGAGOR FAILS TO MEET ANY REQUIREMENTS LISTED IN PARAGRAPH (A) OR (B), MORTGAGEE MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF MORTGAGOR AT MORTGAGOR'S EXPENSE.**

ARTICLE XIII

SPECIAL STATE PROVISIONS

13.1 Instrument. To the extent the Mortgaged Property is in Iowa, this Mortgage shall be deemed to be and shall be enforceable as a mortgage, assignment of rents and financing statement.

13.2 Waiver of Right of Redemption. To the extent allowed by applicable law, Mortgagor hereby waives any right of redemption is may have pursuant to common law, statutory law, constitution, or other law governing this transaction.

IN WITNESS WHEREOF, the undersigned has executed this Mortgage, Assignment of Leases and Rents and Security Agreement as of the date first above written.

NOTICE OF INDEMNIFICATION:

MORTGAGOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS MORTGAGE CONTAINS CERTAIN INDEMNIFICATION PROVISIONS PURSUANT TO SECTIONS 4.20 AND 8.4 HEREOF.

MORTGAGOR:

SHREE JAY AMBE LLC, an Iowa limited liability company

By: Pratik A Patel
Pratik A. Patel, Manager

THE ADDRESS OF THE WITHIN NAMED MORTGAGEE IS:

17950 Preston Road
Suite 600
Dallas, Texas 75252

THE STATE OF ~~IOWA~~ Illinois §
COUNTY OF ~~DELAWARE~~ Jo Daviess §

Personally appeared before me, the undersigned authority, a Notary Public in and for said State and County, personally appeared Pratik A. Patel, Manager of Shree Jay Ambe LLC, an Iowa limited liability company, with whom I am personally acquainted and who acknowledged himself to hold the foregoing position on behalf of the within named mortgagor, and that, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such officer.

Witness my hand and seal at office this the 25 day of September, 2020.

Audra L Baltierra
Notary Public, State of Iowa

My Commission Expires:

6-6-24

OFFICIAL SEAL
Audra L. Baltierra
Notary Public, State of Illinois
My Commission Expires June 6, 2024

List of Attachments:
Exhibit "A" - Land Description
Exhibit "B" - Personal Property

EXHIBIT "A"

Land Description

Lot One (1) of Hotel Subdivision Part of the NE 1/4 of the NE 1/4 of Section 31, T89N, R5W of the Fifth P.M., City of Manchester, Delaware County, Iowa, according to plat recorded in Book 2020, Page 654.

EXHIBIT "B"

Personal Property

DocuSign Envelope ID: A44475ED-A4AE-4683-AC19-8A5B75D664DE

ITEM NO	QUANTITY	SIZE	BRAND NAME	SERIAL NUMBER
Television	50	42	INSIGNIA	17C393107H15029 16E393107H06027 40M183479H02220
Microwave	50		GENERAL COOKING	
Air Conditioner	50		PREM AIRE	
Mattress	50		BEAUTYREST	
Bed	50			
Dressing Table	50			
Dressing Chair	50			
Ironing Table	50			
Iron	50		INTERTEK	
Sofa	10			
Jacuzzi Tub	2			
TV Unit Table	50			
Hair Dryer	50		HOTELO	
Washer	2		DEXTER	W1.15306.001
Dryer	2		UNIMAC	9505/023871
Guest Washer	1		WHIRLPOOL	
Guest Dryer	1		WHIRLPOOL	
Computers	2		HP	HP Pavilion 23
Guest TV	1		VIZIO	
Softner Tank	1		Pentair	25016030
Water Heater Tank	2		Rheem Comercial Universal	URNGA331302522
Phone System	1		Mitel	SX-50
Phone	49		Inn- Phone	
Printer	1		Brother	MFC-L5700DW

DocuSigned by:
Pratik Patel
2798611E17CC44C...

9/18/2020