

## CONSENT TO LEASEHOLD MORTGAGE AND SECURITY AGREEMENT

This Consent To Leasehold Mortgage and Security Agreement ("Consent Agreement") is executed by Broward County, a political subdivision of the State of Florida ("County"), Airside Fort Lauderdale, LLC, a Nevada limited liability company registered to transact business in the State of Florida ("Lessee"), and ZB, N.A. d/b/a Amegy Bank, a national banking association ("Mortgagee") (County, Lessee, and Mortgagee are collectively referred to as the "Parties" or individually as a "Party").

### RECITALS

A. County and Lessee entered into an Agreement of Lease dated June 12, 2018 ("Lease"), pursuant to which County leased to Lessee real property located in Broward County, more particularly described in **Exhibit A** ("Premises").

B. Lessee has requested that County consent to the Leasehold Mortgage and Security Agreement ("Leasehold Mortgage"), in substantially the form attached hereto as **Exhibit B**, which Leasehold Mortgage secures principal indebtedness in a total amount of Six Million Nine Hundred Sixty Thousand Dollars (\$6,960,000).

C. County is unwilling to consent to the Leasehold Mortgage unless this Consent Agreement is also executed by Lessee and Mortgagee.

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

1. Capitalized terms used in this Consent Agreement and not otherwise defined in this Consent Agreement shall have the meaning given to such terms in the Lease. To the extent a capitalized term is not defined in this Consent Agreement or the Lease, such term shall have the meaning assigned to it in the Leasehold Mortgage. In the event of a conflict of a defined term, the definition contained within the Lease shall control.

2. County expressly consents to the Leasehold Mortgage by Lessee in favor of Leasehold Mortgagee, which prior consent is required by the Lease. This consent shall not obligate County to any affirmative obligations that may be set forth by the terms of the Leasehold Mortgage, the note, or any other documents executed in connection therewith (collectively, the "Loan Documents").

3. In giving its consent to Lessee to enter into a Leasehold Mortgage, County does not in any manner adopt, accept, or approve any of the terms or conditions of the Loan Documents. This consent shall not operate or be construed as a waiver of any term, condition, right, or remedy of County under the Lease.

4. County and Lessee agree not to amend the Lease in any material respect without Mortgagee's written consent. Lessee and Mortgagee agree not to amend the Leasehold Mortgage without the prior written consent of County and that there shall be no future

advances, additional notes, or additional loans without the prior written consent of County. Furthermore, Lessee represents and agrees that the loan proceeds shall only be used in connection with the construction of improvements to the Premises.

5. County shall, upon serving Lessee with a copy of any written notice of default under the terms of said Lease, simultaneously serve a copy of such notice upon Leasehold Mortgagee, at the last known address provided in writing to County. Said notice shall specify the nature of the default. Mortgagee shall thereafter have fifteen (15) days from the date of said notice, or such longer period as may be provided in accordance with the terms and provisions of the Lease, to remedy, or cause to be remedied, the default of said Lease. County shall accept such performance by or on behalf of Mortgagee as if the Lessee had done the same. County agrees that with respect to a non-monetary default, provided Mortgagee is diligently pursuing the cure of said non-monetary default in good faith, the period of time for compliance and cure of said non-monetary default shall be reasonably extended as necessary to permit completion by Mortgagee of the cure of said non-monetary default.

6. In the event Mortgagee shall become the lessee of the Lease as a result of default by Lessee or its successors, and Mortgagee desires to transfer Mortgagee's interest in the Lease to any individual, corporation, or entity capable of operating the improvements constructed or to be constructed pursuant to the terms of the Lease, Mortgagee must first obtain the written consent of County, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, in the event the Leasehold Mortgage is successfully foreclosed upon by the Mortgagee, County consent shall not be required for the assignment of the Lease to Mortgagee.

7. Lessee hereby certifies, represents and agrees that Lessee has not received any written notice that it is in violation of any governmental law or regulation applicable to its interest in the Premises or its operation thereon, including, without limitation, any environmental laws or the Americans with Disabilities Act, and has no reason to believe that there are grounds for any claim or such violation.

8. County's consent to the Leasehold Mortgage given in this document is contingent upon compliance with all of the provisions of this Consent Agreement. Despite any provision that is or may appear to be to the contrary, the Leasehold Mortgage shall not, under any circumstances, be construed to provide the Mortgagee, or any successors or assigns, with any of the following:

- (i) any lien upon the fee simple interest in the Premises, or any lien upon any ownership interest of County in and to any improvements located on the Premises, or any lien upon County's interest as lessor under the Lease, which interests are and shall at all times be vested in County;
- (ii) any lien or security interest upon any monies that are payable to County, as lessor under the Lease, including without limitation rent payments, County's portion of the proceeds of any condemnation award, the proceeds of any

insurance payable to County pursuant to the Lease, and all other monies that may be payable to County pursuant to the Lease. Any amounts owed by Lessee shall be paid directly to County as and when payable and such monies shall never be paid to the Leasehold Mortgagee;

- (iii) any subordination of the fee simple interest of County in and to the real property described in **Exhibit A**; or
- (iv) any right to make any future advances to Lessee under the Leasehold Mortgage without obtaining the prior written consent of County.

9. County's consent to the Leasehold Mortgage given in this document shall not approve, grant, or create any greater rights or interests to the leasehold other than those granted in the Lease.

10. County cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations governing the Premises, any improvements thereon, or any operations at the Premises. Nothing in this Consent Agreement shall be deemed to create an affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements.

11. Lessee further agrees that any default of any provision of this Consent Agreement by Lessee shall constitute a default under the Lease. Nothing contained herein shall modify any of the terms and conditions contained in the Lease.

12. In order for a notice to a Party to be effective under this Consent Agreement, notice must be sent via U.S. first-class mail, with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR BROWARD COUNTY:

County Administrator  
Governmental Center  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Email: bhenry@broward.org

with a copy to:

Director of Aviation  
Aviation Department  
2200 SW 45th Street, Suite 100  
Dania Beach, Florida 33312  
Email: mgale@broward.org

FOR MORTGAGEE:

Amegy Bank  
Attention: Jennah Wakeford  
1717 West Loop South  
Houston, Texas 77027  
Email: Jennah.Wakeford@amegybank.com

FOR LESSEE:

Airside Fort Lauderdale, LLC  
Attention: Raymond Brimble  
3501 Manor Road  
Austin, Texas 78723  
Email: ray.brimble@lynxs.com

13. This Consent Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Consent Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Consent Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS CONSENT AGREEMENT, LESSEE, MORTGAGEE, AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS ANY PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS CONSENT AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS CONSENT AGREEMENT AFTER WRITTEN NOTICE BY ANY OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY(S) IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

14. This Consent Agreement shall be binding on the Parties, their respective successors, legal representatives, and assigns; provided, however, that nothing contained herein shall be deemed to authorize any assignment of the Lease other than in strict compliance with the terms of the Lease. The Parties hereby represent to each other that they have full right, title,

and authority to execute this Consent Agreement, including all necessary approvals and authorizations, and that the undersigned signatories have full power and authority to execute and deliver this Consent Agreement.

15. Other than the referenced Lease and Loan Documents, this Consent Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter and there is no other commitment, agreement, or understanding concerning the subject matter of this Consent Agreement that is not contained in this written document.

16. This Consent Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against any Party.

17. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Consent Agreement and executed by the Board, Lessee, and Leasehold Mortgagee, or others delegated authority or otherwise authorized to execute same on their behalf.

18. Any and all recital clauses and representation stated herein are true and correct and are incorporated in this Consent Agreement. The attached **Exhibit A** and **Exhibit B** are incorporated into and made a part of this Consent Agreement.

19. Anything herein contained to the contrary notwithstanding, this Consent Agreement shall terminate upon such time as the Leasehold Mortgage is satisfied. Within sixty (60) days following the satisfaction of the Leasehold Mortgage, Lessee shall provide County with notice of such satisfaction and a copy of the recorded Satisfaction of Mortgage provided by Mortgagee to Lessee. A failure by Lessee to provide such notice and documentation to County shall be a default of the Lease.

20. This Consent Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have made and executed this Consent Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board on the \_\_\_ day of \_\_\_\_\_, 2018, and AIRSIDE FT. LAUDERDALE, LLC, signing by and through its \_\_\_\_\_, duly authorized to execute same, and ZB, N.A. d/b/a AMEGY BANK, signing by and through \_\_\_\_\_, duly authorized to execute same.

COUNTY


ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 2018

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Aviation Office  
2200 SW 45<sup>th</sup> Street, Suite 101  
Dania Beach, Florida 33312  
Telephone: (954) 359-6100  
Telecopier: (954) 359-1292

By  \_\_\_\_\_ 7/25/18  
Sharon Thorsen (Date)  
Senior Assistant County Attorney

SVT/ch  
Airside Consent to Leasehold Mortgage  
07-19-18  
80071.0041

CONSENT TO LEASEHOLD MORTGAGE AND SECURITY AGREEMENT

LESSEE

AIRSIDE FT. LAUDERDALE, LLC, a Nevada  
limited liability company

WITNESS:

I.T. Gonzalez  
Signature

I.T. GONZALEZ  
Print Name

Penny Lambright  
Signature

Penny Lambright  
Print Name

By [Signature]

23 day of July, 2018

ATTEST:

\_\_\_\_\_

(CORPORATE SEAL)

**CONSENT TO LEASEHOLD MORTGAGE AND SECURITY AGREEMENT**

MORTGAGEE

ZB, N.A. dba AMEGY BANK

WITNESS:

Courtney Moro  
Signature

By Jennah Wakeford  
Jennah Wakeford  
Vice President

Courtney Moro  
Print Name

25 day of July, 2018

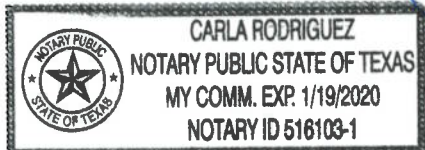
Alicia Lyles  
Signature

Alicia Lyles  
Print Name

ATTEST:

Carla Rodriguez

(CORPORATE SEAL)





## EXHIBIT A

### PREMISES

A portion of Parcel "A", Northwest FLL Airport Plat (Plat 10), according to the plat thereof as recorded in Plat Book 158, Page 20, Public Records of Broward County, Florida, lying in Section 21, Township 50 South, Range 42 East, being more particularly described as follows:

Commencing at the Southwest corner of Section 21, Township 50 South, Range 42 East; thence Easterly along the South line of said Section 21, North 88 degrees 25 minutes 26 seconds East, 1037.55 feet; thence North 01 degree 34 minutes 09 seconds West, 615.53 feet to the Point of Beginning; thence North 89 degrees 57 minutes 45 seconds West, 15.00 feet; thence North 01 degree 34 minutes 09 seconds West, 604.91 feet; thence North 88 degrees 04 minutes 24 seconds East, 360.45 feet; thence South 01 degree 42 minutes 31 seconds East, 54.13 feet; thence North 88 degrees 26 minutes 39 seconds East, 204.86 feet; thence South 49 degrees 13 minutes 05 seconds East, 92.91 feet; thence South 00 degrees 00 minutes 00 seconds East, 196.64 feet; thence North 90 degrees 00 minutes 00 seconds East, 166.79 feet; thence South 00 degrees 00 minutes 08 seconds East, 181.23 feet; thence South 54 degrees 50 minutes 37 seconds West, 78.08 feet; thence South 00 degrees 00 minutes 00 seconds East, 250.99 feet to a point on a line 185.00 feet North of and parallel with the centerline of Taxiway "N", said point being on the arc of a non-tangent curve concave to the South, having a radius of 2180.20 feet; thence Westerly along said parallel line and along the arc of said curve through a central angle of 01 degree 42 minutes 02 seconds, an arc distance of 64.71 feet to a point of reverse curvature of a curve concave to the North, having a radius of 1815.00 feet; thence continue Westerly along said parallel line and along the arc of said curve through a central angle of 09 degrees 07 minutes 07 seconds, an arc distance of 288.86 feet; thence continue Westerly along said parallel line, North 89 degrees 57 minutes 52 seconds West, 45.81 feet; thence North 00 degrees 00 minutes 00 seconds East, 198.03 feet; thence North 89 degrees 57 minutes 45 seconds West, 310.88 feet to the Point of Beginning.

Said lands lying in Broward County, Florida, containing 489,534 square feet (11.238 acres), more or less.

**PREPARED BY AND RETURN TO:**

William T. Johnson  
Jackson Walker L.L.P.  
1401 McKinney, Suite 1900  
Houston, Texas 77010

**LEASEHOLD MORTGAGE AND SECURITY AGREEMENT**

THIS LEASEHOLD MORTGAGE AND SECURITY AGREEMENT (“**Mortgage**”) is made as of August \_\_, 2018 between **AIRSIDE FT. LAUDERDALE, LLC**, a Nevada limited liability company (herein “**Mortgagor**”), whose address for notices under this Mortgage is 3501 Manor Road, Austin, Texas 78723 and **ZB, N.A. dba AMEGY BANK** (herein “**Mortgagee**”), whose address for notices under this Mortgage is 1717 West Loop South Houston, Texas 77027, Attention: Jennah Wakeford.

**ARTICLE I  
DEFINITIONS**

1.1 As used herein, the following terms shall have the following meanings herein specified, such definition to be applicable equally to the singular and plural forms of such terms:

(a) Assignment of Rents and Leases: The assignment of the tenancies, leases, rents and profits executed by Mortgagor, both as set forth herein and in any separate Assignment of Leases, Rents and Profits or similar instrument executed by Mortgagor in favor of Mortgagee, wherein and whereby Mortgagor assigns the Leases, Rents and Profits from the Mortgaged Property to Mortgagee.

(b) Default Rate: The rate of interest specified in the Note as that rate at which the Note and all sums due thereunder shall bear interest from the date when due until paid.

(c) Event of Default: As defined in Article VI of this Mortgage.

(d) Financing Statements: The Financing Statements filed, or to be filed, with the Florida Secured Transactions Registry and recorded, or to be recorded in the County or Counties where the Land is located perfecting the Security Interest created by the Security Agreement.

(e) Fixtures: All fixtures now or hereafter located under, on or above the Land which constitute or will constitute fixtures under the law of the state of Florida which term includes any part of the fixtures.

(f) Impositions: All (i) real estate and personal property taxes and other taxes and assessments, public or private, including, without limitation, water and sewer rates and charges; all other governmental or non-governmental charges; any interest or costs or penalties with respect to any of the foregoing; and charges for any easement or agreement maintained for the benefit of the Mortgaged Property, 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 of the Security Documents may be assessed, levied, or imposed upon the Mortgaged Property or the rent or income received therefrom, or any use or occupancy thereof (excluding Mortgagor’s income taxes), and (ii) other taxes, assessments, fees and governmental and non-governmental charges levied, imposed or assessed upon or against Mortgagor or any of its properties.

(g) Improvements: All buildings, structures, fruit trees, groves, betterments and other improvements of any nature now constructed or hereafter constructed or situated in whole or in part under, on, above or upon the Land, regardless of whether physically affixed thereto or severed or capable of severance therefrom, and all replacements thereof, which term includes any part thereof.

(h) Indebtedness: The principal of, interest on and all other amounts, payments and premiums due under the Note and any advances made hereunder by Mortgagee.

(i) Land: The leasehold estate, together with and including all right, title and interest of Mortgagor therein, under that certain Ground Lease (and other interest or interests in real estate, if any) covering that certain tract or parcel of land described in Exhibit "A" attached hereto, which by this reference is made a part hereof for all purposes.

(j) Leases: Any and all leases, tenancies, subleases, licenses, concessions or grants of other possessory interests granted by Mortgagor as Lessor, now or hereafter in force, oral or written, covering or affecting the Mortgaged Property.

(k) Ground Lease: That certain Agreement of Lease between Broward County, Florida, a subdivision of the State of Florida ("Ground Lease Lessor") and Mortgagor executed on June 12, 2018, as amended, modified and extended from time to time, covering the Land.

(l) Loan Agreement: The Construction Loan Agreement of even date herewith between Mortgagee and Mortgagor.

(m) Loan Documents: All documents, including the Loan Agreement and the Security Documents, executed, prepared or delivered by Mortgagor in conjunction with or implementing the loan transaction between Mortgagor and Mortgagee.

(n) Maturity Date: The Maturity Date as stated in the Loan Agreement.

(o) Mortgaged Property: The Land, the Improvements, the Fixtures and the Personal Property together with:

(i) all rights, privileges, tenements, hereditament, rights-of-way, easements, appendages, appurtenances, riparian or littoral rights now or hereafter belonging or in anywise appertaining to the Land and/or the Improvements; all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land now or hereafter adjoining, crossing or pertaining to the Land; and

(ii) all of the Mortgagor's right, title and interest in and to any award or awards heretofore made or hereafter to be made whether in condemnation, eminent domain or otherwise, by any Municipal, County, State or Federal governmental body, authority or Board to the present and all subsequent owners of the Land, the Improvements, the Fixtures and the Personal Property, including any award or awards for any change or changes of grade of any street or streets affecting the Land and/or Improvements and/or the Fixtures and/or Personal Property; and

(iii) all of the estate, right, title interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Land, the Rents, the Improvements, the Fixtures and the Personal Property;

which term includes any part of the foregoing property described as Mortgaged Property.

(p) Note: Collectively, (i) the Promissory Note, dated of even date with this Mortgage, made by Mortgagor to the order of Mortgagee, in the original principal amount of **SIX MILLION FOUR HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$6,460,000.00)** and (ii) the Promissory Note, dated July 18, 2018, made by Mortgagor to the order of Mortgagee, in the original principal amount of **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00)** and each such Promissory Note secured by this Mortgage, which by this reference is made a part hereof for all purposes together with all future advance promissory notes or other promissory notes executed in conjunction with this Mortgage and all renewals, extensions, modifications, and consolidations of any of the aforesaid.

(q) Obligations: Any and all of the covenants, promises and other obligations (other than for the payment of the Indebtedness) made or owing by Mortgagor or due to Mortgagee under and as set forth in the Loan Documents.

(r) Permitted Encumbrances: The items set forth in Exhibit "B" attached hereto.

(s) Personal Property: All tangible and intangible personal property of Mortgagor on, or connected in any way with, the Land Improvements and Fixtures, if any, including, without limitation the items described on Exhibit "C" attached hereto, which term includes any part of the Personal Property.

(t) Rents: As defined in Exhibit "C" of this Mortgage.

(u) Security Agreement: The security agreement set forth in this Mortgage, wherein and whereby Mortgagor grants a security interest in the Fixtures and the Personal Property to Mortgagee, and any other security agreement, if any, between Mortgagor and Mortgagee, dated of even date herewith, wherein and whereby Mortgagor grants a security interest in the collateral described therein to Mortgagee to secure repayment of the Note.

(v) Security Documents: This Mortgage, the Assignment of Rents and Leases, if any, the Financing Statements, the Security Agreement, and the Note.

## ARTICLE II GRANT

2.1 Grant. To secure the payment of the Indebtedness and the performance and discharge of the Obligations, Mortgagor does by these presents give, transfer, grant, bargain, sell, alien, remise, release, assign, mortgage, hypothecate, deposit, pledge, set over, confirm, convey and warrant unto Mortgagee (A) all estate, right, title and interest of Mortgagor in and to the Mortgaged Property, whether now owned or held or hereafter acquired by Mortgagor, subject, however, to the Permitted Encumbrances, to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever; and (B) the Rents and Leases.

2.2 Condition of Grant. The condition of these presents is such that if Mortgagor shall pay or cause to be paid the Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations, then the Security Documents and the estates and rights granted by them shall be null and void, otherwise to remain in full force and effect.

## ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1 Organization, Power, Etc. Mortgagor hereby represents and warrants to Mortgagee that Mortgagor: (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed, (ii) has the power and authority to own its properties and to carry on its business as now being conducted, (iii) is qualified to do business in the jurisdiction in which the Land is located, and (iv) is in compliance with all laws, regulations, ordinances and orders of all public authorities applicable to it.

3.2 Validity of Loan Instruments. Mortgagor hereby represents and warrants to Mortgagee that: (A) Mortgagor's execution, delivery and performance of the Note, the Security Documents and/or the Loan Documents, and the borrowing evidenced by the Note, (i) are within the powers and purposes of Mortgagor, (ii) have been duly authorized by all requisite action, (iii) have received all necessary governmental approval, and (iv) will not violate any provision of law, any order of any court or other agency of government, the articles of organization or operating agreement of Mortgagor or any indenture, agreement or other instrument to which Mortgagor is a party or by which it or any of its property is bound, or be in conflict with, result in a breach of or constitute (with due notice or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of the Security Documents and/or the Loan Documents; and (B) the Note and the Security Documents and/or the Loan Documents, when executed and delivered by Mortgagor, will constitute the legal, valid and binding obligations of Mortgagor in accordance with their respective terms.

3.3 Other Information. Mortgagor hereby represents and warrants to Mortgagee that all other information, reports, financial statements, papers and data given and to be given to Mortgagee with respect: (A) to Mortgagor; (B) to the loan evidenced by the Note and the Security Documents and/or the Loan Documents; or (C) to others, if any, obligated under the terms of the Security Documents and/or the Loan Documents, are true, accurate and correct in all material respects and complete insofar as completeness may be necessary to give Mortgagee a true and accurate knowledge of the subject matter.

3.4 Mortgaged Property and Other Property. Mortgagor has good and marketable leasehold title to the Land, and has, and will have, good and marketable title to the Improvements, Fixtures and Personal Property all free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances as applicable. Mortgagor will preserve its title to the Mortgaged Property and will forever warrant and defend the same to the Mortgagee and will forever warrant and defend the validity and priority of the lien of this Mortgage against the claims of all persons and parties whomsoever, except those holding Permitted Encumbrances.

3.5 Taxes. Mortgagor has filed all Federal, State, County and Municipal income tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns, pursuant to any assessments received by it or pursuant to law, and Mortgagor does not know of any basis for additional assessment in respect of such taxes or additional taxes.

3.6 Litigation. There is not now pending against or affecting Mortgagor or the Mortgaged Property or any part of it, nor, to the knowledge of Mortgagor, is there threatened or contemplated any action, suit or proceeding at law or in equity or by or before any administrative agency which if adversely determined would materially impair or affect its financial condition or operation or Mortgagor's ownership of the Mortgaged Property.

#### ARTICLE IV AFFIRMATIVE COVENANTS

Until the entire Indebtedness shall have been paid in full, Mortgagor hereby covenants and agrees as follows:

4.1 Existence. Mortgagor will preserve and keep in full force and effect its existence, rights, franchises and trade names.

4.2 Compliance with Laws. Mortgagor will promptly and faithfully comply with, conform to and obey all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental entity, authority or agency and of every Board of Fire Underwriters having jurisdiction, or similar body exercising similar functions, which may be applicable to it or to the Mortgaged Property or to the use or manner of use, occupancy, possession, operation maintenance, alteration, repair or reconstruction of the Mortgaged Property, whether or not such law ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

4.3 Payment of Impositions. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions, such Impositions or installments thereof to be paid not later than the due date thereof, or the day any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof (if such day is used to determine the due date of the respective item); provided, however, that if, by law, any Imposition may be paid in installments, at the option of the taxpayer or other person obligated to pay it (whether or not interest shall accrue on the unpaid balance of such Imposition), Mortgagor may exercise the option to pay the same in such installments.

4.4 Repair. Mortgagor will keep the Mortgaged Property in good order and condition and make all necessary or appropriate repairs and replacements thereof and betterments and improvements thereto, ordinary and extraordinary, foreseen and unforeseen, and use commercially reasonable efforts to prevent any act or thing which might impair the value or usefulness of the Mortgaged Property.

4.5 Insurance. Mortgagor will maintain in full force and effect paid insurance upon such part of the Mortgaged Property as is usually insurable against loss by fire and such other

hazards, casualties and contingencies as are normally and usually covered by “special form” coverage policies usually in effect in the locality where such part of the Mortgaged Property is situated, including rental interruption insurance in an amount equal to twelve (12) months estimated gross revenues from the operations at the Mortgaged Property (less those expenses that would not be incurred during the period of rental interruption), and such other risks, hazards, casualties and contingencies as reasonably may be specified by Mortgagee from time to time, including but not limited to insurance against flood, earthquake and subsidence, all the aforesaid in amounts and with insurers of recognized responsibility and which are acceptable to Mortgagee; Mortgagor will cause each insurance policy issued in connection with this paragraph to contain a New York standard, non-contributory mortgagee endorsement and to provide (and the insurer issuing such policy to certify to Mortgagee) that: (A) loss payments will be payable to Mortgagee; (B) the interest of Mortgagee shall be insured regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy; (C) if any such insurance policy be subject to cancellation or be endorsed or sought to be endorsed to effect a change in coverage for any reason whatsoever, such insurer will promptly notify Mortgagee and such cancellation or change shall not be effective as to Mortgagee for thirty (30) days after receipt by Mortgagee of such notice; and (D) Mortgagee may, but shall not be obligated to, make premium payments to prevent lapse or cancellation by reason of nonpayment of premium, and that such payments shall be accepted by the insurer. Mortgagor shall furnish to Mortgagee the original of each such policy at the time of execution hereof, and the original of each renewal policy not less than thirty (30) days prior to the expiration of the original policy or the preceding renewal policy (as the case may be), together with receipts or other evidence that the premiums thereon have been paid. In the event of enforcement of this Mortgage by Mortgagee or transfer of title to the Mortgaged Property in extinguishment of the Indebtedness, all right, title and interest of Mortgagor in and to all insurance policies then in force with respect to the Mortgaged Property shall pass to the purchaser or grantee. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that to be required under this paragraph, unless Mortgagee is included thereon as a named insured with loss payable to Mortgagee. The Mortgagor shall immediately notify the Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

4.6 Restoration Following Insured Casualty. In the event of the happening of any casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, of the kind to be covered by insurance under paragraph 4.5, resulting in damage to or destruction of any part of the Mortgaged Property, Mortgagor will promptly give notice thereof to Mortgagee, and if the insurance proceeds are to be applied to the restoration, repair or replacement of the damaged or destroyed Mortgaged Property under the terms of the Ground Lease (whether restored by Mortgagor or Ground Lease Lessor), Mortgagee shall permit Mortgagor to apply the insurance proceeds to such restoration, repair or replacement, and, subject to the terms of the Ground Lease, Mortgagor will promptly, at Mortgagor’s sole cost and expense, whether or not the insurance proceeds shall be sufficient for the purpose, commence and diligently continue to restore, repair, replace, rebuild or alter the damaged or destroyed Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage or destruction. Application of the insurance proceeds to the restoration, repair or replacement of the damaged or destroyed Mortgaged Property shall not affect the lien of this Mortgage or reduce the amount of the Indebtedness secured by this Mortgage.

4.7 Restoration Following Uninsured Casualty. In the event of the happening of any casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, not covered by insurance under paragraph 4.5, resulting in damage to or destruction of the Mortgaged Property, Mortgagor will give notice thereof to Mortgagee and Mortgagor will promptly, at Mortgagor’s sole cost and expense, commence and diligently continue to restore, repair, replace, rebuild or alter the damaged or destroyed Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

4.8 Performance of Other Agreements. Mortgagor will duly and punctually perform all covenants and agreements expressed as binding upon it under any lease, Permitted Encumbrance or any other agreement of any nature whatsoever to which it is a party which involves the Mortgaged Property.

4.9 Inspection. Mortgagor will permit Mortgagee and parties designated by Mortgagee, at all reasonable times and upon reasonable prior notice, to inspect the Mortgaged Property.

4.10 Hold Harmless. Mortgagor will defend at its own cost and hold Mortgagee harmless from any action, proceeding or claim affecting the Mortgaged Property, or the value of the Note or the Security Documents and/or the Loan Documents, arising out of action or inaction by Mortgagor.

4.11 Contest of Tax Assessments, Etc. After prior written notice to Mortgagee, Mortgagor, at its own expense, may contest by appropriate legal proceedings, promptly initiated and conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of: (A) any of the legal requirements referred to in paragraph 4.2; or (B) any Imposition; provided that (i) in the case of any unpaid Imposition, such proceedings shall suspend the collection thereof from Mortgagor and from the Mortgaged Property, (ii) the Mortgaged Property will not be in danger of being sold, forfeited, terminated, canceled or lost, (iii) the use of the Mortgaged Property for its present intended purpose or purposes will not be interrupted, lost or terminated, (iv) Mortgagor shall have set aside adequate reserves with respect thereto or place in force an adequate performance or payment bonds, or both, and (v) Mortgagor shall have furnished such security as may be required in the proceedings or as may be reasonably requested by Mortgagee.

4.12 Expenses. The Mortgagor will pay or reimburse the Mortgagee for all reasonable attorneys' fees (including paralegal fees), costs and expenses paid or incurred by the Mortgagee in any action, proceeding or dispute of any kind (including, but not limited to, those incurred prior to or without trial in mediation or arbitration, at trial, on appeal or otherwise) in which the Mortgagee is made a party or appears as party plaintiff or defendant, affecting the Note, this Mortgage, Mortgagor, the Loan Documents, any guarantor of the Mortgaged Property, including but not limited to the foreclosure or other enforcement of this Mortgage, any condemnation or eminent domain action involving the Mortgaged Property or any part thereof, any action to protect the security hereof, or any proceeding in probate, reorganization or bankruptcy, and any such amounts paid or incurred by the Mortgagee shall be added to the Indebtedness, shall bear interest at the Default Rate from date of payment and shall be secured by the lien of this Mortgage.

4.13 Performance of Commitment Letter. The terms of any loan commitment letter issued by Mortgagee, if any, shall survive the execution and delivery of this Mortgage and Mortgagor shall timely comply with, abide by and perform all the terms, obligations and conditions of such loan commitment on its part to be complied with, abided by and performed.

4.14 Tax and Insurance Escrow. Supplementing the provisions of paragraphs 4.3 and 4.5 hereof, and if required by Mortgagee, upon an Event of Default, the Mortgagor shall pay to Mortgagee on the payment date of installments of principal and/or interest, together with and in addition to such installments of principal and/or interest, until the Note is fully paid, an installment of the Impositions and insurance premiums for such insurance as is required hereunder, next due on the Mortgaged Property in an amount sufficient, as estimated by Mortgagee, to accumulate the sum required to pay such Impositions and insurance, as applicable, thirty (30) days prior to the due date thereof. Amounts held hereunder shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable with respect thereto unless required by applicable law. Upon written demand of Mortgagee, Mortgagor agrees to deliver to Mortgagee such additional money as is necessary to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such Impositions and insurance premiums when due. In case of an Event of Default, the Mortgagee may apply to the reduction of the Indebtedness, at such times and in such manner as the Mortgagee shall determine, any amount under this paragraph remaining to the Mortgagor's credit.

4.15 Payment of Indebtedness. Mortgagor will timely pay and discharge the Indebtedness or any part thereof in accordance with the terms and conditions of the Note and the Security Documents.

4.16 Contributed Capital/Equity Capital Absent the express written consent of Mortgagee, all capital contributed by Mortgagor to the project being financed by the proceeds of the Loan (the "Project") and any equity capital generated by the Project itself shall remain in the Project until the earliest of: (i) the Loan being converted to its permanent phase (if applicable); (ii) the Loan being paid in full, or (iii) the Project being sold.

## ARTICLE V NEGATIVE COVENANTS

Until the entire indebtedness shall have been paid in full, Mortgagor hereby covenants and agrees as follows:

5.1 Use Violations, Etc. Mortgagor will not use the Mortgaged Property or allow the same to be used or occupied for any unlawful purpose or in violation of any permit or certificate, or any law, ordinance, regulation or restrictive covenant, covering, affecting or applying to the ownership, use or occupancy thereof, or permit or suffer any act to be done or any condition to exist on the Mortgaged Property or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private.

5.2 Alterations, Etc. Mortgagor will not commit or knowingly permit any waste of the Mortgaged Property or perform any clearing, grading, filling or excavation of the Mortgaged Property or make or permit to be made any alterations or additions to the Mortgaged Property which would have the effect of materially diminishing the value thereof (in Mortgagee's reasonable opinion) or which will in any way increase any ordinary fire or other hazard arising out of construction or operation thereof, provided that nothing in this paragraph shall prohibit the construction of the Improvements by Mortgagor on the Land in accordance with the terms of this Mortgage.

5.3 Replacement of Fixtures, Improvements or Personal Property. Mortgagor will not permit any of the Fixtures or Improvements (or Personal Property, if any) to be removed at any time from the Land, without the prior written consent of Mortgagee, unless actually replaced by an article of equal suitability and value, owned by Mortgagor and free of any vendor's lien, and unless such replacement article is encumbered by this Mortgage free and clear of any lien or security interest except such as may be approved in writing by Mortgagee.

5.4 Other Liens. Mortgagor will not, without the prior written consent of Mortgagee, create or permit to be created or to remain, any mortgage, pledge, lien, encumbrance or charge on (whether prior or subordinate to the lien of this Mortgage), the Mortgaged Property or income therefrom, other than the Security Documents and the Permitted Encumbrances.

5.5 Removal or Demolishment. Mortgagor will not, without the prior written consent of Mortgagee, remove, demolish or substantially alter any Improvements on the Land.

## ARTICLE VI EVENTS OF DEFAULT

The term "**Event of Default**," as used in the Loan Documents and in the Note, shall mean an "Event of Default" as defined in the Loan Agreement.

## ARTICLE VII DEFAULT AND FORECLOSURE

7.1 Remedies. Subject to any applicable notice and cure period, if an Event of Default shall occur Mortgagee may, at its option, exercise any, some or all of the following remedies, concurrently or consecutively:

7.1.1. Acceleration. Declare the unpaid portion of the Indebtedness to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Mortgagor), whereupon the Indebtedness shall become immediately due and payable, anything in the Note or in the Security Documents or Loan Documents to the contrary notwithstanding.

7.1.2. Safeguarding or Completion of Improvements; Additional Future Advances. To the maximum extent permitted under the laws of the state in which the Mortgaged Property is situated, Mortgagee shall have the right, but not the duty, to enter into possession of the Mortgaged Property and perform or engage others to perform any and all work and labor, supply materials and incur any costs and expenses, including attorneys' fees, necessary to protect, secure or complete



the Improvements substantially in accordance with the Plans and Specifications therefore (the “**Plans and Specifications**”) with such changes in the Plans and specifications as Mortgagee may deem desirable and employ watchmen to protect the Mortgaged Property. If Mortgagee undertakes any, some or all of its rights in the first sentence of this paragraph, Mortgagor agrees that on account thereof Mortgagee may make additional future advances (the “**Additional Future Advances**”) in such manner and for such purposes as Mortgagee deems advisable, even if such advances are in excess of the original principal amount of the Note. The Additional Future Advances shall bear interest at the Default Rate from date of disbursement and the Additional Future Advances and interest thereon shall be payable in accordance with the terms of the Note and this Mortgage. Mortgagor agrees that all of the advances made under the provisions of the second sentence of this paragraph shall be deemed to have been advanced by Mortgagee to Mortgagor and all such advances shall be a portion of the Indebtedness and shall be secured by the lien of this Mortgage. For the purpose of exercising its rights under the first sentence of this paragraph, Mortgagor hereby constitutes and appoints Mortgagee its true and lawful Attorney-in-Fact with full power of substitution and empowers said attorney as follows: to use any funds of Mortgagor, including any balance of Mortgagor’s funds which may be held in escrow and any funds which Mortgagee has the right to advance as provided in the second sentence of this paragraph, on account of any, some of or all of the rights of Mortgagee under the first sentence of this paragraph; to make such additions and changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Improvements in substantially the manner contemplated by the Plans and Specifications; to employ such attorneys, contractors, sub-contractors, agents, architects and inspectors as shall be required for the exercise of said rights by Mortgagee; to pay, settle or compromise all existing bills and claims which are, may, or appear to be liens against the Mortgaged Property, or the payment of which may be necessary or desirable in the opinion of Mortgagee for the completion of the work, the protection of the Improvements or the clearance of title, without inquiring into the accuracy or validity of any thereof; to execute in the name of Mortgagor all applications and certificates which may be required by any construction contract; and with respect to the construction of the Improvements to do any and every act which Mortgagor may do in its own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked. Said Attorney-in-Fact shall also have power, but not the duty, to prosecute and defend all actions or proceedings in connection with the construction of the Improvements and to take such action and require such performance as it deems necessary. Mortgagor hereby assigns and transfers to Mortgagee all sums advanced hereunder and all sums in escrow, subject to the condition that said sums, if any, be used in connection with any, some or all of the rights of Mortgagee set forth in the first sentence of this paragraph and provided however that this sentence shall in no way restrict the use or rights of Mortgagee in or of any other collateral (whether cash or otherwise) held by Mortgagee under any other agreements with Mortgagor or others in conjunction with or as security for the Indebtedness. The Event of Default giving rise to the rights of Mortgagee under this paragraph shall be a continuing Event of Default and even though Mortgagee has elected to exercise its rights under this paragraph, such an Event of Default and any other Events of Default thereafter occurring shall continue to exist and Mortgagee, at its option and without notice to Mortgagor, may at any time cease exercising its rights under this paragraph and may exercise any other remedy under this Mortgage by reason of such continuing Event of Default or Events of Default.

- 7.1.3. Enforcement of Mortgage. Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may: (A) institute proceedings for the complete foreclosure of this Mortgage; or (B) institute proceedings to collect any delinquent installment or installments of the Indebtedness without accelerating the due date of the entire Indebtedness by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of the Indebtedness only and any sale of the Mortgaged Property under a foreclosure proceeding under this subparagraph shall be subject to and

shall not affect the un-matured part of the Indebtedness and this Mortgage shall be and continue as a lien on the Mortgaged Property securing the un-matured Indebtedness; or (C) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any Obligation, covenant, condition or agreement in the Note in the Security Documents, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect; or (D) enforce this Mortgage in any other manner permitted under the laws of the state in which the Mortgaged property is situated.

7.1.4. Sale. Any sale or sales made under or by virtue of this Article, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor, to the maximum extent permitted by the law of the state in which the Mortgaged Property is located.

7.1.5. Receiver. Apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Mortgaged Property, collect the Rents and profits therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws of the state in which the Mortgaged Property is situated. The right to the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Mortgaged Property or the solvency or insolvency of Mortgagor. The expenses, including receiver's fee, counsel's fees, costs and agent's commission incurred pursuant to the powers herein contained shall be secured hereby.

7.1.6. Remedies as to Personal Property. Mortgagee may exercise any or all of its rights and remedies under the Uniform Commercial Code or other applicable law of the state in which the Mortgaged Property is located as well as all other rights and remedies possessed by Mortgagee, all of which shall be cumulative. Mortgagee hereby is authorized and empowered to enter the Mortgaged Property or other place where the Personal Property may be located without legal process, and take possession of the Personal Property without notice or demand which hereby are waived. Whenever an Event of Default exists, and upon demand by Mortgagee, Mortgagor shall make the Personal Property available to Mortgagee at a place reasonably convenient to Mortgagee. Mortgagee may waive any default or Event of Default before or after that default or Event of Default has been declared, without impairing its right to declare a subsequent default or Event of Default hereunder, this right being a continuing one. Mortgagee, with notice may sell at one or more public or private sales, without further notice, and for such price as the Mortgagee may deem fair, any and all of the Personal Property secured by this Mortgage or the Security Agreement, and any other security or property held by the Mortgagee. Mortgagee may be the purchaser of any or all of the Personal Property and may hold the Personal Property thereafter in its own right absolutely, free from any claims of Mortgagor or right of redemption. It is expressly agreed in accordance with the provisions of the Florida Uniform Commercial Code, ten (10) days notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the Florida Uniform Commercial Code requiring such notice; provided, that Mortgagee may at its option dispose of the collateral in accordance with Mortgagee's rights and remedies in respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the Florida Uniform Commercial Code.

7.1.7. Other. Mortgagee may exercise any other remedy now or hereafter existing in equity, at law, by virtue of statute or otherwise of the state in which the Mortgaged Property is situated.

7.2 Separate Sales. Any real estate or any interest or estate therein sold pursuant to any court order obtained by virtue of this Mortgage, or pursuant to any other judicial proceedings under this Mortgage, may be sold in one parcel, as an entirety, or in such parcels, and in such

manner or order as Mortgagee, in its sole discretion, may elect to the maximum extent permitted by the laws of the state in which the Mortgaged Property is situated.

7.3 Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in the Note, the Security Documents, any of the Loan Documents, shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor, the Mortgaged Property or any part or parcel thereof, any other collateral, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefore shall arise, all to the maximum extent permitted by the laws of the state in which the Mortgaged Property is situated. If Mortgagee elects to proceed under one right or remedy under the Security Documents, the Note, or any of the Loan Documents Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under the Security Documents, the Note or any of the Loan Documents. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

7.4 Credit of Mortgage. Upon any sale made under or by virtue of this Article, 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 upon the Indebtedness the amount of Mortgagee's bid.

7.5 No Conditions Precedent to Exercise of Remedies. Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the Indebtedness shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of the Security Documents, the Note or any of the Loan Documents, or by reason of the release, regardless of consideration, of all or any part of the Mortgaged Property (or any collateral), or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the Security Documents, the Note or any of the Loan Documents without first having obtained the consent of Mortgagor, or such other person; and in the latter event Mortgagor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

7.6 Release of Collateral, Effect on Subordinate Liens. Mortgagee may release, regardless of consideration, any part of the Mortgaged Property, any other collateral, or Obligations without, as to the remainder of the security, in any way impairing or affecting the lien of the Security Documents or their priority over any subordinate lien. The holder of any subordinate lien by the acceptance of such subordinate lien agrees to be bound by the terms of this paragraph.

7.7 Other Collateral. For payment of the Indebtedness, Mortgagee may resort to any other security therefor, if any, held by Mortgagee in such order and manner as Mortgagee may elect without affecting its remedies under this Mortgage, to the maximum extent permitted by the laws of the state in which the Mortgaged Property is situated.

7.8 Waiver of Redemption, Notice, Marshaling, Etc.. Mortgagor hereby waives and releases, to the maximum extent permitted by the laws of the state in which the Mortgaged Property is situated: (A) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; and (B) unless specifically required herein, all notices of Mortgagor's default, or of Mortgagee's election to exercise, or Mortgagee's actual exercise, of any option or remedy under the Note, the Security Documents or any of the Loan Documents; and (C) any right to have the Mortgaged Property marshaled; provided that if any of the rights waived by Mortgagor in this paragraph affect or extend the time for sale of the Mortgaged Property, affect Mortgagee's rights to enforce this Mortgage or affect Mortgagor's right to redeem, Mortgagee shall have the right to elect to accept or reject the waiver of such right by Mortgagor, and such election may be made by Mortgagee at the time of or at any time prior to the entry of a decree or judgment of foreclosure in the court in which this Mortgage is being foreclosed.

7.9 Discontinuance of Proceedings. In case Mortgagee shall have proceeded to enforce any right under the Note, the Security Documents or any of the Loan Documents and such

proceedings shall have been discontinued or abandoned for any reason, then in every such case Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been instituted.

7.10 Application of Proceeds. The proceeds of any sale of all or any portion of the Mortgaged Property shall be applied by Mortgagee in the following order: (A) first, to the payment of receiver's fees and expenses, to the payment of Mortgagee's reasonable attorney's fees and other legal expenses and to the payment of costs and expenses of Mortgagee in connection with proceedings under this Article; (B) second, to the payment of any other sums due Mortgagee hereunder (other than the Note) and accrued interest; (C) third, to the payment of accrued and unpaid interest on the Note; and (D) fourth, to the payment of the unpaid principal balance of the Note; or (E) in such order as required by the laws of the state in which the Mortgaged Property is situated; provided that if the sale is pursuant to paragraph 7.1.3(B) of this Mortgage, the proceeds of such sale shall be applied first to the payment of Mortgagee's reasonable attorney's fees and other legal expenses in connection with such proceedings, and, second, to the delinquent installment or installments of the Indebtedness involved in the proceeding giving rise to such sale.

Mortgagor shall be and remain liable to Mortgagee for any deficiency to the extent permitted by the laws of the state in which the Mortgaged Property is situated until all of the Indebtedness is paid in full.

## **ARTICLE VIII CONDEMNATION**

8.1 Condemnation. Mortgagor hereby assigns, transfers and sets over to Mortgagee for application on account of the Indebtedness all rights of Mortgagor to any award or payment with respect to: (A) any taking of the Mortgaged Property as a result of, or by agreement in lieu of, the exercise of the right of condemnation or eminent domain; (B) any such taking of (i) any appurtenances to the Mortgaged Property or of vaults, areas or projections outside the boundaries of the Mortgaged Property, (ii) rights in, under or above or of access to the alleys, streets or avenues adjoining or crossing the Mortgaged Property or (iii) rights and benefits of light, air or view appurtenant to the Mortgaged Property; and (C) any damage to the Mortgaged Property due to governmental action, but not resulting in, a taking of any portion of the Mortgaged Property, such as, without limitation, the changing of the grade of any street adjacent to the Mortgaged Property. Mortgagor hereby agrees to file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Mortgagor or otherwise, to collect and receipt for any such award or payment and, in the event Mortgagor fails to act, or in the event that an Event of Default has occurred and is continuing, to file and prosecute such claim or claims and to accept any such award or payment without obligation to question the amount thereof. Mortgagee may participate in any such proceedings and Mortgagor from time to time will deliver to Mortgagee all instruments requested by it to permit such participation.

8.2 Application of Proceeds. All proceeds received by Mortgagee under paragraph 8.1 shall be applied as follows, in the order of priority indicated: (A) to reimburse Mortgagee for all costs and expenses, including reasonable attorney's fees, incurred in connection with the taking or otherwise hereunder; (B) to the payment of accrued and unpaid interest on the Note at the interest rate specified therein regardless of the rate of interest payable on the award or payment by the condemning authority; (C) to the prepayment of the unpaid principal of the Note, without premium; and (D) to the prepayment of the balance of the Indebtedness, if any. The balance of the proceeds, if any, will be paid to Mortgagor.

## **ARTICLE IX ASSIGNMENT OF LEASES AND RENTS**

9.1 Approval of Lease. Mortgagor covenants and agrees not to execute and deliver any Lease without written approval of the Lease by Mortgagee.

9.2 Assignment. In order to secure further the payment of the Indebtedness and the observance, performance and discharge of the Obligations, Mortgagor hereby sells, assigns,

transfers and sets over to Mortgagee all of Mortgagor's right, title and interest in, to and under the Leases, any guaranties of said Leases, and in and to the Rents.

9.3 Performance Under Leases. Mortgagor covenants and agrees that it will, at its cost and expense, perform and discharge, or cause to be performed and discharged, all of the obligations and undertakings of Mortgagor or its agents under the Leases and will commercially reasonable efforts to enforce or secure, or cause to be enforced or secured, the performance of each and every obligation and undertaking of the respective tenants under the Leases, and will appear in and defend, at its cost and expense, any action or proceeding arising under or in any manner connected with the Leases or the obligations and undertakings of any tenant thereunder.

9.4 No Rent Prepayments. Mortgagor, without written approval of Mortgagee, shall not assign or otherwise encumber future rental payments under the Leases or collect or accept Rent for more than one (1) month in advance.

9.5 No Obligation of Mortgagee. This assignment shall not be deemed or construed to constitute Mortgagee as a mortgagee in possession of the Mortgaged Property nor to obligate Mortgagee to take any action or to incur expenses or perform or discharge any obligation, duty or liability of Mortgagor under any Lease.

9.6 Payment of Rents to Mortgagor Until Default. Unless and until an Event of Default occurs, Mortgagor shall be entitled to collect the Rents as and when they become due and payable. Mortgagor hereby agrees that the respective tenants under the Leases, upon notice from Mortgagee of the occurrence of an Event of Default, shall thereafter pay to Mortgagee the Rents due and to become due under the Leases without any obligation to determine whether or not such an Event of Default does in fact exist.

9.7 Termination or Modification. Mortgagor will not (i) without the prior written consent of Mortgagee, except where the lessee is in default under a Lease, terminate or consent to the cancellation or surrender of any Lease of the Mortgaged Property, now existing or hereafter to be made, except that any Lease may be canceled if, promptly after the cancellation or surrender thereof, a new Lease is entered into with a new lessee having, in the judgment of Mortgagee, a credit standing at least equivalent to that of the lessee whose Lease was canceled, on substantially the same terms as the terminated or canceled Lease or (ii) execute and deliver a modification of any Lease without prior written consent to the modification by Mortgagee, or (iii) release any guarantor of any lease.

9.8 Cumulative Remedies. Each and every right, remedy and power granted to Mortgagee by this Article shall be cumulative and in addition to any other right, remedy and power given by the Note and the other instruments executed in connection therewith, or now or hereafter existing in equity, at law or by virtue of statute or otherwise. The failure of Mortgagee to avail itself of any of the rights and remedies hereof shall not be construed or deemed to be a waiver of any thereof.

## ARTICLE X SECURITY AGREEMENT

10.1 Security Interest. This Mortgage constitutes a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the state in which the Fixtures (and Personal Property, if any) are located, with respect to the Fixtures (and Personal Property, if any).

10.2 Financing Statements. Mortgagor agrees to and shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such Financing Statements, continuation statements, and such further assurances as Mortgagee may from time to time consider reasonably necessary to create, perfect, preserve and maintain in full force and effect Mortgagee's liens upon the Fixtures (and Personal Property, if any), and to give public notice thereof, and Mortgagee, at the expense of Mortgagor, may or shall cause such statements and assurances to be recorded and re-recorded, filed and re-filed, at such times and places as may be required or permitted by law to so create, perfect, preserve and maintain such liens and public notice thereof.

10.3 Uniform Commercial Code. Mortgagee shall have all the rights and remedies with respect to the Fixtures (and Personal Property, if any) afforded to it by the Uniform

Commercial Code as adopted by the state in which the Fixtures (and Personal Property, if any) are located, in addition to, but not in limitation of, the other rights afforded Mortgagee by the Security Documents.

## ARTICLE XI MISCELLANEOUS

11.1 Survival of Warranties and Covenants. The warranties, representations, covenants and agreements set forth in the Security Documents and the Loan Documents shall survive the making of the loan and the execution and delivery of the Note, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

11.2 Further Assurances. Mortgagor, upon the reasonable request of Mortgagee, will execute, acknowledge and deliver such further instruments (including, without limitation, a declaration of no set-off) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of this Mortgage and to subject to the lien hereof any property intended by the terms hereof, to be covered thereby and any renewals, additions, substitutions, replacements or betterments thereto.

11.3 Recording and Filing. Mortgagor, at its expense, will cause such of the Security Documents and all supplements thereto for which constructive notice must be given to protect Mortgagee at all times, to be recorded and filed, and re-recorded and re-filed, in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording, re-filing taxes, fees and other charges to the maximum extent permitted by the laws of the state in which the Mortgaged Property is situated.

11.4 Loan Expenses. To the extent permitted by the laws of the state in which the Mortgaged Property is situated, Mortgagor shall pay all costs and expenses in connection with the preparation, execution, delivery, recording and performance of the Security Documents, including, but not limited to, reasonable fees and disbursements of counsel appointed by Mortgagee to prepare the Loan Documents, and close the loan transaction recording costs and expenses, stamp and other taxes, surveys, appraisals and policies of the title and casualty insurance.

11.5 No Representation by Mortgagee. By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Mortgagee, pursuant to the Security Documents and/or the Loan Documents, including but not limited to any officer's certificate, balance sheet, statement of income, profit and loss or other financial statement, survey or appraisal, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

11.6 Notice. All notices, demands, requests and other communications required under the Security Documents and/or the Loan Documents and the Note shall be in writing and shall be deemed to have been properly given when deposited in the United States mail and sent by United States first class mail, postage prepaid, addressed to the party for whom it is intended at its address set forth in the preamble hereof. Any party may designate a change of address by written notice to the others, given at least ten (10) days before such change of address is to become effective.

11.7 Mortgagee's Right to Perform the Obligations. If Mortgagor shall fail to make (or cause to be made) any payment or perform any Obligation or other act required by the Note, the Security Documents, and/or the Loan Documents, then, at any time thereafter without notice to or demand upon Mortgagor, except as herein provided, and without waiving or releasing any remedy, Obligation, Default or Event of Default, Mortgagee may make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Land for such purpose and to take all such action thereon and with respect to the Mortgaged Property as may be necessary or appropriate for such purpose. All sums so paid by Mortgagee, and all costs and expenses, including, without limitation, reasonable attorney's fees and expenses so incurred, together with interest thereon at the Default Rate from the date of payment, shall constitute a part of the Indebtedness and shall be paid by Mortgagor to Mortgagee on demand. If Mortgagee shall elect to pay any Imposition, or other sum which Mortgagor is allegedly obligated to pay, Mortgagee shall give written notice of such election to Mortgagor and if Mortgagor fails to

pay such Imposition or other sum within ten (10) days after giving said notice, Mortgagee may do so in reliance on any bill, statement or assessment procured from the appropriate governmental or non-governmental office, without inquiring into the accuracy, amount or validity of such Imposition or other sum provided Mortgagor has not contested such Imposition under paragraph 4.11. Similarly, in making any payments to protect the security intended to be created by the Security Documents, Mortgagee shall not be bound to inquire into the accuracy, amount or validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same, provided Mortgagee has given Mortgagor ten (10) days' written notice of Mortgagee's intention to pay same. Mortgagor shall indemnify Mortgagee for all losses and expenses, including reasonable attorney's fees, incurred by reason of any acts performed by Mortgagee pursuant to the provisions of this paragraph, and any funds expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such expenditures, shall constitute additions to the Indebtedness and shall be secured by the Security Documents and Loan Documents and shall be paid by Mortgagor to Mortgagee upon demand.

11.8 Covenants Running With the Land. All covenants contained in the Security Documents shall be binding on the Mortgagor and shall run with the Mortgaged Property.

11.9 Successors and Assigns. All of the terms of this Mortgage shall apply to and be binding upon, and inure to the benefit of, the heirs, devisees, personal representatives, successors and assigns of Mortgagor and Mortgagee, respectively, and all persons claiming under or through them.

11.10 Severability. In case any one or more of the Obligations shall be invalid, illegal or unenforceable in any respect, the validity of the remaining Obligations shall be in no way affected, prejudiced or disturbed thereby.

11.11 Modification. This Mortgage may not be changed, waived, discharged, released or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge, release or termination is asserted.

11.12 Applicable Law. This Mortgage shall be governed by and construed according to the laws in effect in the state in which the Land is situated.

11.13 Strict Performance. Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of the Security Documents or of the Note shall not be deemed to be a waiver of any of the terms or provisions of the Security Documents or the Note, and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of them. Time is strictly of the essence with respect to this Mortgage and Mortgagor's performance hereunder.

11.14 Headings. The article headings and the section and subsection entitlements hereof are inserted for convenience of reference only, and shall in no way alter or modify the text or substance of such articles, paragraphs and subparagraphs.

11.15 Gender, Etc. The use of any gender shall include all other genders. The singular shall include the plural and the plural shall include the singular.

11.16 Time of Essence. Time is specifically made of the essence with respect to the performance by the Mortgagor.

11.17 Relief from Automatic Stay. The Mortgagor hereby agrees that, in consideration of the Mortgagee funding the Loan, in the event that the Mortgagor shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the United States Code, as amended ("Title 11"); (ii) be the subject of any order for relief issued under Title 11; (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act or law relating to insolvency or bankruptcy, or other relief from creditors for debtors; (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator; (v) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to insolvency or bankruptcy, or

other relief from creditors for debtors, the Mortgagee shall thereupon be entitled to relief from any automatic stay imposed by Section 362 of Title 11, or otherwise, on or against the exercise of the rights and remedies otherwise available to the Mortgagee under this Mortgage and the Loan Documents, and as otherwise provided by law.

11.18 Hazardous Waste. Without limiting any rights of Mortgagee under the Loan Documents or applicable laws, (a) the Mortgagor represents and warrants to Mortgagee that to the best of Mortgagor's knowledge and except as disclosed in the Environmental Report (as defined in the Loan Agreement) or as used in the ordinary course of business of Mortgagor or of its tenants: (i) the Mortgaged Property is free of any substance which could pose a hazard to the environment or the health or safety of persons on or about the Mortgaged Property or which is classified as hazardous or toxic in or pursuant to any law or restriction relating to health or the environment ("Hazardous Material"); and (ii) there is no claim or inquiry threatened, instituted or completed concerning the presence or discharge of any Hazardous Material on, in, under or about the Mortgaged Property (and Mortgagor will promptly advise Mortgagee in writing as soon as Mortgagor first obtains knowledge of any such claim or inquiry heretofore or hereafter occurring); (b) Mortgagor will not place or allow to remain any Hazardous Material, on, in, under or about the Mortgage Property, except as used in the ordinary course of business and in compliance with all applicable environmental laws; and (c) Mortgagor agrees to indemnify and hold harmless Mortgagee, its successors and assigns, and their respective directors, officers, employees, agents, and affiliates, from and against any and all claims, damages, losses, costs, fines, penalties, liabilities and expenses (including, but not limited to, reasonable attorneys' fees and costs) arising in whole or in part from the presence of any Hazardous Material, on, in, under, or about the Mortgaged Property. The foregoing provisions regarding environmental matters shall be cumulative of all other obligations of Mortgagor and all other rights and remedies of Mortgagee, and the foregoing indemnities shall survive any modification of the Note, payment of the debt evidenced by the Note, and foreclosure (or transfer in lieu thereof), any debtor relief proceeding and the release or other termination of this Mortgage. Mortgagor agrees, upon reasonable request of Mortgagee, to provide Mortgagee from time to time (and at Mortgagor's expense) with a current environmental assessment of the Mortgaged Property within a reasonable time after such request.; provided, however, Mortgagor shall not be required to provide such assessment more often than once in any twelve (12) consecutive month period, unless Mortgagee has a reasonable belief concerning the presence or discharge of any Hazardous Material on, in, under or about the Mortgaged Property. Such assessment shall be in a form satisfactory to Mortgagee and from an environmental consultant satisfactory to Mortgagee.

## **ARTICLE XII CHANGES IN LAW**

In the event of the passage, after the date of this Mortgage, of any law: (A) making it illegal for the Mortgagor to pay the whole, or any part of the Impositions, taxes or assessments or charges or liens herein required to be paid by Mortgagor; or (B) rendering the payment by Mortgagor of all taxes levied or assessed upon the Security Documents or the interest in the Mortgaged Property represented thereby unlawful; or (C) rendering the covenants for the payment of the matters set forth in subparagraphs (A) and (B) of this paragraph by the Mortgagor legally inoperative, the entire unpaid balance of the Indebtedness shall, after ninety (90) days' written notice to Mortgagor, become immediately due and payable, anything in the Note or the Security Documents to the contrary notwithstanding.

## **ARTICLE XIII SPECIAL GROUND LEASE PROVISIONS**

13.1 Mortgagor represents and warrants that the Ground Lease is a valid and subsisting lease of the property therein described and purported to be demised thereby for the term therein set forth and is in full force and effect in accordance with the terms thereof and has not been modified and no default exists thereunder and, to the best of Mortgagor's knowledge, no event or act has occurred and no condition exists which with the passage of time or the giving of notice or both would constitute a default thereunder.

13.2 Mortgagor will not modify, extend or in any way alter the terms of the Ground Lease, or cancel, release, terminate or surrender the Ground Lease, or waive, excuse, condone or in any way release or discharge the landlord thereunder of or from the obligations, covenants,



conditions and agreements by said landlord to be done and performed, or assign all or part of the Ground Lease or sublet all or part of the premises that are the subject of the Ground Lease, without the prior written consent of Mortgagee, which may be withheld in its sole and absolute discretion; and Mortgagor does by these presents expressly release, relinquish and assign unto the Mortgagee all its right, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Ground Lease. Any attempted cancellation, surrender, amendment, modification, alteration, assignment or sublet by Mortgagor without Mortgagee's prior written consent shall be an Event of Default hereunder.

13.3 Mortgagor shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the Ground Lease by the tenant therein to be kept and performed and shall and in all respects conform to and comply with the terms and conditions of the Ground Lease and Mortgagor further covenants that it will not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will impair or tend to impair the security of this Security Instrument or will be grounds for declaring a forfeiture of the Ground Lease.

13.4 Mortgagor shall pay or cause to be paid all rents, additional rents, taxes, assessments, and other charges made payable by Mortgagor pursuant to the provisions of the Ground Lease, when and as often as the same shall become due and payable, and will cause the landlord of the premises leased thereunder to pay any portion of said taxes, assessments, charges and impositions to be borne by the landlord that might become liens on said premises or the leasehold estate under the Ground Lease when and as often as the same shall become due and payable, and Mortgagor will in every case take, or cause to be taken, a proper receipt for any such item so paid and will within ten (10) days after the time when such payment shall be due and payable deliver or cause to be delivered to the Mortgagee, the original receipts for any such payments or a photocopy thereof satisfactory to the Mortgagee.

13.5 Mortgagor shall give the Mortgagee immediate notice of any default under the Ground Lease or of the receipt by Mortgagor of any notice of default from the landlord thereunder and shall furnish to the Mortgagee immediately upon the Mortgagee's request any and all information concerning the performance by Mortgagor of the covenants of the Ground Lease and shall permit the Mortgagee or its representative at all reasonable times to make investigation or examination concerning the performance by Mortgagor of the covenants of the Ground Lease. Mortgagor shall promptly deposit with the Mortgagee a certified copy of the Ground Lease and any and all documentary evidence received by Mortgagor showing compliance by it with the provisions of the Ground Lease and shall deposit with the Mortgagee an exact copy of any notice, communication, plan, specification or other instrument or document received or given by Mortgagor in any way relating to or affecting the Ground Lease which may concern or affect the estate of the landlord or the tenant in or under the Ground Lease or the property leased thereby.

13.6 If, subject to any applicable notice and cure provisions of the Ground Lease, Mortgagor shall default in the performance or observance of any term, covenant or condition of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed, then, without limiting the generality of the other provisions of this Mortgage, and without waiving or releasing Mortgagor from any of its obligations hereunder, Mortgagee shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed or to be promptly performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagor in, to and under the Ground Lease shall be kept unimpaired and free from default. If Mortgagee shall make any payment or perform any act or take action in accordance with the preceding sentence, Mortgagee will notify Mortgagor of the making of any such payment, the performance of any such act, or the taking of any such action. In any such event, to the extent permitted under the Ground Lease, and subject to the rights of permitted lessees, sublessees and other occupants under the Ground Lease, Mortgagee and any person designated by Mortgagee shall have, and are hereby granted, the right to enter upon the Mortgaged Property at any time and from time to time for the purpose of taking any such action. If the landlord under the Ground Lease shall deliver to Mortgagee a copy of any notice of default sent by said landlord to Mortgagor, as tenant under the Ground Lease, such notice shall constitute full protection to Mortgagee for any action taken or omitted to be taken by Mortgagee, in good faith, in reliance thereon. Mortgagor agrees to pay to Mortgagee any sums paid by Mortgagee on Mortgagor's behalf hereunder promptly after written request therefor, and in any event, all such sums, together with interest thereon from the date of expenditure to the date

of repayment at the rate per annum specified in the Note, shall be added to the Indebtedness and secured by the lien of this Mortgage.

13.7 Any default by Mortgagor under the Ground Lease that has not been cured within the applicable cure period set forth in the Ground Lease, or termination of the Ground Lease, shall be an Event of Default hereunder.

13.8 So long as any of the Obligations shall remain unpaid, unless Mortgagee shall otherwise consent in writing, the leasehold estate and the fee estate covered by the Ground Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the lessor or in the Mortgagor, or in a third party, by purchase of otherwise; and Mortgagor further covenants and agrees that, in case it shall acquire the fee title, or any other estate, title or interest in the Land covered by the Ground Lease, including, without limitation, pursuant to a purchase option or right of first refusal, if any, set forth in the Ground Lease, this Mortgage shall attach to or cover and be a lien upon such other estate so acquired, and such other estate so acquired by Mortgagor shall be considered as granted, assigned or conveyed to the Mortgagee and the lien hereof spread to cover such estate with the same force and effect as through specifically herein granted assigned or conveyed.

#### ARTICLE XIV

##### RIGHTS OF THE GROUND LEASE LESSOR PRESERVED AND REAFFIRMED

14.1 Notwithstanding any provision of this Mortgage to the contrary, all rights of the Ground Lease Lessor under the Ground Lease and all other rights under applicable laws, rules, and/or regulations shall be fully protected, preserved, precedent, and superior to the rights of any other party to the Mortgage.

14.2 Nothing herein shall under any circumstances be construed to imply that Ground Lease Lessor has subordinated its fee simple title interest in the real property described in the Ground Lease or its ownership interest in any improvements located on the real property as described in the Ground Lease. Notwithstanding anything to the contrary herein, the Mortgagee is not the holder of any lien on (A) the fee simple title interest of Ground Lease Lessor in the real property described in the Ground Lease, (B) the ownership interest of Ground Lease Lessor in any improvements located on the real property as described in the Ground Lease or (C) Ground Lease Lessor's interest as lessor under the Ground Lease.

14.3 Eminent Domain. Nothing in this Mortgage shall prevent Broward County, Florida from exercising its governmental or police powers, including its right of condemnation.

14.4 Assignment of Leases and Rents. No provision of this Mortgage shall be construed to provide Mortgagee any lien or security interest on any monies that are payable to Ground Lease Lessor as lessor under the Ground Lease including, without limitation, ground rent payments, the lessor's portion of any condemnation award, the proceeds of any casualty insurance payable to the lessor pursuant to the Ground Lease, and all other monies that may be payable to lessor pursuant to the Ground Lease (collectively, the "Ground Lease Lessor's Amounts"), except as necessary to assure payment of the same to Ground Lease Lessor, as lessor under the Ground Lease, as the same become due and payable. The Ground Lease Lessor's Amounts shall be paid directly to Ground Lease Lessor as and when payable and such monies shall never be paid directly to the Mortgagee or to any other party, except Ground Lease Lessor.

14.5 Future Advances. No subsequent Notes will be issued by the Mortgagee unless Ground Lease Lessor shall have given its written consent in accordance with the terms and provisions of the Ground Lease. Any such written consent of Ground Lease Lessor shall be recorded in the public records of Broward County, Florida.

14.6 Amendments. This Mortgage shall not be amended in any way that would change the rights or obligations of Ground Lease Lessor under the Ground Lease or in any way that would adversely affect Ground Lease Lessor's interest under the Ground Lease unless Ground Lease Lessor shall consent to such amendment.

14.7 Conflict of Terms. If any provision contained in this Mortgage is in conflict with, or inconsistent with, any provision in the Ground Lease regarding Ground Lease Lessor's rights or Mortgagee's obligations, as lessee under Ground Lease, the provision contained in the Ground Lease shall govern and control.

14.8 Notices. Any notice to Ground Lease Lessor shall be deemed effective when delivered to or sent by registered or certified mail, addressed to it at: County Administrator, Governmental Center, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, with a copy to Director of Aviation, 2200 SW 45 Street, Suite 101, Dania Beach, Florida 33312. Mortgagee and Mortgagor shall give written notice to Ground Lease Lessor of any legal or administrative action or proceeding relating to this Mortgage upon Mortgagee's or Mortgagor's receipt of notice of such action or proceeding. Any party, by notice given hereunder, may designate a further or different address for future notices.

14.9 Release of Mortgage. Upon repayment of those certain **SIX MILLION FOUR HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$6,460,000.00)**, Mortgagee shall cause a satisfaction of this Mortgage to be recorded in the public records of Broward County, Florida and Mortgagee shall cause a release of any Financing Statements to be filed in the appropriate jurisdiction.

## ARTICLE XV ADDITIONAL PROVISIONS

15.1 Notice of Sale of Mortgaged Property; Indebtedness Due on Sale of Mortgaged Property. Mortgagor shall give immediate written notice to the Mortgagee of any proposed sale, conveyance, transfer or change of ownership of the Land, the Mortgaged Property, or any part thereof. In the event the Mortgaged Property is sold, conveyed, or transferred without the prior written consent of the Mortgagee (which may be unreasonably withheld) then, at the option of the Mortgagee and notwithstanding any provision of this Mortgage or the Note (or the Security Documents or the Loan Documents) to the contrary, Mortgagee may declare the entire Indebtedness to be immediately due and payable, and failure to pay the Indebtedness shall be an Event of Default under Article VI of this Mortgage. Failure of Mortgagee to exercise this option shall not constitute a waiver of its right to exercise such option in the event of any subsequent sale, conveyance, or transfer of the Mortgaged Property.

15.2 Maximum Rate of Interest. Anything in the Note, this Mortgage, or any other agreements or arrangements by the Mortgagor in connection with the loan evidenced by the Note to the contrary notwithstanding, if from any circumstances whatever fulfillment of any provision of any of the foregoing documents or agreements at the time performance of said provision shall be due shall involve transcending the limit of validity prescribed by the usury laws applicable in the state where the Land is located as preempted and prescribed from time to time by the laws of the United States of America or any rule or regulation of any department or agency thereof, then, ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity so that in no event shall exaction be possible under any of the aforesaid documents or agreements in excess of the limit of such validity, but such obligation shall be fulfilled to the limit of such validity, and if under any circumstances whatsoever interest in excess of the limit of such validity will have been paid by the Mortgagor in connection with the loan evidenced by the Note, such excess shall be applied by Mortgagee to the unpaid principal balance of the Note or refunded to the Mortgagor, the manner of handling such excess to be at Mortgagee's election, and in case any such excess interest has accrued, the Mortgagee shall eliminate such excess interest so that under no circumstances shall interest on the loan evidenced by the Note exceed the maximum rate allowed by applicable law as preempted and prescribed from time to time by the laws of the United States of America or any rule or regulation of any department or agency thereof.

15.3 Future Advances. This Mortgage is given to secure not only the existing Indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid principal balance so secured at one time shall not exceed four (4) times the original principal amount secured hereby, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Property, or other monies expended to protect the security of Mortgagee, with interest on such disbursements. Nothing contained herein shall in anyway be construed to obligate Mortgagee to make any future advances.

15.4 Waiver of Right to Jury Trial. MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER

MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE INCLUDING BUT NOT LIMITED TO ANY POST JUDGMENT ACTIONS AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE MORTGAGEE ENTERING INTO THIS AGREEMENT.

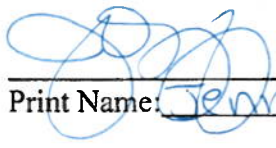
15.5 OFAC Compliance. Mortgagor represents and warrants to Mortgagee (i) that neither Mortgagor nor any person or entity that directly or indirectly owns any interest in Mortgagor nor any of its officers, directors or managing members is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“**OFAC**”) of the U.S. Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including, but not limited to, Executive Order 13224 (“**Executive Order**”) signed on September 24, 2001 and entitled “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”), or other governmental action, (ii) that Mortgagor’s activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the “Money Laundering Act”), and (iii) that so long as this Agreement is in full force and effect, Mortgagor shall comply with the Executive Order and with the Money Laundering Act.

**[The Remainder of This Page Left Intentionally Blank]**

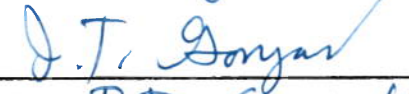
**IN WITNESS WHEREOF**, the Mortgagor has executed this instrument as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

**AIRSIDE FT. LAUDERDALE, LLC**, a  
Nevada limited liability company

  
Print Name: Jenny Ortiz

By:   
Raymond J. Brimble  
Manager

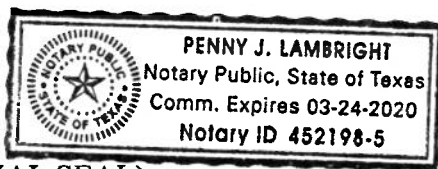
  
Print Name: J.T. Gonzalez

**ACKNOWLEDGMENT**

STATE OF TEXAS

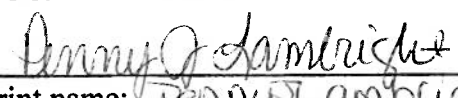
COUNTY OF TRAVIS

The foregoing instrument was acknowledged before me this 17 day of July, 2018, by Raymond J. Brimble, as Manager of Airside Ft. Lauderdale, LLC, a Nevada limited liability company, on behalf of said limited liability company, who is  personally known to me or  produced the following as identification: \_\_\_\_\_.



(NOTARIAL SEAL)

NOTARY PUBLIC

  
Print name: Penny Lambright  
My Commission expires: 3-24-2020

**EXHIBIT "A"**  
**LAND**

A portion of Parcel "A", Northwest FLL Airport Plat (Plat 10), according to the plat thereof as recorded in Plat Book 158, Page 20, Public Records of Broward County, Florida, lying in Section 21, Township 50 South, Range 42 East, being more particularly described as follows:

Commencing at the Southwest corner of Section 21, Township 50 South, Range 42 East; thence Easterly along the South line of said Section 21, North 88 degrees 25 minutes 26 seconds East, 1037.55 feet; thence North 01 degree 34 minutes 09 seconds West, 615.53 feet to the Point of Beginning; thence North 89 degrees 57 minutes 45 seconds West, 15.00 feet; thence North 01 degree 34 minutes 09 seconds West, 604.91 feet; thence North 88 degrees 04 minutes 24 seconds East, 360.45 feet; thence South 01 degree 42 minutes 31 seconds East, 54.13 feet; thence North 88 degrees 26 minutes 39 seconds East, 204.86 feet; thence South 49 degrees 13 minutes 05 seconds East, 92.91 feet; thence South 00 degrees 00 minutes 00 seconds East, 196.64 feet; thence North 90 degrees 00 minutes 00 seconds East, 166.79 feet; thence South 00 degrees 00 minutes 08 seconds East, 181.23 feet; thence South 54 degrees 50 minutes 37 seconds West, 78.08 feet; thence South 00 degrees 00 minutes 00 seconds East, 250.99 feet to a point on a line 185.00 feet North of and parallel with the centerline of Taxiway "N", said point being on the arc of a non-tangent curve concave to the South, having a radius of 2180.20 feet; thence Westerly along said parallel line and along the arc of said curve through a central angle of 01 degree 42 minutes 02 seconds, an arc distance of 64.71 feet to a point of reverse curvature of a curve concave to the North, having a radius of 1815.00 feet; thence continue Westerly along said parallel line and along the arc of said curve through a central angle of 09 degrees 07 minutes 07 seconds, an arc distance of 288.86 feet; thence continue Westerly along said parallel line, North 89 degrees 57 minutes 52 seconds West, 45.81 feet; thence North 00 degrees 00 minutes 00 seconds East, 198.03 feet; thence North 89 degrees 57 minutes 45 seconds West, 310.88 feet to the Point of Beginning.

**EXHIBIT "B"**  
**PERMITTED ENCUMBRANCES**

Those items set forth in Schedule B of the Loan Policy of Title Insurance issued by Old Republic National Title Insurance Company, GF No. 302407NCT insuring the lien of this Security Instrument, excluding, however, all exceptions for liens arising by reason of unpaid bills or claims for work performed or materials furnished to the Land.

## EXHIBIT "C"

1. This Exhibit describes the following types and items of personal property:
  - a. Appurtenances. The benefit of all easements and other rights of any nature whatsoever appurtenant to the Land or the Improvements, or both, and all rights of way, streets, alleys, passages, drainage rights, sewer rights, and rights of ingress and egress to the Land, and all adjoining property, whether now existing or hereafter arising, together with the reversion or reversions, remainder or remainders, rents, issues incomes, and profits of any of the foregoing.
  - b. Tangible Property. All of Mortgagor's interest in all fixtures, equipment, crops now sown and/or growing in the future and tangible personal property of any nature whatsoever now or hereafter (i) attached or affixed to the Land or the Improvements, or both, regardless of whether physically affixed thereto or severed or capable of severance therefrom, or (ii) regardless of where situated, used, usable, or intended to be used in connection with any present or future use or operation of or upon the Land. The foregoing includes: all heating, air conditioning, lighting, incinerating, and power equipment, all engines, compressors, pipes, pumps, tanks, motors, conduits, wiring, and switchboards; all plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, and communications apparatus; all boilers, furnaces, oil burners, vacuum cleaning systems, elevators, and escalators; all stoves, ovens, ranges, disposal units, dishwashers, water heaters, exhaust systems, refrigerators, cabinets, and partitions; all rugs and carpets; all laundry equipment; all building materials; all furniture, furnishings, office equipment, and office supplies (including stationery, letterheads, billheads, and items of a similar nature); and all additions, accessions, renewals, replacements, and substitutions of any or all of the foregoing (for purposes of description in this Exhibit herein referred to as the "**Tangible Property**").
  - c. Income: All rents, issues, incomes, and profits in any manner arising from the Land, Improvements, or Tangible Property, or any combination, including Mortgagor's interest in and to all leases, licenses, franchises, and concessions of, or relating to, all or any portion of the Land, Improvements or Tangible Property, whether now existing or hereafter made, including all amendments, modifications, replacements, substitutions, extensions, renewals, or consolidations. The foregoing items are jointly and severally for purposes of description in this Exhibit referred to as the "**Rents**".
  - d. Proceeds. All proceeds of the conversion, voluntary or involuntary, of the Land, Improvements or any of the property described in this Exhibit into cash or other liquidated claims, or that are otherwise payable for injury to, or the taking or requisitioning of, any such property, including all insurance and condemnation proceeds.
  - e. Contract Rights. All of Mortgagor's right, title and interest in and to any and all contracts, written or oral, expressed or implied, now existing or hereafter entered into or arising, in any manner related to the improvements, use, operation, sale, conversion, or other disposition of any interest in the Land, Improvements, Tangible Property, or the Rents or any combination, including any and all deposits, prepaid items, and payments due and to become due thereunder, and including construction contracts, service contracts, advertising contracts, purchase orders, and equipment leases.
  - f. Other Intangibles. All contract rights, accounts, instruments and general intangibles, as such terms from time to time are defined in the Florida Uniform Commercial Code, in any manner related to the use, operation, sale, conversion, or other disposition (voluntary or involuntary) of the Land, Improvements, Tangible Property, or Rents, including all permits, licenses, insurance policies, rights of action and other choses in action.
  - g. Construction Materials. All lumber, concrete block, drywall, sheet rock, concrete, roof trusses, beams, joints, or any other personal property used or intended to be used in connection with the construction of any improvements on the Land or any of such items of personal property which are intended to be incorporated into the Land as an Improvement thereon.
  - h. Impact Fees. All prepaid impact fees, impact fee credits, all tap in rights, all of which may benefit the Land or Improvements.



- i. Plans. Any and all plans, specifications, permits, including building permits, licenses, fees, architectural drawings, surveys and plats associated with the construction of any proposed Improvements.
- j. Construction Documents. The foregoing types of property include specifically all of the following: all contracts, plans and documents that concern the design and construction of the improvements, including plans and specifications, drawings and architectural and/or engineering contracts, and construction contracts, together with all amendments, revisions, modifications and supplements.

As used in this Exhibit, the term “include”, “includes” or “including” is for illustrative purposes only and is always without limitation.

- 2. The term Mortgagor(s), Land and Improvements as used herein shall have the same meaning as in the Leasehold Mortgage and Security Agreement to which this Exhibit is attached.