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E-recorded

HONORABLE JAMES N. HOGAN
GLOUCESTER COUNTY CLERK
RECEIPT#: 847198 09:57:50 AM

09/10/2019
MB 15917 102

Fee:\$ 170.00

DOCUMENT DATE: 08/02/2019

MUNICIPALITY: GREENWICH BLOCK: 164 LOT: 7
MUNICIPALITY: GREENWICH BLOCK: 164 LOT: 7

PARTIES:

FIRST PARTY-BETTY A GATTUSO
SECOND PARTY-HADDON SAVINGS BANK

RECORD & RETURN TO:
SIMPLIFILE

PLEASE DO NOT DETACH THIS PAGE FROM THE ORIGINAL
DOCUMENT AS IT CONTAINS IMPORTANT INFORMATION AND
IS PART OF THE PERMANENT RECORD.

GLOUCESTER COUNTY RECORDING DATA PAGE
HONORABLE JAMES N. HOGAN, COUNTY CLERK

RECORD AND RETURN TO
FOUNDATION TITLE, LLC
57 EUCLID STREET
WOODBURY NJ 08096
213-125948

Record and Return to:
Cahill, Wilinski, Rhodes & Joyce, P.C.
89 Haddon Avenue, Suite A
Haddonfield, New Jersey 08033

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage"), dated August 2, 2019, is by and between **Betty A. Gattuso**, with an office located at 760 Carter Hill Drive, West Deptford, NJ 08066 ("Mortgagor") and **Haddon Savings Bank**, the principal office of which is located at 201 White Horse Pike, Haddon Heights, NJ 08035 ("Mortgagee").

To secure the payment of the principal sum of **One Hundred Twenty Four Thousand Dollars (\$124,000.00)** (the "Loan") loaned by Mortgagee to Mortgagor, or which the Mortgagor has guaranteed, with interest thereon at the rate or rates specified in, and represented by a Commercial Mortgage Note, bearing even date herewith, payable to the order of Mortgagee (the "Note") as well as any and all other indebtedness of the Mortgagor to the Mortgagee, whether now existing or hereafter arising ("Debt"), and to secure performance of all obligations, covenants and agreements arising pursuant to the Loan Documents [defined below], and in return for other good and valuable consideration receipt of which is hereby acknowledged, Mortgagor hereby mortgages, grants and transfers to Mortgagee the land known as **207 Swedesboro Road a/k/a Block 164, Lot 7 on the Tax Map of the Township of Greenwich, Gloucester County, New Jersey**, more particularly described in Schedule "A" annexed, including the buildings, fixtures, equipment, structures, appliances, machinery, furniture, furnishings and improvements now and hereafter constructed thereon (the "Mortgaged Property"), all of which shall be deemed real property.

In addition and as independent and separate security for the payment of the Debt and the performance of the obligations, covenants and agreements secured thereby, Mortgagor gives and grants to Mortgagee an exclusive security interest in and to all items of personal property owned by Mortgagor located on the Mortgaged Property, including but not limited to, all personal property, fixtures, equipment, furnishings, inventory, supplies and articles of tangible personal property of every kind and nature whatsoever, now or hereafter located in or upon the real estate described herein, or any part thereof, and used or usable in connection with any present or future use of the real estate now owned or hereafter acquired and accessions, improvements and additions, replacements and substitutions thereof, together with the rights of the undersigned under any manufacturer's warranties relating to the foregoing and all condemnation awards and rights of warranty, indemnification and recovery from third parties for loss or damage to or diminution of value of the collateral hereby pledged as well as all accounts, accounts receivable, contract rights, instruments, and general intangibles ("Personal Property"). Upon a default by

American Land Title Association

Schedule A

Commitment for Title Insurance
Adopted 08-01-2016
Technical Corrections 04-02-2018

LEGAL DESCRIPTION

All that certain tract or parcel of land, situated, lying and being in Greenwich Township, County of Gloucester, and State of New Jersey, more particularly described as follows:

BEGINNING at a point in the Northwesternly edge of the Swedesboro-Billingsport Road, distant Southwestwardly one hundred and fifty (150') from the Westerly corner of Rosenthal Avenue.

(1) by line of lands now or formerly of the grantors North fifty-one degrees and one minute West the distance of two hundred and seventy-five feet to a point for a corner; thence

(2) by other lands of the grantor, South thirty-eight degrees and fifty-nine minutes West, the distance of one hundred and fifty feet to a point for a corner; thence

(3) still by other lands of the grantor, South fifty-one degrees and one minute East, the distance of two hundred and seventy-five feet to the Northwesternly edge of the aforesaid Swedesboro-Billingsport Road; thence

(4) along the said Northwesternly edge of the Swedesboro - Billingsport Road, North thirty-eight degrees and fifty-nine minutes East, the distance of one hundred and fifty feet to the place of beginning.

NOTE FOR INFORMATION:

BEING known as 207 Swedesboro Road, Greenwich Township, Gloucester County, State of New Jersey, Block 164, Lot 7 on the tax map of Greenwich Township.

NOTE FOR INFORMATION: The mailing address of the premises is 207 Swedesboro Road, Gibbstown, NJ 08027.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance Fidelity National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Mortgagor, Mortgagee shall, at its option, without notice or demand, be entitled to enter upon the Mortgaged Property to take immediate possession of the Personal Property. Upon request by Mortgagee, Mortgagor shall assemble and make the Personal Property available to Mortgagee at a place designated by Mortgagee which is reasonably convenient to both parties. Mortgagee may propose to retain the Personal Property in partial satisfaction of the Debt, or sell all or any portion of the Personal Property at public or private sale in accordance with the Uniform Commercial Code of the State of New Jersey or in accordance with foreclosure sale under this Mortgage. In the event that Mortgagee elects to proceed under the Uniform Commercial Code as to the Personal property and notification of intended disposition of any of the Personal Property is required by law, such notification, if mailed, shall be deemed reasonably and properly given if mailed at least five (5) days before such disposition, postage prepaid, addressed to Mortgagor at the address of Mortgagor. Mortgagor agrees that a commercially reasonable manner of disposition of the Personal property on a default shall, at the option of Mortgagee, include a sale of the Personal Property, in whole or in part, concurrently with the foreclosure upon the Mortgaged Property in accordance with the provisions of the Mortgage. In the event Mortgagee shall dispose of any or all of the Personal Property after default, the proceeds of this disposition shall be applied as required by law, or to the extent not required by law, at the absolute discretion of Mortgagee in the following order: (a) to the expenses of retaking, holding and preparing for sale, selling and the like; (b) to reasonable attorney's fees and legal expenses incurred by Mortgagee; (c) to the satisfaction of the Debt; and (d) at the discretion of Mortgagee, and any surplus may be applied to the payment of the indebtedness of Mortgagor to third parties claiming a security interest in the Personal Property. Mortgagor shall execute, deliver, file and refile any financing statements, continuation statements or other security agreements Mortgagee may require from time to time to confirm the lien of the Mortgage with respect to the foregoing. Without limiting the foregoing, the Mortgagor hereby irrevocably appoints Mortgagee attorney-in-fact for Mortgagor to execute, deliver and give such instruments for and on behalf of Mortgagor. Mortgagor agrees to execute any and all documents, including financing statements, which may be required by Mortgagee from time to time to perfect the security interest granted hereby.

In addition to any other paragraph of this Mortgage and notwithstanding any term, condition or covenants hereof to the contrary, this Mortgage secures the present obligation of the Mortgagor as well as any other obligations of the Mortgagor to Mortgagee. These obligations shall include present and future obligations, whether direct, indirect, primary, secondary, fixed or contingent.

Mortgagor warrants, covenants and agrees with Mortgagee as follows:

1. **Definitions.** Unless the context otherwise connotes, as used herein:

- 1.1. **"Debt"** means the principal sum of One Hundred Twenty Four Thousand Dollars (\$124,000.00) loaned by Mortgagee to Mortgagor, or which the Mortgagor has guaranteed, with interest thereon at the rate or rates specified in, and represented by a Note, bearing even date herewith, payable to the order of Mortgagee (the

"Note") as well as any extensions, modifications and renewals thereof, and all other indebtedness of the Mortgagor to the Mortgagee of any nature whatsoever, whether now existing or hereafter arising;

- 1.2. **"Loan Documents"** shall mean the Note, this Mortgage and Security Agreement, the Guaranty, the Loan Agreement and any Security Agreement, the Commitment Letter or any amendments thereto, and any and all documents executed by Mortgagor and/or any Guarantor before, during or following the Closing.
2. **Payment of Debt.** Mortgagor shall pay the Debt in accordance with its terms.
3. **Title Warranty.** Mortgagor is seized of an indefeasible estate in fee simple in the Mortgaged Property, and subject to permitted liens, Mortgagor warrants the title to the Mortgaged Property.
4. **Repair.** Mortgagor shall maintain the Mortgaged Property in a good and substantial state of repair so as not to impair Mortgagee's collateral and shall make such repairs to same as may be required by Mortgagee from time to time.
5. **Compliance with Law.** Mortgagor shall comply with and maintain the Mortgaged Property in compliance with all laws and requirements of all governments and governmental authorities applicable thereto.
6. **Taxes.** Mortgagor shall pay promptly, as the same become payable, all taxes, assessments and governmental charges on or to the Mortgaged Property; and no owner of the Mortgaged Property shall be entitled to any credit by reason of the payment of any tax thereon.
7. **Insurance.** The Mortgagor will keep the Mortgaged Property and Personal Property insured against loss or damage by fire, standard extended coverage perils and such other hazards as the Mortgagee shall from time to time require in amounts approved by the Mortgagee, which amounts shall in no event be less than the Debt or the value of the Mortgaged Property and the Personal Property [whichever is greater], and will maintain such other forms of insurance coverage with respect to the Mortgaged Property and the Personal Property as the Mortgagee shall from time to time require in amounts approved by the Mortgagee and provide copies of such policies to the Mortgagee. All Policies shall contain the standard mortgagee non-contribution clause endorsement, satisfactory to the Mortgagee, naming the Mortgagee as the person to which all payments made by the insurer thereunder shall be paid and shall be satisfactory in all respects to the Mortgagee. Not later than twenty (20) days prior to the expiration date of each of the policies, the Mortgagor will deliver to the Mortgagee a renewal policy or policies. If at any time the Mortgagee is not in receipt of written evidence that all insurance policies are in force and effect, the Mortgagee shall have the right, without notice to the Mortgagor, to take such action as the Mortgagee deems necessary to protect its interest in the Mortgaged Property

and the Personal Property, including, without limitation, the obtaining of such insurance coverage as the Mortgagee in its sole discretion deems appropriate, and all expenses incurred by the Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by the Mortgagor to the Mortgagee upon demand. The Mortgagor shall at all times comply with and shall cause the Mortgaged Property and the Personal Property to comply with the terms, conditions, stipulations and requirements of the insurance policies. If the Mortgaged Property, or any portion thereof, is located in a Federally designated "special flood hazard area," in addition to the other policies required under this paragraph, a flood insurance policy shall be delivered by the Mortgagor to the Mortgagee. If the Mortgaged Property or Personal Property shall be damaged or destroyed, in whole or in part, by fire or other property hazard or casualty, the Mortgagor shall give prompt notice thereof to the Mortgagee. Sums paid to the Mortgagee by any insurer may be retained and applied by the Mortgagee toward payment of the Debt, whether or not then due and payable, in such order, priority and proportions as the Mortgagee, in its sole and absolute discretion, shall deem proper or, at the discretion of the Mortgagee, the same may be paid, either in whole or in part, to the Mortgagor for restoration of the Mortgaged Property and/or Personal Property or such other purposes as the Mortgagee shall designate. If the Mortgagee shall receive and retain such insurance proceeds, the lien of this Mortgage shall be reduced only by the amount received and retained by the Mortgagee and actually applied by the Mortgagee in reduction of the Debt.

8. **Tax and Insurance Reserve.** As for a tax and insurance reserve if required by Mortgagee, each month on the day that the payment is due under the Note, Mortgagor shall, if required by the Mortgagee, pay to Mortgagee one-twelfth (1/12th) of the sum of the taxes on the Mortgaged Property and the aggregate of the premiums on insurance on the Mortgaged Property, which Mortgagee estimates will become payable within the next succeeding twelve (12) months.

9. **Eminent Domain.** Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, the Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and this Mortgage and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by the Mortgagee to the discharge of the Debt. The Mortgagee may apply the entire amount of any such award or payment to the discharge of the Debt, whether or not then due and payable, in such order, priority and proportions as the Mortgagee in its discretion shall deem proper. If the Mortgaged Property are sold, through foreclosure or otherwise, prior to the receipt by the Mortgagee of such award or payment, the Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof sufficient to pay the Debt, whichever is less. The Mortgagor shall 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 the Mortgagee. The Mortgagor hereby irrevocably authorizes and empowers the Mortgagee, in the name of

the Mortgagor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, the Mortgagor shall, upon demand of the Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to the Mortgagee, free and clear of any encumbrances of any kind or nature whatsoever.

10. **Environmental Provisions.**

- 10.1. For purposes of this paragraph, the term "Environmental Laws" shall mean all federal, state and local laws, regulations and orders, whether now or in the future enacted or issued, pertaining to the protection of land, water, air, health, safety or the environment. The term "Regulated Substances" shall mean all substances regulated by Environmental Laws, or which are known or considered to be harmful to the health or safety of persons, or the presence of which may require investigation, notification or remediation under the Environmental Laws. The term "Contamination" shall mean the discharge, release, emission, disposal or escape of any Regulated Substances into the environment.
- 10.2. The Mortgagor represents and warrants (i) that no Contamination is present at, on or under the Mortgaged Property and that no Contamination is being or has been emitted onto any surrounding property; (ii) all operations and activities on the Mortgaged Property have been and are being conducted in accordance with all Environmental Laws, and the Mortgagor has all permits and licenses required under the Environmental Laws; (iii) no underground or aboveground storage tanks are or have been located on or under the Mortgaged Property; and (iv) no legal or administrative proceeding is pending or threatened relating to any environmental condition, operation or activity on the Mortgaged Property, or any violation or alleged violation of Environmental Laws. These representations and warranties shall be true as of the date hereof, and shall be deemed to be continuing representations and warranties which must remain true, correct and accurate during the entire duration of the term of this Mortgage.
- 10.3. The Mortgagor shall ensure, at its sole cost and expense, that the Mortgaged Property and the conduct of all operations and activities thereon comply and continue to comply with all Environmental Laws. The Mortgagor shall notify the Mortgagee promptly and in reasonable detail in the event that the Mortgagor becomes aware of any violation of any Environmental Laws, the presence or release of any Contamination with respect to the Mortgaged Property, or any governmental or third party claims relating to the environmental condition of the Mortgaged Property or the conduct of operations or activities thereon. The Mortgagor also agrees not to permit or allow the presence of Regulated Substances on any part of the Mortgaged Property, except for those Regulated Substances (i) which are used in the ordinary course of the Mortgagor's business,

but only to the extent they are in all cases used in a manner which complies with all Environmental Laws; and (ii) those Regulated Substances which are naturally occurring on the Mortgaged Property. The Mortgagor agrees not to cause, allow or permit the presence of any Contamination on the Mortgaged Property.

- 10.4. The Mortgagee shall not be liable for, and the Mortgagor shall indemnify, defend and hold the Mortgagee and all of its officers, directors, employees and agents, and all of their respective successors and assigns harmless from and against all losses, costs, liabilities, damages, fines, claims, penalties and expenses (including, without limitation, reasonable attorneys', consultants' and contractors' fees, costs incurred in the investigation, defense and settlement of claims, as well as costs incurred in connection with the investigation, remediation or monitoring of any Regulated Substances or Contamination) that the Mortgagee may suffer or incur (including, without limitation, as holder of the Mortgage, as mortgagee in possession or as successor in interest to the Mortgagor as owner of the Mortgaged Property by virtue of a foreclosure or acceptance of a deed in lieu of foreclosure) as a result of or in connection with (i) any Environmental Laws (including, without limitation, the assertion that any lien existing or arising pursuant to any Environmental Laws takes priority over the lien of the Mortgage); (ii) the breach of any representation, warranty, covenant or undertaking by the Mortgagor in this paragraph; (iii) the presence on or the migration of any Contamination or Regulated Substances on, under or through the Mortgaged Property; or (iv) any litigation or claim by the government or by any third party in connection with the environmental condition of the Mortgaged Property or the presence or migration of any Regulated Substances or Contamination on, under, to or from the Mortgaged Property.
- 10.5. Upon the request of the Mortgagee, the Mortgagor shall execute and deliver an Environmental Indemnity Agreement satisfactory in form and substance to the Mortgagee, to more fully reflect the representations, warranties, covenants and indemnities of the Mortgagor with respect to the Environmental Laws.
11. **Financial Statements.** The Mortgagor and each Guarantor named in a Guaranty of Payment and Completion of even date herewith shall deliver to Mortgagee the financial statements and other financial information set forth in the Commitment Letter between Mortgagor and Mortgagee and as may be described in the Loan and Security Agreement executed in connection herewith.
12. **Events of Default.** Unless Mortgagee consents thereto, the occurrence of any of the following events shall constitute an "Event of Default":
 - 12.1. Any event which constitutes an Event of Default under the Note or any other Loan Document.

- 12.2. The nonperformance of, or noncompliance with, any of the agreements, covenants, conditions, warranties, representations or other provisions contained in this Mortgage or any other Loan Document.
 - 12.3. A sale, conveyance or other disposition of all or a portion of the Mortgaged Property (whether voluntarily or by operation of law).
 - 12.4. The abandonment or vacating of the Mortgaged Property or any substantial part thereof.
 - 12.5. A default under any other mortgage which is a lien upon the Mortgaged Property.
 - 12.6. The creation of a security interest, whether perfected or otherwise, in the Mortgaged Property or any collateral provided for herein (other than the security interest of the Mortgagee), the placing of any additional mortgage lien on the Mortgaged Property, or the entering into of any secondary financing without the prior written consent of Mortgagee, which consent Mortgagee shall be entitled to withhold.
13. **Assignment of Rents.**
- 13.1. Mortgagor hereby unconditionally assigns to Mortgagee the rents, issues and profits of the Mortgaged Property theretofore accrued and thereafter accruing. Pending and so long as the Mortgagor is not in default of any covenant or condition imposed upon it by the terms of the Note, this Mortgage or any of the other Loan Documents, all dated even date herewith, the Mortgagor is hereby granted a revocable license to collect rents and exercise any and all other rights under the leases.
 - 13.2. Mortgagor shall hold in trust for Mortgagee the rents, issues and profits of the Mortgaged Property which Mortgagor receives, shall not commingle the same with Mortgagor's other property, and shall pay the same promptly to Mortgagee upon demand; and
 - 13.3. Upon the occurrence of an event of default, Mortgagor shall pay Mortgagee, monthly in advance, as a tenant from month to month, a reasonable rent for any part of the Mortgaged Property occupied or used by Mortgagor; if Mortgagor does not do so, Mortgagee may dispossess Mortgagor by summary proceedings; and, in any event, Mortgagor's occupancy shall terminate upon delivery of a deed, whether voluntary or in foreclosure.
 - 13.4. If Mortgagor has executed a separate Assignment of Leases, Rents, and Other Agreements, the terms and conditions of such assignment are hereby incorporated herein by reference.

14. **Remedies.** If an Event of Default occurs, at Mortgagee's option, Mortgagee may do any and all of the following and to effectuate same Mortgagor hereby nominates and appoints Mortgagee its true and lawful attorney-in-fact with full power of substitution in the Mortgaged Property, and hereby empowers said attorney or attorney as follows:
 - 14.1. Declare the Debt to be immediately payable, and thereupon the same shall become immediately payable;
 - 14.2. Recover judgment against Mortgagor for the Debt and neither the recovery of judgment nor the levy of execution thereof on any property, including the Mortgaged Property, shall affect Mortgagee's rights hereunder or the lien hereof;
 - 14.3. Enter upon and take possession of the Mortgaged Property, or have a receiver of the rents, issues and profits appointed, without proof of depreciation in the value of the Mortgaged Property, inadequacy of the Mortgaged Property, or insolvency of Mortgagor, and Mortgagee or the receiver may lease the Mortgaged Property, in the name of Mortgagor, Mortgagee or the receiver, and may receive the rents, issues and profits and apply the same, in its sole and absolute discretion (i) to the payment of expenses of operating, maintaining, repairing and improving the Mortgaged Property, including rent and commissions and rental collection commissions paid to an agent of Mortgagee or of the receiver; and/or (ii) on account of the Debt, in such order and in such amounts as Mortgagee determines; but, while in possession of the Mortgaged Property, Mortgagee or the receiver shall be liable to account only for the rents, issues and profits actually received.
 - 14.4. Take such other action to protect and enforce Mortgagee's rights hereunder and the lien hereof, as Mortgagee deems advisable, including but not limited to:
 - 14.4.1. The foreclosure of this Mortgage, subject, at Mortgagee's option, to the rights of tenants and other persons in the Mortgaged Property; and, in any proceeding to enforce any personal liability for the Debt, Mortgagor shall not assert, as a defense, that Mortgagee failed to foreclose any such rights or that any such rights adversely affected the value of the Mortgaged Property; and
 - 14.4.2. Upon filing a Complaint in Foreclosure, the appointment of a receiver of rents, issues and profits without proof of depreciation in the value of the Mortgaged Property, inadequacy of the Mortgaged Property, or insolvency of Mortgagor; and
 - 14.4.3. The sale of the Mortgaged Property, in a foreclosure proceeding, in one or several parcels, at Mortgagee's option and without obligation to have the Mortgaged Property marshalled; and

14.4.4. To use any funds of Mortgagor on deposit with Mortgagee; and

14.4.5. To employ such contractors, subcontractors and agents, architects and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which may be liens against the Premise, or as may be necessary or desirable for the completion of any construction thereon, or for the clearance of title; and with regard to all of the above, apply the amounts so paid by the Mortgagee to the Debt owed by the Mortgagor; and

14.4.6. To execute all applications and certificates in the name of Mortgagor which may be required and every act which Mortgagor might do in its own behalf. It is further understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. The above-mentioned attorney shall also have power to prosecute and defend all actions or proceedings in connection with the Mortgaged Property and to take such action and require such performance as said attorney-in-fact deems necessary; and

14.4.7. Immediately, and without notice or other action, set-off any money owed by Mortgagee in any capacity to Mortgagor against any of Mortgagor's liability to Mortgagee, whether due or not, and Mortgagee shall be deemed to have exercised such right of set-off and to have made a charge against any such money immediately upon the occurrence of such Event of Default, even though the actual book entries may be made at some time subsequent thereto; and

14.4.8. Take any of the remedies otherwise available to Mortgagee as a matter of law or equity.

15. **Additional Remedies.** In the event of the failure of Mortgagor to comply with any of the requirements of N.J.S.A. 13:1K-6, *et. seq.*, and/or N.J.S.A. 58:10-23.11, *et. seq.*, and/or any related environmental rules or regulations, or in the case of the occurrence of any Event of Default by Mortgagor and failure to cure said Event of Default within any time period set forth therein, Mortgagee shall have the right, at its sole option, to comply with such statutory or regulatory requirements, and/or to cure any such Event of Default, and the costs and expenses of such compliance and/or cure shall be added to the indebtedness secured by this Mortgage and shall be due and payable upon demand with interest computed from the date(s) on which said costs and expenses were incurred by Mortgagee at the default interest rate set forth in the Note which this Mortgage secures.

16. **Mortgagee's Rights Cumulative.** The rights and remedies of Mortgagee hereunder shall be in addition to every other right and remedy now and hereafter provided by law; the

rights and remedies of Mortgagee shall be cumulative and not exclusive one of the other; Mortgagee may exercise the same at such times, in such order, to such extent, and as often as Mortgagee deems advisable, and without regard to whether the exercise of one precedes, concurs with, or succeeds the exercise of another; no delay or omission by Mortgagee in exercising a right or remedy shall exhaust or impair the same, or constitute a waiver of, or acquiescence in, the default; and no waiver of a default by Mortgagee shall extend to or affect any other default or impair any right or remedy with respect thereto.

17. **Indulgences; Extensions.** Mortgagee may allow Mortgagor any indulgences, forbearances and extensions with respect to the Debt, the Mortgaged Property and Mortgagor's obligations hereunder, may waive compliance with any of the provisions hereof, and may release all or any part of the Mortgaged Property from the lien hereof, without affecting the personal liability of any person for the payment of the Debt, or the priority of the lien hereof upon the remainder of the Mortgaged Property.
18. **Other Security.** If the Debt is secured at any time by a lien on or a security interest in any other real or personal property under any mortgage or security instrument executed and delivered by Mortgagor or any other person (corporate or individual), Mortgagor consents to Mortgagee's exercising with respect thereto any of the rights herein and therein provided, at Mortgagee's option and without obligation to have the Mortgaged Property and such other real and personal property marshalled.
19. **Advances by Mortgagee.** Whether or not an event of Default shall have occurred, if Mortgagor does not pay any amount payable by it under, or fails to comply with any provision of this Mortgage or the Debt or any instrument evidencing any part of the Debt, Mortgagee may pay such amount or comply with such provision and make such expenditures, including reasonable counsel fees, in connection therewith and with enforcing this Mortgage and the Debt, for repairing, maintaining and preserving the Mortgaged Property, for establishing, preserving, protecting and restoring the priority of the lien hereof or the value of any and all collateral for this Mortgage, for obtaining official tax searches of the Mortgaged Property, for protecting and preserving any use being made of the Mortgaged Property now or hereafter, and for advances to any trustee or receiver of the Mortgaged Property, as Mortgagee deems advisable; each amount so paid or expended, with interest at a the default rate of interest set forth in the Note to cover the administrative expense of making the aforesaid advances, shall become part of the Debt and be secured hereby and shall be payable on demand; and such obligation shall constitute a personal obligation of Mortgagor and shall survive the foreclosure hereof and any sale of the Mortgaged Property; but no such payment or compliance by Mortgagee shall constitute a waiver of Mortgagor's failure so to do or affect any right or remedy of Mortgagee with respect thereto. If, during the term of this Mortgage, Mortgagee shall be required to participate, directly or indirectly, in the investigation, prosecution or resolution of any claim with respect to the Mortgagor or the Mortgaged Property, whether or not such claim shall result in litigation, Mortgagor shall pay any and

all expenses of Mortgagee incidental to such participation, including reasonable counsel fees.

20. **Personal Representatives, Etc.** The provisions hereof shall bind, and inure to the benefit of, Mortgagor and Mortgagee and their respective heirs, personal representatives, successors and assigns.
21. **Indemnity.** Anything in this Mortgage or the other Loan Documents to the contrary notwithstanding, Mortgagor shall indemnify and hold Mortgagee harmless and defend it at Mortgagor's sole cost and expense against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements of Mortgagee's counsel, whether in-house staff, retained firms, or otherwise) and all claims, actions, procedures and suits arising out of or in connection with (i) any ongoing matters arising out of the transaction contemplated by this Mortgage, the Note and any other document or instrument now or hereafter executed and/or delivered in connection with the Debt and the Debt (including, but not limited to, all costs of any reappraisals of the Mortgaged Property or any other collateral for the Debt), (ii) any amendment to, or restructuring of, the Debt and the Loan Documents, (iii) any and all lawful action that may be taken by Mortgagee in connection with the enforcement of the provisions of this Mortgage or the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with Mortgagor, any Guarantor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; and (iv) the past current and/or future sale or offering for sale of partnership interests in Mortgagor, including, without limitation, liabilities under any applicable securities or blue sky laws. All sums expended by Mortgagee shall be payable on demand and, until reimbursed by Mortgagor pursuant hereto, shall be deemed additional principal of the Debt and shall bear interest at the default rate provided for in the Note.
22. **Relationship.** The relationship of the Mortgagee to the Mortgagor hereunder is strictly and solely that of lender and borrower and nothing contained in the Note, this Mortgage, or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise in connection with the loan secured hereby is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Mortgagee and the Mortgagor other than as lender and borrower.
23. **Non-Merger.** All of the terms and conditions of the loan commitment letter between Mortgagee and Mortgagor, if any, together with any amendments thereof, are incorporated herein by reference, and shall survive the making of the loan herein and therein contemplated. Additionally, no merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Mortgaged Property unless

Mortgagee expresses in writing at the time of its acquisition its intention that a merger shall result.

24. **Cross Collateral/Cross Default.** This Mortgage shall secure, in addition to the Debt evidenced by the Note and secured hereby, all other obligations of Mortgagor, its successors or assigns, whether oral or written, secured or unsecured, and regardless of their nature, and shall also secure any and all such future obligations, when they are incurred. This covenant shall be effective without the execution of any affirmative action by Mortgagor. In the event that the Mortgagor shall default under any other obligation or mortgage held by Mortgagee and made by Mortgagor, such default shall constitute an Event of Default hereunder and under the Note which the Mortgage secures, and the Debt shall be immediately due and payable, anything to the contrary herein notwithstanding. In the event that Mortgagor shall default under this Mortgage, such default shall constitute an Event of Default under any and all obligations and mortgages of Mortgagor to Mortgagee, and Mortgagee, at its option, may declare all such obligations and mortgages immediately due and payable.
25. **Waiver of Trial by Jury.** The Mortgagor hereby irrevocably and unconditionally waives, and the Mortgagee by its acceptance of the Note and this Mortgage irrevocably and unconditionally waives, any and all rights to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to the Note, this Mortgage or any other Loan Document or instrument now or hereafter executed and delivered in connection therewith or the loan secured by this Mortgage.
26. **Modifications and Extensions.** The within Mortgage also secures any and all extensions, renewals and modifications of the Note, this Mortgage or any other Loan Documents including without limitation, any and all notes given in renewal of, substitution for, or in modification of the Note which is secured by this Mortgage. Modification means a change in the interest rate, due date, or other terms and conditions of the Debt. If the parties to this Mortgage agree to a change which is a modification as defined in L. 1991, c.364, this shall be subject to the priority provisions of the law. Advances made pursuant to the agreement secured by this Mortgage shall be "modifications" as defined in L. 1991, c.364, and the priority of this Mortgage shall be subject to that law.
27. **Security Agreement.** This Mortgage constitutes both a real property mortgage and a "security agreement," within the meaning of the Uniform Commercial Code. The Mortgagor by executing and delivering this Mortgage has granted to the Mortgagee, as security for the Debt, a security interest in the Personal Property.

MORTGAGOR HEREBY DECLARES AND ACKNOWLEDGES THAT MORTGAGOR HAS RECEIVED, WITHOUT CHARGE, A TRUE COPY OF THIS MORTGAGE.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed and delivered on the day and year first above written.

WITNESS:



Sharon L. Kessler



Betty A. Gattuso

