

# Holland & Knight

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May 14, 2015

*Via FedEx*

City of Fort Lauderdale  
C/o City Clerk  
P.O Drawer 14250  
Fort Lauderdale, Florida 33302

Re: ColFin Cypress Creek Funding, LLC / ICM (VII) Cypress LP

To whom it may concern:

Pursuant to Section 23(b) of the Ground Lease dated February 15, 1983, as consolidated on May 6, 1993, and as amended on December 12, 1997, enclosed please find a copy of the recorded Leasehold Mortgage between Colfin Cypress Creek Funding, LLC ("Mortgagee"), and ICM (VII) Cypress LP ("Mortgagor") for your records. Please see name and address for the Leasehold Mortgage below.

ColFin Cypress Creek Funding, LLC  
Colony Capital, LLC  
2450 Broadway, Sixth Floor  
Santa Monica, CA 90404  
Attention: Director, Legal Department

You can reach me at the number above if you have any questions.

Sincerely yours,

HOLLAND & KNIGHT LLP

By: 

Judith E. Kreitzer

CC: Airport Manager  
1401 W. Commercial Blvd., Suite 201  
Fort Lauderdale, Florida 33309

2015 MAY 18 PM 4: 49  
CITY CLERK

CITY CLERK  
2015 MAY 18 PM 4: 49

PREPARED BY AND RETURN TO:

Judith E. Kreitzer, Esq.  
Holland & Knight LLP  
515 East Las Olas Boulevard, Suite 1200  
Fort Lauderdale, Florida 33301

**COLLATERAL IS OR INCLUDES FIXTURES**

**LEASEHOLD MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, COLLATERAL  
ASSIGNMENT OF PROPERTY AGREEMENTS, SECURITY AGREEMENT AND FIXTURE  
FILING**

This Leasehold Mortgage, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing (as amended from time to time, this "Mortgage") is made, and is executed as of May 6, 2015, by ICM (VII) CYPRESS LP, a Florida limited partnership (together with its permitted successors and permitted assigns, "Mortgagor"), whose address for all purposes hereunder is ICM Realty Group c/o ICM (VII) Cypress LP, #114, 276 Midway Park SE, Calgary AB T2X 1J6, Canada, Attention: Bruce Timm, for the benefit of COLFIN CYPRESS CREEK FUNDING, LLC, a Delaware limited liability company (together with all of its successors and assigns, the "Mortgagee"), whose address for all purposes hereunder is c/o Colony Capital, LLC, 2450 Broadway, Sixth Floor, Santa Monica, California 90404.

ARTICLE 1

DEFINITIONS

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

"Indebtedness": The sum of all principal, interest and other amounts due from Mortgagor under, or secured by, the Loan Documents.

"Loan Agreement": The Loan Agreement, dated as of the date hereof, by and between Mortgagee, as lender, and Mortgagor, as borrower, as the same may be replaced, amended, supplemented, extended or otherwise modified from time to time.

"Loan Documents": The (1) Loan Agreement, (2) those certain promissory notes, each dated as of the date hereof, executed by Mortgagor pursuant to the Loan Agreement, in the aggregate principal amount of \$10,300,000.00 (as the same may be amended, restated, componentized, supplemented, modified, assigned in whole or in part, replaced and/or divided into multiple notes from time to time, the "Note" or "Notes", as applicable), (3) this Mortgage, (4) all other documents now or hereafter executed by Borrower, or any other person or entity to evidence or secure the payment of the Indebtedness, and (5) all modifications, restatements, extensions, renewals and replacements of the foregoing.

Mortgage (Cypress Executive)

**“Obligations”:** All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor under the Loan Documents.

**“Property”:** All of Mortgagor’s right, title and interest in and to each of the following (whether now owned or hereafter acquired):

(1) the leasehold interest created by that certain Lease described in Exhibit C attached hereto and made a part hereof (together with any and all modifications, renewals, extensions, and substitutions of the foregoing, the **“Pledged Lease”**) with respect to the real property described in Exhibit A attached hereto and made a part hereof (the **“Land”**), together with all right, title and interest in and to any right pursuant to Section 365(h) of the Bankruptcy Code or any successor to such Section (i) to possession of any statutory term of years derived from or incident to the Pledged Lease, or (ii) to treat the Pledged Lease as terminated,

(2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the **“Improvements”**),

(3) all materials, machinery, supplies, equipment, fixtures (including **“fixtures”** as defined in the UCC), apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, including any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, lighting, communications and elevator fixtures, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery and equipment, disposals, dishwashers, furniture, refrigerators and ranges, security systems, artwork, recreational and pool equipment and facilities of all kinds, water, gas, electrical, storm and sanitary sewer facilities of all kinds, and all other utilities whether or not situated in easements together with all accessions, replacements, betterments and substitutions for any of the foregoing (the **“Fixtures”**),

(4) in and to all goods, accounts, deposit accounts, general intangibles, instruments, documents, accounts receivable, chattel paper, investment property, securities accounts and all other personal property of any kind or character, including such items of **“personal property”** as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and/or the Improvements or that may be used in or relating to the planning, development, financing or operation of the Land and/or the Improvements, including furniture, furnishings, equipment, machinery, money, insurance proceeds, condemnation awards, accounts, contract rights, trademarks, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under

leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs and all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments against the Land and/or Improvements as a result of tax certiorari or any applications or proceedings for reduction (the "Personalty"),

(5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including tenant's security and cleaning deposits and deposits with respect to utility services) maintained by or on behalf of Mortgagor with respect to the Land and/or Improvements,

(6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Plans"),

(7) subject to the rights of Mortgagor hereunder and under the Loan Agreement, all leasehold estates, leases, subleases, sub-subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect and every modification, amendment or other agreement relating thereto, including every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto) that grant a possessory interest in, or the right to use or occupy, all or any part of the Land and/or Improvements, together with all related security and other deposits (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Leases"),

(8) subject to the rights of Mortgagor hereunder and under the Loan Agreement, all of the rents, revenues, income, proceeds, issues, profits (including all oil or gas or other mineral royalties and bonuses), security and other types of deposits, and other benefits paid or payable and to become due or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, occupying, operating from, residing in, selling or otherwise enjoying any portion or portions of the Land and/or Improvements (the "Rents"),

(9) the Approved Management Agreement and all other contracts and agreements in any way relating to, executed in connection with, or used in, the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition, management or ownership of the Land and/or Improvements or the sale of goods or services produced in or relating to the Land and/or Improvements (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Property Agreements"), including all right, title and interest of

Mortgagor in, to and under (a) all construction contracts, architects' agreements, engineers' contracts, utility contracts, letters of credit, escrow agreements, maintenance agreements, management, leasing and related agreements, parking agreements, equipment leases, service contracts, operating leases, catering and restaurant leases and agreements, agreements for the sale, lease or exchange of goods or other property, agreements for the performance of services, permits, variances, licenses, certificates and entitlements, (b) all material agreements and instruments under which Mortgagor or any of its affiliates or the seller of the Property have remaining rights or obligations in respect of Mortgagor's acquisition of the Property or equity interests therein, (c) applicable business licenses, variances, entitlements, certificates, state health department licenses, liquor licenses, food service licenses, licenses to conduct business, certificates of need and all other permits, licenses and rights obtained from any Governmental Authority or private Person, (d) all rights of Mortgagor to receive monies due and to become due under or pursuant to the Property Agreements, (e) all claims of Mortgagor for damages arising out of or for breach of or default under the Property Agreements, (f) all rights of Mortgagor to terminate, amend, supplement, modify or waive performance under the Property Agreements, to compel performance and otherwise to exercise all remedies thereunder, and, with respect to Property Agreements that are letters of credit, to make any draws thereon, and (g) to the extent not included in the foregoing, all cash and non-cash proceeds, products, offspring, rents, revenues, issues, profits, royalties, income, benefits, additions, renewals, extensions, substitutions, replacements and accessions of and to any and all of the foregoing,

(10) all rights, privileges, titles, interests, liberties, tenements, hereditaments, rights-of-way, easements, sewer rights, water, water courses, water rights and powers, air rights and development rights, licenses, permits and construction and equipment warranties, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, underground vaults, passages, strips or gores of land adjoining the Land or any part thereof,

(11) subject to the rights of Mortgagor hereunder or under the Loan Agreement, all insurance policies, unearned premiums therefor and proceeds from such policies, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, covering any of the above property now or hereafter acquired by Mortgagor,

(12) all mineral, riparian, littoral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Land and/or Improvements,

(13) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures or Personalty,

(14) all after acquired title to or remainder or reversion in any of the property (or any portion thereof) described herein,

(15) to the extent not included in clauses (1) to (14) above, all other property and interests of Mortgagor of any kind or description whatsoever, wherever located, whether now owned or hereafter acquired, real or personal, tangible or intangible, and

(16) all present and future accessions and additions to, substitutions for, and all replacements, renewals, products, cash and non-cash proceeds of any of the foregoing.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in the jurisdiction in which the Land is located.

Capitalized terms used herein but not otherwise defined shall have the respective meanings ascribed to such terms in the Loan Agreement.

## ARTICLE 2

### HABENDUM

Section 2.1 Grant. To secure in part the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor HAS MORTGAGED, GIVEN, GRANTED, BARGAINED, SOLD, TRANSFERRED, WARRANTED, PLEDGED, ASSIGNED and CONVEYED, and does hereby MORTGAGE, GIVE, GRANT, BARGAIN, SELL, TRANSFER, WARRANT, PLEDGE, ASSIGN and CONVEY to Mortgagee, its heirs, successors and assigns, with power of trust, the Property, TO HAVE AND TO HOLD all of the Property unto and, for the use and benefit of Mortgagee, its heirs, successors and assigns forever, and Mortgagor does hereby bind itself, its heirs, successors and assigns to WARRANT AND FOREVER DEFEND (i) the title to the Property unto Mortgagee and its heirs, successors and assigns, subject only to Permitted Encumbrances and (ii) the validity and priority of the Liens of this Mortgage, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever.

## ARTICLE 3

### DEFAULT AND FORECLOSURE

Section 3.1 Remedies. If an Event of Default is continuing, Mortgagee may, at Mortgagee’s election, take such action permitted at law or in equity, without notice or demand (except as explicitly provided in the Loan Agreement), as it deems advisable to protect and enforce its rights against Mortgagor and to the Property, including but not limited to, any or all of the following rights, remedies and recourses each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(a) Acceleration. Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration,

demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor (except as provided in the Loan Agreement)), whereupon the same shall become immediately due and payable.

(b) Entry on Property. Subject to the rights of tenants, enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Property after the occurrence and during the continuance of an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) Operation of Property. Whether or not a receiver has been appointed pursuant to Section 3.1(e) hereof, hold, lease, develop, manage, operate, control and otherwise use the Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances, subject to the rights of tenants, (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems reasonably necessary or desirable), exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents, and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 3.7 hereof.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Mortgage, either by judicial action or by exercise of the STATUTORY POWER OF SALE or otherwise, in which case the Property may be sold for cash or credit in one or more parcels or in several interests or portions and in any order or manner in accordance with applicable law governing foreclosures. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse including power of sale, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash. With respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) Business Days' prior written notice shall be deemed commercially reasonable.

(e) Receiver. Prior to, concurrently with, or subsequent to the institution of foreclosure proceedings, make application to a court of competent jurisdiction for, and (to the extent permitted by applicable law) obtain from such court as a matter of strict right and without notice to Mortgagor or anyone claiming under Mortgagor or regard to the value of the Property or the solvency or insolvency of Mortgagor or the adequacy of any collateral for the repayment of the Indebtedness or the interest of Mortgagor therein, the appointment of a receiver or receivers of the Property, and Mortgagor irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 3.7 hereof.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Notes either before, during or after any proceeding to enforce this Mortgage).

Section 3.2 Separate Sales. In connection with the exercise by Mortgagee of its rights and remedies hereunder, the Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect, subject to applicable law; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 3.3 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent and shall be in addition to every other remedy so provided or permitted, (b) may be pursued separately, successively or concurrently against Mortgagor, or against the Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 3.4 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 3.5 Waiver of Redemption, Notice and Marshaling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or "moratorium law" or other law or judicial decision exempting the Property or any part thereof, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption reinstatement (to the extent permitted by law) or extension of time for payment, (b) any right to a marshaling of assets or a sale in inverse order of alienation, and (c) any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure.

Section 3.6 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or



recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 3.7 Application of Proceeds.** Except as otherwise provided in the Loan Documents and unless otherwise required by applicable law, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order or in such other order as Mortgagee shall determine in its sole discretion:

(a) to the payment of the reasonable costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys', accountants', appraisers', environmental consultants', engineers' and other experts' fees and expenses, (4) costs of advertisement, (5) costs of procuring title searches, title policies and similar data and assurance with respect to title, (6) the payment of all applicable transfer taxes and mortgage recording taxes, and (7) the payment of all ground rent, real estate taxes and assessments;

(b) to the payment of all amounts, other than the unpaid principal balance of the Notes and accrued but unpaid interest, which may be due under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(d) the balance, if any, to the payment of the Persons legally entitled thereto.

If Mortgagee shall be ordered, in connection with any bankruptcy, insolvency or reorganization of Mortgagor, to restore or repay to or for the account of Mortgagor or its creditors any amount theretofore received under this Section 3.7 the amount of such restoration or repayment shall be deemed to be a part of the Indebtedness so as to place Mortgagee in the same position it would have been in had such amount never been received by Mortgagee.

**Section 3.8 Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 3.1(d) shall become the legal owner of the Property. All occupants of the Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Property other than the statutory action of forcible detainer in any court having jurisdiction over the Property.

**Section 3.9 Additional Advances and Disbursements; Costs of Enforcement.** If any Event of Default has occurred and is continuing, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall constitute additions to the Indebtedness and shall be secured by this Mortgage and Mortgagor covenants and agrees to pay them to the order of Mortgagee promptly upon demand.

Section 3.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 3, the assignment of the Rents and Leases under Article 4, the collateral assignment of the Property Agreements under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Mortgagee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by Mortgagee, as the case may be, solely by reason of Mortgagee's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent of Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee, as the case may be, therefor immediately upon demand.

#### ARTICLE 4

##### ASSIGNMENT OF RENTS AND LEASES

Section 4.1 Assignment. Mortgagor does hereby presently, absolutely and unconditionally assign to Mortgagee, Mortgagor's right, title and interest in all current and future Leases and the absolute, unconditional and continuing right to receive and collect all Rents, it being intended by Mortgagor that this assignment constitutes a present, outright, immediate, continuing and absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Mortgagee. Mortgagee shall have no responsibility on account of this assignment for the control, care, maintenance, management or repair of the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance reasonably satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment.

Section 4.2 License. Notwithstanding that Mortgagor hereby presently grants to Mortgagee an outright, immediate, continuing and absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in, the Rents and Leases, Mortgagee hereby grants to Mortgagor and its successors and not to any tenant or any other person, a revocable license to collect and receive the Rents and to retain, use and enjoy the same and otherwise exercise all rights as landlord under any Lease, in each case subject to the terms hereof and of the Loan Agreement. Upon the occurrence and during the continuance of any Event of Default, (i) the license granted herein to Mortgagor shall immediately and automatically cease and terminate and shall be void and of no further force or effect, (ii) Mortgagee shall immediately be entitled to possession of all Rents (whether or not Mortgagee enters upon or takes control of the Property) and (iii) at the request of Mortgagee, Mortgagor shall notify in writing all tenants and subtenants under any of the Leases that all Rent due thereunder should be paid to

Mortgagee at its address set forth in the Loan Agreement, or at such other place as Mortgagee shall notify Mortgagor in writing; provided that, if such Event of Default ceases to exist, the license described in the foregoing clause (i) shall automatically be reinstated. Notwithstanding said license, Mortgagor agrees that Mortgagee, and not Mortgagor, shall be deemed to be the creditor of each tenant or subtenant under any Lease in respect to assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such tenant or subtenant (without obligation on the part of Mortgagee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditors' rights therein), with an option to apply in accordance with the Loan Documents any money received from such tenant or subtenant in reduction of any amounts due under the Loan Documents. Upon the occurrence and during the continuance of an Event of Default, any portion of the Rents held by Mortgagor shall be held in trust for the benefit of Mortgagee for use in the payment of the Indebtedness.

**Section 4.3 Certain Rights of Mortgagee.** Subject to the revocable license granted above, upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the immediate and continuing right, power and authority, either in person or by agent, without bringing any action or proceeding, or by a receiver appointed by a court, without the necessity of taking possession of the Property in its own name, and without the need for any other authorization or action by Mortgagor or Mortgagee, in addition to and without limiting any of Mortgagee's rights and remedies hereunder, under the Loan Agreement and any other Loan Documents and as otherwise available at law or in equity, (a) to notify any tenant or other person that the Leases have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee, whether or not Mortgagee has commenced or completed foreclosure or taken possession of the Property; (b) to settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations in, to and under the Leases; (c) to demand, sue for or otherwise collect, receive and enforce payment of Rents, including those past-due and unpaid and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to the Rents and Leases; (d) to enter upon, take possession of and operate the Property whether or not foreclosure under this Mortgage has been instituted and without applying for a receiver; (e) to lease all or any part of the Property; and/or (f) to perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder.

**Section 4.4 Irrevocable Instructions to Tenants.** At Mortgagee's request, Mortgagor shall deliver a copy of this Mortgage to each tenant under a Lease and to each manager and managing agent or operator of the Property, and Mortgagee shall have the continuing right to do so. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Article 4 and to turn over to Mortgagee on demand all Rents that it receives. Mortgagor hereby acknowledges and agrees that payment of any Rents by a person to Mortgagee as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such Rents had been paid to Mortgagor. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, upon an Event of Default that is continuing, to enter upon the Property in person or by agent, without bringing any action or proceeding, or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license shall be applied in accordance with the provisions of

the Loan Agreement. Neither the enforcement of any of the remedies under this Article 4 nor any other remedies or security interests afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Mortgagee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Mortgagee solely by reason of Mortgagee's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent caused by Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee therefor within ten (10) Business Days after demand.

Section 4.5 Unilateral Subordination. Mortgagee may, at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

## ARTICLE 5

### COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS

Section 5.1 Collateral Assignment. Mortgagor does hereby collaterally assign and pledge to Mortgagee, Mortgagor's right, title and interest in, to and under all current and future Property Agreements. Such collateral assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Property Agreement or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be reasonably requested by Mortgagee to further evidence and confirm such collateral assignment.

Section 5.2 Retained Rights of Mortgagor. Subject to the other provisions of this Article 5 and the provisions of the other Loan Documents, for so long as no Event of Default shall have occurred and be continuing, Mortgagor may exercise all of its rights and privileges under the Property Agreements and shall have the exclusive right and authority to deal with, enjoy the benefit under, grant any consents and approvals under, and amend, modify or terminate, such Property Agreements, collect, receive and retain for its own benefit all monies due or to become due under such Property Agreements, sue and enforce all claims of Mortgagor for damages arising under such Property Agreements, and retain for its own benefit all items described in clause (d) of paragraph (9) of the definition of "Property" above, if and to the extent not prohibited by the Loan Agreement or the other Loan Documents. Upon the occurrence and during the continuance of any Event of Default, the rights of Mortgagor described in this Section 5.2 shall immediately and

automatically cease and terminate and shall be void and of no further force or effect. Upon the occurrence and during the continuance of an Event of Default, any amounts held by Mortgagor as a party to the Property Agreements shall be held in trust for the benefit of Mortgagee for use in the payment of the Indebtedness.

**Section 5.3 Exercise of Assigned Rights.** Mortgagor hereby irrevocably directs the grantor or licensor of, or the contracting party to, any Property Agreement, upon demand from Mortgagee, to recognize and accept Mortgagee as the party to such Property Agreement for any and all purposes as fully as it would recognize and accept Mortgagor and the performance of Mortgagor thereunder; provided, that Mortgagee hereby covenants to Mortgagor that it will not make such demand except upon the occurrence and during the continuance of an Event of Default. Upon the occurrence, and during the continuance, of an Event of Default, without further notice or demand and at Mortgagor's sole cost and expense, Mortgagee shall be entitled to exercise all rights of Mortgagor arising under the Property Agreements. Mortgagor hereby acknowledges and agrees that payment of any amounts owing under any Property Agreement by a person to Mortgagee as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such amounts had been paid to Mortgagor. Any amounts collected after the occurrence and during the continuance of an Event of Default shall be applied in accordance with the provisions of the Loan Agreement. At Mortgagee's request, Mortgagor shall deliver a copy of this Mortgage to each grantor or licensor of or the contracting party to a Property Agreement, and Mortgagee shall have the continuing right to do so.

**Section 5.4 Indemnity.** Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by Mortgagee solely by reason of Mortgagee's status as an assignee pursuant to the collateral assignment of Property Agreements contained herein, but excluding any claim to the extent caused by Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee therefor within ten (10) Business Days after demand.

**Section 5.5 Property Agreement Covenants.** (a) Mortgagor shall perform and observe, in a timely manner, all of the covenants, conditions, obligations and agreements of Mortgagor under the Property Agreements and shall suffer or permit no delinquency on its part to exist thereunder if such action is prohibited by the Loan Agreement, or would have a Material Adverse Effect.

(b) Mortgagor shall not (i) sell, assign, transfer, mortgage or pledge any Property Agreement or any such right or interest under any Property Agreement, or (ii) cancel, terminate, amend, supplement or modify any Property Agreement, in either case, if such action is prohibited by the Loan Agreement or would have a Material Adverse Effect.

(c) Mortgagor shall exercise all reasonable efforts to enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the franchisor, manager, licensor, grantor or other contracting party under the Property Agreements, if the failure to take such action would have a Material Adverse Effect.

## ARTICLE 6

SECURITY AGREEMENT

**Section 6.1 Security Interest.** This Mortgage constitutes both a real property mortgage and a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements (said portion of the Property subject to the UCC, the "Collateral"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. Mortgagor, by executing and delivering this Mortgage, hereby grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Property that is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at the Property. Mortgagor shall pay to Mortgagee on demand any and all expenses, including actual reasonable legal expenses and reasonable attorneys' fees, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least 10 Business Days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, shall, except as otherwise required by law, be applied by Mortgagee in accordance with Section 3.7 hereof.

**Section 6.2 Further Assurances.** Mortgagor shall execute and deliver to Mortgagee and/or file, in form and substance reasonably satisfactory to Mortgagee, such further statements, documents and agreements, financing statements, continuation statements, and such further assurances and instruments, and do such further acts, as Mortgagee may, from time to time, reasonably consider necessary, desirable or proper to create, perfect and preserve Mortgagee's security interest hereunder and to carry out more effectively the purposes of this Mortgage, and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest; provided that such further statements, documents, agreements, assurances, instruments and acts do not increase the liability or obligations or decrease the rights of Mortgagor from those provided for in the Loan Documents. Mortgagor hereby irrevocably authorizes Mortgagee to file UCC financing statements in each jurisdiction that Mortgagee deems necessary or desirable in its sole discretion in order to perfect the security interests in all or any portion of the Collateral. Such financing statements may indicate or describe the Collateral in any manner Mortgagee chooses, including, without limitation, describing such collateral as "all assets of debtor, whether now owned or hereafter acquired," "all personal property of debtor, whether now owned or hereafter acquired" or using words of similar import. As of the date hereof, Mortgagor's chief executive office and principal place of business is at the address set forth in the first paragraph of this Mortgage, and Mortgagor shall promptly notify Mortgagee of any change in such address.

**Section 6.3 Fixture Filing.** This Mortgage shall also constitute a “fixture filing” for the purposes of the UCC upon all of the Property which is or is to become “fixtures” (as that term is defined in the UCC), upon being filed for record in the real estate records of the city or county wherein such fixtures are located. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

## ARTICLE 7

### MISCELLANEOUS

**Section 7.1 Notices.** Any notice required or permitted to be given under this Mortgage shall be given in the manner described in the Loan Agreement.

**Section 7.2 Covenant Running with the Land.** All representations, warranties, covenants and Obligations contained in the Loan Agreement are incorporated herein by this reference and, to the extent relating to the Property, are intended by the parties to be, and shall be construed as, covenants running with the land. All persons or entities who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

**Section 7.3 Attorney-in-Fact.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which appointment is irrevocable and coupled with an interest, after the occurrence and during the continuance of an Event of Default (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee’s interest, if Mortgagor shall fail to do so within 10 days after written request by Mortgagee, (b) upon the issuance of a deed or assignment of lease pursuant to the foreclosure of this Mortgage or the delivery of a deed or assignment of lease in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed or the assignee of any such assignment of lease and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee’s security interests and rights in or to any of the Collateral, and (d) to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be included in the Indebtedness and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action that it is empowered to take under this Section.

**Section 7.4 Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns.

**Section 7.5 No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

**Section 7.6 Subrogation.** To the extent proceeds of the Notes have been used to extinguish, extend or renew any indebtedness against the Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Property and held by the holder of such indebtedness and shall have the benefit of the priority of all of the same, and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

**Section 7.7 Loan Agreement.** If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.

**Section 7.8 Release.** Upon payment in full of the Indebtedness, in each case, when permitted or required hereunder, the estate hereby granted shall cease, terminate and be void and Mortgagee shall execute instruments prepared by Mortgagor and reasonably satisfactory to Lender, which, at Mortgagor's election and at Mortgagor's sole cost and expense, either (a) release and discharge all Liens of this Mortgage and all other Liens on all Collateral securing payment of the Indebtedness (subject to Mortgagor's obligation to pay any associated fees and expenses), including all balances in the Collateral Accounts, or (b) assign such Liens (and the Loan Documents) to a new lender designated by Mortgagor. Any release or assignment provided by Mortgagee pursuant to this Section shall be without recourse, representation or warranty of any kind.

**Section 7.9 Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of, and hereby waives, any appraisal, valuation, stay, marshaling of assets, exemption, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

**Section 7.10 Waiver of Jury Trial; Consent to Jurisdiction.** (a) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY DEALINGS, CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS BY EITHER OF THEM RELATING TO THE SUBJECT MATTER OF THIS MORTGAGE. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE ACKNOWLEDGE THAT THIS



WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS MORTGAGE. MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE FURTHER WARRANT AND REPRESENT THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS MORTGAGE, OR ANY OTHER LOAN DOCUMENTS OR AGREEMENTS RELATING TO THIS MORTGAGE. IN THE EVENT OF LITIGATION, THIS MORTGAGE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(b) MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE HEREBY CONSENT FOR THEMSELVES AND MORTGAGOR HEREBY CONSENTS IN RESPECT OF ITS PROPERTIES, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY. MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE FURTHER CONSENT, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE IN WHICH ANY OF THE COLLATERAL IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO SUCH COLLATERAL. MORTGAGOR AND MORTGAGEE FURTHER IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH IN SECTION 9.1 OF THE LOAN AGREEMENT IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE HEREBY IRREVOCABLY WAIVE ANY OBJECTION THAT THEY MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF MORTGAGEE TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST MORTGAGOR IN ANY JURISDICTION.

Section 7.11 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify, limit or define, or be used in construing, the scope, intent or text of such Articles, Sections or Subsections.

**Section 7.12 Governing Law.** THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE LAND IS LOCATED. WITH RESPECT TO ANY PERSONAL PROPERTY INCLUDED IN THE "PROPERTY", THE CREATION OF THE SECURITY INTEREST THEREIN SHALL BE GOVERNED BY THE UCC, AND THE PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION AND PRIORITY OF SUCH SECURITY INTEREST SHALL BE GOVERNED IN ACCORDANCE WITH THE MANDATORY CHOICE OF LAW RULES SET FORTH IN THE UCC.

**Section 7.13 General Indemnity; Payment of Expenses.** Section 9.5 of the Loan Agreement is incorporated by this reference, as if fully set forth herein.

**Section 7.14 Entire Agreement.** This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor pertaining to the subject matter hereof and thereof and supersede all prior agreements, understandings, representations or other arrangements, whether express or implied, written or oral, between such parties relating to the subject matter hereof and thereof. This Mortgage and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**Section 7.15 Severability.** If any provision of this Mortgage is invalid or unenforceable, then such provision shall be given full force and effect to the fullest possible extent, and all of the remaining provisions of this Mortgage shall remain in full force and effect and shall be binding on the parties hereto.

**Section 7.16 Variable Rate of Interest.** This Mortgage secures, inter alia, obligations that provide for a variable rate of interest (as described in the Loan Agreement).

**Section 7.17 Lien Absolute.** Mortgagor acknowledges that this Mortgage and a number of other Loan Documents and those documents required by the Loan Documents together secure the Indebtedness. Mortgagor agrees that, to the extent permitted by law, the lien of this Mortgage and all obligations of Mortgagor hereunder shall be absolute and unconditional and shall not in any manner be affected or impaired by:

- (a) any lack of validity or enforceability of the Loan Agreement or any other Loan Document, any agreement with respect to any of the Indebtedness or Obligations or any other agreement or instrument relating to any of the foregoing;
- (b) any acceptance by Mortgagee of any security for or guarantees of any of the Indebtedness;
- (c) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any of the Indebtedness or any of the collateral security therefor, including the Loan Documents, or due to any other circumstance which might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of the Indebtedness and Obligations hereby secured or any collateral security therefor, including the Loan Documents, or due to any other circumstance which might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of

the Indebtedness or Obligations or this Mortgage (other than the indefeasible payment in full in cash of all the Indebtedness and Obligations hereby secured);

(d) any change in the time, manner or place of payment of, or in any other term of, all or any of the Indebtedness or Obligations;

(e) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, nonperfection, renewal, extension, indulgence, alteration, exchange, modification or disposition of any of the Indebtedness or Obligations hereby secured or of any of the collateral security therefor;

(f) any amendment or waiver of or any consent to any departure from the Loan Agreement or any other Loan Documents or of any guaranty thereof, if any, and Mortgagee may in its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Loan Documents without first exercising or enforcing any of its rights and remedies hereunder; and

(g) any exercise of the rights or remedies of Mortgagee hereunder or under any or all of the Loan Documents.

**Section 7.18 Real Estate Taxes.** Mortgagor shall not be entitled to any credit upon the Indebtedness or deduction from the assessed value of the Property by virtue of payment of real estate taxes on the Property. If any law is enacted or adopted or amended after the date of this Mortgage that deducts the Indebtedness from the value of the Property for the purpose of taxation or that imposes a tax, either directly or indirectly, on the Indebtedness or Mortgagee's interest in the Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than 90 days, to declare the Indebtedness immediately due and payable.

**Section 7.19 Incorporation by Reference.** (a) All obligations of Mortgagor under this Mortgage shall be limited by the provisions of Section 8.1 of the Loan Agreement, the provisions of which are incorporated herein by this reference.

(b) The parties hereby acknowledge that the Loan Agreement, among other things, contains restrictions on the prepayment of the Indebtedness, as well as restrictions on the sale, transfer and encumbrance of the Property and the ownership interests of Mortgagor.

**Section 7.20 State Specific Provisions.** The provisions of Exhibit B attached hereto are hereby incorporated by reference as though set forth in full herein.

**Section 7.21 Last Dollars Secured.** The parties agree that any payments or repayments of the Indebtedness shall be and be deemed to be applied first to the portion of the Indebtedness that is not secured hereby, if any, it being the parties' intent that the portion of the Indebtedness last remaining unpaid shall be secured hereby.

**Section 7.22 Mortgage Recording Taxes.** Mortgagor hereby covenants to pay any and all mortgage recording or other taxes or fees due in connection with this Mortgage.

**Section 7.23 Multiple Exercise of Remedies.** To the extent permitted by law, Mortgagor specifically consents and agrees that Mortgagee may exercise rights and remedies hereunder and under the other Loan Documents separately or concurrently and in any order that Mortgagee may deem appropriate.

**Section 7.24 Rules of Construction.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require. All references to sections, schedules and exhibits are to sections, schedules and exhibits in or to this Mortgage unless otherwise specified. Unless otherwise specified: (i) all meanings attributed to defined terms in this Mortgage shall be equally applicable to both the singular and plural forms of the terms so defined, (ii) "including" means "including, but not limited to" and "including, without limitation" and (iii) the words "hereof," "herein," "hereby," "hereunder" and words of similar import when used in this Mortgage shall refer to this Mortgage as a whole and not to any particular provision, article, section or other subdivision of this Mortgage.

**Section 7.25 Counterparts: Facsimile Signatures.** This Mortgage may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Any counterpart delivered by facsimile, pdf or other electronic means shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Mortgage (it being understood that, for the purpose of recording this Mortgage, original counterparts are required).

**Section 7.26 Lease Covenants.**

(a) Mortgagor shall (i) pay or cause to be paid all rents, additional rents and other sums required to be paid by Mortgagor as tenant under and pursuant to the provisions of the Pledged Lease on or before the date on which such rent or other charge is payable, (ii) diligently perform and observe all of the terms, covenants and conditions of the Pledged Lease, as tenant thereunder, to be performed and observed prior to the expiration of any applicable grace period therein provided, (iii) promptly notify Mortgagee of the giving of any notice by the lessor under the Pledged Lease ("Lessor") to Mortgagor of any default by Mortgagor as tenant thereunder, and promptly deliver to Mortgagee a true copy of each such notice except, in the case of clauses (i) through (iii) above, for any such defaults or breaches as would not be reasonably expected to have a Material Adverse Effect.

(b) Mortgagor shall not (i) surrender the leasehold estate created by the Pledged Lease or terminate or cancel the Pledged Lease, (ii) modify, change, supplement, alter or amend the Pledged Lease, in any respect, either orally or in writing, in any manner that materially impairs the collateral value of the leasehold created by the Pledged Lease or in any manner that would be materially adverse to Mortgagee. Mortgagor hereby assigns to Mortgagee, as further security for the payment and performance of the Obligations and observance of the terms, covenants and conditions of this Mortgage, all of the rights, privileges and prerogatives of Mortgagor, as tenant under the Pledged Lease following the occurrence and during the continuance of an Event of

Default, to surrender the leasehold estates created by the Pledged Lease or to terminate, cancel, modify, change, supplement, alter or amend any of the Pledged Lease, and any such surrender of the leasehold estate created by any of the Pledged Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Pledged Lease not permitted pursuant to the foregoing terms of this Section 7.26(b) shall be void and of no force or effect.

(c) If at any time after the occurrence and during the continuance of an Event of Default, Mortgagor shall default in the performance or observance of any term, covenant or condition of the Pledged Lease to be performed or observed by Mortgagor, as tenant thereunder, then, without limiting the generality of the other provisions of this Mortgage, and without waiving or releasing Mortgagor from any of its Obligations, 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 Pledged 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 Pledged 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 thereof. In any such event, upon the occurrence and during the continuance of an Event of Default and subject to the rights of other tenants, subtenants and other occupants under the Leases, Mortgagee and any tenant designated by Mortgagee shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If Lessor shall deliver to Mortgagee a copy of any notice of default sent by Lessor to Mortgagor, as tenant under the Pledged 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.

(d) In the event that Mortgagor shall be the owner and holder of the fee title to any portion of the Land while any portion of the Obligations remains unpaid or unsatisfied, the lien of this Mortgage shall be spread to cover such Person's fee title to such portion of the Land and such fee title shall be deemed to be included in the Property. Mortgagor agrees, at its sole cost and expense, including any reasonable attorneys' fees and disbursements incurred by Mortgagee, to (i) execute or cause to be executed any and all documents or instruments necessary to subject Mortgagor's fee title to the Land to the lien of this Mortgage; and (ii) provide, at Mortgagor's expense, a title insurance policy in form and substance satisfactory to Mortgagee that shall insure that the lien of this Mortgage is a first lien on Mortgagor's or such Person's fee title to the Land.

(e) In the event of the bankruptcy, reorganization or insolvency of Mortgagor, any attempt by Mortgagor to surrender its leasehold estate, or any portion thereof, under the Pledged Lease, or any attempt under such circumstances by Mortgagor to terminate, cancel or acquiesce in the rejection of the Pledged Lease without the consent of Mortgagee shall be null and void. Mortgagor hereby expressly releases, assigns, relinquishes and surrenders unto Mortgagee all of its right, power and authority to terminate, cancel, acquiesce in the rejection of, modify, change, supplement, alter or amend the Pledged Lease in any respect, either orally or in writing, in the event of the bankruptcy, reorganization or insolvency of Mortgagor, and any attempt on the part of Mortgagor to exercise any such right without the consent of Mortgagee shall be null and void. Mortgagor hereby irrevocably appoints Mortgagee as its true and lawful attorney-in-fact, which power of attorney shall be coupled with an interest, for the purpose of exercising its rights

pursuant to Section 365(h) of the Bankruptcy Code or any successor to such Section (i) to obtain for the benefit of Mortgagor or Mortgagee a right to possession or statutory term of years derived from or incident to the Pledged Lease, or (ii) to treat the Pledged Lease as terminated.

(f) Notwithstanding the rejection of the Pledged Lease by Lessor, as debtor in possession, or by a trustee for Lessor, pursuant to Section 365 of the Bankruptcy Code, neither the lien of this Mortgage nor Mortgagee's rights with respect to the Pledged Lease shall be affected or impaired by reason thereof. In the event that Mortgagor shall remain in possession of the Property following a rejection of the Pledged Lease by Lessor, as debtor in possession, or by a trustee for Lessor, Mortgagor agrees that it shall not exercise any right of offset against the rent payable under the Pledged Lease, pursuant to Section 365(h)(2) of the Bankruptcy Code, or otherwise, without the prior consent of Mortgagee thereto.

Mortgagor hereby acknowledges receipt of a true copy of the within Mortgage.

*[No further text on this page; Signature page follows]*

EXECUTED as of the date first above written.

**MORTGAGOR:**

**ICM (VII) CYPRESS LP, a Florida limited  
partnership**

**By: ICM (VI) Florida Management LLC, a  
Florida limited liability company, its General  
Partner**

By: 


Name: Bruce Timm

Title: Manager

ACKNOWLEDGMENT

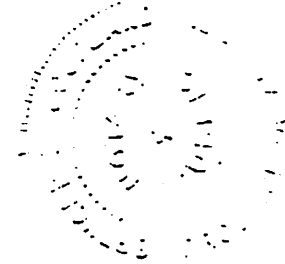
Province Alberta  
STATE OF FLORIDA )  
City Calgary  
COUNTY OF BROWARD )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of April, 2015 by Bruce Timm, as Manager of ICM (VII) Florida Management LLC, a Florida limited liability company, as general partner of ICM (VII) CYPRESS LP, a Florida limited partnership, on behalf of the company and the partnership. He is personally known to me or has produced \_\_\_\_\_ as identification.

Printed Name:   
Notary Public SPENCER M. COUPLAND  
Serial Number (if any): Barrister and Solicitor

My Commission Expires: NA

(NOTARY SEAL)





**EXHIBIT A**

**Legal Description**

**PARCEL A**

Lessee's interest in the Consolidated Lease Agreement between the City of Fort Lauderdale and Bank One, Milwaukee, N.A., a copy of which is recorded at Official Records Book 20581, page 714, being attached as Exhibit B to the Assignment of Ground Lease dated April 19, 1993 and recorded April 22, 1993 in Official Records Book 20581, page 707; as assigned to Gulf Atlantic Investment Group, Inc. by the Assignment and Assumption of Ground Lease recorded March 21, 1994 in Official Records Book 21896, page 665; as affected by the Consent to Assignment of Lease Agreement and Lease Guaranty recorded December 18, 1997 in Official Records Book 27430, page 771, further assigned to Highwoods/Florida Holdings, L.P. by the Assignment and Assumption of Ground Lease recorded December 18, 1997 in Official Records Book 27430, page 780, and modified by the Amendment to Lease Agreement recorded December 18, 1997 in Official Records Book 27430, page 785; as affected by the Consent to Assignment of Lease Agreement recorded June 11, 1999 in Official Records Book 29743, page 1927 and further assigned to ACP Office I LLC by the Assignment and Assumption of Ground Lease recorded June 11, 1999 in Official Records Book 29743, page 1936 further assigned to Cypress Executive Associates LLC by the Assignment and Assumption of Ground Lease recorded March 29, 2006 in Official Records Book 41720, page 133; and further assigned to ICM (VII) Cypress LP, a Florida limited partnership, by the Assignment and Assumption of Ground Lease recorded March 27, 2015 in Official Records Instrument Number 112892331, as affected by Consent to Assignment of Lease Agreement recorded March 27, 2015 in Official Records Instrument Number 112892332, all of the public records of Broward County, Florida, demising the following described land:

Lots 22, 41 and 42 in FORT LAUDERDALE INDUSTRIAL AIRPARK - SECTION 2, according to the plat thereof recorded in Plat Book 63, page 8 of the public records of Broward County, Florida.

Less and except the buildings, structures and other improvements situate on said land.

**PARCEL B**

Ownership of the buildings, structures and other improvements situated on the real property described below for the term of the Consolidated Lease Agreement more particularly described in Parcel A above:

Lots 22, 41 and 42 in FORT LAUDERDALE INDUSTRIAL AIRPARK - SECTION 2, according to the plat thereof recorded in Plat Book 63, page 8 of the public records of Broward County, Florida.

## EXHIBIT B

### Special Provisions for the State of Florida

**Future Advance.** This Mortgage is meant to secure not only the 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 (20) years from the date of this Mortgage to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of the Indebtedness that may be secured by this Mortgage may be increased or decreased from time to time, but the total amount so secured at any one time shall not exceed \$18,400,000.00 plus interest thereon and any disbursements made for the payment of taxes, assessments, governmental charges, levies, insurance premiums or maintenance charges on the Property, the payment of intangible and documentary stamp taxes, interest and/or penalties thereon, the payment of all fees, costs and other expenses incurred by Mortgagee for the enforcement of this Mortgage and protection of the Property, and the payment of recording costs and title insurance costs related to this Mortgage, with interest on such disbursements at the Default Rate. Nothing herein contained shall be deemed an obligation on the part of Mortgagee to make future advances. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, Mortgagor shall not file or record any notice limiting the maximum amount that may be secured by this Mortgage to an amount less than the maximum amount set forth in this Section.

**Assignment of Rents.** The assignments of Rents and Leases contained in this Mortgage are intended to provide Mortgagee with all of the rights and remedies of mortgagees pursuant to Section 697.07 of the Florida Statutes (hereinafter "Section 697.07"), as may be amended from time to time. However, in no event shall this reference diminish, alter, impair, or affect any other rights and remedies of Mortgagee, including but not limited to, the appointment of a receiver, nor shall any provision in this Section diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth herein. In addition, this assignment shall be fully operative without regard to value of the Property or without regard to the adequacy of the Property to serve as security for the obligations owed by Mortgagor to Mortgagee, and shall be in addition to any rights arising under Section 697.07. Further, except for the notices required hereunder, if any, Mortgagor waives any notice of default or demand for turnover of rents by Mortgagee, together with any rights under Section 697.07 to apply to a court to deposit the Rents into the registry of the court or such other depository as the court may designate.

EXHIBIT C

Pledged Lease

Consolidated Lease Agreement by and between The City of Fort Lauderdale, a municipal corporation of the State of Florida, Lessor and Bank One, Milwaukee, N.A., Lessee recorded in Official Records Book 20581, Page 714 through 745 inclusive, and attached to that certain Assignment of Ground Lease dated April 19, 1993, and recorded April 22, 1993, in Official Records Book 20581, Page 707; as assigned to Gulf Atlantic Investment Group, Inc., a Florida corporation by that certain Assignment and Assumption of Ground Lease recorded March 21, 1994, in Official Records Book 21896, Page 665; modified by Consent to Assignment of Lease Agreement and Lease Guaranty among the City of Fort Lauderdale, Lessor, Gulf Atlantic Investment Group, Inc., Assignor, Highwoods/Florida Holdings, LP., Assignee and Highwoods Properties, Inc., Guarantor, dated December 12, 1997, and recorded December 18, 1997, in Official Records Book 27430, Page 771; assigned to Highwoods/Florida Holdings, L.P., a Delaware limited partnership by Assignment and Assumption of Ground Lease recorded December 18, 1997, in Official Records Book 27430, Page 780; and Amendment to Lease Agreement recorded December 18, 1997, in Official Records Book 27430, Page 785, as affected by Consent Of Assignment Of Lease Agreement recorded in Official Records Book 29743, Page 1927, and further assigned to ACP Office I LLC, a Delaware limited liability company by virtue of Assignment And Assumption Of Ground Lease between Highwoods/Florida Holdings, LP. and ACP Office I LLC, a Delaware limited liability company, recorded August 11, 1999 in Official Records Book 29743, Page 1936; and as further assigned to Cypress Executive Associates LLC by the Assignment and Assumption of Ground Lease recorded March 29, 2006 in Official Records Book 41720, page 133; and further assigned to ICM (VII) Cypress LP, a Florida limited partnership, by the Assignment and Assumption of Ground Lease recorded March 27, 2015 in Official Records Instrument Number 112892331, as corrected by Corrective Assignment and Assumption of Ground Lease recorded in Official Record's Instrument Number 112917621, as affected by Consent to Assignment of Lease Agreement recorded March 27, 2015 in Official Records Instrument Number 112892332, all of the Public Records of Broward County, Florida.



I hereby certify this document to be a true, correct and complete copy of the record filed in my office. Dated this 20 day of May, 2015  
County Administrator  
By *[Signature]* Deputy Clerk