

Recorded: 10/21/2024 at 1:04:08.0 PM  
County Recording Fee: \$137.00  
Iowa E-Filing Fee: \$3.00  
Combined Fee: \$140.00  
Revenue Tax: \$0.00  
Delaware County, Iowa  
Daneen Schindler RECORDER  
BK: 2024 PG: 2659

**RECORD AND RETURN:**  
National UCC, Inc.  
450 Lexington Avenue, #392  
New York, NY 10163-0392  
www.NationalUCC.com  
File No.: 17251

**PREPARED BY AND UPON  
RECORDATION RETURN TO:**  
Katten Muchin Rosenman LLP  
50 Rockefeller Plaza  
New York, New York 10020  
Attention: Peter Doyle, Esq.

TO BE RECORDED IN THE  
MORTGAGE RECORDS OF  
DELAWARE COUNTY, IOWA

**COLLATERAL IS OR INCLUDES FIXTURES**

STATE OF IOWA                                   §  
  §  
COUNTY OF DELAWARE                   §

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

This Mortgage, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing (as amended from time to time, this "Security Instrument") is made, and is effective as of October 9, 2024, by **AGNL BLIZZARD, L.L.C.**, a Delaware limited liability company (together with its permitted successors and permitted assigns, "Borrower"), whose address for all purposes hereunder is c/o TPG Angelo Gordon, 245 Park Avenue, 24th Floor, New York, New York 10167, for the benefit of **BANK OF MONTREAL**, a Canadian Chartered bank acting through its Chicago Branch (together with its successors and assigns, "Lender"), whose address for all purposes hereunder is c/o BMO Capital Markets Corp., 151 West 42nd Street, New York, New York 10036. For all state law, statutory and other purposes hereunder, (i) the term "Borrower" as used herein shall be deemed to mean a mortgagor of the Property as described herein the same as if the term "mortgagor" were used in lieu of the term "Borrower" throughout this Security Instrument, and (ii) the term "Lender" as used herein shall be

deemed to mean a mortgagee of this Security Instrument with respect to the Property with all of the rights conferred hereby the same as if the term “mortgagee” were used in lieu of the term “Lender” throughout this Security Instrument.

## 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 Borrower under, or secured by, the Loan Documents.

“Loan Agreement”: That certain Loan Agreement, dated as of the date hereof, by and between Lender, as lender, and Borrower, as borrower, as the same may be replaced, amended, supplemented, extended or otherwise modified from time to time in accordance with its terms.

“Loan Documents”: (1) the Loan Agreement, (2) that certain Promissory Note, dated as of the date hereof, executed by Borrower pursuant to the Loan Agreement, in the original principal amount of \$42,097,500.00 (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 in accordance with their terms, the “Note” or “Notes”, as applicable), (3) this Security Instrument, (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 in accordance with their respective terms.

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

“Property”: All of the following, or any interest therein (whether now owned or hereafter acquired):

(1) all right, title and interest of Borrower in and to the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Borrower (the “Land”),

(2) all right, title and interest of Borrower in and to buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the “Improvements”),

(3) all right, title and interest of Borrower in and to 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 Borrower 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"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that Borrower shall have any ownership interest or other right therein (but specifically limited to Borrower's ownership interest or right therein),

(4) all right, title and interest of Borrower in and to all goods, accounts, general intangibles, instruments, documents, books and records, 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 Borrower 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 (subject to the disposition thereof in accordance with the terms of the Loan Documents), condemnation awards, accounts, contract rights, causes of action, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Borrower 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 Borrower 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 Borrower with respect to the Land and/or Improvements,

(6) to the extent assignable, all right, title and interest of Borrower in and to 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 Borrower hereunder and under the Loan Agreement, Borrower's right, title and interest in and to 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) which 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 delivered pursuant thereto (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Leases"),

(8) all right, title and interest of Borrower in and to 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 Borrower 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) to the extent assignable, all right, title and interest of Borrower in and to 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 Borrower 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 Borrower or, to the extent Borrower may grant a security interest therein pursuant to applicable law, any of its affiliates or the seller of the Property have remaining rights or obligations in respect of Borrower'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 Borrower to receive

monies due and to become due under or pursuant to the Property Agreements, (e) all claims of Borrower for damages arising out of or for breach of or default under the Property Agreements, (f) all rights of Borrower 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 right, title and interest of Borrower in and to 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 Borrower in and to any streets, ways, alleys, underground vaults, passages, strips or gores of land adjoining the Land or any part thereof,

(11) all accessions, replacements, renewals, additions and substitutions for any of the foregoing and all proceeds thereof,

(12) subject to the rights of Borrower hereunder or under the Loan Agreement, all insurance policies, unearned premiums therefor and proceeds from such policies received by or on behalf of Borrower, 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 Borrower,

(13) all right, title and interest of Borrower in and to 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,

(14) to the extent set forth in the Loan Agreement, all of Borrower's right, title and interest in and to 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, and

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

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

Notwithstanding the foregoing to the contrary, with respect to the security interest granted herein pursuant to this Section, Lender and Borrower acknowledge that any such awards, proceeds, funds, or other credits received related to such matters shall be held, maintained and disbursed in

accordance with the express terms and conditions set forth in the Loan Agreement and the other Loan Documents. Notwithstanding the foregoing, the Property described in subparagraphs (1) – (15) above shall not include any property belonging to any Tenants under Leases except to the extent that Borrower shall have any ownership interest or other right therein (but specifically limited to Borrower's ownership interest or right therein).

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, and subject to the terms hereof, the other Loan Documents and any tenants-in-possession pursuant to the terms and provisions of the applicable Leases (in each case, but only to the extent such Leases have not been subordinated to the lien of this Security Instrument) for so long as the Obligations remain outstanding. Borrower HAS MORTGAGED and WARRANTED, and does hereby MORTGAGE and WARRANT to Lender, the Property, and Borrower does hereby bind itself, its heirs, successors and assigns to WARRANT AND FOREVER DEFEND (i) the title to the Property unto Lender and its heirs, successors and assigns, subject only to Permitted Encumbrances and (ii) the validity and priority of the Liens of this Security Instrument, 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, Lender may, at Lender'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 Borrower 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 Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender, to the extent not prohibited by law and to the extent in accordance with the Loan Agreement and the other Loan Documents:

(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 Borrower (except as provided in the Loan Agreement)), whereupon the same shall become immediately due and payable.

(b) Entry on Property. To the fullest extent permitted by applicable law, but subject to the rights of Tenants under Leases, enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Borrower remains in possession of the Property after the occurrence and during the continuance of an Event of Default and without Lender's prior written consent, Lender may invoke any legal remedies to dispossess Borrower.

(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 Lender may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Lender deems reasonably necessary or desirable), exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower 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 Lender in connection therewith in accordance with the provisions of Section 3.7 hereof.

(d) Foreclosure and Sale.

(i) Institute proceedings for the complete foreclosure of this Security Instrument, by judicial action or otherwise as permitted by applicable law, 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 foreclosure.

(ii) With respect to any notices required or permitted under the UCC, Borrower agrees that ten (10) Business Days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse available by applicable law, 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, Borrower 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 Borrower, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Borrower. Lender may be a purchaser at such sale and if Lender is the highest bidder, may credit the portion of the purchase price that would be distributed to Lender against the Indebtedness in lieu of paying cash.

(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 Borrower or anyone claiming under Borrower or regard to the value of the Property or the solvency or insolvency of Borrower or the adequacy of any collateral for the repayment of the Indebtedness or the interest of Borrower therein, the appointment of a receiver or receivers of the Property, and Borrower 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 explicitly 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 Security Instrument).

Section 3.2 Separate Sales. During the continuance of an Event of Default, the Property may be sold in one or more parcels and in such manner and order as Lender 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. During the continuance of an Event of Default, Lender 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 Borrower, or against the Property, or against any one or more of them, at the sole and good faith discretion of Lender, (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 Lender 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 unless Lender has otherwise specified in writing to Borrower in accordance with the Loan Documents that such action shall be deemed to cure such Event of Default.

Section 3.4 Release of and Resort to Collateral. During the continuance of an Event of Default, Lender 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, Lender may resort to any other security in such order and manner as Lender may elect.

Section 3.5 Waiver of Redemption, Notice and Marshaling of Assets. To the fullest extent permitted by applicable law, Borrower hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Borrower 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 appraisal, 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 Lender 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, then Lender shall have the unqualified right to do so and, in such an event, Borrower and Lender 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 Lender 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 Lender thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 3.7 Application of Proceeds. During the continuance of an Event of Default, 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 Lender (or the receiver, if one is appointed for the Property, pursuant to the terms hereof) in the following order or in such other order as Lender shall determine in its sole discretion:

(a) to the payment of the actually incurred third-party out-of-pocket reasonable costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including actually incurred third-party out-of-pocket (1) receiver's fees and expenses, (2) court costs, (3) reasonable out-of-pocket attorneys', accountants', appraisers', environmental consultants', engineers' and other experts' fees and expenses, (4) costs of advertisement, (5) costs of procuring title searches and title policies, (6) the payment of all applicable transfer taxes and mortgage recording taxes, and (7) the payment of all 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 Lender in its sole discretion may determine; and

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

If Lender shall be ordered, in connection with any bankruptcy, insolvency or reorganization of Borrower, to restore or repay to or for the account of Borrower 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 Lender in the same position it would have been in had such amount never been received by Lender.

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 is continuing, Lender shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Borrower. All sums actually advanced and expenses actually incurred at any time by Lender under this Section 3.9, or otherwise under this Security Instrument or any of the other Loan Documents or applicable law and subject to reimbursement by Borrower in accordance with the Loan Documents, shall be due and payable to Lender within ten (10) Business Days following written demand by Lender, and shall bear interest from the period beginning on the first day after the expiration of such ten (10) Business Day period until 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 Security Instrument and Borrower covenants and agrees to pay them to the order of Lender promptly upon demand.

Section 3.10 No Lender 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 Lender under the Loan Documents, at law or in equity shall cause Lender to be deemed or construed to be a mortgagee in possession of the Property, to obligate Lender 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. Borrower shall, and hereby agrees to indemnify Lender for, and to hold Lender harmless from and against, any and all claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Lender, as the case may be, solely by reason of Lender's status as an assignee pursuant to the assignment of Rents and Leases contained in Article 4, but excluding any claim to the extent caused by Lender's gross negligence, fraud, illegal acts or willful misconduct, as well as excluding any claim relating to any acts or omissions first occurring (i) after the appointment of a receiver, (ii) after Lender, Trustee or any third party has taken possession and control of the Property, or (iii) after the occurrence of a foreclosure sale or Borrower's tender of a deed in lieu of foreclosure. Should Lender incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable out-of-pocket fees of third-party attorneys, shall constitute Indebtedness secured hereby, and Borrower shall reimburse Lender, as the case may be, therefor immediately upon demand.

#### ARTICLE 4

##### ASSIGNMENT OF RENTS AND LEASES

Section 4.1 Assignment. Borrower does hereby presently, absolutely and unconditionally assign to Lender, Borrower'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 Borrower that this assignment constitutes a present, outright, immediate, continuing and absolute assignment and not an assignment for additional security only. Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Lender. Lender 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, except to the extent of Lender's gross negligence, fraud, illegal acts or willful misconduct or after Lender has taken possession and control of the Property. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter be reasonably requested in writing by Lender to further evidence and confirm such assignment.

Section 4.2 License. Notwithstanding that Borrower hereby presently grants to Lender 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, Lender hereby grants to Borrower 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 Borrower shall immediately and automatically cease and terminate and shall be void and of no further force or effect, (ii) Lender shall immediately be entitled to possession of all Rents (whether or not Lender enters upon or takes control of the Property) and (iii) at the written request of Lender, Borrower shall notify in writing all tenants and subtenants under any of the Leases that all Rent due thereunder should be paid to Lender at its address set forth in the Loan Agreement, or at such other place as Lender shall notify Borrower in writing; provided that, if such Event of Default ceases to exist, the license described in the foregoing clause (i) shall automatically be reinstated and provided that any possession of Rents by Lender prior to the reinstatement of such license shall otherwise be in accordance with the Loan Agreement. Notwithstanding said license, Borrower agrees that Lender, and not Borrower, 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 Lender, 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 Borrower shall be held in trust for the benefit of Lender for use in the payment of the Indebtedness.

Section 4.3 Certain Rights of Lender. Subject to the revocable license granted above, upon the occurrence and during the continuance of an Event of Default, Lender 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 Borrower or Lender, in addition to and without limiting any of Lender'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 Lender and that all Rents are to be paid directly to Lender, whether or not Lender 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, 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 Security Instrument 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 Borrower under the Leases and exercise any and all rights of Borrower therein contained to the full extent of Borrower's rights and obligations thereunder.

Section 4.4 Irrevocable Instructions to Tenants. At Lender's written request, during the continuance of an Event of Default, Borrower shall deliver a copy of this Security Instrument to each tenant under a Lease and to each manager and managing agent or operator of the Property. Borrower irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Borrower, to comply with all demands of Lender under this Article 4 and to turn over to Lender on demand all Rents which it receives. Borrower hereby acknowledges and agrees that payment of any Rents by a person to Lender as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such Rents had been paid to Borrower. Lender is hereby granted and assigned by Borrower 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 Lender under the Loan Documents, at law or in equity shall cause Lender to be deemed or construed to be a mortgagee in possession of the Property, to obligate Lender 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. Borrower shall, and hereby agrees to indemnify Lender for, and to hold Lender harmless from and against, any and all claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Lender solely by reason of Lender's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent caused by Lender's gross negligence, fraud, illegal acts or willful misconduct, as well as excluding any claim relating to any acts or omissions first occurring (i) after the appointment of a receiver, (ii) after Lender, Trustee or any third party has taken possession and control of the Property, or (iii) after the occurrence of a foreclosure sale or Borrower's tender of a deed in lieu of foreclosure. Should Lender incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable out-of-pocket fees of third-party attorneys,

shall constitute Indebtedness secured hereby, and Borrower shall reimburse Lender therefor within ten (10) Business Days after demand.

Section 4.5 Unilateral Subordination. Lender may, at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Security Instrument to any Lease, without joinder or consent of, or notice to, Borrower, 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 Security Instrument to any Lease.

## ARTICLE 5

### COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS

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

Section 5.2 Retained Rights of Borrower. 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 be continuing, Borrower 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 Borrower 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 Borrower described in this Section 5.2 shall immediately and automatically cease and terminate and shall be void and of no further force or effect, provided that, if such Event of Default is affirmatively waived by Lender in writing, the right of Borrower described in this Section 5.2 shall be automatically reinstated. Upon the occurrence and during the continuance of an Event of Default, any amounts held by Borrower as a party to the Property Agreements shall be held in trust for the benefit of Lender for use in the payment of the Indebtedness.

Section 5.3 Exercise of Assigned Rights. Borrower hereby irrevocably directs the grantor or licensor of, or the contracting party to, any Property Agreement, upon demand from

Lender, to recognize and accept Lender as the party to such Property Agreement for any and all purposes as fully as it would recognize and accept Borrower and the performance of Borrower thereunder; provided, that Lender hereby covenants to Borrower 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 Borrower's sole cost and expense, Lender shall be entitled to exercise all rights of Borrower arising under the Property Agreements. Borrower hereby acknowledges and agrees that payment of any amounts owing under any Property Agreement by a person to Lender as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such amounts had been paid to Borrower. 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 Lender's written request, during the continuance of an Event of Default, Borrower shall deliver a copy of this Security Instrument to each grantor or licensor of or the contracting party to a Property Agreement.

Section 5.4 Indemnity. Borrower shall, and hereby agrees to indemnify Lender for, and to hold Lender harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by Lender solely by reason of Lender's status as an assignee pursuant to the collateral assignment of Property Agreements contained herein, but excluding any claim to the extent caused by Lender's gross negligence, fraud, illegal acts or willful misconduct as well as excluding any claim relating to any acts or omissions first occurring (i) after the appointment of a receiver, (ii) after Lender or any third party has taken possession and control of the Property, or (iii) after the occurrence of a foreclosure sale or Borrower tenders a deed in lieu of foreclosure. Should Lender incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable out-of-pocket legal fees of third-party attorneys, shall constitute Indebtedness secured hereby, and Borrower shall reimburse Lender therefor within ten (10) Business Days after demand.

Section 5.5 Property Agreement Covenants.

(a) Borrower shall perform and observe, in all material respects, in a timely manner, all of the covenants, conditions, obligations and agreements required to be performed or observed by Borrower 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 is reasonably expected to have a Material Adverse Effect.

(b) Borrower 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 is reasonably expected to have a Material Adverse Effect.

(c) Borrower 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 is reasonably expected to have a Material Adverse Effect.

## ARTICLE 6

### SECURITY AGREEMENT

Section 6.1 Security Interest. This Security Instrument 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 Borrower in the Property. Borrower, by executing and delivering this Security Instrument, hereby grants to Lender, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Lender shall have all the rights and remedies of a secured party within the meaning of the UCC with respect to such property including, without limiting the generality of the foregoing, the right during the continuance of an Event of Default to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. During the continuance of an Event of Default, upon written request or written demand of Lender, Borrower shall at its expense assemble the Collateral and make it available to Lender at the Property. Borrower shall pay to Lender within ten (10) Business Days of written demand any and all actual out-of-pocket expenses, including actual reasonable out-of-pocket third-party attorneys' fees and legal expenses, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. During the continuance of an Event of Default, notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, shall, except as otherwise required by law, be applied by Lender in accordance with Section 3.7 hereof.

Section 6.2 Further Assurances. Upon Lender's written request and at Lender's expense (except during an Event of Default, in which case Borrower's expenses in compliance with the provisions of this Section 6.2 shall be at Borrower's expense), Borrower shall execute and deliver to Lender and/or file, in form and substance reasonably satisfactory to Lender, such further statements, documents and agreements, financing statements, continuation statements, and such further assurances and instruments, and do such further acts, as Lender may, from time to time, reasonably consider necessary, desirable or proper to create, perfect and preserve Lender's security interest hereunder and to carry out more effectively the purposes of this Security Instrument, and Lender 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 Borrower from those provided for in the Loan Documents. Borrower hereby irrevocably authorizes Lender, at Lender's expense (except during an Event of Default, in which case Borrower's expenses in compliance with the provisions of this Section 6.2 shall be at Borrower's expense), at any time and from time to time to prepare, file of record in any Uniform Commercial Code jurisdiction or otherwise effectuate new financing statements or financing statement amendments which (a) indicate the Collateral (i) as all assets of Borrower or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of any applicable Uniform Commercial Code, or (ii) by any other description which reasonably approximates the description contained in this Security Instrument, and (b) provide any other information required by part 5 of Article 9 of any applicable Uniform Commercial Code, for the sufficiency or filing office acceptance of any financing statement or amendment. As of the date hereof, Borrower's chief executive office and principal place of business is at the address set forth in the first paragraph of this Security Instrument, and Borrower shall promptly notify Lender of any change in such address in accordance with the Loan Agreement.

Section 6.3 Fixture Filing. This Security Instrument shall also constitute a "fixture filing" for the purposes of the UCC upon all of the Property that 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 (Borrower) and Secured Party (Lender) as set forth in the first paragraph of this Security Instrument.

## ARTICLE 7

### MISCELLANEOUS

Section 7.1 Notices. Any notice required or permitted to be given under this Security Instrument 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, subject to all applicable notice, grace and/or cure periods expressly set forth in the Loan Agreement, if any. 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 Lender.

Section 7.3 Attorney-in-Fact. Borrower hereby irrevocably appoints Lender 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 Lender deems appropriate to protect Lender's interest, if Borrower shall fail to do so within ten (10) Business



Days after written request by Lender, (b) upon the issuance of a deed or assignment of lease pursuant to the foreclosure of this Security Instrument 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 Lender's security interests and rights in or to any of the Collateral, and (d) while any Event of Default is continuing, to perform any obligation of Borrower hereunder; however: (1) Lender shall not under any circumstances be obligated to perform any obligation of Borrower prior to Lender having taken possession and control of the Property; (2) any sums advanced by Lender in such performance shall be included in the Indebtedness and shall bear interest at the Default Rate; (3) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; and (4) Lender shall not be liable to Borrower or any other person or entity for any failure to take any action that it is empowered to take under this Section 7.3.

Section 7.4 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Lender and Borrower and their respective successors and assigns.

Section 7.5 No Waiver. Any failure by Lender 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 Lender shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 Intentionally Omitted.

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

Section 7.8 Release. Upon payment in full of the Indebtedness and performance in full of all of the outstanding Obligations or the Defeasance in full of the Loan, the estate hereby granted shall cease, terminate and be void and Lender, at Borrower's reasonable expense, shall release the liens and security interests created by this Security Instrument or assign this Security Instrument, in each case in accordance with the Loan Agreement.

Section 7.9 Waiver of Stay, Moratorium and Similar Rights. Borrower 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 Security Instrument or the indebtedness secured hereby, or any agreement between Borrower and Lender or any rights or remedies of Lender.

Section 7.10 Waiver of Jury Trial; Consent to Jurisdiction.

(a) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, BORROWER AND, BY ITS ACCEPTANCE HEREOF, LENDER 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 SECURITY INSTRUMENT, 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 SECURITY INSTRUMENT. 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. BORROWER AND, BY ITS ACCEPTANCE HEREOF, LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS SECURITY INSTRUMENT. BORROWER AND, BY ITS ACCEPTANCE HEREOF, LENDER FURTHER WARRANT AND REPRESENT THAT THEY HAVE REVIEWED THIS WAIVER WITH THEIR RESPECTIVE LEGAL COUNSEL, AND THAT THEY KNOWINGLY AND VOLUNTARILY WAIVE THEIR 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 SECURITY INSTRUMENT, OR ANY OTHER LOAN DOCUMENTS OR AGREEMENTS RELATING TO THIS SECURITY INSTRUMENT. IN THE EVENT OF LITIGATION, THIS SECURITY INSTRUMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(b) BORROWER AND, BY ITS ACCEPTANCE HEREOF, LENDER HEREBY CONSENT FOR THEMSELVES AND BORROWER 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. BORROWER AND, BY ITS ACCEPTANCE HEREOF, LENDER 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. BORROWER AND LENDER 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 8.4 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, BORROWER AND, BY ITS ACCEPTANCE HEREOF, LENDER 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 LENDER TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER 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. THE PROVISIONS OF THIS SECURITY INSTRUMENT REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS SECURITY INSTRUMENT, ANY CLAIM OR CONTROVERSY ARISING OUT OF THE SUBJECT MATTER HEREOF WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE, AND THE RIGHTS AND OBLIGATIONS OF BORROWER AND LENDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF, TO THE EXTENT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY, AND FURTHER, NOTWITHSTANDING THE FOREGOING, WITH RESPECT TO ANY PERSONAL PROPERTY INCLUDED IN THE "PROPERTY", THE CREATION OF THE SECURITY INTEREST THEREIN SHALL BE GOVERNED BY THE UNIFORM COMMERCIAL CODE IN EFFECT IN THE STATE OF NEW YORK FROM TIME TO TIME 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 UNIFORM COMMERCIAL CODE IN EFFECT IN THE STATE OF NEW YORK FROM TIME TO TIME.

Section 7.13 Hold Harmless. Borrower shall and does hereby agree to defend, indemnify and hold harmless Lender from and against any and all claims, losses, expenses, damages and liabilities (including, without limitation, all reasonable out-of-pocket fees and expenses of third-party attorneys) which may arise or be incurred or accrue in connection herewith or in connection with an obligation of Borrower hereunder with respect to the Property, except, in each case, to the extent incurred as a result of the gross negligence, illegal acts or willful misconduct of Lender. Should Lender incur any such claim, loss, expense, damage or liability, the amount thereof,

including all reasonable expenses and reasonable out-of-pocket fees of third-party attorneys and actually incurred third-party out-of-pocket reasonable costs and expenses associated with actions taken by Lender in defense thereof, or otherwise in protecting its interests hereunder, shall constitute additions to the Indebtedness and shall be secured hereby, and Borrower covenants and agrees to reimburse Lender promptly upon demand. Borrower shall reimburse Lender for any actual losses, actual costs, actual damages and reasonable expenses (including reasonable out-of-pocket fees of third-party attorneys' and court costs) incurred by Lender if an interest in the Property, other than as permitted under the Loan Documents, is claimed by another Person.

Section 7.14 Entire Agreement. This Security Instrument and the other Loan Documents embody the entire agreement and understanding between Lender and Borrower 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 Security Instrument 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 Security Instrument 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 Security Instrument shall remain in full force and effect and shall be binding on the parties hereto.

Section 7.16 Release. Upon repayment in full of the Indebtedness, Lender shall release the lien of this Security Instrument from the Property in accordance with Section 1.5 of the Loan Agreement (and Lender shall, at no cost and expense to Lender, effect a full and proper termination, release and reconveyance on the date of such repayment in full of the Indebtedness).

Section 7.17 Lien Absolute. Borrower acknowledges that this Security Instrument and a number of other Loan Documents and those documents required by the Loan Documents together secure the Indebtedness. Borrower agrees that, to the extent permitted by law, the lien of this Security Instrument and all obligations of Borrower 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 Lender of any security for or guarantees of any of the Indebtedness;

(c) any failure, neglect or omission on the part of Lender 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, Borrower in respect of the Indebtedness and Obligations hereby secured or

any collateral security therefor, including the Loan Documents, or due to any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower in respect of the Indebtedness or Obligations or this Security Instrument (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 Lender may in its discretion foreclose 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 Lender hereunder or under any or all of the Loan Documents.

**Section 7.18 Real Estate Taxes.** Borrower 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 Security Instrument 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 Lender's interest in the Property, Borrower will pay such tax, with interest and penalties thereon, if any, in accordance with the terms and conditions of the Loan Agreement. In the event that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than 150 days, to declare the Indebtedness immediately due and payable without any prepayment penalty or premium in connection therewith.

**Section 7.19 Incorporation by Reference.**

(a) All obligations of Borrower under this Security Instrument shall be limited by the provisions of Section 8.19 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 Borrower.

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 by Borrower 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. Borrower hereby covenants to pay any and all mortgage recording or other taxes or fees due in connection with this Security Instrument.

Section 7.23 Multiple Exercise of Remedies. To the extent permitted by law, Borrower specifically consents and agrees that Lender may exercise rights and remedies hereunder and under the other Loan Documents separately or concurrently and in any order that Lender 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 Security Instrument unless otherwise specified. Unless otherwise specified: (i) all meanings attributed to defined terms in this Security Instrument 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 Security Instrument shall refer to this Security Instrument as a whole and not to any particular provision, article, section or other subdivision of this Security Instrument.

Section 7.25 Counterparts; Facsimile Signatures. This Security Instrument 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 Security Instrument.

Section 7.26 Damages. Notwithstanding anything to the contrary set forth herein, or in any of the other Loan Documents, Borrower shall not be liable for any punitive, exemplary, special, consequential or loss of profit damages under any provision of this Security Instrument that would otherwise impose liability on Borrower for such damages except to the extent that any such damages are payable by Lender to a third party. Any damages attributable to diminution in value of the Property shall not exceed the lesser of (a) the actual diminution in the value of the Property and (b) the loss suffered by Lender upon the enforcement of the Loan and disposition of the Property attributable to such actual diminution in the value and shall be payable to the extent such diminution or reduction results in damages to Lender as a result of its inability to recover the then-outstanding Indebtedness upon the disposing of the Property in connection with the

enforcement of the Loan by Lender. No damages shall be deemed to have occurred for diminution in value upon Lender selling the Loan for less than the then-outstanding Indebtedness.

Section 7.27 Cross-Collateralization. Borrower acknowledges that the Indebtedness is secured by this Security Instrument together with the Other Security Instrument (as hereinafter defined), together with the other Loan Documents securing or evidencing the Debt, and encumbering the other individual Property, all as more specifically set forth in the Loan Agreement. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right to institute a proceeding or proceedings for the foreclosure of this Security Instrument and/or the Other Security Instrument, whether by court action or otherwise, under any applicable provision of law, for all of the Indebtedness or the portion of the Indebtedness allocated to the Property in the Loan Agreement (or, as applicable, the individual Property), and the lien and the security interest created by the Other Security Instrument shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Indebtedness then due and payable but still outstanding. Borrower acknowledges and agrees that the Property and the other individual Property are located in one or more cities, counties and/or jurisdictions, and therefore Lender shall be permitted to enforce payment of the Indebtedness and the performance of any term, covenant or condition of the Note, this Security Instrument, the Loan Documents or the Other Security Instrument and exercise any and all rights and remedies under the Note, this Security Instrument, the other Loan Documents or the Other Security Instrument, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Lender, in its sole discretion, in any one or more of the cities or counties in which the Property or any other individual Property is located. Neither the acceptance of this Security Instrument, the other Loan Documents or the Other Security Instrument nor the enforcement thereof in any one city or county, whether by court action, foreclosure, or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, or otherwise, of the Note, this Security Instrument, the other Loan Documents, or any Other Security Instrument through one or more additional proceedings in that city or county or in any other city or county. Upon the occurrence and during the continuance of an Event of Default, any and all sums received by Lender under the Note, this Security Instrument, and the other Loan Documents shall be applied to the Indebtedness in such order and priority as Lender shall determine, in its sole discretion, without regard to the Allocated Loan Amount (as defined in the Loan Agreement) for the Property or the other individual Property or the appraised value of the Property or the other individual Property. As used herein, the term "Other Security Instrument" shall mean, collectively, those certain other first priority mortgages and deeds of trust dated as of the date hereof, executed and delivered by Borrower in favor of Lender in connection with the Loan and covering the individual Property therein described.

Borrower hereby acknowledges receipt of a true copy of the within Security Instrument.

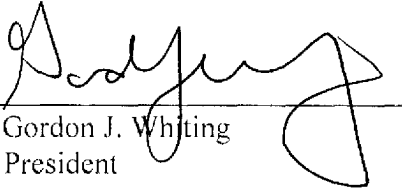
[Remainder of page intentionally left blank. Signature page follows.]

Executed and delivered as of the date first hereinabove set forth.

**BORROWER:**

**AGNL BLIZZARD, L.L.C.,**  
a Delaware limited liability company

By: AGNL Manager V, Inc.,  
a Delaware corporation,  
its manager

By:   
Name: Gordon J. Whiting  
Title: President

STATE OF NEW YORK

§  
§  
§

COUNTY OF NEW YORK

On the 7 day of October in the year 2024 before me, the undersigned, personally appeared Gordon J. Whiting, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

(Affix Stamp or Seal)

**Pierce L. Cote**  
Notary Public, State of New York  
Reg. No. 01CO0013149  
Qualified in New York County  
Commission Expires September 6, 2027



## **EXHIBIT A**

### **Legal Description**

#### **Parcel 1:**

Parcel P in the Southwest Quarter of the Southeast Quarter of Section 32, Township 89 North, Range 5 West of the 5<sup>th</sup> Principal Meridian, City of Manchester, Delaware County, Iowa, according to plat filed in Book 2004, Page 4504, being a part of Lots 12 and 13 of the Subdivision of the East Three-Fourths of the South One-Half of said Section 32.

#### **Parcel 2:**

Lot 2 of Lot 13 of the Subdivision of the East Three-Fourths of the South One-Half of Section 32, Township 89 North, Range 5 West of the Fifth Principal Meridian, Delaware County, Iowa, according to the plat filed in Book 2 Plats, Page 96 1/2 in the Office of the Recorder, Delaware County, Iowa; except that portion deeded to the City of Manchester by Quit Claim Deed filed in Book 125 of LD, Page 322 in the Office of the Recorder, Delaware County, Iowa; and further excepting that portion deeded to the State of Iowa filed in Book 91 of LD, Page 403 in the Office of the Recorder, Delaware County, Iowa.

## EXHIBIT B

### Special Provisions for the State of Iowa

THIS EXHIBIT B is attached to and made a part of that certain Mortgage, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing dated as of October 9, 2024 (the "Security Instrument"), executed and delivered by AGNL BLIZZARD, L.L.C., a Delaware limited liability company, mortgagor for all purposes hereunder (together with its permitted successors and permitted assigns, "Borrower"), for the benefit of BANK OF MONTREAL, a Canadian Chartered bank acting through its Chicago Branch, mortgagee for all purposes hereunder (together with its successors and assigns, "Lender"). This Exhibit B is hereby incorporated by reference into and made a part of the Security Instrument as if fully set forth therein. All provisions and terms of the Security Instrument not otherwise amended or modified herein shall remain in full force and effect, and all definitions contained in the Security Instrument shall have the same meanings for purposes of this Exhibit B, except as otherwise specifically defined or modified hereby.

1. Principles of Construction. In the event of any inconsistencies between the terms and provisions of this Exhibit B and the terms and provision of the other Sections and Articles of the Security Instrument, the terms and provisions of this Exhibit B shall govern and control.

2. Redemption. It is agreed that if this Security Instrument covers less than ten (10) acres of land, and in the event of the foreclosure of this Security Instrument and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statues of the State of Iowa shall be reduced to six (6) months, or reduced to three (3) months if the property is not used for an agricultural purpose as defined in Section 535.13, provided the Lender, in such action files an election to waive any deficiency judgment against Borrower which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first two (2) months after sale such right of redemption shall be exclusive to the Borrower, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to three (3) months. It is further agreed that the period of redemption after a foreclosure of this Security Instrument shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) The real estate is less than ten (10) acres in size; (2) the Court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this Security Instrument at the time of such foreclosure; and (3) Lender in such action files an election to waive any deficiency judgment against Borrower or their successors in interest in such action. If the redemption period is so reduced, Borrower or their successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Borrower shall be a presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code.

This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

3. Security Agreement. For purposes of the Security Agreement which is part of this instrument, the Lender is the secured party and the Borrower is the debtor. The addresses shown on the first page hereof are the addresses at which each may be contacted. The address for the Lender is the address from which information concerning the security interest may be obtained.

4. Copy. The Borrower hereby acknowledges the receipt of a copy of this Security Instrument, together with a copy of each promissory note secured hereby, and all other documents executed by the Borrower in connection herewith.

5. Business Purpose. Borrower warrants that the Property is not used for agricultural purposes as defined in Iowa Code §535.13 and that the Property is not agricultural land as defined in Iowa Code §9h.1. Further, the Borrower warrants that the Property is not a one-family or two-family dwelling and that the Indebtedness secured by this Security Instrument does not constitute a consumer credit transaction as defined in Iowa Code §537.1301(12).

6. Nonjudicial Foreclosure. The Lender may at its option elect to foreclose this Security Instrument by nonjudicial procedures allowed by Iowa law.

7. Surrender of Note. In the event of foreclosure of this Security Instrument, the Borrower hereby agrees that a court may, and request the court to, enter a special order directing the clerk of court to enter and record the judgment contained in the foreclosure decree on the Note secured by the Security Instrument without requiring that the Note be first filed with the clerk of court for cancellation. Borrower further agrees, because the Note secured by this Security Instrument is also secured by other collateral and will be necessary and any realization upon such collateral, that notwithstanding Iowa Rule of Civil Procedure 1.961, as presently enacted or as hereinafter amended or replaced, the clerk of court may, in the event of foreclosure of this Security Instrument, enter and record the judgment contained in the foreclosure decree on the Note secured by this Security Instrument without the requirement that the Note be first filed with the clerk of court for cancellation.

8. Non-Statutory Liens. The Borrower hereby represents, warrants and agrees that the liens and security interest granted hereby are not the type of lien referred to in Chapter 575 of the Iowa Code, as now enacted or hereafter modified, amended, or replaced. The Borrower, for itself and all persons claiming by, through or under the Borrower, agrees that it claims no lien or right to a lien of the type contemplated by Chapter 575 or any other chapter of the Iowa Code and further waives all notices and rights pursuant to said law with respect to the liens and security interests hereby granted, and represents and warrants that it is the sole party entitled to do so and agrees to indemnify and hold harmless the Lender from any loss, damage and cost, including attorney's fees, threatened or suffered by the Lender arising either directly or indirectly as a result of any claim of the applicability of said law to the liens and security interest hereby granted.

[NO FURTHER TEXT ON THIS PAGE]