

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2017 070346

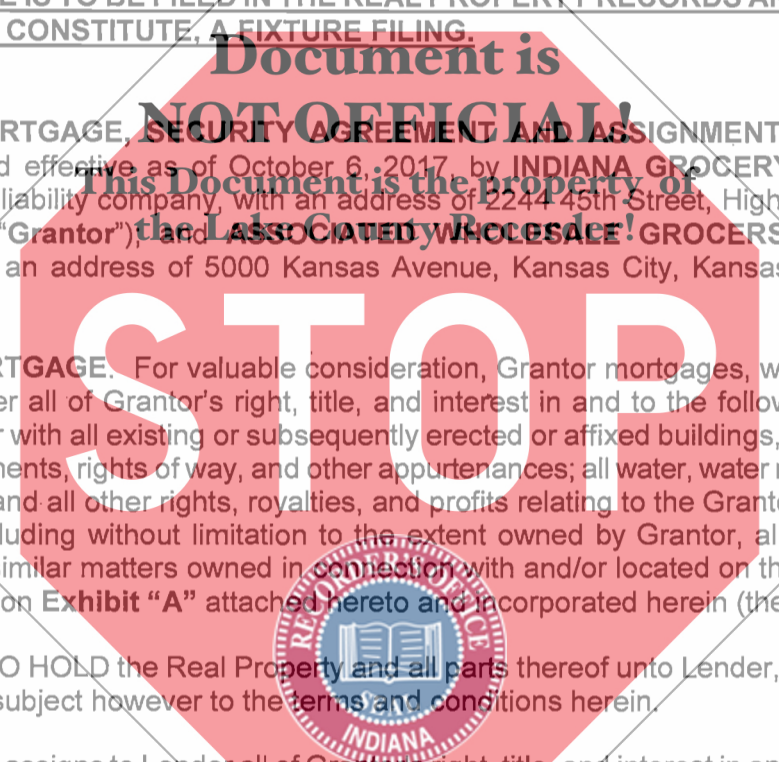
2017 OCT 18 AM 9:13

MICHAEL B. BROWN
RECORDER

**MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF RENTS AND LEASES**

(Office/Warehouse – 2244 45th Street, Highland, Lake County, Indiana)

THIS MORTGAGE IS TO BE FILED IN THE REAL PROPERTY RECORDS AND IS TO BE FILED AS, AND SHALL CONSTITUTE, A FIXTURE FILING.



THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES is dated effective as of October 6, 2017, by INDIANA GROCERY GROUP, LLC, a Delaware limited liability company, with an address of 2244 45th Street, Highland, Lake County, Indiana 46322 ("Grantor"), and ASSOCIATED WHOLESALE GROCERS, INC., a Kansas corporation, with an address of 5000 Kansas Avenue, Kansas City, Kansas 66106, as lender ("Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, warrants, grants and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and other appurtenances; all water, water rights, watercourses and ditch rights; and all other rights, royalties, and profits relating to the Grantor's interest in such real property, including without limitation to the extent owned by Grantor, all minerals, oil, gas, geothermal and similar matters owned in connection with and/or located on the real property and legally described on Exhibit "A" attached hereto and incorporated herein (the "Real Property").

TO HAVE AND TO HOLD the Real Property and all parts thereof unto Lender, its successors and assigns forever, subject however to the terms and conditions herein.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ALL MONETARY AND NON-MONETARY OBLIGATIONS OF GRANTOR UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

When Recorded Return To: *K. Keckler*
First American Title Insurance Company
National Commercial Services
1201 Walnut, Suite 700
Kansas City, MO 64106
File No: NCS 8657do-4

55-5
Ch 172612156
B

1. **Definitions.** The following words shall have the following meanings when used in this Mortgage. Terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Loan Agreement and if not defined therein the meaning attributed to such term in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

"Improvements" means and includes without limitation all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

"Indebtedness" means all of the Obligations, and any amounts expended or advanced by Lender in accordance with the Loan Documents to discharge obligations or expenses incurred by Lender to enforce obligations of Grantor under this Mortgage and the other Loan Documents, together with interest on such amounts as provided in this Mortgage. This Mortgage secures the Obligations, together with all interest thereon. The last installment of the Obligations for the purposes of Indiana Code § 32-28-4-1 is scheduled to become due on August 3, 2024.

"Leases" means all leases, subleases, occupancy agreements, licenses, rental contracts and other agreements now or hereafter existing relating to the use or occupancy of the Real Property between Grantor and third parties.

"Loan Agreement" means that certain Loan Agreement dated as of August 3, 2017, between Lender and Grantor (as the same may be further amended, restated, extended or otherwise modified from time to time).

"Mortgage" means this Mortgage, Security Agreement and Assignment of Rents and Leases between Grantor and Lender, and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents.

"Personal Property" means all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor and attached or affixed to the Real Property or located at or related to the Real Property, together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

"Property" means collectively Grantor's interests in the Real Property and the Personal Property.

"Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

"Uniform Commercial Code" means the Uniform Commercial Code in effect in the state where the Real Property is located, as amended from time to time.

2. **Payment and Performance.** Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due, and shall strictly perform all of the Obligations. It is agreed that this Mortgage shall secure all future and additional indebtedness incurred by Grantor for any business related in any manner to the original Indebtedness up to an amount not to exceed Forty Million and No/100 Dollars (\$40,000,000.00).

Pursuant to Indiana Code § 32-29-1-10, the lien of this Mortgage with respect to any such future advances, modifications, extensions, and renewals referred to herein and made from time to time shall have the same priority to which this Mortgage otherwise would be entitled as of the date this Mortgage is executed and recorded, without regard to the fact that any such future advance, modification, extension, or renewal may occur after this Mortgage is executed. The maximum amount stated in this paragraph is stated pursuant to and in accordance with Indiana Code § 32-29-1-10 and is not and shall not be deemed to be a commitment by Lender to make any such future advances.

3. **Possession and Maintenance of the Property.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

a. **Possession and Use.** So long as no default exists beyond the expiration of applicable notice and/or cure periods, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents from the Property.

b. **Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance reasonably necessary to preserve its value.

c. **Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof, asbestos, mining waste, drilling fluids and other wastes associated with the exploration, development and production of crude oil, fly ash, bottom ash, slag and flue emissions, and cement kiln dust. Grantor represents and warrants to Lender that, except for gasoline and other motor fuels, motor oils, automotive fluids, cleaning fluids and substances and similar substances and items held both for retail sale to customers and for use in the operation of the Property (the "Permitted Substances"): (a) during the period of Grantor's possession of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, about or from the Property; (b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance on, under, about or from the Property by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) except as previously disclosed to Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, about or from the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense in the event Lender reasonably suspects a breach of this Section, as Lender reasonably may deem appropriate to determine

compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor; provided however, the foregoing shall not apply to any all claims, losses, liabilities, damages, penalties, and expenses attributable to any hazardous waste or substance first introduced onto the Property after the extinguishment of the lien of this Mortgage by foreclosure or action in lieu thereof or otherwise due to indemnified parties' own gross negligence or willful misconduct. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

d. Nuisance Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender unless such removal is necessary for construction of Improvements or the right to remove exists prior to the date of this Mortgage.

e. Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without the prior written consent of Lender. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements reasonably satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

f. Lender's Right to Enter. Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage; provided that (i) Lender and its agents and representatives shall use commercially reasonable efforts to minimize disruption or interference with Grantor's use and occupancy of the Premises, and (ii) so long as no default exists beyond applicable notice and/or cure periods, Lender shall provide reasonable prior notice Grantor of any such entry.

g. Compliance with Governmental Requirements. Grantor shall promptly comply with in all material respects all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's reasonable opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest, which shall not exceed 110% of the estimated cost of compliance.

4. **Due on Sale or Further Encumbrance - Consent by Lender.** Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale, transfer or further encumbrance, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law of the state where the Real Property is located. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than ten (10) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest; provided the foregoing shall not be construed to prevent Grantor from entering into a purchase agreement if such purchase agreement requires this Mortgage to be released at closing thereunder.

5. **Taxes and Liens.** The following provisions relating to the taxes and liens on the Property are a part of this Mortgage.

a. **Payment.** Grantor shall pay when due (and in all events prior to delinquency) all property taxes, payroll taxes, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property, subject to the following paragraph. Grantor shall maintain the Property free of all liens having priority over, equal to or subordinate to the interest of Lender under this Mortgage, of taxes and assessments not due, and except as otherwise provided in the following paragraph.

b. **Right To Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien is filed as a result of nonpayment, Grantor shall, within thirty (30) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security reasonably satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

c. **Evidence of Payment.** Grantor shall upon demand authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

d. **Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced or any materials are supplied to the Property other than routine repairs and maintenance in the ordinary course of business or emergency repairs and maintenance, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances reasonably satisfactory to Lender that Grantor can and will pay the cost of such improvements.

6. **Property Damage Insurance.** The following provisions relating to insuring the Property are a part of this Mortgage.

a. **Maintenance of Insurance.** Grantor shall procure and maintain insurance in accordance with the terms of the Loan Agreement. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance for the full unpaid principal balance of the Term Loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the Term Loan.

b. **Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$100,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty; and whether or not Lender's security is impaired, Lender may, at its election, apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property; provided that so long as (i) no default exists beyond applicable notice and/or cure periods, and (ii) the estimated cost of repair/replacement is \$500,000 or less, Lender shall select to make proceeds available for restoration and repair. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner reasonably satisfactory to Lender and Grantor shall have no obligation to repair or replace the Property in the event Lender elects to apply the proceeds to reduce the Indebtedness. Lender shall, upon reasonable satisfaction of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default hereunder which payment or reimbursement shall, on Grantor's request, be made in standard construction progress payment type distributions for work completed. Any proceeds which have not been disbursed within 270 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to prepay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor.

c. **Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any foreclosure sale of such Property.

d. **Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (i) the name of the insurer; (ii) the risks insured; (iii) the amount of the policy; (iv) the property insured, the then current replacement value of such property, and the manner of determining that value; and (v) the expiration date of the policy. Grantor shall, upon request of Lender, however not more than once every two (2) years, have an independent appraiser reasonably satisfactory to Lender determine the cash value replacement cost of the Property.

7. **Expenditures by Lender.** If Grantor fails to comply with any provision of this Mortgage beyond applicable notice and/or cure periods, or if any action or proceeding is commenced that would materially adversely affect Lender's interests in the Property, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate in its reasonable discretion. Any amount that Lender expends in so doing will bear interest at the rate provided for in the Loan Documents from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will be payable within ten (10) days of demand. This Mortgage also will secure payment of these amounts. The rights provided for in this paragraph shall

be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

8. **After-Acquired Property.** All property of every kind acquired by the Grantor after the date hereof, which property is purchased as a replacement for property covered hereby is intended to be subjected to the lien of this Mortgage, shall immediately upon the acquisition thereof by the Grantor, and without further mortgage, conveyance or assignment, become subject to the lien of this Mortgage as fully as though now owned by the Grantor and specifically described herein. Nevertheless, the Grantor shall take such actions and execute and deliver such additional instruments as the Lender shall reasonably require to further evidence or confirm the subjection to the lien of this Mortgage or any such property.

9. **Warranty: Defense of Title.** The following provisions relating to ownership of the Property are a part of this Mortgage.

a. **Title.** Grantor warrants that: (i) Grantor holds good and marketable fee simple title of record to the Property, free and clear of all liens and encumbrances other than those set forth in the Real Property description and those of record prior to the date hereof, and (ii) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

b. **Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

c. **Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies in all material respects with all existing applicable laws, ordinances, and regulations of governmental authorities.

10. **Condemnation.** The following provisions relating to condemnation of the Property are a part of this Mortgage.

a. **Application of Net Proceeds.** If all or any material part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property and Grantor shall have no obligation to repair or replace the Property in the event Lender elects to apply the proceeds to reduce the Indebtedness. If less than a material part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender shall make the net proceeds available to Grantor for the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and reasonable attorneys' fees incurred by Grantor and Lender in connection with the condemnation.

b. **Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be

necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

11. **Imposition of Taxes, Fees and Charges by Governmental Authorities.** The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

a. **Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is reasonably requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

b. **Taxes.** The following shall constitute taxes to which this section applies: (i) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (ii) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (iii) a tax on this type of Mortgage chargeable against the Lender; and (iv) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

c. **Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default (as defined below), and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

12. **Assignment of Rents and Leases.** Grantor unconditionally and absolutely assigns to Lender all of Grantor's rights, title and interest in and to the Leases and Rents.

a. **Lender's Rights.** Lender shall have the right, power and authority to: (i) notify any 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 Real Property; (ii) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (iii) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (iv) enter upon, take possession of and operate the Real Property; (v) lease all or any part of the Real Property; and/or (vi) perform any and all obligations of Grantor under the Leases and exercise any and all rights of Grantor therein contained to the full extent of Grantor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Lender's request, Grantor shall deliver a copy of this Mortgage to each tenant under a Lease and to each manager and managing agent or operator of the Real Property. Grantor irrevocably directs any tenant, manager, managing agent or operator of the Real Property, without any requirement for notice to or consent by Grantor, to comply with all demands of Lender under this Mortgage and to turn over to Lender on demand all Rents which it receives.

b. Grantor Remains Liable. Notwithstanding Lender's rights hereunder, Lender shall not be obligated to perform, and Lender does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Real Property on account of this assignment. Lender shall have no responsibility on account of this assignment for the control, care, maintenance or repair of the Real Property, for any waste committed on the Real Property, for any dangerous or defective condition of the Real Property, or for any negligence in the management, upkeep, repair or control of the Real Property, unless and until Lender takes possession of the Real Property.

c. Revocable License. Notwithstanding that this assignment is an 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 grants to Grantor a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Such license may be revoked by Lender upon the occurrence and during the continuance of any Event of Default hereunder. Further, Lender shall not exercise its rights under subsection (a) above unless an Event of Default exists and is continuing. Grantor shall apply any Rents which it receives to the payment of debt service on the Loan Agreement and other payments due under the Loan Documents, taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Real Property, insurance premiums, operation and maintenance charges relating to the Real Property, and other obligations of Grantor under the Leases before using such proceeds for any other purpose.

Grantor also recognizes that Lender may as part of this assignment of Rents extend or renew or enter into new leases for periods and payments consistent with the terms and payments customary for leases of the Property; provided Lender shall not exercise such rights unless an Event of Default exists and is continuing. If Lender sends written notice to a lessee obligated to pay under any Lease on the Property requesting lessee to direct all Rents payable under the Lease to Lender, this assignment of Rents, when it is effective, shall transfer to Lender the lessee's obligation to pay Grantor the Rents, and Grantor and all lessees agree that no modification or termination or renewal of a Lease prior to or subsequent to that time or advance payment and collection of Rents will be effective against Lender unless Lender consents in writing. If any lessee obligated to pay Lender does not do so, Lender shall have available all remedies to collect the Rents, including without limitation those available to a lessor upon a lessee's failure to perform under a Lease. Grantor agrees that this assignment of Rents will be considered as separate and independent from the Mortgage to the extent that the assignment of Rents shall continue in effect in favor of the purchaser of the Property upon foreclosure with respect to Leases that are not terminated by foreclosure or, at the election of Lender made known before any sale upon foreclosure is concluded, shall continue in effect in favor of Lender with respect to leases that are not terminated by foreclosure until any deficiency owed Lender after foreclosure is satisfied by payments under the Leases, at which time further due payments shall accrue to the purchaser of the Property or to the purchaser's assigns.

13. Security Agreement; Financing Statements. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage.

a. Security Agreement. This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other Personal Property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

b. Security Interest. Grantor hereby authorizes Lender to file, on behalf of Grantor and without its signature, one or more financing statements and such other

documents as Lender may from time to time require to perfect or continue the perfection of Lender's security interest in any Property, Rents or Personal Property. In case Grantor fails to execute any documents for the perfection or continuation of any security interest, Grantor hereby appoints Lender as its true and lawful attorney in fact to execute any such documents on its behalf. Upon request by Lender, Grantor shall take whatever action is reasonably requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon the occurrence and during the continuance of an Event of Default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

c. **Fixture Filing.** This Mortgage constitutes a financing statement filed as a fixture filing under the Uniform Commercial Code, covering any Property which now is or later may become a fixture attached to the Real Property or any building located thereon. For this purpose, the mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Mortgage. Grantor is a limited liability company organized and existing under the laws of the State of Delaware. Grantor hereby acknowledges receipt of a copy of this Mortgage in compliance with Lender's obligation to deliver a copy of the fixture filing to Grantor pursuant to Section 9.1-502(f) of the Indiana Uniform Commercial Code.

14. **Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender reasonably may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (i) the obligations of Grantor under the Loan Agreement, this Mortgage, and the other Loan Documents, and (ii) the liens and security interests created by this Mortgage as liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

15. **Full Performance.** If Grantor pays all the Indebtedness, including without limitation all future advances, when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, all filing and recording fees associated therewith.

16. **Default.** Each of the following, at the option of Lender, shall constitute an event of default ("**Event of Default**") under this Mortgage:

a. **Default Under the Loan Agreement or other Loan Documents.** Any Event of Default occurs under the Loan Agreement or the other Loan Documents including, but not limited to, any cross-defaults described in the Loan Agreement.

b. Default on Other Payments. Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

c. Compliance Default. Failure of Grantor to comply with Paragraph 4 herein. Failure of Grantor to comply with any other non-payment term, obligation, covenant or condition contained in this Mortgage which is not cured within twenty (20) days of notice of such failure; provided that if such failure cannot reasonably be cured within twenty (20) days, such period may be extended by Lender so long as Grantor has commenced and is diligently pursuing the cure thereof.

d. Defective Collateralization. This Mortgage or any Loan Document ceases to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason, and Grantor fails to deliver documents to Lender necessary to create such valid and perfected security interest.

e. Foreclosure, Forfeiture, etc. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any of the Property. However, this subsection shall not apply in the event of a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the foreclosure or forfeiture proceeding, provided that Grantor gives Lender written notice of such claim and furnishes reserves or a surety bond for the claim satisfactory to Lender, which shall not exceed 110% of the disputed claim amount.

f. Default under or Termination of Lease. Any breach by Grantor under the terms of any Lease, that is not remedied within any grace period provided therein, or the termination of any Lease for any reason (but excluding, if the Lease is a sublease, the termination of the prime lease unless such termination is caused by a default by Grantor under the Lease that is not remedied within any grace period provided therein).

17. Rights and Remedies on Default. Upon the occurrence of any Event of Default after the expiration of any applicable cure periods and at any time thereafter during the continuance of such Event of Default, but subject to the terms of the Loan Agreement or any limitation in this Mortgage, Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

a. Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

b. UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

c. Collect Rents. Lender shall have the right to collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to

Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

d. Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver. Grantor hereby consents to the appointment of such a receiver (including without limitation for purposes of Ind. Code § 32-30-5-1(4)(C)) and covenants not to oppose any such appointment. Nothing herein is to be construed to deprive Lender of any other right, remedy or privilege it may have under the law to have a receiver appointed.

e. Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

f. Reserved.

g. Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

h. Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Loan Agreement or available at law or in equity.

i. Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all right to have the property marshaled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

j. Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time at which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

k. Waiver; Election of Remedies. A waiver by any party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor under this Mortgage after failure of Grantor to perform shall not affect Lender's right to declare a default and exercise its remedies under this Mortgage.

l. Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. In the event Lender pursues non-judicial means to enforce any of the terms of this Mortgage, Lender shall be

entitled to recover its reasonable attorneys' fees. Expenses covered by this paragraph include all reasonable costs incurred in the collection of the Indebtedness, including but not limited to, court costs, attorneys' fees, and collection agency fees, except that such costs of collection shall not include the recovery of both attorneys' fees and collection agency fees.

18. **Notices to Grantor and Other Parties.** Any notice under this Mortgage, including without limitation any notice of default and any notice of sale to Grantor, shall be in writing, and shall be given in the manner, and deemed received, as provided for in the Loan Agreement. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage.

19. **Other Mortgages.** Except as set forth in the Loan Agreement, Grantor shall not further encumber the Property or any interest of Grantor in the Property without Lender's prior written consent.

20. **Intentionally Omitted.**

21. **Miscellaneous Provisions.** The following miscellaneous provisions are a part of this Mortgage:

a. **Amendments.** This Mortgage together with any other Loan Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

b. **Applicable Law.** The validity of this Mortgage, its construction, interpretation, and enforcement and the rights of the parties hereto shall be determined under, governed by and construed in accordance with the laws of the State of Kansas (excluding the laws applicable to conflicts or choice of law); provided however, that the laws of the state where the Real Property is located shall govern with respect to (i) the creation of liens on the Property and (ii) the method, manner and procedure for foreclosure of Lender's liens upon any portion of the Property and the enforcement in such state of Lender's other remedies with respect to the Property.

c. **Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

d. **Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender. If Grantor acquires the fee title of any estate or interest in the Property superior to the Lease, it shall immediately notify Lender of such acquisition and, upon request, shall execute and deliver such further documents as may be required to further evidence the grant and conveyance to Lender of all interest so acquired to such property. Such execution and delivery, however, shall not be deemed a condition to the lien of this Mortgage, which shall, upon any acquisition by Grantor of the fee interest of the Property, automatically secure such fee interest with a priority dating to the recordation date of this Mortgage.

e. **Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances.



If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Mortgage in all other respects shall remain valid and enforceable.

f. Successors and Assigns. Subject to the limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

g. Time Is of the Essence. Time is of the essence in the performance of this Mortgage.

h. Waiver of Defenses and Right of Redemption. To the full extent permitted by applicable law: Grantor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Property, or any part thereof, whenever enacted, now or at any time hereafter, enforced, which may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist upon any benefit or advantage of any law regarding marshaling of assets, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction, Grantor hereby expressly waives all benefit or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. GRANTOR AGREES NOT TO EXERCISE ANY RIGHT WHICH GRANTOR MAY HAVE TO REDEEM THE PROPERTY, OR ANY PART THEREOF, AFTER A FORECLOSURE SALE OR SALES THEREOF, AND EXPRESSLY WAIVES AND RELINQUISHES ANY AND ALL RIGHT OF REDEMPTION UNDER APPLICABLE LAW. Appraisal of the Property is hereby expressly waived, or not, at the option of Lender, with such option to be exercised at the time judgment is entered in any judicial proceeding foreclosing the lien granted by the Mortgage or at any time prior thereto.

i. Waivers and Consents. Lender shall not be deemed to have waived any rights under this Mortgage (or under the Loan Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or any of Grantor's obligations as to any future transactions. Whenever consent by Lender is required in this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

j. No Homestead. No part of the Property constitutes a part of a residential homestead.

k. Business Loan. The indebtedness results from a contract under which credit is extended for business, commercial, investment, or other similar purpose, and is not for personal, family, household, or agricultural use.

l. Prevailing Terms. If there is a discrepancy between the terms of this Mortgage and the Loan Agreement, the terms of the Loan Agreement shall prevail.

[Remainder of Page Intentionally Left Blank]



IN WITNESS WHEREOF, this Mortgage has been executed by Borrower as of the day and year first set forth above.

INDIANA GROCERY GROUP, LLC,
a Delaware limited liability company

By: [Signature]
Name: Jeffrey D. Strack
Title: President and Chief Executive Officer

STATE OF INDIANA

COUNTY OF LAKE

SS.

I, GLENN R. PATTERSON, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jeffrey D. Strack, the President and Chief Executive Officer of **INDIANA GROCERY GROUP, LLC**, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act, and as the free and voluntary act of **INDIANA GROCERY GROUP, LLC**, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4th day of OCTOBER, 2017.



[Signature]
Notary Public in and for the State of INDIANA

GLENN R. PATTERSON
Printed Name of Notary

My County of Residence: LAKE
My Commission Expires: 11-25-2024

This document prepared by and after recording mail to:

Stephen M. James, Esq.
Associated Wholesale Grocers, Inc.
5000 Kansas Avenue
Kansas City, Kansas 66106

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law: Stephen M. James.

2244 45th Street
Highland, Lake County, Indiana 46322

EXHIBIT "A"

Legal Description

The West 400 feet of the East 1,115 feet of the North 540 feet of the Northeast Quarter of the Northeast Quarter of Section 32, Township 36 North, Range 9 West of the Second Principal Meridian, in Lake County, Indiana.

and

The West 400 feet of the East 1,115 feet of the South 350 feet of the North 890 feet of the Northeast Quarter of Section 32, Township 36 North, Range 9 West of the 2nd P.M. in Lake County, Indiana.

