

**MORTGAGE
AND
SECURITY AGREEMENT**

ILLINOIS REAL ESTATE



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TJL

This Mortgage ("**Mortgage**") is made and entered into by the undersigned borrower(s), guarantor(s) and/or other obligor(s)/pledgor(s) (collectively the "**Mortgagor**") in favor of Samir Financial, L.L.C., an Illinois limited liability company (the "**Mortgagee**") as of the date set forth on the last page of this Mortgage.

ARTICLE I. MORTGAGE/SECURITY INTEREST

1.1 Grant of Mortgage/Security Interest. The Mortgagor hereby mortgages and warrants, conveys, grants and collaterally assigns to the Mortgagee the Mortgaged Property (defined below) to secure all of the Mortgagor's Obligations (defined below) to the Mortgagee. The intent of the parties hereto is that the Mortgaged Property secures all Obligations of the Mortgagor to the Mortgagee, whether now or hereafter existing, between the Mortgagor and the Mortgagee or in favor of the Mortgagee, including, without limitation, any note, any loan or security agreement, any lease, any other mortgage, deed of trust or other pledge of an interest in real or personal property, any guaranty, any letter of credit or reimbursement agreement or Mortgagee's acceptance, any agreement for any other services or credit extended by the Mortgagee to the Mortgagor even though not specifically enumerated herein and any other agreement with the Mortgagee (together and individually, the "**Loan Documents**"). Notwithstanding anything to the contrary herein, the amount secured hereby shall not exceed \$100,000,000.

1.2 "Mortgaged Property" means all of the following, whether now owned or existing or hereafter acquired by the Mortgagor, wherever located: all the real estate described below or in **Exhibit A** attached hereto (the "**Land**"), together with all buildings, structures, fixtures, equipment and furnishings used in connection with the operation of the Land and improvements, and all other improvements now or hereafter constructed, affixed or located thereon (the "**Improvements**") (the Land and the Improvements collectively the "**Premises**"); TOGETHER with any and all easements, rights-of-way, licenses, privileges, and appurtenances thereto, and any and all leases or other agreements for the use or occupancy of the Premises, all the rents, issues, profits or any proceeds

therefrom and all security deposits and any guaranty of a tenant's obligations thereunder (collectively the "**Rents**"); all awards as a result of condemnation, eminent domain or other decrease in value of the Premises and all insurance and other proceeds of the Premises.

The Land is described as follows (or in Exhibit A hereto if the description does not appear below):

Address: 1520 N. Dearborn Parkway, Chicago, IL 60610

PIN# 17-04-208-021-0000

1.3 "Obligations" means all loans by the Mortgagee to Joseph A. Seher including those loans evidenced by a note or notes dated September 16, 2002, in the principal amount of One Million and 00/100 Dollars (\$1,000,000.00), and any extensions, renewals, restatements and modifications thereof and all principal, interest, fees and expenses relating thereto (the "**Note**"); and also means all the Mortgagor's debts, liabilities, obligations, covenants, warranties, and duties to the Mortgagee (plus its affiliates), whether now or hereafter existing or incurred, whether liquidated or unliquidated, whether absolute or contingent, whether arising out of the Loan Documents or otherwise, and regardless of whether such Obligations arise out of existing or future credit granted by the Mortgagee to any Mortgagor, to any Mortgagor and others, to others guaranteed, endorsed or otherwise secured by any Mortgagor or to any debtor-in-possession/successor-in-interest of any Mortgagor, and principal, interest, fees, expenses and charges relating to any of the foregoing, including, without limitation, costs and expenses of collection and enforcement of this Mortgage, attorneys' fees of both inside and outside counsel and environmental assessment remediation costs. The interest rate and maturity of such Obligations are as described in the documents creating the indebtedness secured hereby.

1.4 Homestead. The Premises are the homestead of the Mortgagor. If so, the Mortgagor releases and waives all rights under and by virtue of the homestead exemption laws of the State of Illinois.

1.5 Revolving Loan. If checked here, this Mortgage is given to secure a revolving credit facility and secures not only present indebtedness, but also future advances, whether such future advances are obligatory or are to be made at the option of Lender, or otherwise as are to be made within twenty (20) years following the date hereof. Nothing herein shall be construed as meaning that such revolving indebtedness has a term of twenty (20) years. The amount of revolving indebtedness secured hereby may increase or decrease from time to time, however, the principal amount of such revolving indebtedness shall not any one time exceed the amount of \$100,000,000 plus interest thereon, and other costs, amounts and disbursements as provided herein and in the other Loan Documents.

ARTICLE II. WARRANTIES AND COVENANTS

In addition to all other warranties and covenants of the Mortgagor under the Loan Documents which are expressly incorporated herein as part of this Mortgage, including the covenants to pay and perform all Obligations, and while any part of the credit granted the Mortgagor under the Loan Documents is available or any Obligations of the Mortgagor to the Mortgagee are unpaid or outstanding, the Mortgagor continuously warrants and agrees as follows:

2.1 Warranty of Title/Possession. The Mortgagor warrants that it has sole and exclusive title to and possession of the Premises, excepting only the following "**Permitted Encumbrances**": restrictions and easements of record, and zoning ordinances (the terms of which are and will be complied with, and in the case of easements, are and will be kept free of encroachments), taxes and assessments not yet due and payable and those Permitted Encumbrances set forth on **Exhibit B** attached hereto (except that if no **Exhibit B** is attached, there will be no additional Permitted Encumbrances). The lien of this Mortgage, subject only to Permitted Encumbrances, is and will continue to be a valid first and only lien upon all of the Mortgaged Property.

2.2 Maintenance; Waste; Alteration. The Mortgagor will maintain the Premises in good and able condition and will restore or replace damaged or destroyed improvements with items of at least equal utility and value. The Mortgagor will not commit or permit waste to be committed on the Premises. The Mortgagor will not remove, demolish or materially alter any part of the Premises without the Mortgagee's prior written consent, except the Mortgagor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility. The replacement fixture will be subject to the priority lien and security of this Mortgage.

2.3 Transfer and Liens. The Mortgagor will not, without the prior written consent of the Mortgagee, which may be withheld in the Mortgagee's sole and absolute discretion, either voluntarily or involuntarily (a) sell, assign, lease or transfer, or permit to be sold, assigned, leased or transferred, any part of the Premises, or any interest therein; or (b) pledge or otherwise encumber, create or permit to exist any mortgage, pledge, lien or claim for lien or encumbrance upon any part of the Premises or interest therein, except for the Permitted Encumbrances.

2.4 Escrow. After written request from the Mortgagee, the Mortgagor will pay to the Mortgagee sufficient funds at such time as the Mortgagee designates, to pay (a) the estimated annual real estate taxes and assessments on the Premises; and (b) all property or hazard insurance premiums when due. Interest will not be paid by the Mortgagee on any escrowed funds. Escrowed funds may be commingled with other funds of the Mortgagee. All escrowed funds are hereby pledged as additional security for the Obligations.

2.5 Taxes, Assessments and Charges. To the extent not paid to the Mortgagee under 2.4 above, the Mortgagor will pay before they become delinquent all taxes, assessments and other charges now

or hereafter levied or assessed against the Premises, against the Mortgagee based upon this Mortgage or the Obligations secured by this Mortgage, or upon the Mortgagee's interest in the Premises, and deliver to the Mortgagee receipts showing timely payments.

2.6 Insurance. The Mortgagor will continually insure the Premises against such perils or hazards as the Mortgagee may require, in amounts, with acceptable co-insurance provisions, not less than the unpaid balance of the Obligations or the full replacement value of the Improvements, whichever is less. The policies will contain an agreement by each insurer that the policy will not be terminated or modified without at least thirty (30) days' prior written notice to the Mortgagee and will contain a mortgage clause acceptable to the Mortgagee; and the Mortgagor will take such other action as the Mortgagee may reasonably request to ensure that the Mortgagee will receive (subject to no other interests) the insurance proceeds from the Improvements. The Mortgagor hereby assigns all insurance proceeds to and irrevocably directs, while any Obligations remain unpaid, any insurer to pay to the Mortgagee the proceeds of all such insurance and any premium refund; and authorizes the Mortgagee to endorse the Mortgagors name to effect the same, to make, adjust or settle, in the Mortgagor's name, any claim on any insurance policy relating to the Premises. The proceeds and refunds will be applied in such manner as the Mortgagee, in its sole and absolute discretion, determines to rebuilding of the Premises or to payment of the Obligations, whether or not then due and payable.

2.7 Condemnation. The Mortgagor will pay to the Mortgagee all compensation received for the taking of the Premises, or any part thereof, by a condemnation proceeding (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the Premises, or any part thereof. The compensation will be applied in such manner as the Mortgagee, in its sole and absolute discretion, determines to rebuilding of the Premises or to payment of the Obligations, whether or not then due and payable.

2.8 Environmental Matters. The following warranties and covenants are subject to those exceptions set forth on **Exhibit C** attached hereto (except that if no **Exhibit C** is attached, there will be no exceptions). There exists no uncorrected violation by the Mortgagor of any federal, state or local laws (including statutes, regulations, ordinances or other governmental restrictions and requirements) relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or Hazardous Substances as hereinafter defined, whether such laws currently exist or are enacted in the future (collectively "**Environmental Laws**"). The term "**Hazardous Substances**" will mean any hazardous or toxic wastes, chemicals or other substances, the generation, possession or existence of which is prohibited or governed by any Environmental Laws. The Mortgagor is not subject to any judgment, decree, order or citation, or a party to (or threatened with) any litigation or administrative proceeding, which asserts that the Mortgagor (a) has violated any Environmental Laws; (b) is required to clean up, remove or take remedial or other action with respect to any Hazardous Substances (collectively "**Remedial Action**"); or (c) is required to pay all or a portion of the cost of any Remedial Action, as a potentially responsible party.

Except as disclosed on the Borrower's environmental questionnaire provided to the Mortgagee, there are not now, nor to the Mortgagor's knowledge after reasonable investigation have there ever been, any Hazardous Substances (or tanks or other facilities for the storage of Hazardous Substances) stored, deposited, recycled or disposed of on, under or at any real estate owned or occupied by the Mortgagor during the periods that the Mortgagor owned or occupied such real estate, which if present on the real estate or in soils or ground water, could require Remedial Action. To the Mortgagor's knowledge, there are no proposed or pending charges in Environmental Laws which would adversely affect the Mortgagor or its business, and there are no conditions existing currently or likely to exist while the Loan Documents are in effect which would subject the Mortgagor to Remedial Action or other liability. The Mortgagor currently complies with and will continue to timely comply with all applicable Environmental Laws; and will provide the Mortgagee, immediately upon receipt, copies of any correspondence, notice, complaint, order or other document from any source asserting or alleging any circumstance or condition which requires or may require a financial contribution by the Mortgagor or Remedial Action or other response by or on the part of the Mortgagor under Environmental Laws, or which seeks damages or civil, criminal or punitive penalties from the Mortgagor for an alleged violation of Environmental Laws. In the event of any such circumstances or condition, the Mortgagor agrees, at its expense and at the request of the Mortgagee, to permit an environmental audit solely for the benefit of the Mortgagee, to be conducted by the Mortgagee or an independent agent selected by the Mortgagee and which may not be relied on by the Mortgagor for any purpose. These provisions shall not relieve the Mortgagor from conducting its own environmental audits or taking any other steps necessary to comply with Environmental Laws.

The Mortgagor hereby represents and warrants that the execution and delivery of this Mortgage is not a transfer of "real property," as "real property" is defined in the Illinois Responsible Property Transfer Act (765 ILCS 90/1 et seq.), as said Act may be amended from time to time, or, if the execution and delivery of this Mortgage is "real property" as defined in said Act, then the Mortgagor hereby represents and warrants that it has complied with the provisions thereof.

2.9 Assignment. The Mortgagor will not assign, in whole or in part, without the Mortgagee's prior written consent, the rents, issues or profits arising from the Premises.

2.10 Right of Inspection. The Mortgagee may at all reasonable times enter and inspect the Premises.

2.11 Waivers by Mortgagor. To the greatest extent that such rights may then be lawfully waived, the Mortgagor hereby agrees for itself and any person claiming under the Mortgage that it will waive and will not, at any time, insist upon or plead or in any manner whatsoever claim or take any benefit or advantage of (a) any exemption, stay, extension or moratorium law now or at any time hereafter in force; (b) any law now or hereafter in force providing for the valuation or appraisements of the Premises or any part thereof prior to any sale or sales thereof to be made pursuant to any

provision herein contained or pursuant to the decree, judgement or order of any court of competent jurisdiction; (c) to the extent permitted by law, any law now or at any time hereafter made or enacted granting a right to redeem from foreclosure or any other rights of redemption in connection with foreclosure with foreclosure of this Mortgage; (d) any statute any time hereafter in force; or (e) any right to require marshaling of assets by the Mortgagee.

2. 12 Assignment of Rents and Leases. The Mortgagor assigns and transfers to the Mortgagee, as additional security for the Obligations, all right, title and interest of the Mortgagor in and all leases which now exist or hereafter may be executed by or on behalf of the Mortgagor covering the Premises and any extensions or renewals thereof, together with all Rents, it being intended that this is an absolute and present assignment of the Rents. Notwithstanding that this assignment constitutes a present assignment of leases and rents, the Mortgagor may collect the Rents and manage the Premises, but only if and so long as a default has not occurred. If a default occurs, the right of the Mortgagor to collect the Rents and to manage the Premises shall thereupon automatically terminate and such right, together with other rights, powers and authorizations contained herein, shall belong exclusively to the Mortgagee. This assignment confers upon the Mortgagee a power coupled with an interest and cannot be revoked by the Mortgagor. Upon the occurrence of a default, the Mortgagee, as its option without notice and without seeking or obtaining the appointment of a receiver or taking actual possession of the Premises may (a) give notice to any tenant(s) that the tenant(s) should begin making payments under their lease agreement(s) directly to the Mortgagee or its designee; (b) commence a foreclosure action and file a motion for appointment of a receiver; or (c) give notice to the Mortgagor that the Mortgagor should collect all Rents arising from the Premises and remit them to the Mortgagee upon collection and that the Mortgagor should enforce the terms of the lease(s) to ensure prompt payment by tenant(s) under the lease(s). All Rents received by the Mortgagor shall be held in trust by the Mortgagor for the Mortgagee. All such payments received by the Mortgagee may be applied in any manner as the Mortgagee determines to payments required under this Mortgage, the Loan Documents and the Obligations. The Mortgagor agrees to hold each harmless from actions relating to tenant's payment of Rents to the Mortgagee.

ARTICLE III. RIGHTS AND DUTIES OF THE Mortgagee

In addition to all other rights (including setoff) and duties of the Mortgagee under the Loan Documents which are expressly incorporated herein as a part of this Mortgage, the following provisions will also apply:

3.1 Mortgagee Authorized to Perform for Mortgagor. If the Mortgagor fails to perform any of the Mortgagor's duties or covenants set forth in this Mortgage, the Mortgagee may perform the duties or cause them to be performed, including, without limitation, signing the Mortgagor's name or paying any amount so required, and the cost, with interest at the default rate set forth in the Loan Documents, will immediately be due from the Mortgagor to the Mortgagee from the date of

expenditure by the Mortgagee to date of payment by the Mortgagor, and will be one of the Obligations secured by this Mortgage. All acts by the Mortgagee are hereby ratified and approved, and the Mortgagee will not be liable for any acts of commission or omission, nor for any errors of judgment or mistakes of fact or law.

ARTICLE IV. DEFAULTS AND REMEDIES

The Mortgagee may enforce its rights and remedies under this Mortgage upon default. A default will occur if the Mortgagor fails to comply with the terms of any Loan Documents (including this Mortgage or any guaranty by the Mortgagor) or a demand for payment is made under a demand loan, or the Mortgagor defaults on any other mortgage affecting the Land, or if any other obligor fails to comply with the terms of any Loan Documents for which the Mortgagor has given the Mortgagee a guaranty or pledge. Upon the occurrence of a default, the Mortgagee may declare the Obligations to be immediately due and payable.

4.1 Cumulative Remedies; Waiver. In addition to the remedies for default set forth in the Loan Documents, including acceleration, the Mortgagee upon default will have all other rights and remedies for default available by law or equity including foreclosure of this Mortgage. The rights and remedies specified herein are cumulative and are not exclusive of any rights or remedies which the Mortgagee would otherwise have. With respect to such rights and remedies:

(a) Receiver; Mortgagee-In-Possession. Upon the commencement or during the pendency of any action to foreclose this Mortgage, the Mortgagee will be entitled, as a matter of right, without notice or demand and without giving bond or other security, and without regard to the solvency or insolvency of the Mortgagor or to the value of the Premises, to have a receiver appointed for all or any part of the Premises, which receiver will be authorized to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action, and until discharged, and to hold and apply such rents, issues and profits, when so collected, as the court will from time to time direct. Without limitation of the foregoing, the Mortgagor hereby authorizes the Mortgagee to be placed in possession of the Premises during foreclosure, whether the Premises are residential or not, and, for so long as the Mortgagee shall remain in possession of the Premises, the Mortgagee shall have the power and authority to operate, manage and control the Premises, including, without limitation, the right to receive the rents, issues and profits of the Premises, perform all maintenance and make all repairs and replacements, enter into leases, and amend, cancel, renew, modify and terminate the same.

(b) Agreement to State Foreclosure Statutes. The Mortgagor agrees that in the event of foreclosure of this Mortgage, the Mortgagor will be bound by the provisions of Section 735 ILCS 5/15-1101 et seq., as the same may be amended or renumbered from time to time, whichever may be applicable to the Premises, permitting the Mortgagee (at its option) to waive the right to a deficiency judgement and shorten the length of the redemption period in the event of the foreclosure.

(c) **Waiver by the Mortgagee.** The Mortgagee may permit the Mortgagor to attempt to remedy any default without waiving its rights and remedies hereunder, and the Mortgagee may waive any default without waiving any other subsequent or prior default by the Mortgagor. Furthermore, delay on the part of the Mortgagee in exercising any right, power or privilege hereunder or at law will not operate as a waiver thereof, nor will any single or partial exercise of such right, power or privilege preclude other exercise thereof or the exercise of any other right, power or privilege. No waiver or suspension will be deemed to have occurred unless the Mortgagee has expressly agreed in writing specifying such waiver or suspension.

(d) **Attorneys' Fees and Other Costs.** Attorneys' fees and other costs incurred in connection with foreclosure of this Mortgage may be recovered by the Mortgagee and included in any judgement of foreclosure.

ARTICLE V. MISCELLANEOUS

In addition to all other miscellaneous provisions under the Loan Documents which are expressly incorporated as a part of this Mortgage, the following provisions will also apply:

5.1 Term of Mortgage. The Lien of this Mortgage shall continue in full force and effect until this Mortgage is released.

5.2 Time of the Essence. Time is of the essence with the respect to payment of the Obligations, the performance of all covenants of the mortgagor and the payment of taxes, assessments, and similar charges and insurance premiums.

5.3 Subrogation. The Mortgagee will be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the proceeds of the Note or other advances by the Mortgagee, in which event any sums otherwise advanced by the Mortgagee shall be immediately due and payable, with interest at the default rate set forth in the Loan Documents from the date of advance by the Mortgagee to the date of payment by the Mortgagor, and will be one of the obligations secured by this Mortgage.

5.4 Choice of Law. Foreclosure of this Mortgage will be governed by the laws of this state in which the Mortgaged Property is located. For all other purposes, the choice of law specified in the Loan Documents will govern.

5.5 Severability. Invalidity or unenforceability of any provision of this Mortgage shall not affect the validity of enforceability of any other provision.

5.6 Non-Recourse Obligation of Mary Beth Seher. Mary Beth Seher mortgaged to Mortgagee, without recourse, her interest in the Premises as provided in this Mortgage. Nothing contained in this Mortgage shall create any personal liability by Mary Beth Seher to Mortgagee under any of the affirmative covenants of this Mortgage or any of the other Loan Documents. Mary Beth Seher

UNOFFICIAL COPY

21026306

further signs this Mortgage for the purpose of expressly releasing and waiving all rights and benefits of the Homestead Exemption Laws of the State of Illinois as to all indebtedness, liabilities and obligations secured by this Mortgage.

5.7 Entire Agreement. This mortgage is intended by the Mortgagor and the Mortgagee as a final expression of this Mortgage and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Mortgage. No parol evidence of any nature shall be used to supplement or modify any terms.


IN WITNESS WHEREOF, the undersigned have executed this MORTGAGE as of September 12, 2002.

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MORTGAGORS:



Joseph A. Seher



Mary Beth Seher

Mortgagor Address:
1520 N. Dearborn Parkway
Chicago, Illinois 60610

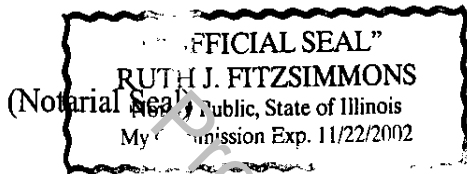
Bank Address:
Samir Financial Services, Inc.
20682 N. Plumwood Drive
Kildeer, Illinois 60047
ATTN: Mohammed H. Mirza

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss. 352-34-2770
COUNTY OF DuPage)

21026306

This instrument was acknowledged before me on September 16, 2002, by Joseph A. Seher and Mary Beth Seher as husband and wife.



Ruth J. Fitzsimmons
Printed Name: RUTH J. FITZSIMMONS
Notary Public, State of: Illinois
My commission expires: 11/22/2002

This instrument was drafted by James B. Gottlieb on behalf of Mortgagee.

After recording return to: Chuhak & Tecson, P.C.
30 South Wacker Drive
Suite 2600
Chicago, Illinois 60606

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21028306

EXHIBIT A

21028306

Legal Description of the Property

LOT 69 (EXCEPT THE SOUTH 4 FEET THEREOF) AND LOT 72 (EXCEPT THE NORTH 23 FEET THEREOF) IN BURTON'S SUBDIVISION OF LOT 14 IN BRONSON'S ADDITION TO CHICAGO, SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 17-04-208-021-0000

Address: 1520 N. Dearborn Parkway
Chicago, Illinois 60610

Property of Cook County Clerk's Office

EXHIBIT B

Permitted Encumbrances

1. Bank of America first Mortgage dated August 28, 2001 in the originally stated amount of \$2,500,000;
2. Mortgage and Security Agreement dated December 22, 2001 by Mortgagor to Mortgagee securing a note in the amount of \$500,000 (the "Second Mortgage"); and
3. Mortgage in favor of Deborah Lambrecht in the amount of \$2,250,000 subordinated to the lien of the Second Mortgage and this Mortgage in favor of Samir Financial, L.L.C.

Property of Cook County Clerk's Office