

# UNOFFICIAL COPY

## COMMERCIAL MORTGAGE



## SECOND MORTGAGE

Doc#: 0426039052  
Eugene "Gene" Moore Fee: \$34.50  
Cook County Recorder of Deeds  
Date: 09/16/2004 10:57 AM Pg: 1 of 6

This indenture made September 14, 2004 by and between RUSLAN USTYANICH hereinafter referred to as "Mortgagor" and ALEXANDER NIMCZENKO (hereinafter referred to as "Mortgagee")

WHEREAS, to secure the payment of an indebtedness in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) to be paid with interest thereon as evidenced by a certain Principal Note bearing even date herewith, the Mortgagors hereby mortgage, convey, transfer and grant unto Mortgagee, its successors, heirs and assigns forever, the Real Estate and all improvements thereon situated in the County of Cook State of Illinois, as legally as follows:

THE EAST 6 FEET OF LOT 70 AND ALL OF LOT 69 IN MARY ANN BAYLEY'S SUBDIVISION OF BLOCK 8 IN WRIGHT & WEBSTERS SUBDIVISION OF THE NORTHEAST ¼ OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Commonly known as 2435 W. Erie, Chicago, IL  
PIN 16-12-214-044-0000

Together with all buildings and improvements now or hereafter belonging upon the mortgaged property, or any part thereof, and all fixtures now or hereafter installed, including but not limited to all lighting, cooling, and electrical systems together with the rents, issues, profits and leases of the Mortgaged Property.

TO HAVE AND HOLD the premises unto said mortgagee, its successors, and assigns forever, for the purposes and uses set forth herein.

### I. MORTGAGOR COVENANTS

Mortgagor represents to and covenants with mortgagee that Mortgagor holds fee simple title to the Mortgaged Property and Mortgagor has the power and authority to mortgage the Mortgaged Property.

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The Mortgagor shall maintain or cause to be maintained the Mortgaged Property in good repair, working order and condition and make or cause to be made, when necessary, all repairs, renewals, replacements, structural and non-structural, interior and exterior, ordinary and extra-ordinary. The Mortgagor shall refrain from and shall not permit waste in or about the property, and shall not remove, demolish, alter or change the structural character of any improvement erected at any time on the Mortgaged Property without the written consent of the Mortgagee. Mortgagor covenants and agrees that in the ownership, operation and management of the Mortgaged Premises, Mortgagor will observe and comply with all applicable federal state and municipal statutes and ordinances, regulation, orders and restrictions. Mortgage shall have the right at any time and from time to time to enter upon the premises for the purpose of inspecting same.

## II. INSURANCE

Mortgagor shall at all times keep the Mortgaged Property, including all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the premises insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee. Mortgagor shall also at all times maintain comprehensive public liability, property damage and workmen's compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts and deductibles reasonably satisfactory to Mortgagee.

## III. PAYMENT OF TAXES AND ASSESSMENTS

Mortgagor shall pay before any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges and all other liens or charges levied or assessed against the Premises of any nature whatsoever when due, and shall furnish to Mortgagee duplicate receipts of payments therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. With respect to any tax or assessment which Mortgagor may desire to contest, Mortgagor shall pay such tax or assessment in full under protest in order to prevent a default under this Mortgage on account thereof.

## IV. PROTECTION OF LENDER'S SECURITY

If default be made in the payment of any of the above taxes or assessments or in making repairs or replacements or in procuring or maintaining insurance and paying the premiums therefore, or in keeping or performing any other covenant of the Mortgagor herein, then Mortgagee may, at its option and without any obligation to do so, pay said taxes and assessment, make such repairs and replacements, effect such insurance, pay such premiums and perform any other covenant of Mortgagor herein. All amounts expended by Mortgagee hereunder shall be secured hereby and shall be due and payable

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by Mortgagor to Mortgagee upon demand with interest thereon at the rate applicable under the Note from the date of such expenditure.

## V. REIMBURSEMENT FOR MORTGAGEE LEGAL EXPENSE

In the event that Mortgagee is made a party to any suit or proceeding by reason of the interest of Mortgagee in the Premises, Mortgagor shall reimburse Mortgagee for all costs and expenses, including attorneys fees, incurred by Mortgagee in connection therewith, whether or not said proceedings or suit ever goes to trial. All amounts incurred by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith in demand with interest thereon at the rate applicable under the Note from the date of such expenditure.

## VI. EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default for purposes of this Mortgage:

- (A) Failure to make prompt payment, when due of any payment of Principal or Interest under the Note and such failure continues for ten (10) days after Mortgagee gives written notice thereof to Mortgagor.
- (B) Failure to promptly perform or observe any other covenant, promise, term or agreement contained in the Mortgage Note or parts of any other Loan Documents executed in connection with this transaction.
- (C) Any sale lease, transfer, grant of security interest, mortgage or other encumbrance or alienation of any interest in the Mortgaged Property with out the prior written consent of the Mortgagee.
- (D) Failure to make prompt payment when due, of any payment of principal or interest under any agreement, loan document, note or other instrument now in effect or hereafter executed by Mortgagee with regard to said premises.
- (E) The commencement of any petition in Bankruptcy, whether voluntary or involuntary, by or against any Mortgagor, or if Mortgagor is adjudicated bankrupt or insolvent or files any petition or answer seeking restoration, assignment, composition, liquidation or similar relief under the present or any future Federal or state law or seeks or covenants to acquiesce I the appointment of any trustee, receiver or similar officer of the Mortgagor regarding the mortgaged Property.
- (F) The commencement of any suit or proceeding to foreclose any other mortgage, lien or encumbrance against the Mortgaged Property.
- (G) Any material adverse change in the financial condition of the Mortgagor

## VII. ACCELERATION AND DEFAULT RATE

If any Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness secured hereby to be immediately due and payable without notice to the Mortgagor. Then at any time thereafter, at the sole option of the Mortgagee, the principal balance and accrued interest in the Note shall become immediately due and payable. All sums coming due and payable hereunder shall bear interest after acceleration, at the

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Default Rate of fourteen per cent (14%) per annum. And shall constitute an additional indebtedness secured by this Mortgage. After any such Event of Default, Mortgagee may institute or cause to be instituted, proceedings for the realization of its rights, including but not limited to foreclosure, under this Mortgage or any other loan documents.

## VIII. RIGHTS, POWERS AND REMEDIES OF THE MORTGAGEE

When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee may at its election:

- (A) Foreclose this Mortgage by legal action, as provided by Illinois Statutes and this paragraph shall further authorize a power of sale as provided by said statute.
- (B) Enter upon and take possession of the Mortgage Property with irrevocable consent of Mortgagor as granted and evidenced by the execution of this Mortgage. A Mortgagee in Possession, Mortgagee may hold, operate, control and manage the mortgage Property and conduct business, if any, either personally or by its agents. The Mortgagee may collect rents and lease the Mortgaged Property, cancel or modify existing leases and generally exercise any powers and rights customarily incident to ownership. Mortgagee may pay out of rents collected and taxes, insurance, conversions, fees or either expenses attributable to the Mortgage Property.
- (C) Upon, or at any time after filing a Complaint or petition to foreclose this mortgage, the Mortgagee may apply to the Court for the appointment of a receiver of the Mortgaged Property. Such receiver shall have the power to collect rents, issues and profits of the Mortgage Property during the pendency of the foreclosure suit up to and after any sale of the Mortgaged Property. The court may authorize the receiver to apply net income from management and control of the Mortgage Property in whole or in part to the indebtedness.

## IX. CROSS DEFAULT CLAUSE

Any default by Mortgagor in the performance or observance of any covenant, promise, condition or agreement hereof shall be deemed and Event of Default under each of the Loan Documents, entitling Mortgagee to exercise all or any remedies available to Mortgagee under the terms of any other Loan Documents, and any default or event of default under any other Loan Document relating to any of Mortgagor's other obligations to Mortgagee shall be deemed a default hereunder. Failure by Mortgagee to exercise any right which it may have hereunder shall not be deemed a waiver thereof unless so agree in writing by Mortgagee, and the waiver by Mortgagee of any default by Mortgagor hereunder shall not constitute a continuing waiver of any other default or of the same default in the future.

## X. BUSINESS PURPOSE

Mortgagor covenants that the proceeds of the loan evidenced by the Note and secured by this Mortgage will be used for business purposes and the principal obligation secures a business loan.

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## XI. WAIVER OF REDEMPTION

- (a) Mortgagor hereby waives all rights of redemption and or equity of redemption which exist by statute or common law for sale under any order or decree of foreclosure of this Mortgage on its own behalf, and behalf of every person, beneficiary or other entity, except decree or judgement creditors, who may acquire any interest in or title to the Mortgaged Property subsequent to the date hereof.
- (b) Mortgagor hereby waives the benefit of appraisalment, valuation stay or extension laws now or hereafter in force and all rights of marshalling in the event of any sale of the Mortgaged Property or any part thereof or any interest therein.
- (c) Mortgagor hereby waives the benefits of any rights or benefits provided by any Homestead Exemption Laws, if any, now or hereafter in force.

## XII. FURTHER INSTRUMENTS

Upon the request of Mortgagee, Mortgagor will execute, acknowledge and deliver such additional instruments and further assurances or title and will do or cause to be done all such further acts and things as may be reasonable necessary to full effectuate the intent of this Mortgage.

## XIII. NOTICES

Any notice, demand requests or other communications desired or required to be given pursuant to the terms of this Mortgage shall be in writing and shall be delivered by personal service or certified or registered mail, return receipt requested, addressed as follows:

Mortgagor: Ruslan Ustyanich  
2513 W Superior  
Chicago, IL 60612

Mortgagee: Alexander Nimczenko  
22 W 273 Sunset Terrace  
Medinah, IL 60157

## XIV. SUCCESSORS AND ASSIGNS

This Mortgage shall run with the Mortgaged Property and shall be binding upon and enforceable against Mortgagor and its permitted successors, grantees and assigns, any subsequent owner or owners of the Premises who acquire the premises subject to this Mortgage and all person claiming under or through Mortgagor. The word Mortgagor herein shall include all such persons liable for the payment of the indebtedness or any part thereof, whether or not such persons have executed this Note.

## XV. REMEDIES CUMULATIVE



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The rights and remedies herein provided are cumulative and Mortgagee may recover judgment on the Note, issue execution therefore, and resort to every other right or remedy available at law or equity, without first exhausting and without impairing or affecting the security or any right or remedy afforded by this Mortgage. No enumeration of special rights or powers by any provision of this Mortgage shall be construed to limit any grant of general rights or powers, or to take away or limit any and all rights granted to or vested in the Mortgagee by virtue of the laws of the State of Illinois

## XVI. SUCCESSORS AND ASSIGNS

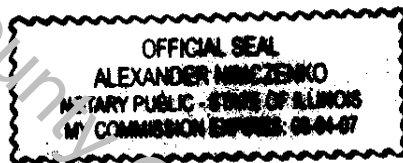
All of the covenants and conditions hereof shall run with the land and shall be binding upon and inure to the benefit of the successors and assign of Mortgagor and Mortgagee, respectively, and all persons claiming through or under them. Any reference herein to Mortgagee shall include the successors and assigns of Mortgagee. The Mortgagor shall not assign its interest without the prior written consent of Mortgagee.

WITNESS WHEREOF Mortgage has caused this Mortgage to be executed this 11th day of September 14, 2004

*R. Ustyanih*

Ruslan Ustyanih

State of Illinois  
County of Cook



The undersigned, a Notary Public in and for said State and County, DO HEREBY CERTIFY that RUSLAN USTYANICH, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release of homestead.

Given under my hand and seal this 14<sup>th</sup> day of September , 2004

*Alexander Nimczenko*  
Notary Public

This instrument prepared by Mary F. Murray 6223 N. Navajo Chicago, IL 60646

After recording Mail To:

ALEXANDER NIMCZENKO  
22W273 Sunset Terrace  
Medinah Il 60157



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