

UNOFFICIAL COPY



This Instrument When
Recorded Should Be
Mailed To:

Doc#: **0504604028**
Eugene "Gene" Moore Fee: \$64.00
Cook County Recorder of Deeds
Date: 02/15/2005 09:44 AM Pg: 1 of 21

CORUS BANK, N.A.
3959 N. Lincoln Ave.
Chicago, IL 60613
Attn: Terence Keenan

FIRST AMERICAN
File # 955402
e/s

MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made this 20th day of January, 2004, between

B.A.R. Realty, LLC, (hereinafter referred to as "Mortgagor") and **CORUS** BANK, N.A. with a mailing address of 3959 N. Lincoln Ave. Chicago, IL 60613 (hereinafter referred to as "Mortgagee");

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of Five Hundred Twenty-five Thousand and no/100--Dollars (\$525,000.00), which indebtedness is evidenced by that certain Mortgage Note of even date herewith (together with all renewals, amendments, supplements, restatements, extensions and modifications thereof and thereto, if any, the "Note"). The Note is due and payable on February 10, 2010 unless extended pursuant to the terms thereof and provides for payment of the indebtedness as set forth therein. The Note, this Mortgage and all other documents or instruments executed and/or delivered as additional evidence of, or security for payment of, the Note, whether now or hereafter existing, and all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, are hereinafter sometimes collectively referred to as the "Loan Documents". The terms and provisions of the other Loan Documents are hereby incorporated herein by this reference.

NOW, THEREFORE, Mortgagor, to secure the payment of the Note with interest thereon at the variable rates as set forth therein, the payment of all late charges, fees, premiums and other sums evidenced by or owing under the Note, this Mortgage or any of the other Loan Documents, including, but not limited to, all sums expended by or advanced by Mortgagee in connection with the Loan Documents, with interest thereon as provided herein, in the Note or any of the other Loan Documents and the performance and observance of the covenants and agreements of Mortgagor and any other obligor to or benefiting Mortgagee which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents, does hereby mortgage, grant and convey to Mortgagee the following described real estate located in the City of Chicago, County of Cook, State of Illinois: Permanent Tax Index No. 17-20-318-008-0000; which real estate has the address of 2023 S. Ashland Ave., Chicago, Illinois 60608 and Permanent Tax Index No. 17-20-318-017-0000; which real estate has the address of 1538 W. 21st St., Chicago, Illinois 60608 and is legally described on Exhibit A attached hereto and hereby made a part hereof, and which, together with the property hereinafter described, is referred to herein as the "Premises."

TOGETHER with all improvements, tenements, easements, fixtures, rights of way, and rights used as a means of access to the Premises and appurtenances thereto belonging, and all rents, issues, royalties, income, revenue, proceeds and profits and other benefits thereof and any after acquired-title, franchise, or

UNOFFICIAL COPY

license and the reversions and remainders thereof, for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, and other personal property of every kind and nature whatsoever and all proceeds thereof, including (without restricting the foregoing): all fixtures, apparatus, equipment and articles, other than such as constitute trade fixtures used in the operation of any business conducted upon the Premises and distinguished from fixtures which relate to the use, occupancy and enjoyment of the Premises, it being understood that the enumeration of any specific articles of property shall in no wise exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights, hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

Mortgagor covenants that Mortgagor is lawfully seized of the real estate hereby conveyed and has the right to mortgage, grant and convey the Premises, that the Premises is unencumbered and that Mortgagor will warrant and defend generally the title to the Premises against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Mortgagee's interest in the Premises.

IT IS FURTHER UNDERSTOOD THAT:

1. **Principal, Interest and Other Payments.** Mortgagor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and the principal of and interest on any future advances allowed under and secured by this Mortgage and all other amounts due and payable to Mortgagee under the Note or at any time secured by this Mortgage (all such payments are collectively referred to in this Mortgage as the "indebtedness secured hereby").

2. **Maintenance, Repair and Restoration of Improvements; Payment of Taxes and Liens, Etc.** Mortgagor shall:

(a) Promptly repair, restore or rebuild any improvement now or hereafter on the Premises which may become damaged or destroyed.

(b) Pay immediately when due and payable and before any penalty attaches all general taxes, special taxes, special assessments, water charges, sewer service charges and other taxes and charges against the Premises, including those heretofore due, and to furnish Mortgagee, upon request, with the original or duplicate receipts therefor, and all such items extended against the Premises shall be conclusively deemed valid for the purpose of this requirement. To prevent default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest. Pursuant to the terms of the Note, Mortgagor shall, simultaneously with Mortgagor's monthly payments of principal and interest, deposit monthly an amount sufficient to pay when due and payable all general taxes and said deposits may be held without any allowance of interest and need not be kept separate and apart, all as further specified in the Note.

UNOFFICIAL COPY

(c) Keep the Premises and all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by fire and extended coverage insurance, with malicious mischief and vandalism endorsements, and such other hazards in such amounts as may reasonably be required by Mortgagee, for the full insurable value thereof with agreed upon amount and inflation protection endorsements, but in any case in such amounts as to negate Mortgagor being a co-insurer in the event of the occurrence of a fire or other insurance casualty. Mortgagor shall also provide and keep in effect comprehensive public liability insurance with such limits for personal injury and death and property damage as Mortgagee may reasonably require. Mortgagor will also keep in effect upon the request of Mortgagee rent loss insurance in such amounts as Mortgagee may reasonably require, and such other insurance as Mortgagee may from time to time require. In addition, if the Premises are now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the "Act"), Mortgagor will keep the Premises covered for the term of the Note by flood insurance up to the maximum limit of coverage available under the Act. All policies of insurance to be furnished hereunder shall be in forms, issued by companies and in amounts and with deductibles reasonably satisfactory to Mortgagee, with standard mortgagee loss payable clause attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee. Mortgagor shall deliver the original of all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration. If any renewal policy is not delivered to Mortgagee thirty (30) days before the expiration of any existing policy or policies, with evidence of premium paid, Mortgagee may, but is not obligated to, obtain the required insurance on behalf of Mortgagor (or insurance in favor of Mortgagee alone) and pay the premiums thereon. Any monies so advanced shall be so much additional indebtedness secured hereby and shall become immediately due and payable with interest thereon at the Default Interest Rate (as defined in the Note). So long as any sum remains due hereunder or under the Note, Mortgagor covenants and agrees that it shall not place, or cause to be placed or issued, any separate casualty, fire, rent loss, or liability insurance separate from the insurance required to be maintained under the terms hereof, unless in each such instance Mortgagee is included therein as the payee under a standard mortgagee's loss payable clause. Mortgagor covenants to advise Mortgagee whenever any such separate insurance coverage is placed, issued or renewed, and agrees to deposit the original of all such other policies with Mortgagee. Application by Mortgagee of any of the proceeds of such insurance to the indebtedness secured hereby shall not excuse Mortgagor from making all monthly payments due under the Note.

(d) Complete within a reasonable time any buildings or improvements now or at any time in process of erection upon the Premises.

(e) Subject to the provisions hereof, restore and rebuild any buildings or improvements now or at any time upon said property and destroyed by fire or other casualty so as to be of at least equal value and substantially the same character as immediately prior to such damage or destruction. In any case where the insurance proceeds are made available for rebuilding and restoration, such proceeds shall be disbursed only upon the disbursing party being furnished with satisfactory evidence of the estimated cost of completion thereof and with architects certificates, waivers of lien, contractors and subcontractors sworn statements and other evidence of cost and payment so that the disbursing party can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics lien claims. No payment prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time and at all times the undisbursed balance of such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If Mortgagee reasonably determines that the cost of rebuilding, repairing or restoring the buildings and improvements shall exceed the sum of \$15,000, then

UNOFFICIAL COPY

Mortgagor shall submit plans and specifications of such work to Mortgagee for Mortgagee's prior approval before such work shall be commenced. Any surplus which remains from said insurance proceeds after payment of such costs of building or restoring shall, at the option of Mortgagee, be applied toward the indebtedness secured hereby or be paid to any party entitled thereto without interest.

(f) Keep the Premises in good condition and repair without waste and free from any mechanics or other lien or claims of lien not expressly subordinated to the lien hereof.

(g) Not suffer or permit any unlawful use of or any nuisance to exist on the Premises nor to diminish nor impair its value by any act or omission to act.

(h) Comply with all requirements of law, municipal ordinances, rules and regulations with respect to the Premises and the use thereof.

3. **Casualty.** (a) In case of loss or damage, Mortgagee (or after entry of decree of foreclosure, the purchaser at the sale, or the decree creditor, as the case may be) is hereby authorized to either: (i) settle and adjust any claim under any insurance policies without the consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss or damage; provided, however, that Mortgagee shall not have the right to exercise the powers granted in Paragraph 3(a) (i) hereof unless there is then existing a Default (as hereinafter defined) hereunder or an event which with the giving of notice or passage of time would constitute a Default hereunder or there has been entered a decree of foreclosure. In all cases Mortgagee is authorized to collect and receipt for any such insurance proceeds and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be such additional indebtedness secured hereby and shall be reimbursed to Mortgagee upon demand with interest thereon at the Default Interest Rate or may be deducted by Mortgagee from said insurance proceeds prior to any other application thereof. The insurance proceeds may, at the option of Mortgagee, be applied in the reduction of the indebtedness secured hereby, whether due or not, in such order as Mortgagee shall determine, or be held by Mortgagee and used to reimburse Mortgagor for the cost of rebuilding or restoring buildings or improvements on the Premises. Notwithstanding the foregoing, the insurance proceeds may be made available to Mortgagor to repair and restore the Premises if, and only if, in Mortgagee's sole and absolute discretion, all of the following conditions are satisfied: (i) no Default, or event which with the giving of notice or passage of time would constitute a Default, shall have occurred hereunder or under any of the other Loan Documents; (ii) the insurance proceeds shall, in Mortgagee's sole and absolute judgment, be sufficient to complete the repair and restoration of the buildings, structures and other improvements on the Premises to an architectural and economic unit of substantially the same character and the same value as existed immediately prior to such casualty, or, if Mortgagee shall determine, in its sole and absolute discretion, that the insurance proceeds are insufficient, Mortgagor shall have deposited with Mortgagee the amount of the deficiency in cash within fifteen (15) days after Mortgagee's demand therefor; (iii) after such repair or restoration, the Premises shall, in Mortgagee's sole and absolute judgment, adequately secure the outstanding balance of the indebtedness secured hereby; (iv) any and all leases of the Premises remain in full force and effect and under the leases the Mortgagor is obligated to repair and restore the Mortgaged Premises; (v) the insurers do not deny liability to either of the insureds; and (vi) with respect to any claims for any loss or damage arising out of a single occurrence which shall in the aggregate exceed Fifteen Thousand and No/100 Dollars (\$15,000), such loss or damage does not occur during the last twelve (12) months of the term of the Note.

(b) In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the building or improvements, shall be used to pay the amount due in accordance with any decree of foreclosure that may

UNOFFICIAL COPY

be entered in any such proceeding, and the balance, if any, shall be paid to the owner of the equity of redemption if said owner shall then be entitled to the same, or as the court may otherwise direct. In case of foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor. Any foreclosure decree may further provide that in case of one or more redemptions under said decree, each successive redeemer may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

(c) Nothing contained in this Mortgage shall create any responsibility or obligation on Mortgagee to collect any amount owing on any insurance policy, to rebuild, repair or replace any damaged or destroyed portion of the Premises or any improvements thereon, or to perform any act hereunder.

4. Condemnation and Eminent Domain. Mortgagor hereby assigns to Mortgagee and authorizes Mortgagee to negotiate for and collect any award for condemnation or eminent domain of all or any part of the Premises. Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings of which it has knowledge affecting all or any part of the Premises (including severance of, consequential damage to or change in grade of streets), and shall immediately deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute and deliver to Mortgagee, free and clear of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore, now and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. Any such award shall be applied toward the indebtedness secured by this Mortgage or applied toward restoring the Premises in accordance with the provisions of and in the same manner as is provided for insurance proceeds in Paragraph 3 hereof. Notwithstanding the foregoing, any expenses, including, without limitation, attorneys' fees and expenses, incurred by Mortgagee in intervening in such action or compromising and settling such action or claim, or collecting such proceeds, shall be reimbursed to Mortgagee first out of the proceeds.

5. Mortgagor's Representations and Covenants. Mortgagor hereby represents and covenants to Mortgagee that:

(a) Mortgagor (i) has the power and authority to own its properties and to carry on its business as now being conducted; (ii) is qualified to do business in every jurisdiction in which the nature of its business or its properties makes such qualifications necessary; and (iii) is in compliance with all laws, regulations, ordinances and order of public authorities applicable to it.

(b) The execution, delivery and performance by Mortgagor of the Note, this Mortgage, and all other Loan Documents, and the borrowing evidenced by the Note: (i) are within the powers of Mortgagor; (ii) have been duly authorized by all requisite actions; (iii) have received all necessary approvals; (iv) do not violate any provision of any law, any order of any court or agency of government or any indenture, agreement or other instrument to which Mortgagor is a party, or by which it or any portion of the Premises is bound; and (v) are not in conflict with, nor will it result in breach of, or constitute (with due notice and/or lapse of time) a default under any indenture, agreement, or other instrument, or result in the

UNOFFICIAL COPY

creation or imposition of any lien, charge or encumbrance of any nature whatsoever, upon any of its property or assets, except as contemplated by the provisions of this Mortgage and the other Loan Documents.

(c) The Note, this Mortgage, and all other Loan Documents, when executed and delivered by Mortgagor, will constitute the legal, valid and binding obligations of Mortgagor, and other obligors named therein, if any, in accordance with their respective terms; subject, however, to such exculpation provisions, if any, as may be hereinafter specifically set forth.

(d) All other information, reports, papers, balance sheets, statements of profit and loss, and data given to Mortgagee, its agents, employees, representatives or counsel regarding Mortgagor or any other party obligated under the terms of this Mortgage or any of the other Loan Documents are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Mortgagee a true and accurate knowledge of the subject matter.

(e) There is not now pending against or affecting Mortgagor or any other party obligated under the terms of this Mortgage or any of the other Loan Documents nor, to the knowledge of Mortgagor or any other party obligated under the terms of this Mortgage or any of the other Loan Documents, is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency which if adversely determined would materially impair or affect the financial condition or operation of Mortgagor or the Premises.

6. **Transfer of Premises; Further Encumbrances.** Any sale, conveyance, transfer, pledge, mortgage or other encumbrance of any right, title or interest in the Premises or any portion thereof, or any sale, transfer or assignment (either outright or collateral) of all or any part of the beneficial interest in any trust holding title to the Premises; or any sale, conveyance, assignment or other transfer of all or any portion of the stock, partnership interest, or membership interest of any corporation, partnership or limited liability company, respectively, constituting Mortgagor, that result in a material change in the identity of the person(s) or entities in control of Mortgagor; or any subordinate or secondary financing which results in a lien upon the Premises or any portion thereof; without the prior written approval of Mortgagee shall, at the option of Mortgagee, constitute a Default hereunder, in which event the holder of the Note may declare the entire unpaid balance of the indebtedness secured hereby to be immediately due and payable and foreclose the lien of this Mortgage immediately or at any time after such Default occurs. PROVIDED, HOWEVER, that sales, conveyances or transfers are permissible when and if the transferee's credit worthiness and management ability are satisfactory to Mortgagee in Mortgagee's sole and absolute discretion, and the transferee has executed any and all assumption documents, paid all fees and satisfied any and all other requirements of Mortgagee prior to such sale, conveyance or transfer.

7. **Performance by Mortgagee.** In the case of Mortgagor's failure to perform or observe any of the covenants herein, or if any action or proceeding is commenced which materially affects or threatens to materially affect Mortgagee's interest in the Premises, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, Mortgagee may do on Mortgagor's behalf everything so covenanted; Mortgagee may also do any act it may deem necessary to protect the lien hereof; and Mortgagor will repay upon demand any monies paid or disbursed by Mortgagee, including reasonable attorneys' fees and expenses, for any of the above purposes and such monies together with interest thereon at the Default Interest Rate shall become so much additional indebtedness secured hereby and may be included in any decree foreclosing the lien of this Mortgage and be paid out of the rents or proceeds of sale of the Premises if not otherwise paid. It shall not be obligatory upon Mortgagee to inquire into the validity or accuracy of any lien, encumbrance, or claim in advancing

UNOFFICIAL COPY

monies as above authorized, but nothing herein contained shall be construed as requiring Mortgagee to advance any monies for any purpose nor to do any act hereunder; and Mortgagee shall not incur any personal liability because of anything it may do or omit to do hereunder nor shall any acts of Mortgagee act as a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage or to proceed to foreclose the lien of this Mortgage.

8. **Future Advances; Maximum Indebtedness.** It is the intent hereof to secure payment of the Note whether the entire amount shall have been advanced to Mortgagor at the date hereof or at a later date, or having been advanced, shall have been repaid in part and further advances made at a later date, which advances shall in no event cause the indebtedness secured hereby to exceed the sum of One Million Five Hundred Seventy Five Thousand and no/100---Dollars (\$1,575,000.00).

[Three times an amount]

9. **Assignment of Rents.** (a) To further secure the indebtedness secured hereby, Mortgagor does hereby sell, assign and transfer unto Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all of such leases and agreements, and all the avails thereunder, unto Mortgagee, and Mortgagor does hereby appoint irrevocably Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the Premises) to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession of the Premises.

(b) Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than two installments in advance, and that no payment of rents to accrue for any portion of the Premises has been or will be waived, released, reduced, discounted, or otherwise discharged or compromised by Mortgagor. Mortgagor waives any right of set off against any person in possession of any portion of the Premises. Mortgagor agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises.

(c) Nothing herein contained shall be construed as constituting Mortgagee as a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

(d) Mortgagor further agrees to assign and transfer to Mortgagee all future leases regarding all or any part of the Premises hereinbefore described and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments pertaining to the Premises as Mortgagee shall from time to time require.

(e) Although it is the intention of the parties that the assignment contained in this Paragraph 9 shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that so long as Mortgagor is not in Default hereunder or under the Note, it shall have the privilege of collecting and retaining the rents accruing under the leases assigned hereby, until

UNOFFICIAL COPY

such time as Mortgagee shall elect to collect such rents pursuant to the terms and provisions of this Mortgage.

(f) Mortgagee shall not be obliged to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Mortgagee incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand with interest thereon at the Default Interest Rate.

10. Security Agreement. (a) This Mortgage shall be deemed a Security Agreement as defined in the Illinois Commercial Code. This Mortgage creates a security interest in favor of Mortgagee in all property including all personal property, fixtures and goods affecting property either referred to or described herein or in anyway connected with the use or enjoyment of the Premises. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in any Financing Statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and the hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Premises and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such items is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) the right in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in condemnation or eminent domain proceedings for a taking or for loss of value, or (3) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal Government and any subdivisions or entity of the Federal Government, must be filed in the Commercial Code records.

(b) Notwithstanding the aforesaid, Mortgagor covenants and agrees that so long as any balance remains unpaid on the Note, it will execute (or cause to be executed) and deliver to Mortgagee, such renewal certificates, affidavits, extension statements or other documentation in proper form so as to keep perfected the lien created hereby or by any Security Agreement and Financing Statement given to

UNOFFICIAL COPY

Mortgagee by Mortgagor, and to keep and maintain the same in full force and effect until the entire indebtedness secured hereby has been paid in full.

11. **Fixture Financing Statement.** From the date of its recording, this Mortgage shall be effective as a Fixture Financing Statement with respect to all goods constituting part of the Premises which are or are to become fixtures related to the Premises. For this purpose, the following information is set forth:

(a) Name and Address of Mortgagor:

B.A.R. Realty, LLC.
Arie Goldenstein
2023 S. Ashland Ave.
Chicago, IL 60608

(b) Name and Address of Mortgagee:

CORUS BANK, N.A.
3959 N. Lincoln Ave.
Chicago, IL 60613

(c) This document covers goods which are or are to become fixtures.

12. **Hazardous Waste.** (a) Mortgagor, or the beneficiaries of the Mortgagor, if the Mortgagor is a land trust (the "Beneficiary"), represents, warrants, covenants and agrees, to the best of its knowledge, after due inquiry, that: (i) (A) there are no Hazardous Substances (as hereinafter defined) at, upon, over or under the Premises, or, to the best of its knowledge, at, upon, over, or under those parcels of real estate adjacent to the Premises, and (B) during the period of ownership of the Premises by Mortgagor, and to the best of its knowledge, prior to Mortgagor's acquisition of its interest therein, there have not been any Hazardous Substances at, upon, over or under the Premises or, to the best of its knowledge, at, upon, over or under those parcels of real estate adjacent to the Premises; and (ii) (A) the Premises is in compliance with all Environmental Laws (as hereinafter defined); (B) Mortgagor shall comply with all Environmental Laws and Environmental Permits (as hereinafter defined); (C) Mortgagor shall require its tenants and others operating on the Premises to comply with Environmental Laws and Environmental Permits; (D) Mortgagor shall provide Mortgagee immediate notice of any correspondence, notices, demands or communications of any nature whatsoever received by any of Mortgagor or any guarantor of the payment of the Note ("Guarantor") relating to any alleged or actual violation, or any investigation of any alleged or actual violation, of any Environmental Law or relating to any alleged or actual presence of Hazardous Substances at, upon, over or under the Premises or adjacent real estate, and to immediately provide Mortgagee copies of any such correspondence, notices, demands or communications which are in writing; and (E) Mortgagor shall advise Mortgagee in writing as soon as any of Mortgagor or any Guarantor becomes aware of any condition or circumstance which makes any of Mortgagor's representations or warranties contained herein incomplete or inaccurate; and (iii) all necessary Environmental Permits pertaining to the Premises have been obtained by the appropriate party, and all reports, notices and other documents required under any Environmental Law in connection with the Premises have been filed; and (iv) neither Mortgagor nor any Guarantor is a party to any litigation or administrative proceeding arising under any Environmental Law in connection with the Premises or adjacent real estate, nor, to the best knowledge of Mortgagor, is there any such litigation or proceeding contemplated or threatened; and (v) Mortgagor, any and all Guarantors and the Premises are free from any judgment, decree, order or citation related to or arising out of any Environmental Law. In the event Mortgagee determines in its sole and absolute discretion that there is any evidence that

UNOFFICIAL COPY

any circumstance might exist, whether or not described in any communication or notice to either Mortgagor or Mortgagee, Mortgagor, or Beneficiary, as the case may be, agrees, at its own expense and at the request of Mortgagee, to permit an environmental audit to be conducted by Mortgagee or an independent agent selected by Mortgagee. This provision shall not relieve Mortgagor, or Beneficiary, as the case may be, from conducting its own environmental audits or taking any other steps necessary to comply with any Environmental Law or Environmental Permits. If, in the opinion of Mortgagee, there exists any uncorrected violation by Mortgagor of any Environmental Law or Environmental Permits or any condition which requires or may require any cleanup, removal or other remedial action under any Environmental Law, and such cleanup, removal or other remedial action is not commenced within sixty (60) days, and diligently prosecuted to completion within one hundred twenty (120) days, from the date of written notice from Mortgagee to Mortgagor, the same shall, at the option of Mortgagee constitute a Default hereunder, without further notice or cure period.

(b) Mortgagor, or Beneficiary, as the case may be, hereby represents, warrants and certifies to Mortgagee that: (i) the execution and delivery of the Loan Documents is not a "transfer of real property" under and as defined in the Illinois Responsible Premises Transfer Law, as amended (Illinois Code Ann. 765 ILCS 9011 et. seq.) ("RPTA"); (ii) there are no above ground storage tanks ("ASTs") or underground storage tanks ("USTs") at, upon, over or under the Premises which are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act, as amended (42 U.S.C. §6901); (iii) there is no facility located on or at the Premises which is subject to the reporting requirements of Section 312 of the Federal Emergency Planning and Community Right to Know Act of 1986, as amended, and the federal regulations promulgated thereunder (42 U.S.C. §11022), as the term "facility" is defined in the IRPTA, (iv) during the periods of ownership of the Premises by Mortgagor, and prior to Mortgagor's acquisition of its interest therein, there have been no ASTs or USTs at, upon, over or under the Premises, and (v) Mortgagor will not cause or allow any ASTs or USTs to be installed at, upon, over or under the Premises.

(c) Mortgagor, or Beneficiary, as the case may be, agrees to indemnify, defend and hold harmless Mortgagee and any and all current, future or former officers, directors, employees, representatives and agents from and against any and all Environmental Losses (as hereinafter defined) in any way arising from (except to the extent that such claims arise from the willful or grossly negligent acts of Mortgagee or its agents, or Mortgagee or its agents introduce materials to the Premises in violation of any Environmental Laws after Mortgagee takes possession of the Premises): (i) any breach of any covenant, representation or warranty in this Paragraph 12; (ii) any Environmental Liability (as hereinafter defined); (iii) any failure to obtain or comply with any Environmental Permit; (iv) any Release (as hereinafter defined); (v) any Management (as hereinafter defined); (vi) any Environmental Condition (as hereinafter defined); (vii) the presence of any Hazardous Substance at any property other than the Premises which is present due to either (A) any direct or indirect transportation whatsoever of a Hazardous Substance from the Premises, or by any of Mortgagor or any Guarantor, to the property at which such Hazardous Substance is present or (B) migration or other movement from the Premises to such other property of a Hazardous Substance Released at the Premises; and (viii) any Response (as hereinafter defined) arising out of or in connection with any of the matters described in this Paragraph 12(c). Any and all amounts owed by Mortgagor, or Beneficiary, as the case may be, to Mortgagee under this Paragraph 12 shall constitute additional indebtedness secured hereby.

(d) The term "Environmental Condition" shall mean the presence of any Hazardous Substance at, upon, over, under or emanating from the Premises, any other real estate to which any Hazardous Substance has migrated from the Premises or any other real estate whatsoever to which any Hazardous Substance has been transported from the Premises. The term "Environmental Laws" shall mean all federal, state, and local laws, statutes, rules, regulations, ordinances, permits, guides, orders and consent decrees relating to health, safety and environmental matters as now exist and as may be enacted or amended after the

UNOFFICIAL COPY

date hereof. Such laws and regulations include, but are not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, as amended; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA"); the Toxic Substance Control Act, 15 U.S.C. §2601 *et seq.*, as amended; the Clean Water Act 33 U.S.C. §1251 *et seq.*, as amended; the Clean Air Act, 42 U.S.C. §7401 *et seq.*, as amended; federal, state and local environmental cleanup programs; federal, state and local environmental lien programs; the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 *et seq.*, as amended ("OSHA"); and U.S. Department of Transportation regulations applicable to the transportation of Hazardous Substances. The term "Environmental Liability" shall mean any and all liabilities, whether fixed, absolute, or contingent, arising under any Environmental Law or arising under or in connection with any Environmental Permit or Environmental Condition; any and all claims of any nature whatsoever by a third party (including but not limited to governmental agencies) arising in any way under any Environmental Law or arising under or in connection with any Environmental Permit or Environmental Condition, including but not limited to demands for environmental cleanup, investigation or corrective action; any and all Environmental Losses incurred or sustained as a direct or indirect result of alleged or actual violations of Environmental Laws or Environmental Permits; any and all alleged or actual Environmental Conditions; any and all Releases; any and all Management; or any and all Responses. The terms "Environmental Loss" or "Environmental Losses" shall mean any and all costs, expenses and expenditures, including, without limitation, court costs and reasonable attorneys', experts' and consultants' fees and costs of litigation or any other losses whatsoever, including, without limitation, costs and expenses of investigation, cleanup, prevention of migration, monitoring, evaluating, assessment, removal or remediation of Hazardous Substances whether or not such costs or expenses are incurred in response to any governmental or third party action, claim or directive; damages; punitive damages actually awarded; obligations; deficiencies; liabilities, whether fixed, absolute, accrued, contingent or otherwise and whether direct, primary or secondary, known or unknown; claims; encumbrances; penalties; demands; assessments; and judgments. The term "Environmental Permit" shall mean authorization by any governmental entity to conduct activities governed in whole or in part by one or more Environmental Laws. The term "Hazardous Substance" shall mean hazardous substances, hazardous wastes, hazardous waste constituents, by-products, hazardous materials, hazardous chemicals, extremely hazardous substances, pesticides, oil and other petroleum products and toxic substances, including, without limitation, asbestos and PCBs, as those terms are defined pursuant to or encompassed by any Environmental Law or by trade custom and usage. The terms "Manage", "Managed" or "Management" shall mean the generation, handling, manufacturing, processing, treatment, storing, use, reuse, refinement, recycling, reclaiming, blending, burning, recovery, incineration, accumulation, transportation, transfer, disposal, release or abandonment of any Hazardous Substances, by any person at any property (including but not limited to facilities or properties other than the Premises, as applicable). The terms "Release", "Released" or "Releases" shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substance at, upon, over or from the Premises, any other real estate to which any Hazardous Substance has migrated from the Premises or any other real estate whatsoever to which any Hazardous Substance has been transported from the Premises. The terms "Respond" or "Response" shall mean any action taken by any person, whether or not in response to a governmental or third party action, claim or directive, to correct, remove, remediate, clean up, prevent migration of, monitor, evaluate, investigate or assess, as appropriate, any Release of a Hazardous Substance, Environmental Condition, Management or actual or alleged violation of an Environmental Law or Environmental Permit.

(e) Any provisions of this Mortgage to the contrary notwithstanding, the representations, warranties, covenants, agreements and indemnification obligations contained in this Paragraph 12 shall survive the foreclosure of the lien of this Mortgage by Mortgagee or a third party or the conveyance thereof by deed in lieu of foreclosure and shall not be limited to the amount of any deficiency in any foreclosure sale of the Premises) and all indicia of termination of the relationship between Mortgagor and Mortgagee,

UNOFFICIAL COPY

including, but not limited to, the repayment of all amounts due under the loan evidenced by the Note, the cancellation of the Note, satisfaction of any guaranty, and the release of this Mortgage.

13. **Stamp Tax.** In the event of the enactment after this date of any law imposing a tax upon the issuance of the Note or deducting from the value of the Premises for the purpose of taxation any lien on the land, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens required in this Mortgage to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured by this Mortgage or the holder of this Mortgage, then, and in any such event, Mortgagor, upon demand of Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee for such taxes and assessments; provided, however, that if in the opinion of counsel for Mortgagee it might be unlawful to require Mortgagor to make such payments, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured by this Mortgage to be and become due and payable sixty (60) days from the giving of such notice. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

14. **Time is of the Essence; Defaults; Acceleration.** Time is of the essence hereof, and the occurrence of any of the following shall constitute a default ("Default") under this Mortgage, the Note and the other Loan Documents: (a) Mortgagor's failure to perform or observe, or cause to be performed or observed, any covenant herein contained or contained in the Note or any of the other Loan Documents; (b) Mortgagor's failure to make, or cause to be made, any payment when due of any principal, interest, charge, assessment or other amount payable pursuant to the Note, this Mortgage, or any of the other Loan Documents; (c) if proceedings be instituted to enforce any other lien or charge upon any of the Premises, or upon the filing of a bankruptcy, insolvency, reorganization or arrangement proceeding of any kind under the Federal Bankruptcy Code, whether as now existing or as hereafter amended, or any similar debtors' or creditors' rights law, whether federal or state, now or hereafter existing, by or against Mortgagor; (d) if Mortgagor shall make an assignment for the benefit of its creditors or if its property be placed under control of or in custody of any court or officer of the government; (e) if Mortgagor abandons the Premises; (f) if any sale, transfer, lease, assignment, conveyance, financing lien or other encumbrance is made in violation of Paragraph 6 of this Mortgage; or (g) if there exists any inaccuracy or untruth in any material respect in any representations or warranties contained herein or any of the other Loan Documents or any statement or certification delivered to Mortgagee in connection herewith or therewith. Upon any Default, or at Mortgagee's option at any time thereafter, Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of Mortgagee hereunder, to declare, without notice, the unpaid balance of the indebtedness secured hereby immediately due and payable, whether or not such Default be remedied by Mortgagor, and to apply toward the payment of said indebtedness any indebtedness of Mortgagee to Mortgagor. Mortgagee may also immediately, or at Mortgagee's option at any time thereafter, proceed to foreclose the lien of this Mortgage, and to exercise any other remedies of Mortgagee herein or any of the other Loan Documents or which Mortgagee may have at law or in equity. In any foreclosure sale of the Premises, the same may at Mortgagee's option be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

15. **Mortgagee's Continuing Rights and Options.** The failure of Mortgagee to declare a Default or exercise any one or more of its options to accelerate the maturity of the indebtedness secured hereby and to foreclose the lien hereof following any Default as aforesaid, or to exercise any other option granted to Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments of such indebtedness, shall neither constitute a waiver of any such Default or of Mortgagee's

UNOFFICIAL COPY

options hereunder nor establish, extend or affect any grace period for payments due under the Note, but such options shall remain continuously in force. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release in any manner the liability of the original Mortgagor or Mortgagor's successor in interest. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sum secured by this Mortgage by reason of any demand made by the original Mortgagor and Mortgagor's successors in interest. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the indebtedness secured by this Mortgage. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at Mortgagee's option, be rescinded by written acknowledgment to that effect by Mortgagee and shall not affect Mortgagee's right to accelerate maturity upon or after any future Default.

16. Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may at any time, either before or after sale, and without regard to the solvency of Mortgagor or the then value of the Premises, or whether the same shall then be occupied by the owner of the equity of redemption as a homestead, appoint either Mortgagee or any other holder of the Note as "Mortgagee in Possession" or a receiver. Such receiver shall have all powers and duties prescribed by the Illinois Mortgage Foreclosure Law, as amended from time to time (Illinois Code Ann. 735 ILCS 5/15-1001 et. seq.) (the "IMF Act"), including the power to manage and rent, including to the extent permitted by law the right to lease all or any portion of the Premises for a term that extends beyond the time of the receiver's possession or the maturity date of the loan evidenced by the Note, and to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and the statutory period of redemption. All such rents, issues and profits, when collected, may be applied before as well as after the foreclosure sale, towards the payment of the indebtedness secured hereby including the expenses of such receivership, or on any deficiency decree whether there be a decree therefor in personam or not. If a receiver shall be appointed he shall remain in possession until the expiration of the full period allowed by statute for redemption, whether there be redemption or not, and until the issuance of a deed in case of sale, but if no deed be issued, until the expiration of the statutory period during which it may be issued, and no lease of the Premises shall be nullified by the appointment or entry in possession of a receiver but he may elect to terminate any lease junior to the lien hereof.

17. Litigation Expenses. In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under the Note, this Mortgage, the other Loan Documents or in any other proceeding whatsoever in connection with the Premises in which Mortgagee is named as a party, there shall be allowed and included, as additional indebtedness secured hereby in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee, including, without limitation, reasonable attorney's fees and expenses and court costs, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and any similar data and assurances with respect to title to the Premises as Mortgagee may deem reasonably necessary, and any other expenses and expenditures which may be paid or incurred by or on behalf of Mortgagee and permitted by the IMF Act to be included in the decree of sale, either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to any such decree the true condition of the title to or value of the Premises or the Premises. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Premises and the maintenance of the lien of this Mortgage thereon, including, without limitation, the reasonable fees and expenses of, and court costs incurred by, any attorney employed by Mortgagee in any litigation affecting the Note, this Mortgage or any of the other Loan

UNOFFICIAL COPY

Documents or any of the Premises, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor with interest thereon at the Default Interest Rate.

18. Performance by Mortgagee. In the event of any Default, or in the event any action or proceeding is instituted which materially affects, or threatens to materially affect, Mortgagee's interest in the Premises, Mortgagee may, but need not, make any payment or perform any act on Mortgagor's behalf in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Premises; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including without limitation reasonable attorneys' fees and court costs, and any other monies advanced by Mortgagee to protect the Premises and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the Default Interest Rate from the date an advance is made to and including the date the same is paid. The action or inaction of Mortgagee shall never be construed to be waiver of any right accruing to Mortgagee by reason of any default by Mortgagor. Mortgagee shall not incur any personal liability because of anything it may do or omit to do hereunder, nor shall any acts of Mortgagee act as a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage or to proceed to foreclose this Mortgage.

19. Right of Possession. In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Premises or any part thereof, personally or by its agent or attorneys, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Premises relating thereto, and may exclude Mortgagor, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted: (a) hold, operate, manage and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, whether legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits and avails of the Premises, including, without limitation, actions for recovery of rent, and actions in forcible detainer, all without notice to Mortgagor; (b) cancel or terminate any lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Mortgagor to cancel the same; (c) elect to disaffirm any lease or sublease of all or any part of the Premises made subsequent to this Mortgage or subordinated to the lien hereof; (d) extend or modify any then existing leases and make new leases of all or any part of the Premises, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Premises are subject to the lien hereof and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and (e) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and

UNOFFICIAL COPY

improvements in connection with the Premises as may seem judicious to Mortgagee, to insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom. Without limiting the generality of the foregoing, Mortgagee shall have all right, power, authority and duties as provided in the IMF Act. Nothing herein contained shall be construed as constituting Mortgagee as a mortgagee in possession in the absence of the actual taking of possession of the Premises.

20. Application of Income. Any rents, issues, deposits, profits and avails of the Property received by Mortgagee after taking possession of all or any part of the Premises, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage, shall be applied in payment of or on account of the following, in such order as Mortgagee or, in case of a receivership, as the court, may in its sole and absolute discretion determine: (a) operating expenses of the Premises (including, without limitation, reasonable compensation to Mortgagee, any receiver of the Premises, any agent or agents to whom management of the Premises has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized); (b) taxes, special assessments, water and sewer charges now due or that may hereafter become due on the Premises, or that may become a lien thereon prior to the lien of this Mortgage; (c) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Premises (including, without limitation, the cost, from time to time, of installing or replacing any personal property therein, and of placing the Premises in such condition as will, in the judgment of Mortgagee or any receiver thereof, make it readily rentable or salable); (d) any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto, in the order of priority specified by Mortgagee in its sole and absolute discretion; and (e) any remaining funds to Mortgagor or its successors or assigns, as their interests and rights may appear.

21. Application of Proceeds. The proceeds of any foreclosure sale of the Premises or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraphs 17 and 18 hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the Default Interest Rate; (c) all principal and interest, together with any prepayment charge, remaining unpaid under the Note, in the order of priority specified by Mortgagee in its sole and absolute discretion; and (d) the balance, if any, to Mortgagor or its successors or assigns, as their interests and rights may appear.

22. Deficiency Payment. In the event of a deficiency upon a sale of the Premises pledged hereunder by Mortgagor, then Mortgagor shall forthwith pay such deficiency, including all expenses and fees which may be incurred by the holder of the Note in enforcing any of the terms and provisions of this Mortgage.

23. Inspection of Premises. Mortgagee, its agents and designees, shall upon reasonable notice have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

24. Inspection of Books and Records, Etc. Mortgagor will at all times deliver to Mortgagee, upon its request, duplicate originals or certified copies of all leases, agreements and documents relating to the Premises and shall permit access by Mortgagee, its agents and designees, to its books and records, insurance policies and other papers for examination and making copies and extracts thereof.

UNOFFICIAL COPY

25. **Mortgagor's Operating Account.** Mortgagor, or Beneficiary, as the case may be, shall maintain with Mortgagee for so long as this Mortgage is in effect a demand deposit non-interest bearing operating account for the Premises.

26. **Utilities.** Mortgagor will (except to the extent paid by lessees) pay all utility charges incurred in connection with the Premises and all improvements thereon and maintain all utility services now or hereafter available for use at the Premises.

27. **Financial Information.** Mortgagor, or Beneficiary, as the case may be, shall, within 30 days after demand by Mortgagee, furnish to Mortgagee an annual operating statement of income and expenses for the Premises signed and certified by Mortgagor. Within fifteen days after demand by Mortgagee, Mortgagor shall deliver a certified copy of a rent roll for the Premises and such other information as Mortgagee may request, which may include, but shall not be limited to, the personal financial statements and copies of the as filed federal income tax return for Mortgagor, any co-Maker of the Note, and any Guarantor.

28. **Waiver of Rights of Redemption and Other Statutory Rights.** To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any right, under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption under the IMF Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor acknowledges that the Premises do not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Act or residential real estate as defined in Section 5/15-1219 of the IMF Act.

29. **Indemnification.** Mortgagor will protect, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation attorneys' fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of (a) the ownership of the Premises or any interest therein or receipt of any rents, issues, proceeds or profits therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, or about the Premises or any part thereof or on the adjoining sidewalks, or curbs, adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, the adjacent parking areas, streets or ways; (d) any failure

UNOFFICIAL COPY

on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof. Any amounts payable to Mortgagee by reason of the application of this Paragraph shall constitute additional indebtedness secured by this Mortgage and shall become immediately due and payable upon demand therefor and shall bear interest at the Default Interest Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations of Mortgagor under this Paragraph shall survive any termination or satisfaction of this Mortgage.

30. **Relationship of Mortgagor and Mortgagee.** Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor or Beneficiary, as the case may be. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any of the other Loan Documents.

31. **Illinois Mortgage Foreclosure Act.** (a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the IMF Act, then the IMF Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Act.

(b) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMF Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(c) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon Default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the IMF Act in the absence of said provision, then Mortgagee shall be vested with the rights granted in the IMF Act to the full extent permitted by law.

(d) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Section 15-1510 and 15-1512 of the IMF Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not otherwise specifically enumerated in any other paragraph of this Mortgage, shall be added to the indebtedness secured hereby or by the judgment of foreclosure.

32. **Recapture.** To the extent Mortgagee receives any payment by or on behalf of Mortgagor, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to Mortgagor or its respective estate, trustee, receiver, custodian or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the indebtedness secured hereby as of the date such initial payment, reduction or satisfaction occurred.

33. **No Lien Management Agreements.** Mortgagor shall include a "no lien" provision in any property management agreement hereafter entered into by Mortgagor with a property manager for the Premises, whereby the property manager waives and releases any and all mechanics' lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1. If the property management agreement in existence as of the date hereof does not contain a "no

UNOFFICIAL COPY

lien" provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form and substance satisfactory to Mortgagee, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage. Such property management agreement containing such "no lien" provision or a short form thereof, or subordination agreement, shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the county where the Premises are located.

34. Rights and Remedies Cumulative. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or any other document, or afforded to Mortgagee by law or equity and may be exercised concurrently, independently or successively, at Mortgagee's sole discretion.

35. Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor, its successors, assigns, legal representatives and all other persons or entities claiming under or through Mortgagor, and the word "Mortgagor," when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, including Beneficiary if the Mortgagor is a land trust, whether or not they have executed the Note or this Mortgage. The word "Mortgagee," when used herein, shall include Mortgagee's successors, assigns and legal representatives, including all other holders, from time to time, of the Note.

36. Notices. All notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person or telecopied (provided that a confirmation copy of such telecopied notice shall be sent by regular U.S. mail on the same day), (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows: to Mortgagor at 2023 S. Ashland Ave., Chicago, IL 60608; and to Mortgagee at **CORUS BANK**, N.A. 3959 N. Lincoln Ave., Chicago, IL 60613, Attention: Terence Keenan, or to any other address or telecopier number as either party shall designate in a notice to such other party. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered or telecopied, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the second federal banking day following the day sent or when actually received.

37. Release of Mortgage. Upon payment of all indebtedness secured by this Mortgage, Mortgagee shall release this Mortgage without charge to Mortgagor, except that Mortgagor shall pay all costs of recordation of any documentation necessary to release this Mortgage.

38. Headings; Grammar. The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. Whenever the words "including", "include" or "includes" are used in this Mortgage, they should be interpreted in a non-exclusive manner as though the words ", without limitation," immediately followed the same.

39. Severability. In the event one or more of the provisions contained in this Mortgage shall be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

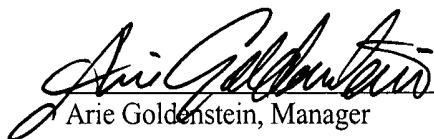
UNOFFICIAL COPY

40. **Governing Law; Litigation.** The place of the location of the Premises being the State of Illinois, this Mortgage shall be governed by, and construed and enforced according to, the laws of that State without giving effect to the Illinois choice of law principles. To the extent that this Mortgage may operate as a security agreement under the Uniform Commercial Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF MORTGAGEE, IN ANY OTHER COURT IN WHICH MORTGAGEE SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

41. **JURY WAIVER.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF MORTGAGOR AND MORTGAGEE HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MORTGAGE, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF MORTGAGOR AND MORTGAGEE WITH RESPECT TO THIS MORTGAGE, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF MORTGAGOR AND MORTGAGEE HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT MORTGAGOR OR MORTGAGEE MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF MORTGAGOR AND MORTGAGEE TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage on the day and year first above written.

BAR Realty, LLC.


Arie Goldenstein, Manager

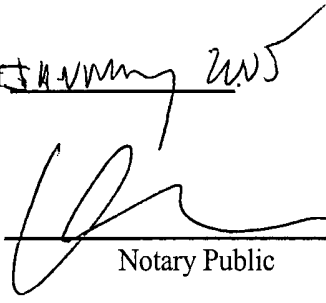
UNOFFICIAL COPY

USE FOR PERSONAL NOTARY

STATE OF ILLINOIS)
COUNTY OF TL) SS.

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Arie Goldenstein, Manager of B.A.R. Realty, LLC., who is 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 own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20 day of January 2005



Notary Public



UNOFFICIAL COPY

EXHIBIT A

Legal Description

Parcel 1:

THE SOUTH 29 FEET 7 1/2 INCHES OF LOT 10 IN LARNED AND WALKER'S SUBDIVISION OF BLOCK 12 IN JOHNSTON AND LEE'S SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Permanent Real Estate Tax No: 17-20-318-008-0000

Property Address: 2023 S. Ashland Ave., Chicago, Illinois 60608

Parcel 2:

LOT 11 IN THE SUBDIVISION OF BLOCK 12 IN JOHNSTON AND LEE'S SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Permanent Real Estate Tax No: 17-20-318-017-0000

Property Address: 1538 W. 21ST ST., Chicago, Illinois 60608