

# UNOFFICIAL COPY



Doc#: 0505419091  
Eugene "Gene" Moore Fee: \$52.00  
Cook County Recorder of Deeds  
Date: 02/23/2005 01:48 PM Pg: 1 of 15

CA 8902760  
CHC  
SP  
- 4 of 4

Property of Cook County Clerk's Office

## SUBORDINATED MORTGAGE AND ASSIGNMENT OF RENTS

THIS MORTGAGE, made this 22nd day of February, 2005 by 1428 Walton, Inc., an Illinois Corporation (herein referred to as "Mortgagor") in favor of Elizabeth Wangler, having her principal address at 1438 W. Kinzie Street, Chicago, IL 60622 (collectively "Mortgagee").

### WITNESSETH:

WHEREAS, Mortgagor is justly indebted to Mortgagee on a certain loan in the principal amount of Four Hundred Fifty Five Thousand and 00/100 Dollars (\$455,000.00), and interest thereon evidenced by that certain Promissory Note of even date herewith made by Mortgagor to the order of, and delivered to, Mortgagee (the "Note").

WHEREAS, pursuant to the Note, Mortgagor promises to pay the said principal sum and interest at the rate or rates and in installments as provided in said Note, and a final payment of principal and interest, if not sooner paid, on or before February 22, 2005 at 1438 W. Kinzie Street, Chicago, Illinois 60622, or such place as the Mortgagee may from time to time in writing appoint.

This instrument was prepared by  
and should be returned after recording to:

PIN No. 17-05-315-031-0000

Alexander R. Domanskis  
Boodell & Domanskis, LLC  
205 N. Michigan Avenue, Suite 4307  
Chicago, Illinois 60601

Property Address:  
1428 W. Walton Street  
Chicago, IL 60622

ROX 334

# UNOFFICIAL COPY

NOW, THEREFORE, Mortgagor, to secure the payment of the principal indebtedness and interest thereon in accordance with the terms of the Note, as said Note may be amended, modified or replaced from time to time, and to secure the performance of the covenants and agreements herein contained by Mortgagor to be performed and the additional obligations hereinafter described, and also in consideration of the sum of Ten Dollars (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto Mortgagee, its successors and assigns, the real estate and all of its estate, right, title and interest therein situate, lying and being in the County of Cook and State of Illinois, legally described in Exhibit A, attached hereto and made a part hereof, which, with the property hereinafter described, is collectively referred to herein as the "Premises";

TOGETHER with all easements and rights of way appurtenant thereto, and all heretofore or hereafter vacated alleys and streets abutting said real estate;

TOGETHER with all buildings and other improvements now located thereon or which may hereafter be placed thereon (the "Improvements"), tenements, easements, fixtures and appurtenances thereto belonging, and all rents, issues and profits 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, electricity, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration, and ventilation, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned;

TOGETHER with all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now have or may hereinafter acquire in the Premises, and any and all awards made for the taking of eminent domain, or by any proceedings or purchase in lieu thereof, or of the whole or any part of the Premises, including without limitation any awards resulting from the change of grade of streets and awards for severance damages;

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 it is lawfully seized of the Premises, that the same are unencumbered and that it has good right, full power and lawful authority to convey and mortgage the same, and that they will forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

# UNOFFICIAL COPY

TO HAVE AND TO HOLD the Premises mortgaged and conveyed unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

Mortgagor hereby further covenants and agrees to and with Mortgagee, as follows:

1. PROTECTION AND MAINTENANCE OF THE PREMISES.

(a) Maintenance, Repair and Restoration of Improvements, Payment of Indebtedness, Payment of Prior Liens.

Mortgagor shall: (i) promptly repair, restore or rebuild any building or improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction; (ii) keep said Premises in good condition and repair, without waste, and free from nuisance, mechanics' lien or other liens or claims for lien not expressly subordinated to the lien hereof or insured over; (iii) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (iv) comply with all requirements of applicable law, including any applicable local, state or federal environmental laws, municipal ordinances, and restrictions of record with respect to the Premises and the use thereof, and (v) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof and of the Note; and (vi) complete, within a reasonable time, the Improvements at any time in the process of erection upon the Premises. As used in this Paragraph 1 and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Note, together with all interest thereon, and all other sums at any time secured by this Mortgage.

(b) Contested Liens. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal or administrative proceedings diligently prosecuted any mechanics', materialmen's or other lien or claim for lien upon the Premises (collectively referred to as a "Contested Lien") and no Contested Lien shall constitute a Default (hereinafter defined) hereunder, provided that Mortgagor shall furnish to Mortgagee such security as may be deemed reasonably satisfactory to Mortgagee to insure payment thereof and to prevent any sale, foreclosure or forfeiture of the Premises by reason of nonpayment thereof, and provided further that, upon final determination of the lien or claim for lien, Mortgagor shall immediately pay any judgment recorded, with all prior costs and charges, and shall have the lien released and any judgment satisfied. Security delivered to Mortgagee in the form of cash or its equivalent shall be released to Mortgagor to be applied toward satisfaction of such judgment upon presentation of appropriate documentation.

2. PAYMENT OF TAXES, TAX CONTESTS OR TAX DEPOSITS.

(a) Mortgagor's Obligation to Pay Taxes When Due. Mortgagor shall pay when due and before any penalty or interest attaches all general real estate taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other like charges against the Premises of any nature whatsoever when due and prior to delinquency (all hereinafter referred to as "Taxes"), and shall, upon written request, furnish to Mortgagee duplicate receipts therefor.

# UNOFFICIAL COPY

(b) Right to Contest Taxes. Mortgagor may contest the validity or amount of any such Taxes by appropriate legal or administrative proceedings diligently prosecuted, provided that if in conjunction with such contest Tenant shall not pay such contested tax, pending any such legal proceedings, Mortgagor shall give Mortgagee such security as may be deemed reasonably satisfactory to Mortgagee to insure payment of the amount of the tax, assessment, tax lien or other imposition or charge, and any and all interest and penalties thereon, including Mortgagee's reasonable attorneys' fees as may be required. Security delivered to Mortgagee in the form of cash or its equivalent shall be released to Mortgagor to discharge any tax due with respect to said contest, upon presentation of appropriate documentation.

### 3. INSURANCE.

(a) Mortgagor to Maintain Insurance. Mortgagor shall maintain the following policies of insurance with respect to the Premises: (a) casualty insurance for the full replacement cost of the completed Improvements and (b) public liability insurance. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with standard mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, naming Mortgagee as loss payee, and including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without less than ten 10 days' prior written notice to Mortgagee and with Mortgagee named as an additional insured with respect to all public liability insurance carried by Mortgagor. Mortgagor shall deliver 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.

(b) No Separate Insurance. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

4. ASSIGNMENT OF RENTS AND INCOME. To further secure the Note, Mortgagor hereby assigns unto Mortgagee, and grants to Mortgagee a security interest in, all of the rents, leases and income now or hereafter generated with respect to the operation of the business on the Premises, it being the intention hereby to establish an absolute transfer and assignment of all such leases, rents and income thereunder to Mortgagee, however such income is generated, and with respect to the assignment of leases, whether such leases now exist or shall exist in the future. Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Mortgagee) with or without taking possession of the Premises as provided herein, to lease any portion of the Premises to any party upon such terms as Mortgagee shall determine, to collect all income generated by the business on the Property and to collect all rents due under each of the leases, 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 pursuant to the provisions of this Mortgage. Mortgagor represents that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance

# UNOFFICIAL COPY

and that the payment of none of the rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Mortgagor. Mortgagor waives any rights 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, income or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to this Mortgage. Mortgagor expressly waives all liability of Mortgagee in the exercise of the powers herein granted Mortgagee except for Mortgagee's gross negligence or willful misconduct. Mortgagor shall execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Premises as Mortgagee shall from time to time require. Although the assignment contained in this paragraph is a present assignment, Mortgagee shall not exercise any of the rights or powers conferred upon it by this paragraph until a Default shall exist under this Mortgage. Within thirty (30) days of Mortgagee's written demand, Mortgagor will furnish Mortgagee with executed copies of each of the leases and with estoppel letters from each tenant in a form satisfactory to Mortgagee. Mortgagor hereby warrants and represents that there are no leases for all or any part of the Improvements presently in effect.

5. EFFECT OF EXTENSIONS OF TIME. If the payment of said indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the indebtedness be released, all persons now or at any time hereafter liable therefore, or interested in said Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation or release.

6. MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS. In case of Default (defined below), Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may be made or accomplished either before or after acceleration of the indebtedness secured hereby or foreclosure of the lien hereof and during the period of redemption, if any. Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title encumbrance or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment or cure any default of landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax if not paid and or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate specified in the Note (hereinafter called the "Default Rate"). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

7. MORTGAGEE'S RELIANCE. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other



# UNOFFICIAL COPY

prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, subject to Mortgagor's rights as set forth in sub-paragraphs 1(b) and 2(b) hereof.

8. ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT. Mortgagor further covenants and agrees with Mortgagee, that if: (a) default be made in the due and punctual payment of the Note secured hereby, or any payment due in accordance with the terms thereof and such default is not cured within the time periods set forth in the Note; or (b) Mortgagor shall file a petition in voluntary bankruptcy or under any Chapter of Title Eleven of the United States Code or any similar law, state or federal, whether now or hereafter existing, or any answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within sixty (60) days, as hereinafter provided; or (c) Mortgagor shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for Mortgagor or the major part thereof in any involuntary proceeding or any court shall have taken jurisdiction of the property of Mortgagor in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of such Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days; or (d) Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof; or (e) default shall be made in the due observance or performance of any other of the covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor, which shall not be cured within thirty (30) days after written notice thereof is sent by Mortgagee to Mortgagor, or commenced to be corrected and diligently pursued to completion within sixty (60) days after such notice if correction is impossible to perform within a 30-day period; or (f) the occurrence of a Prohibited Transfer (as defined in Paragraph 28 below); or (g) default which shall not have been cured within the applicable grace period, if any, shall be made in the due observance or performance of any of the covenants, agreements or conditions contained, required to be kept or observed by Mortgagor or the beneficiary of Mortgagor in any other instrument given to secure the payment of the Note, including that certain Security Agreement of even date herewith by and between the beneficiary of Mortgagor and Mortgagee, then and in every such case the whole of the indebtedness hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable without notice to Mortgagor. For purposes of this Mortgage, each of the events described in (a) through (g) in the preceding shall be referred to as a "Default". If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of any or all Improvements on the Premises, as set forth in this Mortgage, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any subsequent party holding record title to the Premises or otherwise entitled thereto, without interest.

9. FORECLOSURE; EXPENSE OF LITIGATION

(a) Right to Foreclosure. In case of Default, Mortgagee shall have the right to foreclose the lien hereof for the indebtedness secured hereby or part thereof in accordance with the applicable state law, and to exercise any other remedies of Mortgagee at law or in equity or

# UNOFFICIAL COPY

otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All costs and expenses of the nature mentioned in this paragraph and such reasonable expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage the Note or said Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall immediately become due and payable by Mortgagor, with interest thereon at the Default Rate (as defined in the Note) from the time of such expenditure until paid. Anything herein to the contrary notwithstanding, any costs or fees of Mortgagee that is awarded or confirmed by any court in conjunction with the foreclosure proceedings set forth herein shall be deemed reasonable.

(b) Mortgagee May Bid. Upon any foreclosure sale, Mortgagee may bid for and purchase the Premises and shall be entitled to apply all or part of the indebtedness secured hereby as a credit to the purchase price.

10. APPLICATION OF PROCEEDS OF FORECLOSURE SALE. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and reasonable expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided and all principal and interest remaining unpaid on the Note; third, any surplus to any party entitled thereto as their rights may appear.

11. POSSESSION DURING FORECLOSURE.

(a) Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of said Premises upon Mortgagee's request, and Mortgagor hereby waives any objection thereto and agrees not to raise any such objection during any foreclosure proceeding. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed such receiver. Such receiver shall have power to collect the rents, issues and profits of said Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises

# UNOFFICIAL COPY

during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (i) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure; (ii) the deficiency in case of a sale and deficiency.

(b) Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall 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. In such event, Mortgagee in its discretion may, with process of law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, their respective agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power and to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, income, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (i) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (ii) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof, provided Mortgagee has not previously agreed to recognize the rights of possession of a tenant thereunder; (iii) to extend or modify any then existing leases and to make new leases, 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 indebtedness hereunder and beyond the date of 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 and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (iv) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as to it may seem judicious; (v) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (vi) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. 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



# UNOFFICIAL COPY

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 attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

(c) Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(i) to the payment of the operating expenses of said Premises, including cost of management and sale or leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease or sale commissions and other compensation and expenses of seeking and procuring tenants or purchasers and entering into leases or sales contracts), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(ii) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and, if this is a leasehold mortgage, of all rents due or which may become hereafter due under the underlying lease;

(iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises, including the cost from time to time of installing or replacing personal property such as appliances therein, and of placing the Premises in such condition as will, in the judgment of Mortgagee, make it readily rentable or saleable; and

(iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

12. RIGHTS AND REMEDIES CUMULATIVE; NO WAIVER. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

13. RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby. Mortgagee may require from Mortgagor reimbursement of any reasonable attorneys' fees and other out of pocket expenses incurred for preparation and delivery of any release.

# UNOFFICIAL COPY

14. GIVING OF NOTICE. Any notice which shall be required to be given hereunder shall be in writing, and the mailing thereof in the United States mail by certified or registered mail addressed to Mortgagor and Mortgagee at their respective addresses as set forth in Paragraph 29(c) hereof, or at such other place as any Mortgagor or Mortgagee may by notice in writing designate as a place for service of notice, or personal delivery, or overnight courier, shall constitute service of notice hereunder. Any notice mailed shall be deemed to have been given two (2) business days after the date of mailing. Notice may also be given by hand delivery and, in such case, shall be deemed to have been given as of the date of receipt.

15. WAIVER OF DEFENSE. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

16. WAIVERS.

(a) Waiver of Statutory Rights. To the extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, or under any sale pursuant to any statute, order, decree or judgment of any court, on their own behalfs and on behalf of each and every person (except decree or judgment creditors of Mortgagor) acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and to the extent permitted by law, hereby waive any homestead right in and to the Premises.

(b) Waiver of Claims. To the extent permitted by law, Mortgagor further waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives for loss or damage to any Mortgagor, the Premises, any Mortgagor's other property, or the property of others under any Mortgagor's control from any cause except for the gross negligence and willful or malicious acts of Mortgagee, its employees, agents and representatives. All sums payable by Mortgagor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, or defense, and without abatement, suspension, deferment, diminution, or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Premises or any part thereof; (ii) any restriction or prevention of or interference with any use of the Premises or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; (v) any claim which Mortgagor has or might have against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; or whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any obligations secured hereby.

# UNOFFICIAL COPY

17. FILING AND RECORDING FEES. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (other than Mortgagee's income on other like taxes accruing by reason of the interest payable on the loan), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of said Note and this Mortgage.

18. NO MERGER. It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

19. TRUTH-IN-LENDING. Mortgagor represents and agrees that the obligations secured hereby is an exempt transaction under the Truth-In-Lending Act, 15 U.S.C., § 1601 et seq.

20. RESTRICTIONS ON TRANSFER.

(a) Prohibited Transfers. It shall be an immediate event of default hereunder if, without the prior written consent of the Mortgagee, (i) Mortgagor shall create, effect or consent to or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of all or any part of the Premises, or interest therein.

(b) Reasonableness of Restrictions. Mortgagor acknowledges and agrees, for itself and its successors, that the foregoing restrictions on sale, transfer, or conveyance are reasonable. Any violation of the terms of this paragraph shall entitle Mortgagee to declare the whole outstanding principal balance of the Note, together with interest accrued thereon and any other sums owing under the terms of this Mortgage or any other instrument related to the indebtedness hereby secured, immediately due and payable and to foreclose the lien and security interest granted in this Mortgage.

(c) Binding Upon Successors. The provisions of this Section 23 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part or interest in or encumbrance upon the Premises.

21. MAXIMUM ALLOWABLE RATE OF INTEREST. All agreements herein and in the Note are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to Mortgagee for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of

# UNOFFICIAL COPY

validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance Mortgagee shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

22. MORTGAGEE'S LIEN FOR SERVICE CHARGE AND EXPENSES. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan fees or service charges, liquidated damages, loan expenses including but not limited to reasonable attorneys' fees of Mortgagee's counsel to prepare loan documents, appraisal fees, and advances due to or incurred by Mortgagee in connection with the loan to be secured hereby; provided, however, that in no event shall the total amount of loan proceeds disbursed plus such additional amounts exceed three hundred percent (300%) of the face of the Note.

23. SUBORDINATION. This mortgage shall be subordinate to the first mortgage executed on the property located at 1428 West Walton Street, Chicago, Illinois 60622.

24. MISCELLANEOUS. The following understandings shall be applicable to this Mortgage.

(a) Successors. This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and its successors, grantees and assigns, any subsequent owner or owners of the Premises and all persons claiming under or through any Mortgagor, and the word "Mortgagor" or "Mortgagors" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed said Note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of Mortgagee named herein, and the holder or holders, from time to time, of any Note secured hereby.

(b) Invalidity of a Provision. In the event one or more of the provisions contained in this Mortgage or any Note secured hereby or in any other security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

(c) Notices. Any notice which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been given on the second business day after mailing if mailed by United States registered or certified mail in Illinois addressed to their addresses as set forth herein or as changed by prior notification to the other party.

(d) Illinois Law. This Mortgage and the Note it secures are to be construed and governed by the laws of the state of Illinois.



# UNOFFICIAL COPY

(e) Grammatical Adjustments. Whenever the context requires, the singular form of any word herein shall include the plural form, and vice versa, and the neuter form of any word shall include the masculine and feminine forms, and vice versa.

Property of Cook County Clerk's Office

***SIGNATURES FOLLOW ON NEXT PAGE***

# UNOFFICIAL COPY

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

1428 Walton, Inc., an Illinois Corporation

By: *Edward Neri*  
Edward Neri, Its President

State of Illinois            )  
  )  
County of Cook            )        SS

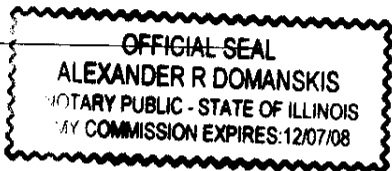
I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Edward Neri, personally known to me to be the President of 1428 Walton, Inc., an Illinois Corporation and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed the foregoing instrument as his free and voluntary act and deed as aforesaid, for the uses and purposes therein set forth.

Given under my hand and official seal, this 22nd day of February, 2005.

*Alexander R Domanskis*

\_\_\_\_\_  
Notary Public

Commission expires:



# UNOFFICIAL COPY

## EXHIBIT "A"

### LEGAL DESCRIPTION

LOT 18 IN THE SUBDIVISION OF THE EAST ½ OF THE NORTH ½ OF BLOCK 22 IN CANAL TRUSTEE'S SUBDIVISION OF THE WEST ½ OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office