

Doc#: 0603812090 Fee: \$68.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/07/2006 04:33 PM Pg: 1 of 23

Property of Cook County Clerk's Office

(Above space for recording information)

THIS INSTRUMENT PREPARED BY:) David H. Hight, Esq.
) Wildman, Harrold, Allen & Dixon
) Suite 455
) 2300 Cabot Drive
AFTER RECORDING, MAIL TO:) Lisle, Illinois 60532

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

Dated as of February 1, 2006

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES is made and dated to be effective as of this 1ST day of February, 2006 by

DENNIS PROSPERI (herein, together with his successors and assigns, called the "Mortgagor"),

to

JP MORGAN CHASE BANK, N.A., a national banking association (herein, for convenience referred to as the "Mortgagee").

Box 195

UNOFFICIAL COPY

WITNESSETH:

WHEREAS, Mortgagor is the owner and holder of fee simple title in and to the following described real estate located in the County of Cook, State of Illinois, which real estate forms the Premises hereinafter described:

Per the Legal Descriptions set forth in Exhibit A attached hereto and forming a part hereof

Commonly known as: 21 Polo Drive, South Barrington, Illinois 60010

WHEREAS, Mortgagor is indebted to Mortgagee pursuant to the Guaranty Agreement dated as of February 8, 2002, as amended by the First Amendment to Guaranty dated as of November 20, 2003, the Second Amendment to Guaranty dated as of December 9, 2005 and the Third Amendment to Guaranty dated as of even date herewith (collectively, the "Guaranty Agreement"), wherein the Mortgagor guaranteed the indebtedness and liabilities of Henri Studio, Inc., an Illinois corporation (the "Borrower") to the Mortgagee.

WHEREAS, the Borrower has made an assignment for the benefit of creditors to Howard Korenthal (the "Assignee"), not individually, but solely as Assignee for the Benefit of Creditors of Henri Studio, Inc.

WHEREAS, the Mortgagee has agreed to make loans to the Assignee under the Revolving Credit Agreement dated as of the date of this Mortgage, 2006 (together with all amendments, renewals, extensions and replacements thereof, the "Credit Agreement") and that certain Secured Promissory Note dated as of January 31, 2006 in the original principal sum of Twelve Million Six Hundred Sixty Two Thousand Two Hundred Fifty Seven and 48/100 Dollars (\$12,662,257.48) (together with all amendments, renewals, extensions and replacements thereof, the "Note") (the Credit Agreement and the Note collectively referred to herein as, the "Assignee Loan Documents").

WHEREAS, the Guaranty Agreement also secures the obligations of the Assignee under the Assignee Loan Documents.

NOW, THEREFORE, to secure the obligations of the Mortgagor under the Guaranty Agreement, and to secure the payment of all other sums which may at any time be due and owing or required to be paid by Mortgagor to Mortgagee not to exceed in the aggregate Five Million Seven Hundred Fifty Thousand Dollars (\$5,750,000.00) (the "Indebtedness"), and the performance and observance of all of the covenants, agreements and provisions herein and in the Assignee Loan Documents and in consideration of the premises and of the extension of credit by the Mortgagee to the Borrower or the Assignee whether evidenced by the Assignee Loan Documents, or any other instruments and agreements, and for other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged by the Mortgagor, the Mortgagor DOES HEREBY GRANT, DEMISE, RELEASE, ALIEN, MORTGAGE and CONVEY unto Mortgagee, its successors and assigns forever, the real estate above described (which, together with the property mentioned in the next succeeding paragraphs hereto, is called

UNOFFICIAL COPY

the "Premises");

TOGETHER with all right, title and interest of Mortgagor, including any after-acquired title or reversions, in and to the beds of the ways, streets, avenues and alleys adjoining the aforesaid real estate;

TOGETHER with all and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to said real estate, including any other claim at law or in equity as well as any after-acquired title, franchise or license and the reversions and remainder and remainders thereof;

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the aforesaid real estate, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or forming a part of or used in connection with the aforesaid real estate or the operation and convenience of any building or buildings and improvements located thereon, including but without limitation, all furniture, furnishings, equipment, apparatus, machinery, motors, elevators, fittings, screens, awnings, partitions, carpeting, curtains and drapery hardware used or useful in the operation and/or convenience of the aforesaid real property or improvements thereon and all plumbing, electrical, heating, lighting, ventilating, refrigerating, incineration, air conditioning and sprinkler equipment, systems, fixtures and conduits (including, but not limited to, all furnaces, boilers, plants, units, condensers, compressors, ducts, apparatus and hot and cold water equipment and system), and all renewals or replacements thereof or articles in substitution herefor, in all cases whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the aforesaid realty shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness. Notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Illinois Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods as collateral, in Mortgagee as a secured party, all in accordance with said Illinois Uniform Commercial Code as more particularly set forth in the Section herein titled "Uniform Commercial Code";

TOGETHER with all right, title, estate and interest of the Mortgagor in and to the Premises, property, improvements, furniture, furnishing, apparatus and fixtures hereby conveyed, assigned, pledged and hypothecated, or intended so to be, and all right to retain possession of the Premises after default in payment or breach of any covenant herein contained; and

UNOFFICIAL COPY

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Premises for any taking by eminent domain, either permanent or temporary, of all or any part of the Premises or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, which said awards and compensation are hereby assigned to Mortgagee, and Mortgagor hereby designates Mortgagee as its agent and directs and empowers Mortgagee, at the option of the Mortgagee, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust or compromise the claim for any award and to collect and receive the proceeds thereof, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Indebtedness, notwithstanding the fact that the amount owing thereon may then be due and payable or that the Indebtedness is otherwise adequately secured, all subject to the provisions of the Section herein titled "Condemnation."

TO HAVE AND TO HOLD the Premises, with the appurtenances, and fixtures, unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the uses and purposes herein set forth together with all right to possession of the Premises after any default in the payment of all or any part of the Indebtedness, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined; the Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

PROVIDED, NEVERTHELESS, that if the Mortgagor shall pay when due the Indebtedness and duly and timely perform and observe all of the terms, provisions, covenants and agreements herein provided to be performed and observed by the Mortgagor, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect, otherwise to remain in full force and effect.

THE MORTGAGOR COVENANTS AND AGREES AS FOLLOWS:

Section 1. Payment of Indebtedness. The Mortgagor shall pay when due (a) the principal of and interest and premium, if any, on the Indebtedness of the Borrower evidenced by the Guaranty Agreement, and (b) all other Indebtedness; and the Mortgagor shall duly and punctually perform and observe all of the terms, provisions, conditions, covenants and agreements on the Mortgagor's part to be performed and observed as provided herein and in the Guaranty Agreement and this Mortgage shall secure such payment, performance and observance.

Section 2. Maintenance, Repair, Restoration, Liens, etc. The Mortgagor shall (a) promptly repair, restore or rebuild any building or improvement now or hereafter included within the definition of Premises which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for the purpose; (b) keep the Premises in good condition and repair, without waste, and free from mechanic's, materialmen's or like liens or claims or other liens or claims for lien; (c) pay, when due, any indebtedness which may be secured by a lien or charge on the Premises junior to the lien hereof and, upon request, exhibit to the Mortgagee satisfactory evidence of the discharge of such lien; (d) complete, within a reasonable time, any building or buildings or other improvements now or at any time in the process of

UNOFFICIAL COPY

erection upon the Premises; (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof; (f) make or permit no material alterations in the Premises except as required by law or ordinance without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld or delayed; (g) suffer or permit no change in the general nature of the occupancy of the Premises; (h) initiate or acquiesce in no zoning reclassification with respect to the Premises; (i) suffer or permit no unlawful use of, or nuisance to exist upon, the Premises, and (j) cause the Premises to be managed in a competent and professional manner.

Section 3. Other Liens. Except as otherwise expressly provided herein and for Permitted Encumbrances, the Mortgagor shall not create or suffer to permit any mortgage, lien, charge or encumbrance to attach to the Premises, whether such lien or encumbrance is inferior or superior to the lien of this Mortgage, excepting only the lien of real estate taxes and assessments not due or delinquent. As used herein, "Permitted Encumbrances" shall mean with respect to the Premises, all private, public and utility easements and roads and highways, if any; existing leases and tenancies; if any; special or general taxes not yet due and payable; and covenants, conditions, restrictions and easements of record.

Section 4. Taxes. The Mortgagor shall pay before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby; and Mortgagor shall, upon written request, furnish to the Mortgagee duplicate receipts therefor. The Mortgagor shall pay in full under protest in the manner provided by statute, any Taxes which the Mortgagor may desire to contest; provided, however, that if deferment of payment of any such Taxes is permitted in connection with any contest or review, the Mortgagor shall deposit with the Mortgagee the full amount thereof, together with an amount equal to the estimated interest and penalties thereon during the period of contest, and in any event, shall pay such Taxes, notwithstanding such contest, if in the opinion of the Mortgagee the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; and if the Mortgagor shall not pay the same when required to do so, the Mortgagee may do so and may apply such deposit for the purpose. In the event that any law or court decree has the effect of deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises, or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness or the Mortgagee, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such Taxes, or reimburse the Mortgagee therefor on demand, unless such payment or reimbursement by Mortgagor is unlawful, in which event the Indebtedness shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this Section shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes pertaining to the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

UNOFFICIAL COPY

Section 5. Insurance Coverage. The Mortgagor at its own expense will insure and keep insured itself and all of the buildings and improvements now or hereafter included within the Premises, and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time reasonably require, and in any event including:

(a) Commercial general liability against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may require, and in any event not less than \$2,000,000.00 combined single limit coverage, with a \$5,000,000.00 umbrella policy;

(b) During the course of any construction or major repair of improvements on the Premises, builder's risk insurance (completed value form) against "all risks of physical loss", including installation floater coverage and collapse and transit coverage, during construction of such improvements, with deductibles not to exceed \$10,000.00, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished. Said policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement;

(c) If any such equipment is ever located upon the Premises, boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and insurance against loss of occupancy or use arising from any such breakdown, in such amounts as are reasonably satisfactory to Mortgagee;

(e) Flood insurance, if available and required under the National Flood Insurance Act of 1968, as amended; and

(f) Such other insurance, and in such amounts as are customarily carried upon like premises in the community and as may from time to time be reasonably required by Mortgagee against the same or other hazards.

Section 6. Insurance Policies. All policies of insurance to be maintained and provided as required herein shall be with companies, and in form and amounts satisfactory to the Mortgagee and all policies of casualty insurance shall have attached thereto mortgage clauses or endorsements in favor of and with loss payable to and in form satisfactory to the Mortgagee and shall provide that such insurance may not be cancelled or altered as to Mortgagee without at least thirty (30) days prior written notice to Mortgagee. The Mortgagor will deliver all policies and certificates of insurance, including additional and renewal policies to the Mortgagee and, in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

Section 7. Proceeds of Insurance. The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and:

UNOFFICIAL COPY

(a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagor may itself adjust losses aggregating not in excess of Twenty Five Thousand Dollars (\$25,000.00) if such adjustment is carried out in a competent and timely manner, and provided that in any case the Mortgagee shall, and is hereby authorized to, collect and give receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to the Mortgagee upon demand.

(b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty"), and if, in the reasonable judgment of the Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the Insured Casualty and adequately securing the outstanding balance of the Indebtedness, then, if no Event of Default, as hereinafter defined, shall have occurred and be then continuing and the Mortgagor shall not be in default hereunder, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises or part thereof subject to Insured Casualty, as provided for in the Section herein titled "Disbursement of Insurance Proceeds"; and the Mortgagor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided, always, that the Mortgagor shall pay all costs of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(c) Except as provided in subsection (b) of this Section, the Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness, in such order or manner as the Mortgagee may elect; provided, however, that such application of proceeds shall not be considered a voluntary prepayment of the Indebtedness which would require the payment of any prepayment premium or penalty.

(d) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the restoring, repairing, replacing or rebuilding of the Premises, the Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee, which approval shall not be unreasonably withheld or delayed.

Section 8. Disbursement of Insurance Proceeds. In the event the Mortgagor is entitled to reimbursement out of insurance proceeds held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with (i) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (ii) funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement

UNOFFICIAL COPY

and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats or survey and such other evidences of cost, payment and performance as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety (90%) percent of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee must be sufficient to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by the Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall, at the option of Mortgagee, be applied on account of the Indebtedness then most remotely to be paid, or be paid to the Mortgagor.

Section 9. Condemnation. The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation including any payments made in lieu of or in settlement of a claim or threat of condemnation. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness then most remotely to be paid, whether due or not, or require the Mortgagor to restore or rebuild the Premises, in which event the proceeds shall be held by the Mortgagee and used to reimburse the Mortgagor for the cost of such rebuilding or restoring. If, in the reasonable judgment of the Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the condemnation and adequately securing the outstanding balance of the Indebtedness, the award shall be used to reimburse the Mortgagor for the cost of restoration and rebuilding; provided, always, that Mortgagor is not in default hereunder and that no Event of Default has occurred and is then continuing. If the Mortgagor is required or permitted to rebuild or restore the Premises as aforesaid, such rebuilding or restoration shall be effected solely in accordance with plans and specifications previously submitted to and approved by the Mortgagee, and proceeds of the award shall be paid out in the same manner as is provided in the Section herein titled "Disbursement of Insurance Proceeds" for the payment of insurance proceeds towards the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, the Mortgagor shall pay such costs in excess of the award before being entitled to reimbursement out of the award. Any surplus which may remain out of the award after payment of such costs of rebuilding or restoration shall, at the option of the Mortgagee, be paid to the Mortgagor.

Section 10. Environmental Laws. Mortgagor shall at all times comply with all applicable environmental protection regulations imposed by federal, state, municipal and/or public or quasi-public agencies having jurisdiction over the Premises. Under no circumstances shall Mortgagor permit hazardous materials (as hereinafter defined) to be disposed of on the Premises in violation of applicable law. The term "hazardous materials" shall mean (i) any

UNOFFICIAL COPY

“hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) or by applicable state law, each as amended from time to time, and regulations promulgated thereunder; and by (ii) any “hazardous substance” as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) or by applicable state law, each as amended from time to time, and regulations promulgated thereunder. The Mortgagor shall not permit any liens to be filed against the Premises by reason of services or materials furnished in connection with the clean-up of environmental contamination or the removal of any hazardous materials. If requested to do so by any public or quasi-public agency, the Mortgagor shall promptly prepare and implement a clean-up plan with respect to the elimination of any hazardous materials or environmental contamination. The Mortgagor shall indemnify and hold harmless the Mortgagee, its agents, employees and successors, from all costs incurred to clean-up any environmental contamination or the removal of any hazardous materials. The indemnification provided herein shall survive foreclosure of this Mortgage.

Section 11. Stamp Tax. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Mortgagor or the Premises, any tax is used or becomes due in respect of the Indebtedness, the Mortgagor shall pay such tax in the manner required by such law.

Section 12. Effect of Extension of Time and Amendments. If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security therefor be released, all persons now or at any time hereafter liable therefor, or interested in the 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 and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee to amend, modify and supplement this Mortgage, the Guaranty Agreement, and the assignments herein referred to, and to extend the maturity of the Indebtedness, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

Section 13. Mortgagee’s Performance of Mortgagor’s Obligations. In case of default herein, the Mortgagee, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and the Mortgagee may, but shall not be required to, 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 or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment, and may, but shall not be required to, rent, operate and manage the Premises and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and improvements shall be operational and usable for their intended purposes. All monies paid for

UNOFFICIAL COPY

any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees and other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such improvements or to pay any such operating costs and expenses thereof or to keep the Premises and improvements operational and usable for its intended purpose, shall be so much additional Indebtedness, whether or not they exceed the face amount of the Indebtedness, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate, after Mortgagor has failed to pay when due amounts owing thereunder. Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of the Mortgagor. The Mortgagee, in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the improvements or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

Section 14. Inspection of Premises and Records. The Mortgagee shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times upon reasonable advance notice, and access thereto shall be permitted for that purpose.

Section 15. Uniform Commercial Code. This Mortgage constitutes a Security Agreement under the Illinois Uniform Commercial Code (the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all for the purposes of this Section called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Upon any Event of Default hereunder and at any time thereafter, the Mortgagee at its option may declare the Indebtedness immediately due and payable, all as more fully set forth in the Section herein titled "Events of Default" hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including, but without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations as provided in the Code. The Mortgagee, without removal may

UNOFFICIAL COPY

render the Collateral unusable and dispose of the Collateral on the Premises. The Mortgagee will give Mortgagor at least five (5) business days notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by registered or certified mail or equivalent, postage prepaid, to the address of Mortgagor shown in the Section herein titled "Notices" of this Mortgage at least five (5) business days before the time of the sale or disposition. The Mortgagee may buy at any public sale, and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Premises, the Collateral and real estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses or retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness. The Mortgagee will account to the Mortgagor for any surplus realized on such disposition.

(b) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness remains unsatisfied.

(c) The terms and provisions contained in this Section shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(d) This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described at the beginning of this Mortgage, which goods are or are to become fixtures relating to the Premises. The addresses of the Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in the Section herein titled "Notices". This Mortgage is to be filed for record with the Recorder of Deeds or other proper office of the County or Counties where the Premises are located. The Mortgagor is the record owner of the Premises.

Section 16. Restrictions on Transfer. It shall be an Event of Default hereunder if, without the prior written consent of the Mortgagee, any one or more of the following shall occur:

(a) If the Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof or interest therein, including the equity of redemption and including the beneficial interest in a trustee mortgagor, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility if such Collateral is deemed by Mortgagor to be necessary for the use and operation of the Premises;

UNOFFICIAL COPY

(b) If the Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation 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 any such shareholder's shares in such corporation; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over The Counter" market, then this Section shall be inapplicable;

(c) If the Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee mortgagor is a partnership or joint venture, then if any partner or joint venturer in such partnership or joint venture 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 partnership interest or joint venture interest, as the case may be, of such partner or joint venturer;

(d) If the Mortgagor is a limited liability company, or if any limited liability company is a beneficiary of a trustee mortgagor, then if any member in such limited liability company 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 membership interest of such member;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this Section shall not apply to (i) liens securing the Indebtedness, (ii) the lien of current taxes and assessments not in default, (iii) transfers of membership interests in Mortgagor to a trust whose beneficiary shall be one or more of the children of one or more of the trustees of the trusts which are members of Mortgagor; and (iv) any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership, joint venture or membership interests, as the case may be, in the Mortgagor or any beneficiary of a trustee mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee. The provisions of this Section 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 of or interest in or encumbrance upon the Premises, or such beneficial interest in, shares of stock of, or partnership or joint venture interest in, the Mortgagor or any beneficiary of a trustee mortgagor.

Section 17. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur:

(a) The failure of Mortgagor to make any payment on the Indebtedness evidenced by the Guaranty Agreement within ten (10) days of the date when due

UNOFFICIAL COPY

(b) If any other default hereunder or under the Guaranty Agreement shall occur and such default is not cured within thirty (30) days after written notice to Mortgagor; or

(c) If any other default under the Assignee Loan Documents shall occur and such default is not cured within the applicable cure period; or

(d) If a default under the Section herein titled "Restrictions on Transfer" shall occur and be continuing without notice or period of grace of any kind; or

(e) If any default shall exist under the provisions hereof regarding assignments of rents and leases and such default is not cured within thirty (30) days after written notice to Mortgagor; or

(f) If the Premises shall be abandoned; or

(g) There shall occur any default or event of default, or any similar event, or any event which requires the prepayment of borrowed money or the acceleration of the maturity thereof, under the terms of any evidence of indebtedness or other agreement issued, assumed or entered into by the Mortgagor, the Guarantor or any co-maker or guarantor of the Indebtedness or under the terms of any indenture, agreement or instrument under which any such evidence of indebtedness or other agreement is issued, assumed, secured or guaranteed, owed to Mortgagee, and such event shall continue beyond any applicable period of grace;

then the 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 the Mortgagee hereunder to declare, without further notice, all Indebtedness to be immediately due and payable, whether or not such default be thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage or to exercise any right, power or remedy provided by this Mortgage, the Guaranty Agreement, the assignments or by law or in equity conferred.

Section 18. Possession by Mortgagee. When the Indebtedness shall become due, whether by acceleration or otherwise, the Mortgagee, shall after filing a complaint, if applicable law permits, have the right to enter into and upon the Premises and take possession thereof or to appoint an agent or trustee for the collection of the rents, issues and profits of the Premises. The net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, may be applied to the payment of Taxes, insurance premiums and other charges applicable to the Premises, or in reduction of the Indebtedness; and the rents, issues and profits of and from the Premises are hereby specifically pledged to the payment of the Indebtedness.

Section 19. Environmental Assessment. When an Event of Default has occurred, and Mortgagee reasonably believes that any violation of Environmental Laws (as defined in the Environmental Indemnity Agreement of even date herewith between Mortgagor and Mortgagee) with respect to the Premises may have occurred, or that any Contaminants (as defined in said Environmental Indemnity Agreement) exist over, beneath, in or upon the Premises or have been discharged, emitted, transported or released from the Premises, Mortgagor shall, promptly upon

UNOFFICIAL COPY

written request of Mortgagee, obtain and deliver to Mortgagee, an environmental assessment of the Premises by a qualified environmental or engineering firm.

Section 20. Foreclosure. When the Indebtedness, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's 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 assurance with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Section, and such other expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Guaranty Agreement or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, shall be so much additional Indebtedness and shall be immediately due and payable by Mortgagor, with interest thereon until paid.

Section 21. 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 the Premises. Such appointment may be made either before or after sale, without regard to solvency or insolvency of the 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 the Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of 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 during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

- (a) The Indebtedness or the indebtedness secured by a 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 sale; or
- (b) The deficiency in case of a sale and deficiency.

UNOFFICIAL COPY

Section 22. 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 expenses incident to the foreclosure proceedings, including all such items as are mentioned in the Section regarding foreclosure herein; Second, all other items which, under the terms hereof, constitute Indebtedness additional to that evidenced by the Guaranty Agreement, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Guaranty Agreement; Fourth, to the principal remaining unpaid upon the Guaranty Agreement; and Fifth, any overage to the Mortgagor and its successors or assigns, as their rights may appear.

Section 23. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in rebuilding or restoring the buildings or improvements as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to Mortgagor for prepaid premiums thereon.

Section 24. Waiver. Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the premises, and (ii) in any way extending the time for the enforcement of the collection of the Guaranty Agreement or the debt evidenced thereby or creating or extending a period of reinstatement or redemption from any sale made in collecting said debt. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, reinstatement or redemption, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the premises, to the extent permitted by law, hereby waives and releases all rights of reinstatement, redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Indebtedness and marshalling in the event of foreclosure of the liens hereby (and in the supplementary collateral) created. If any law referred to in this Section and now in force, of which Mortgagor, Mortgagor's heirs, devisees, successors and assigns or other person may take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Mortgagor expressly waives and relinquishes any and

UNOFFICIAL COPY

all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Illinois pertaining to the rights and remedies of sureties. Without limiting the foregoing, but in addition thereto and in amplification thereof, the Mortgagor hereby expressly waives any and all rights of reinstatement or redemption from sale under any order, judgment, or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of the Mortgagor acquiring any interest in or title to the premises subsequent to the date thereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois law.

Section 25. Assignment of Rents and Leases. Without limiting the generality of any other provisions hereof, as additional security, Mortgagor hereby assigns to Mortgagee the rents, issues and profits of the Premises, and upon the occurrence of any Event of Default Mortgagee may receive and collect said rents, issues and profits so long as such Event of Default shall exist and during the pendency of any foreclosure proceedings. As of the date of this Mortgage, as additional security, Mortgagor also hereby assigns to Mortgagee any and all other written and oral leases whether now in existence or which may hereafter come into existence during the term of this Mortgage, or any extension hereof, and the rents thereunder covering the Premises or any portion thereof. The collection of rents by Mortgagee pursuant to this Section shall in no way waive the right of Mortgagee to foreclose this Mortgage in the event of any Event of Default, and Mortgagee shall not be required to commence foreclosure proceedings prior to exercising its rights to collect rents pursuant to this Section. Notwithstanding the foregoing, until a notice in writing is sent to Mortgagor stating that an Event of Default or any event of condition that with notice or passage of time or both might become an Event of Default has occurred under the terms and conditions of this Mortgage (a "Notice"), Mortgagor may receive, collect and enjoy the lease payments, rents, income, and profits accruing from the Premises, including the rents, income and profits accruing from the any lease (the "Rents"). Mortgagee may, after service of a Notice, receive and collect the Rents as they become due. Mortgagee may thereafter continue to receive and collect all such Rents as long as such Event of Default shall exist and during the pendency of any foreclosure proceedings.

From and after the occurrence of an Event of Default, Mortgagor hereby appoints Mortgagee its true and lawful attorney, which appointment is irrevocable and coupled with an interest, with full power of substitution and with full power for Mortgagee in its own name and capacity or in the name and capacity of Mortgagor, from and after the service of a Notice (with or without taking possession of the Premises), to demand, collect, receive, and give complete acquittance for any and all Rents and at Mortgagee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Mortgagor or otherwise, that Mortgagor may deem necessary or desirable in order to collect or enforce the payment of the Rents. Lessees and tenants of the Premises, including, but not limited to, the Guarantor, are hereby expressly authorized and directed to pay any and all rents due Mortgagor to Mortgagee or such nominee as Mortgagee may designate in writing delivered to and received by such lessees and tenants, who are expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all payments so made.

UNOFFICIAL COPY

From and after the service of a Notice, Mortgagee is hereby vested with full power to use all measures, legal and equitable, it may deem necessary or proper to enforce this assignment and to collect the Rents, including without limitation the right of Mortgagee or its designee to enter upon the Premises, or any part thereof, with or without process of law, take possession of all or any part of the Premises and all personal property, fixtures, documents, books, records, papers, and accounts of Mortgagor relating thereto, and exclude Mortgagor and its agents and servants wholly therefrom. Mortgagor hereby grants full power and authority to Mortgagee to exercise all rights, privileges, and powers herein granted to any and all times after service of a Notice, without further notice to Mortgagor, with full power to use and apply all of the Rents to the payment of the costs of managing and operating the Premises and of the Indebtedness in such order as Mortgagee shall determine. Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of Mortgagor as landlord or as lessor, and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the leases or otherwise. This assignment shall not place responsibility for the control, care, management, or repair of the Premises or parts thereof, upon Mortgagee, nor shall it make Mortgagee liable for the performance of any of the terms and conditions of any of the leases, for any waste of the Premises by lessee under any of the leases or any other person, for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss, injury, or death to any lessee, licensee, employee, or stranger.

In the exercise of the powers herein granted to Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

The assignment contained in this Section is given as collateral security and the execution and delivery hereof shall not in any way impair or diminish the obligations of Mortgagor, nor shall this assignment impose any obligation on Mortgagee to perform any provision of any contract pertaining to the Premises, or any responsibility for the non-performance thereof by Mortgagor or any other person. The assignment under this Section is given as a primary pledge and assignment of the rights described herein and such assignment shall not be deemed secondary to the security interest and mortgage of Mortgagee in the Premises. Mortgagee shall have the right to exercise any rights under this Section before, together with, or after exercising any other rights under this Mortgage. Nothing herein contained shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty, or liability of Mortgagor under this assignment, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all costs (including without limitation reasonable attorneys' fees, legal costs and expenses, and reasonable time charges of attorneys who may be employees of Mortgagee whether in or out of court, in original or appellate proceedings or in bankruptcy), liability, loss, or damage which Mortgagee may or might incur by reason of this assignment; and any and all such costs, liability, loss, or damage incurred by Mortgagee (whether successful or not), shall be the Indebtedness hereby secured, and Mortgagor shall reimburse Mortgagee therefor on demand, together with interest thereon until paid.

UNOFFICIAL COPY

Section 26. Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises.

Section 27. Further Assurances. The Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper, in the sole judgment of the Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be; whether now owned by Mortgagor or hereafter acquired.

Section 28. Mortgagor's Successors. In the event that the ownership of the Premises becomes vested in a person or persons other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness in the same manner as with the Mortgagor. The Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Section shall vary or negate the provisions of the Section herein entitled "Restrictions on Transfer".

Section 29. Rights Cumulative. Each right, power and remedy herein conferred upon the 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 to the 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 the 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.

Section 30. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Indebtedness, whether so expressed or not; and each such from-time-to-time holder of the Indebtedness, whether so expressed or not, shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from-time-to-time holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated the Mortgagee.

Section 31. Business Purpose Statement. The undersigned Mortgagor represents and agrees that the loans secured by this Mortgage is a business loan within the purview of the laws and regulations of the State of Illinois and of the United States and is transacted solely for the

UNOFFICIAL COPY

business purpose of the Mortgagor (or, if the Mortgagor is a Trust, then of the beneficiaries of the Mortgagor) and for its or their investment or profit, as contemplated by such laws and regulations.

Section 32. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 33. Waiver of Defense. 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 to the party interposing the same in an action at law upon the Guaranty Agreement.

Section 34. Time of the Essence. Time is of the essence of the Guaranty Agreement, this Mortgage, the assignments and any other document evidencing or securing the Indebtedness.

Section 35. Notices. All notices, requests, demands, directions and other communications (collectively "notices") under the provisions of this Mortgage shall be given as provided in the Guaranty Agreement.

Section 36. Captions and Pronouns. The captions and headings of the various Sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

Section 37. Option to Subordinate. At the option of the Mortgagee, this Mortgage shall become subject and subordinate in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds or other proper office, in and for the county or counties wherein the Premises are situated, of a unilateral declaration to that effect.

Section 38. Applicable Law/Waiver of Jury. The provisions of this Mortgage shall be governed by the laws of the State of Illinois and the United States and shall be binding upon Mortgagor, its successors and assigns and shall inure to the benefit of the Mortgagee, its successors and assigns. MORTGAGOR WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS OR REMEDIES HEREUNDER.

Section 39. Compliance With Illinois Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Compiled Statutes, as amended (herein called the "ILCS"), the provisions of the ICS shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with the ILCS. Furthermore, if any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of

UNOFFICIAL COPY

Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the ILCS in the absence of said provisions, Mortgagee shall be vested with the rights granted in the ILCS to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the ILCS, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

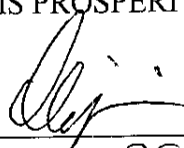
Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage, Security Agreement and Assignment of Rents and Leases to be duly signed, sealed and delivered the day and year first above written.

MORTGAGOR:

DENNIS PROSPERI

By: 
Name: DENNIS PROSPERI
Title: EXECUTIVE V. P.

Property of Cook County Clerk's Office

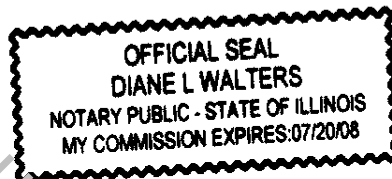
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF McHenry)

I, Diane L Walters, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Dennis Prosser, 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 acknowledged that as such manager he signed and delivered the said instrument, as his free and voluntary act and as the free and voluntary act of said _____, for the uses and purposes therein set forth.

GIVEN under my hand and official notarial seal this 1 day of February, 2006.

Diane L Walters
Notary Public



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOT 28 IN HUNTER'S RIDGE SUBDIVISION, BEING A SUBDIVISION OF PARTS OF THE WEST ½ OF THE SOUTHEAST ¼ AND THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 26, TOWNSHIP 42 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Tax No.: 01-26-404-008-0000

Commonly known as 21 Polo Drive
South Barrington, Illinois 60010