

Doc#: 0619439049 Fee: \$62.50
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 07/13/2006 11:32 AM Pg: 1 of 20

Prepared by And After
Recording Return To:

Scott J. Oh, Esq.
Law Office of Scott J. Oh
203 N. LaSalle Street, Suite 2100
Chicago, Illinois 60601

MORTGAGE

THIS MORTGAGE (the "*Mortgage*") is made this 12th day of JUNE, 2006, by FORTY SEVEN DEVELOPMENT, LLC, an Illinois limited liability corporation (the "*Mortgagor*"), in favor of METRI TECH, INC., an Illinois corporation, (the collectively "*Mortgagee*").

WHEREAS, Mortgagor is the owner of the property commonly known as **533-547 East 47th Street, Chicago, Illinois 60643** which is legally described on Exhibit "A" attached hereto and made a part hereof (the "*Property*");

WHEREAS, Mortgagor has executed and delivered to Mortgagee that certain Promissory Note in the sum of **ONE MILLION EIGHT HUNDRED AND FORTY THOUSAND DOLLARS (\$1,840,000.00)** to be paid with interest thereon according to the terms thereof (the "*Note*"), which Note shall be due, if not sooner paid or due, on September 8, 2035;

NOW, THEREFORE, to secure payment of the Note, and any amendments, modifications, renewals or replacements thereof, and all sums which may be due and owing, or required to be paid under the Loan Documents (as defined herein), which sums shall in no event exceed **ONE MILLION EIGHT HUNDRED AND FORTY THOUSAND DOLLARS (\$1,840,000.00)** and to secure performance by the Mortgagor of all of the covenants and conditions contained in the Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor DOES HEREBY GRANT, REMISE, RELEASE, ALIEN, MORTGAGE AND CONVEY unto Mortgagee, its successors and assigns, the following described Property, rights and interests (all of which are collectively referred to as the "*Premises*");

The Property located in the County of Cook, State of Illinois and which is described on Exhibit "A" attached hereto and made a part hereof;

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Property, and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Property, and such buildings, structures or other improvements or in connection with any construction being conducted or which may be conducted thereon, and owned by Mortgagor, including all extensions, additions, improvements, betterments, renewals, substitutions,

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and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf;

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenants whatsoever, in any way belonging, relating or appertaining to the Property, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor or in and to the same;

TOGETHER WITH all rents, royalties, issues, profits, revenue, income and other benefits from the Premises to be applied against the Note and all other sums which may be due and owing under the Loan Documents, provided, however, that permission is hereby given to Mortgagor so long as no Event of Default (as defined herein) has occurred hereunder for which Mortgagee exercises its remedies, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable;

TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases of the Premises, which leases may have been made by Mortgagor, or its agents now or hereafter on or affecting the Premises whether written or oral and all agreements for use of the Premises (the "**Leases**"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Property or the improvements located thereon or the operation thereof, including, but without limitation, any and all retail fuel facility equipment, tanks, pumps, pipelines, building facades and signs, air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Property or the improvements located thereon in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Property or the improvements located thereon shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Note and all other sums which may be due and owing under the Loan Documents; notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this

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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 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 and Mortgagor as Debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in paragraph 31 hereof, and

TOGETHER WITH all proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Premises; and Mortgagor hereby authorizes, directs and empowers Mortgagee, at its option, to join Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds, all as hereinafter provided.

TO HAVE AND TO HOLD the Premises, unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Event of Default for which Mortgagee exercises its rights.

And the Mortgagor covenants, represents and warrants with the Mortgagee as follows:

1. **Certain Definitions.** Whenever used in this Mortgage, the following terms, when capitalized, shall have the following respective meanings unless the context shall clearly indicate otherwise:

A. **"Default Rate"** shall mean that rate defined in the Note (as defined herein) and shall be charged on any amount payable herein unless promptly paid, and shall constitute additional indebtedness secured by this Mortgage and shall be immediately due and payable.

B. **"Event of Default"** shall mean those occurrences described in paragraph 15 hereof.

C. **"Full Insurable Value"** shall mean replacement cost, exclusive of costs of excavation, foundations and footings below the lowest basement floor, or the principal balance on the Note, whichever is greater.

D. **"Impositions"** shall mean all real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of the Premises, and all other liens with respect to the Premises, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Premises or the rents, issues and profits or the ownership, use, occupancy or enjoyment thereof.

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E. "**Loan Documents**" shall mean the following documents of even date herewith, together with all amendments, modifications, renewals and replacements:

- i. Promissory Note;
- ii. This Mortgage;
- iii. Such other documentation as reasonably required by Mortgagee.

F. "**Permitted Encumbrances**" shall mean this Mortgage and other matters (if any) agreed to in writing by Mortgagee, and the lien and security interests created by the Loan Documents

G. "**Prohibited Transfer**" shall mean a transfer as defined in paragraph 10 herein.

2. **Payment of Indebtedness.** Mortgagor shall promptly pay each installment of principal, interest and prepayment premiums, if any, as provided in the Note and shall otherwise duly comply with the terms thereof

3. **Representations as to the Premises.** Mortgagor covenants and represents that: (a) it is the holder of the fee simple title to the Premises subject only to the Permitted Encumbrances; (b) Mortgagor has full legal power, right and authority to mortgage and convey the Premises; and (c) this Mortgage creates a valid first lien on the Premises

4. **Imposition.** Mortgagor shall, subject to the provisions of this Mortgage, pay all Impositions when due, and in default thereof Mortgagee may, at its option, pay the same. Any sums paid by Mortgagee on account of Impositions shall bear interest at the Default rate.

5. **Maintenance of Mortgaged Premises: Changes and Alterations.**

A. Mortgagor shall maintain or cause to be maintained the Premises in good repair, working order, and condition and make or cause to be made, when necessary, all repairs, renewals, and replacements, structural, non-structural, exterior, interior, ordinary and extraordinary. Mortgagor shall refrain from and shall not permit the commission of waste in or about the Premises and shall not remove, demolish, alter, change or add to the structural character of any improvement at any time erected on the Premises without the prior written consent of the Mortgagee, except as hereinafter otherwise provided.

B. Mortgagor shall not, without the prior written consent of Mortgagee, at any time, make or cause to be made changes, alterations or additions, structural or otherwise, in or to the Premises, which affect the Premises or Mortgagor's ability to repay the Note.

C. Mortgagor shall not, without the prior written consent of Mortgagee, at any time, remove and dispose of any personalty, now or hereafter constituting part of the Premises.

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D. Mortgagor shall cause the Premises to be operated in compliance with all federal, state, local and municipal laws, statutes, ordinances, rules and regulations, including such laws, statutes, ordinances, rules and regulations concerning environmental matters so that no clean-up, claim or other obligation or responsibility arises from a violation of such laws, statutes, ordinances, rules and regulations.

6. Insurance.

A. Mortgagor shall maintain the following insurance coverage with respect to the Premises:

i. insurance against loss of or damage to the Premises by fire and such other risks, including but not limited to, risks insured against under extended coverage policies with "all risk" endorsements, in each case in amounts at all times sufficient to prevent Mortgagor from becoming a co-insurer under the terms of applicable policies and, in any event, in amounts not less than the Full Insurable Value, as determined by Mortgagee from time to time;

ii. Federal Flood Insurance in the maximum amount obtainable up to the amount of the Note, if the Premises are in "flood plain area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended;

B. Any insurance purchased by Mortgagor relating to the Premises, whether or not required under this Mortgage, shall be for the benefit of Mortgagee and Mortgagor, as their interests may appear, and shall be subject to the provisions of this Mortgage.

C. If Mortgagor fails to keep the Premises insured in accordance with the requirements of the Loan Documents, Mortgagee shall have the right, at its option, to provide for such insurance and pay the premiums thereof, and any amounts paid thereon by the Mortgagee shall bear interest at the Default Rate.

D. All policies of insurance required by the Loan Documents shall be in forms and with companies reasonably satisfactory to Mortgagee, with standard mortgage clauses attached to or incorporated in all policies in favor of Mortgagee, including a provision requiring that coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee, and shall contain no deductible in excess of \$1,000.00. Such insurance may be provided for under a blanket policy or policies. Mortgagor shall at its own expense furnish insurance appraisals as may be required by Mortgagee from time to time to ascertain the full replacement cost of the Premises.

E. Mortgagor shall deliver to Mortgagee the originals of all insurance policies (or certificates of coverage under blanket policies), including renewal or replacement policies, and in the case of insurance about to expire, shall deliver renewal or replacement policies (or certificates in the case of blanket policies) not less than thirty (30) days prior to the expiration date.

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F. Notwithstanding any damage, loss or casualty and in any event, the Mortgagor shall continue to pay the principal and interest due on the Note.

7. Damage or Destruction.

A. In case of any damage to or destruction of the Premises or any part thereof from any cause whatsoever, other than a Taking (as defined herein), the Mortgagor shall promptly give written notice thereof to Mortgagee. Mortgagee (or after entry of judgment of foreclosure, the purchaser at the foreclosure sale) is hereby authorized to either settle and adjust any claim under the insurance policies without the consent of Mortgagor, or may allow Mortgagor to adjust the claim or claims. In any event, but subject to the provisions of this paragraph 7, Mortgagor shall restore, repair, replace, or rebuild the same or cause the same to be restored, repaired, replaced or rebuilt to substantially the same value, condition and character as existed immediately prior to such damage or destruction. Such restoration, repair, replacement or rebuilding (herein collectively called "**Restoration**") shall be commenced promptly and completed with diligence by Mortgagor, subject only to delays beyond the control of Mortgagor.

B. All insurance proceeds shall be paid to Mortgagee and held by it in a non-interest bearing escrow account and, subject to the terms of this paragraph 7, shall be made available to Mortgagor for the Restoration required hereby in the event of damage or destruction on account of which such insurance proceeds are paid. If at any time the insurance proceeds shall be insufficient to pay the entire cost of the Restoration, as determined by Mortgagee, Mortgagor shall pay the deficiency. In such an event, Mortgagor shall make all payments from its own funds to the contractor making such Restoration until the amount of said deficiency has been satisfied; thereafter, Mortgagee shall make subsequent payments from the insurance proceeds to Mortgagor or to the contractor, whichever is appropriate. All payments shall be disbursed from time to time upon Mortgagee being furnished with: (i) evidence reasonably satisfactory to it of the estimated cost of completion of the Restoration; (ii) funds (or assurance satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance, to complete the proposed Restoration; and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidence of cost, payment and performance as the Mortgagee may reasonably require and approve; and Mortgagee may, in any event, require that all plans and specifications for such Restoration be submitted to and approved by the Mortgagee prior to commencement of the Restoration. No payment made prior to the final completion of the Restoration shall exceed ninety percent (90%) 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 Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the Restoration, free and clear of all liens or claims for lien.

C. Upon completion of the Restoration, the excess net insurance proceeds, if any,

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shall be paid to Mortgagor.

D. Mortgagor shall, in the event of damage or destruction to less than all or substantially all of the Premises, and the Premises are not susceptible and suitable to Restoration to an economic unit of substantially the same character and value, as determined by Mortgagee, pay the insurance proceeds to Mortgagee, which proceeds shall be applied to the mortgage indebtedness as provided for in the Note.

E. Mortgagor shall, in the event of damage or destruction to all or substantially all of the Premises, at the option of Mortgagee, prepay the remaining unpaid principal balance of the Note together with accrued interest thereon with the same prepayment premium, if any, as provided in the Loan Documents. In such an event, any insurance proceeds paid to Mortgagee pursuant to the terms of this Mortgage, shall be applied by Mortgagee as provided for in the Note.

F. Notwithstanding anything to the contrary contained in this paragraph 7, if an Event of Default shall occur, all insurance shall be paid to Mortgagee and applied, at its option, in payment of the mortgage indebtedness as provided for in the Note.

8. Condemnation.

A. The term "**Taking**" as used herein shall mean a taking of all or part of the Premises under the power of condemnation or eminent domain. Upon the receipt by Mortgagor of notice of the institution of any proceeding for the Taking of the Premises or any part thereof, Mortgagor shall immediately give written notice thereof to Mortgagee and Mortgagee may, at its option, appear in any such proceeding. Mortgagor shall immediately deliver to Mortgagee true and accurate copies of all notices, pleadings, awards, determinations and other papers received by Mortgagor in any such proceeding. Mortgagor shall not adjust or compromise any claim for award or other proceeds of a Taking without having first given at least thirty (30) days' prior written notice to Mortgagee of the proposed basis of adjustment or compromise and without first having received the written consent of Mortgagee. Any award or other proceeds of a Taking, after allowance for reasonable expenses incurred by Mortgagee in connection therewith, are herein referred to as "**Condemnation Proceeds**".

B. In the event of a Taking of all or substantially all of the Premises or a Taking of less than all or substantially all of the Premises, and the Premises are not susceptible or suitable to Restoration to an economic unit of substantially the same character and value, as determined by Mortgagee, the Condemnation Proceeds shall be paid to Mortgagee and applied to the mortgage indebtedness as provided for in the Note.

C. Subject to paragraph 8.D. hereof, in the event of a Taking of less than all or substantially all of the Premises which leaves the Premises susceptible and suitable to Restoration to an economic unit of substantially the same character and value, as determined by Mortgagee, the Condemnation Proceeds shall be paid to Mortgagee and shall be held in a noninterest bearing escrow account, and shall be applied to reimburse Mortgagor for such Restoration in conformity with and

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subject to the conditions specified in paragraph 7 hereof relating to Restoration of damage or destruction. In such event, whether or not the Condemnation Proceeds which are applicable thereto shall be sufficient for the purpose, Mortgagor shall promptly repair or restore the Premises as nearly as practicable to substantially the same value, condition and character as existed immediately prior to the Taking.

D. Notwithstanding anything to the contrary contained in this paragraph 8, if an Event of Default shall occur, all Condemnation Proceeds shall be paid to Mortgagee and applied, at its option, in payment of the mortgage indebtedness as provided for in the Note.

9. **Indemnification.** Mortgagor agrees to indemnify and hold the Mortgagee harmless from any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, decrees, costs and expenses (including attorney's fees), arising directly or indirectly, in whole or in part, out of the acts and omissions whether negligent, willful or otherwise, of Mortgagor, or any of its officers, directors, agents, subagents, or employees, in connection with this Mortgage or the other Loan Documents or as a result of: (a) ownership of the Premises or any interest therein or receipt of any rent or other sum therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways; (c) any use, non-use or condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways; (d) any failure on the part of the Mortgagor to perform or comply with any of the terms of this Mortgage; (e) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises of any Hazardous Substances (as defined herein); or (f) the performance of any labor or services or the furnishing of any materials or other property with respect to the Premises or any part thereof. Any amounts payable to the Mortgagee under this paragraph which are not paid within ten (10) days after written demand therefor by the Mortgagee shall bear interest at the Default Rate. The obligations of the Mortgagor under this paragraph shall survive any termination or satisfaction of this Mortgage. "**Hazardous Substances**" shall mean waste, petroleum products, pesticides, asbestos, PCBs or toxic or hazardous substances or materials of any kind, including, without limitation, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1802, the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et. seq. the Clean Air Act, 42 U.S.C. Sec. 7401, et. seq., the Clean Water Act, 33 U.S.C. Sec. 1251, et. seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sec. 11001, et. seq., the Toxic Substances Control Act, 15 U.S.C. Sec. 2601, et. seq., the Illinois Environmental Protection Act, 111 Rev Stat ch 111-1/2 Section 1009 et. seq., or any other law, statute, or common law theory dealing with environmental matters, and shall also include lead-based paints, any petroleum products, and any natural gas, natural gas liquids, synthetic gas and liquefied natural gas.

10. **Prohibited Transfer; Due on Sale.** Mortgagor shall not create, effect, contract for, agree to, consent to, suffer, or permit any conveyance, sale, lease, assignment, transfer, lien, pledge, mortgage, grant a security interest, or other encumbrance or alienation of any interest in the

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following properties, rights or interests without the prior written consent of Mortgagee ("**Prohibited Transfer**") :

- A. the Premises or any part thereof or interest therein;
- B. all or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a Trustee;

in each case whether any such Prohibited Transfer is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this paragraph 10 shall not apply: (i) to this Mortgage; (ii) to the lien of current taxes and assessments not in default; and (iii) the Permitted Encumbrances; provided that no default or Event of Default has occurred hereunder and that Mortgagor gives prompt written notice of the transfer to Mortgagee.

11. **Priority of Lien; After-Acquired Property.**

A. Subject to paragraph 24, Mortgagor shall keep and maintain the Premises free from all liens for moneys due and payable to persons or entities supplying labor for and providing materials used in the construction, modification, repair or replacement of the Premises.

B. In no event shall Mortgagor do or permit to be done, or omit to do or permit the omission of any act or thing the doing or omission of which would impair the lien of this Mortgage. Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction or agreement changing the uses which may be made of the Premises or any part thereof without the express written consent of Mortgagee.

C. All property of every kind acquired by Mortgagor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien and security of this Mortgage. Nevertheless, Mortgagor will do such further acts and execute, acknowledge and deliver such further conveyances, mortgages, loan documents, financing statements and assurances as Mortgagee shall reasonably require for accomplishing the purpose of this Mortgage.

12. **Right to Inspect.** Mortgagee, its agents and representatives, may at all reasonable times make such inspections of the Premises as Mortgagee may deem necessary or desirable. Mortgagor shall allow Mortgagee, its agents and representatives, access to the Premises to audit the books and records of Mortgagor and of the Premises.

13. **Events of Default.** If any one or more of the following events ("**Events of Default**") shall occur, to wit:

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A. failure to make prompt payment, when due, of any payment of interest, principal and interest under the Note, and such failure continues for ten (10) days after Mortgagee gives written notice thereof to Mortgagor;

B. subject to paragraph 24 herein, if Mortgagor fails to make prompt payment, when due, of any Impositions, and such failure continues for ten (10) days after Mortgagee gives written notice thereof to Mortgagor;

C. any representation, warranty or other information made or furnished to Mortgagee shall prove to have been false or incorrect in any material respect;

D. if Mortgagor or any of the Guarantors shall make a general assignment for the benefit of creditors, or shall state in writing or by public announcement its inability to pay its or their debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or any of the Guarantors or any material portion of its or their assets;

E. if, within sixty (60) days after the commencement of any proceeding against Mortgagor or any of the Guarantors seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment without the consent or acquiescence of Mortgagor or any of the Guarantors, of any trustee, receiver or liquidator of Mortgagor or any of the Guarantors or any material portion of its or their assets, such appointment shall not have been vacated;

F. the occurrence of a Prohibited Transfer;

G. except as otherwise provided for in any subparagraph of this paragraph 15, failure to promptly perform or observe any other covenant, promise or agreement contained in this Mortgage or in the other Loan Documents, and such failure continues for thirty (30) days after Mortgagee gives written notice unless a shorter time period is stated in the other Loan Documents, in which event the shorter time period shall control;

then, at any time thereafter, at the sole option of the Mortgagee, without further notice to Mortgagor, the unpaid principal balance and accrued interest in the Note shall become immediately due and payable, and any other sums secured hereby shall become immediately due and payable. All sums coming due and payable hereunder shall bear interest after acceleration at the Default Rate.

14. **Rights, Powers and Remedies of Mortgagee.**

A. If an Event of Default shall occur, Mortgagee may, at its election, do any one

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or more of the following:

i. institute, or cause to be instituted, proceedings for the realization of its rights under this Mortgage or the other Loan Documents;

ii. make application for the appointment of a receiver for the Premises whether such receivership be incident to a proposed sale of the Premises or otherwise, and Mortgagor hereby consents to the appointment of such receiver without bond or surety and hereby consents to such appointment. Mortgagee may be appointed as such receiver. Further, Mortgagor agrees that Mortgagee may, at its option, be appointed receiver of the Premises without bond or surety.

B. If an Event of Default shall occur, Mortgagee may, without order of Court or notice to or demand upon Mortgagor, take possession of the Premises. Should Court proceedings be instituted, Mortgagor hereby consents to the entry of an order by agreement to effect and carry out the provisions of this paragraph. While in possession of the Premises, Mortgagee (or a receiver, if appointed) shall have the following powers:

i. to collect the rents and manage, lease, alter and repair the Premises, cancel or modify existing leases, obtain insurance and in general have all powers and rights customarily incident to absolute ownership; and

ii. to pay out of the rents so collected the management and repair charges, taxes, insurance, commissions, fees and all other expenses and, after creating reasonable reserves, apply the balance (if any) on account of the mortgage indebtedness.

C. Mortgagee (or a receiver, if appointed) may upon the occurrence of an Event of Default, remain in possession of the Premises, in the event of a foreclosure, until the foreclosure sale and thereafter during the period of redemption (if any). Mortgagee shall incur no liability for, and Mortgagor shall not assert any claim, set-off or recoupment as a result of any action taken while Mortgagee is in possession of the Premises, except only for Mortgagee's own gross negligence or willful misconduct. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession as long as there exists an Event of Default.

D. In order to facilitate Mortgagee's exercise of the rights, powers and remedies granted herein upon the occurrence of an Event of Default, Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney to act in its name and stead for the purpose of effectuating any sale, assignment, transfer or delivery authorized above, whether pursuant to power of sale or otherwise, and to execute and deliver all such deeds, bills of sale, leases, assignments and other instruments as Mortgagee may deem necessary and appropriate. Notwithstanding the foregoing, if requested by Mortgagee or any purchaser from Mortgagee, Mortgagor shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to Mortgagee or such purchaser all appropriate deeds, bills of sale, leases, assignments and other instruments as may be designated in such request. Further, Mortgagor agrees that Mortgagee may be a purchaser of the

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Premises or any part thereof or any interest therein at any sale, whether pursuant to power of sale or otherwise, and may apply upon the purchase price the indebtedness secured hereby.

E. The proceeds of any sale of the Premises or part thereof or any interest therein, and all amounts received by Mortgagee by reason of any holding, operation or management of the Premises or any part thereof, together with any other monies at the time held by Mortgagee, shall be applied in the following order to the extent that funds are so available:

i. first, to the payment of the costs and expenses of taking possession of the Premises and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (a) trustee's and receivers' fees, (b) court costs, (c) attorneys' and accountants' fees, (d) costs of advertisement, and (e) payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Mortgage (except those subject to which the Premises has been sold and without in any way implying Mortgagee's prior consent to the creation thereof) ;

ii. second, to the payment of all amounts, other than the principal balance and accrued but unpaid interest which may be due to Mortgagee under the Loan Documents, together with interest thereon as provided therein;

iii. third, to the payment of all accrued but unpaid interest due on the Note,

iv. fourth, to the payment of the principal balance of the Note; and

v. fifth, to Mortgagor.

15. **Change in Tax Laws.** If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes 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 Mortgagee in the Premises, or the manner of collection of taxes, so as to affect this Mortgage, the indebtedness hereby secured or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, or reimburse Mortgagee therefor on demand and any amounts paid thereon by Mortgagee shall bear interest at the Default Rate, unless Mortgagee determines, in Mortgagee's sole and exclusive judgment, that such payment or reimbursement by Mortgagor is unlawful, in which event the indebtedness hereby secured shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this paragraph shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against the income of Mortgagee as a complete or partial substitute for taxes required to be paid by

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Mortgagor pursuant hereto.

16. **Waivers.** To the extent permitted under applicable law, Mortgagor hereby waives:

A. All rights of redemption and/or equity of redemption and rights of reinstatement which exist by statute or common law for sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of each and every person, beneficiary or any other entity, except decree or judgment creditors of Mortgagor who may acquire any interest in or title to the Premises or the trust estate subsequent to the date hereof.

B. The benefit of all appraisal, valuation, stay, or extension laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Premises or any part thereof or any interest therein.

C. The benefit of any rights or benefits provided by the Homestead Exemption laws, if any, now or hereafter in force.

17. **Remedies are Cumulative.** Each right, power and remedy of Mortgagee now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power and remedy provided for in the Loan Documents, and the exercise of any right, power or remedy shall not preclude the simultaneous or later exercise of any other right, power or remedy.

18. **Compromise of Actions.** Any action, suit or proceeding brought by or against Mortgagee in conjunction herewith, and any claim made by Mortgagee under the Loan Documents, or otherwise, may be compromised, withdrawn or otherwise settled by Mortgagee without any notice to or approval of Mortgagor.

19. **No Waiver.** No delay or failure by Mortgagee to insist upon the strict performance of any term herein or in the other Loan Documents or to exercise any right, power or remedy provided for herein or in the other Loan Documents as a consequence of an Event of Default, and no acceptance of any payment of the principal, interest or premium if any, on the Note during the occurrence of any such Event of Default, shall constitute a waiver of any such Event of Default. The exercise by Mortgagee of any right, power or remedy conferred upon it herein or any other Loan Document or by law or equity shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

20. **Further Assurances.** Mortgagor, at its expense, shall execute, acknowledge and deliver such instruments and take such actions as Mortgagee from time to time may reasonably request to carry out the intent and purpose of this Mortgage and the other Loan Documents.

21. **Defeasance.** Upon payment in full of all principal, interest, prepayment premiums or penalties, if any, and all other sums due under the Note and other Loan Documents, Mortgagee will execute and deliver to Mortgagor a release of this Mortgage. Mortgagor shall pay the costs and

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expenses incurred by Mortgagee to prepare such release.

22. **Permitted Contest.** Mortgagor may contest, at its own expense, by appropriate legal actions or proceedings conducted in good faith and with due diligence, the amount, validity or enforceability in whole or in part of any Imposition or lien thereof or the validity of any instrument of record affecting the Premises or any part thereof (the "***Contested Liens***") provided that:

A. Mortgagor shall immediately give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;

B. Mortgagor shall deposit with Mortgagee the full amount (the "***Lien Amount***") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;

C. Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute additional indebtedness secured hereby and shall be due at the Default Rate);

D. Mortgagor shall pay such Contested Lien together with interest and penalties thereon: (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor; or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and interest and penalties thereon and such other sums as may be necessary in the judgment of Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall constitute additional indebtedness secured by the Mortgage and shall be due at the Default Rate, and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in paragraph 24B hereof and may demand payment upon any bond or title indemnity furnished as aforesaid.

23. **Amendment.** This Mortgage cannot be amended, modified or terminated orally but may only be amended, modified or terminated pursuant to written agreement between Mortgagor and Mortgagee.

24. **Notices.** Any notice or demand required pursuant to the terms hereof shall be given pursuant to the terms and conditions contained in the Note.

25. **Expense of Enforcement.** In any proceeding to foreclose the lien hereof, there shall

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be allowed and included as additional indebtedness in the decree for all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's 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, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem to be 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 expenditures and expenses of the nature in this paragraph mentioned shall bear interest at the Default Rate, when paid or incurred by Mortgagee in connection with: (a) any proceeding, including, but not by way of limitation, to foreclosure, probate and bankruptcy proceedings, to which either of them shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

26. **Cross-Default Clause.** Any Event of Default by Mortgagor hereunder shall be deemed an Event of Default under each of the other Loan Documents, entitling Mortgagee to exercise all or any remedies available to Mortgagee under the terms of the Loan Documents, and any Event of Default under any other Loan Document shall be deemed an Event of Default hereunder, entitling Mortgagee to exercise any or all remedies provided for in the Loan Documents.

27. **Incorporation by Reference.** The terms of the Loan Documents are incorporated herein and made a part hereof by reference.

28. **Security Agreement.**

A. This Mortgage, in the absence of a separate security agreement entered into by Mortgagor and Mortgagee, constitutes a Security Agreement under the Uniform Commercial Code (herein called the "**Code**") of the state in which this Mortgage is recorded, 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 Paragraph called "**Collateral**"), and Mortgagor hereby grants Mortgagee a security interest in said 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.

B. This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) 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 Mortgagor (Debtor) and Mortgagee (Secured Party) are the same as set forth herein for notices to be given to such parties hereunder. This Mortgage is to be filed for record with the Recorder of Deeds of the County where the Premises are located. Mortgagor is the record owner of the Premises.

C. Upon the occurrence of any Event of Default hereunder, Mortgagee shall have

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the rights and remedies of a Secured Party under the Code and, at Mortgagee's option, Mortgagee shall also have the rights and remedies, to the extent permitted by law, provided in this Mortgage as to said Collateral.

29. **Mortgagee's Performance of Mortgagor's Obligations.** Subject to the terms of this Mortgage, if Mortgagor fails to pay any claim, lien or encumbrance, or to pay, when due any Imposition, or to keep the Premises in good repair and free of waste, or any action or proceeding affecting the Premises shall be commenced, then Mortgagee, at its option, may pay such claim, lien, encumbrance, or Imposition, with full right of subrogation thereunder, may procure such evidence of title as it deems necessary, and make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action or proceeding, and retain counsel therein, and take such action therein as Mortgagee deems advisable, and for any such purposes Mortgagee may advance such sums of money as it deems necessary. Mortgagee shall be the sole judge of the legality, validity and priority of any such claim, lien, encumbrance, or Imposition, and of the amount necessary to be paid and satisfaction thereof Mortgagor shall pay to Mortgagee, immediately, and without demand, all such sums advanced by Mortgagee pursuant to this paragraph, together with interest thereon at the Default Rate.

30. **Miscellaneous.**

A. Upon request, Mortgagor shall confirm in writing to Mortgagee, or its designee, the amount then due hereunder and under the Note.

B. If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, if the Note be renewed, modified or replaced, or if any security for the Note be released, Mortgagor and any other parties now or hereafter liable for payment of such indebtedness in whole or in part or interested in the Premises shall be held to consent to such extensions, renewals, modifications, replacements and releases, and their liability and the lien hereof and the Loan Documents and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Mortgagee.

C. Nothing contained in this Mortgage shall be deemed to constitute Mortgagee a mortgagee in possession.

D. This Mortgage shall be binding upon Mortgagor and its successors and assigns, and all persons claiming under or through Mortgagor or any such successor or assign, and shall inure to the benefit of and be enforceable by Mortgagee and its successors and assigns.

E. The various headings used in this Mortgage as headings for sections or otherwise are for convenience only and shall not be used in interpreting the text of the section in which they appear and shall not limit or otherwise affect the meanings thereof.

F. If any provision in this Mortgage is held by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or

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public policy, and if such court should declare such provision of this Mortgage to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable provision was not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage shall continue in full force and effect.

G. If any action or proceeding shall be instituted to recover possession of the Premises or any part thereof or to accomplish any other purpose which would materially affect this Mortgage or the Premises, Mortgagor will immediately, upon service of notice thereof, deliver to Mortgagee a true copy of each petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers however designated, served in any such action or proceeding.

H. Regardless of their form, all words shall be deemed singular or plural and shall have such gender as required by the text.

I. This Mortgage and the other Loan Documents shall not be construed more strictly against one party than against another merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Mortgagor and Mortgagee have both substantially and materially contributed to the preparation hereof.

31. **WAIVERS.** MORTGAGOR HEREBY (a) WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION TO ENFORCE OR DEFEND ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT; (b) IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN COOK COUNTY, ILLINOIS, OVER ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT; (c) WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON MORTGAGOR, AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE BY MESSENGER, CERTIFIED MAIL OR REGISTERED MAIL DIRECTED TO SUCH BORROWER OR ANY OTHER BORROWER AT THE ADDRESS SET FORTH IN THE NOTE AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT OR ON THE SECOND (2ND) BUSINESS DAY AFTER THE SAME SHALL HAVE BEEN POSTED TO SUCH MORTGAGOR'S OR OTHER MORTGAGOR'S ADDRESS; (d) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT SUCH MORTGAGOR OR MORTGAGORS MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING; AND (e) AGREES NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST MORTGAGEE OR ANY OF MORTGAGEE'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY, CONCERNING ANY MATTER ARISING OUT OF OR RELATING TO THIS MORTGAGE IN ANY COURT OTHER THAN ONE LOCATED IN COOK COUNTY, ILLINOIS. (f) MORTGAGOR HEREBY WAIVES ITS RIGHTS TO FORCE MORTGAGEE TO SEEK REMEDIES UNDER THE ILLINOIS MORTGAGE FORECLOSURE ACT. UPON FIFTEEN DAYS (15) WRITTEN NOTICE OF DEFAULT

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MORTGAGEE MAY PROCEED UNDER THE ILLINOIS FORCIBLE DETAINER ACT EVEN IF MORTGAGOR HAS MORE THAN TWENTY PERCENT (20%) EQUITY IN THE PROPERTY. NOTHING IN THIS PARAGRAPH SHALL AFFECT OR IMPAIR MORTGAGEE'S RIGHT TO SERVE LEGAL PROCESS IN ANY MANNER PERMITTED BY LAW OR MORTGAGEE'S RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST MORTGAGOR, OR ANY MORTGAGOR'S PROPERTY IN THE COURTS OF ANY THE JURISDICTION.

[SIGNATURE PAGE FOLLOWS]

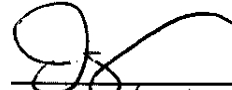
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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed.

MORTGAGOR:

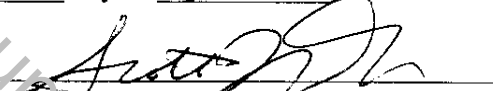
FORTY SEVEN DEVELOPMENT, LLC


By: DAVID KRUG, its Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that DAVID KRUG, personally known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledge that he signed, sealed and delivered the said instrument as his free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and official seal this 12 day of June, 2006.


Notary Public



Notary Public

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EXHIBIT A – Legal Description

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, & 10 in Block 1 of Well's addition to Chicago in the Northwest quarter of the Northeast quarter of Section 10, Township 98 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Property Index Numbers: 20-10-202-001-0000
20-10-202-002-0000

Property of Cook County Clerk's Office