

UNOFFICIAL COPY



Doc#: 0714311069 Fee: \$48.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/23/2007 11:07 AM Pg: 1 of 13

Property of Cook County Office

JUNIOR MORTGAGE AND SECURITY AGREEMENT

This JUNIOR MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") is made as of May 11, 2007 between ** Husband & Wife* Julio C. Gonzales and Rosa Gonzales (hereinafter referred to as "Mortgagor"), and AztecAmerica Bank, an Illinois banking corporation, having an office at 2136 S. Oak Park Avenue, Berwyn, IL 60402 (hereinafter referred to as "Mortgagee").

P
13
D

WITNESS:

WHEREAS, the Mortgagor, is indebted to Mortgagee in the principal amount of \$281,250.00 with interest thereon from and after the date hereof at the rates provided in that certain Mortgage Note of even date herewith in the principal amount of \$281,250.00 executed and delivered by Mortgagor to Mortgagee (the "Note") payable in monthly installments of principal and interest with the final payment of the entire outstanding principal balance with accrued interest thereon due and payable on June 1, 2012;

WHEREAS, as a condition of issuing the loan evidenced by the aforesaid Note, Mortgagee has required that Mortgagor mortgage the "Premises" (as hereinafter defined) to the Mortgagee, and Mortgagor has executed, acknowledged, and delivered this Mortgage to secure any indebtedness of Mortgagor existing at the date hereof or hereafter arising and evidenced by the Note and any modifications, renewals or extensions thereof; and

Mortgagor does, by these presents, grant, convey, pledge, hypothecate, bargain, sell, alien, remise, confirm and mortgage unto Mortgagee, its successors and assigns forever, the Real Estate and all of their estates, rights, titles, and interests therein situated in the County of Cook, State of Illinois, legally described on Exhibit "1" attached hereto and made a part hereof (sometimes herein referred to as the "Real Estate"), which Real Estate, together with the following described property, is collectively referred to as the "Premises", together with:

A. All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, and alleys adjoining the Premises;

B. All and singular the tenements, hereditaments, easements, appurtenances,

UNOFFICIAL COPY

passages, liberties, and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license, and the reversion and reversions and remainder and remainders thereof;

C. All rents, issues, proceeds, and profits accruing and to accrue from the Premises; and

D. 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 Premises, and all fixtures, equipment, materials and other types of personal property used in the ownership and operation of the improvement situated thereon with parking and other related facilities in possession of Mortgagor now or hereafter located in, on, or upon, or installed in or affixed to, the Real Estate legally described herein, or any improvements or structures thereon, together with all accessories and parts now attached to or used in connection with any such equipment, materials and personal property or which may hereafter, at any time, be placed in or added thereto, and also any and all replacements and proceeds of any such equipment, materials and personal property, together with the proceeds of any of the foregoing; it being mutually agreed, intended, and declared, that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the Real Estate and for the purpose of this Mortgage to be Real Estate, and covered by this Mortgage; and as to any of the property aforesaid which does not so form a part and parcel of the Real Estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code), this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as the Secured Party (as such term is defined in the Uniform Commercial Code).

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

1. MORTGAGOR'S COVENANTS. To protect the security of this Mortgage, Mortgagor agrees and covenants with the Mortgagee that Mortgagor shall:

A. PAYMENT OF PRINCIPAL AND INTEREST. Pay and cause Mortgagor to pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner herein and in each of the Note provided.

B. TAXES AND DEPOSITS THEREFOR. Pay immediately when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and other charges which may be levied against the Premises, and to furnish to Mortgagee upon request therefor, duplicate receipts therefor within thirty (30) days after payment thereof.

UNOFFICIAL COPY

C. INSURANCE. (1) Hazard. Keep the improvements now existing or hereafter erected on the Premises insured under a replacement cost form of insurance policy against loss or damage resulting from fire, windstorm, and other hazards as may be required by Mortgagee, and to pay promptly, when due, any premiums on such insurance, provided however, Mortgagee may make such payments on behalf of Mortgagor. All insurance shall be in form and content as reasonably approved by the Mortgagee (which shall be carried in companies reasonably acceptable to Mortgagee) and the policies and renewals marked "PAID", shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the old policies and shall have attached thereto standard noncontributing mortgage clause(s) in favor of and entitling Mortgagee to collect any and all of the proceeds payable under all such insurance, as well as standard waiver of subrogation endorsement, if available. Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of any casualty loss, Mortgagor will give immediate notice by mail to the Mortgagee.

(2) Liability Insurance. Carry and maintain comprehensive public liability insurance as may be required from time to time by the Mortgagee in forms, amounts, and with companies reasonably satisfactory to the Mortgagee. Such liability policy and business interruption insurance shall name Mortgagee as an additional insured party thereunder. Certificates of such insurance, premiums prepaid, shall be deposited with the Mortgagee and shall contain provision for thirty (30) days' notice to the Mortgagee prior to any cancellation thereof.

D. PRESERVATION AND RESTORATION OF PREMISES AND COMPLIANCE WITH GOVERNMENTAL REGULATIONS. Not permit any building or other improvement on the Premises to be materially altered, removed, or demolished, nor shall any fixtures or appliances on, in, or about said buildings or improvements be severed, removed, sold, or mortgaged, without the prior written consent of Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels, or articles of personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto. Subject to the provisions of Paragraph 16 hereof, Mortgagor shall promptly repair, restore, or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction.

Mortgagor further agrees to permit, commit, or suffer no waste, impairment, or deterioration of the Premises or any part or improvement thereof; to keep and maintain the Premises and every part thereof in good repair and condition, subject to ordinary wear and tear, to effect such repairs as the Mortgagee may reasonably require, and, from time to time, to make all needful and proper replacements and additions thereto so that said buildings, fixtures, machinery, and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or

UNOFFICIAL COPY

installed; to comply with all statutes, orders, requirements or decrees relating to said Premises provided in any notice given by any federal, state, or municipal authority; and to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions, and nonconforming uses) privileges, franchises, and concessions which are applicable to the Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the said Premises.

E. CREATION OF LIENS AND TRANSFER OF OWNERSHIP. (1) Except for that certain Mortgage recorded December 7, 2005 with the Cook County Recorder of Deeds as Document No. 0534102152 and that certain Mortgage recorded September 27, 2001 with the Cook County Recorder of Deeds as Document No. 0010900748 (the "Prior Mortgages"), not create, suffer, or permit to be created or filed against the Premises, any mortgage lien or other lien whether superior or inferior to the lien of this Mortgage, without the written consent of Mortgagee; or

(2) Not permit the Premises, in whole or in part, to be alienated, transferred, conveyed or assigned to any person or entity.

Any default in the performance or observance of any of the provisions of this Paragraph shall constitute an Event of Default as described in Paragraph 10 below and, thereafter, in addition to any other remedies hereunder, the entire indebtedness secured hereby, including, but not limited to, principal and accrued interest shall, at the option of the Mortgagee and without demand or notice to Mortgagor, become immediately due and payable with interest accruing thereafter on the unpaid principal balance of the Note at the Default Interest Rate specified in the Note and Mortgagee may proceed to foreclose this Mortgage.

Any waiver by Mortgagee of the provisions of this Paragraph shall not be deemed to be a waiver of the right of Mortgagee to insist upon strict compliance with the provisions of this Paragraph in the future.

F. (1) Not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, or about the Premises, or transport to or from the Premises any Hazardous Substance (as defined herein) or allow any other person or entity to do so.

(2) Keep and maintain the Premises in compliance with, and shall not cause or permit the premises to be in violation of any Environmental Laws (as defined herein) or allow any other person or entity to do so.

For the purposes of this Paragraph, the following terms shall have the meanings as set forth below:

(a) "Environmental Laws" shall mean any federal, state, or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the premises, including, without limitation, the

UNOFFICIAL COPY

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. Section 9601 et seq., and the Resource Conservation and Recovery Act of 1976, as amended, ("RCRA"), 42 U.S.C. Section 6901 et seq.

(b) The term "Hazardous Substance" shall include without limitation:

(i) Those substances included within the definitions of any one or more of the terms "hazardous substances", "hazardous materials", "toxic substances", and "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1801 et seq., and in the regulations promulgated pursuant to said laws or under applicable state law;

(ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.010 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR, Part 302 and amendments thereof);

(iii) Such other substances, materials and wastes which are or become regulated under applicable local, state, or federal laws, or which are classified as hazardous or toxic under federal, state, or local laws or regulations; and

(iv) Any material, waste, or substance which is (A) petroleum, (F) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251, et seq. (33 U.S.C. Section 1321), or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (E) flammable explosives; or (F) radioactive material.

2. MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS. Upon the occurrence of an Event of Default, Mortgagee may, but need not, at any time after the giving of any notice and the lapse of any time thereafter which may be required by Paragraph 11 hereof, and subject to the provisions of this Mortgage make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the Default Interest Rate as defined herein. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

3. EMINENT DOMAIN. So long as any portion of the principal balance evidenced by the Note remains unpaid, any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Premises, by any

UNOFFICIAL COPY

governmental or other lawful authority for taking, by condemnation or eminent domain, of the whole or any part of the Premises or any improvement located thereon, or any easement therein or appurtenant thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, to the extent of the unpaid indebtedness evidenced by the Note, which award Mortgagee is hereby authorized to give appropriate receipts and acquittances therefore, and, Mortgagee shall apply the proceeds of such award as a credit upon any portion of the indebtedness secured hereby or, at its option, permit the same to be used to repair and restore the improvements. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain affecting all or any part of the said Premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Mortgagee, at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards in accordance with and subject to the provisions hereof, and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. Notwithstanding anything aforesaid to the contrary, Mortgagor shall have the sole authority to conduct the defense of any condemnation or eminent domain proceeding and (so long as the amount of any condemnation or eminent domain award exceeds the aggregate unpaid principal balance evidenced by the Note) the sole authority to agree to and/or accept the amounts, terms, and conditions of any and all condemnation or eminent domain awards.

4. WAIVER OF HOMESTEAD. MORTGAGOR HEREBY WAIVES ALL RIGHT OF HOMESTEAD EXEMPTION IN THE PREMISES.

5. MORTGAGOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE INDEBTEDNESS EVIDENCED BY THE NOTE, THIS MORTGAGE, THE NOTE, OR ANY ACTS OR OMISSIONS OF THE MORTGAGEE, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

6. ILLEGALITY OF TERMS HEREOF. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (a) to require Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate; or (b) to require Mortgagor to make any payment or do any act contrary to law, and if any clause and provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such clause or clauses and provisions only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall

UNOFFICIAL COPY

be given a reasonable time to correct any such error.

7. SUBROGATION. In the event the proceeds of the loan made by the Mortgagee to the Mortgagor, or any part thereof, or any amount paid out or advanced by the Mortgagee, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then the Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

8. MORTGAGEE'S PAYMENT OF GOVERNMENTAL, MUNICIPAL, OR OTHER CHARGES OR LIENS. Upon the occurrence of an Event of Default hereunder Mortgagee is hereby authorized subject to the terms and provisions of this Mortgage, to make or advance, in place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the Premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the adequacy of the bill, statement, or estimate, or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof, and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge; or payment otherwise relating to any purpose herein, and hereby authorized but not enumerated in this Paragraph, and may do so whenever, in its reasonable judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and, provided further, that in connection with any such advance, Mortgagee, in its option, may, and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing.

All such advances and indebtedness authorized by this Paragraph shall be repayable by Mortgagor upon demand with interest at the Default Interest Rate.

9. BUSINESS LOAN. Mortgagor warrant, represent and agree that the proceeds of the Note will be used for business purposes, and that the indebtedness evidenced by the Note constitute business loans.

10. DEFAULT AND FORECLOSURE.

(a) **Events of Default and Remedies.** The following shall constitute an Event of Default under this Mortgage:

- (i) any failure of Mortgagor to comply with the provisions of Paragraph 1(C)(1) and 1(C)(2) herein;
- (ii) any default in making any monthly interest payment or monthly principal and interest payment which default continues for ten (10) days, or a default in the final principal and accrued interest payment required under the Note; or

UNOFFICIAL COPY

(iii) any default in the performance or observance of any other term, covenant, or condition in this Mortgage or in any other instrument now or hereafter evidencing or securing any indebtedness evidenced by the Note which default continues for thirty (30) days or such lesser time as may be specified herein or in any other document for such default; or

(iv) any default in the performance or observance of other term, covenant, or condition in the Prior Mortgage or in any instrument or document now or hereafter evidencing or securing the indebtedness secured by the Prior Mortgage; or

(v) if the Mortgagor or the Mortgagee shall file a petition in voluntary bankruptcy or under Chapter VII or Chapter XI of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, which action is not dismissed within thirty (30) days; or

(vi) if the Mortgagor or the Mortgagee shall file an answer admitting insolvency or inability to pay their debts or fail to obtain a vacation or stay of involuntary proceedings within thirty (30) days after the filing thereof; or

(vii) if the Mortgagor or the Mortgagee shall be adjudicated bankrupt, or a trustee or a receiver shall be appointed for the Mortgagor or the Mortgagee which appointment is not relinquished within thirty (30) days for all or any portion of the Premises or its or their property in any involuntary proceeding; or

(viii) any Court shall have taken jurisdiction of all or any portion of the Premises or the property of the Mortgagor or the Mortgagee in any involuntary proceeding for the reorganization, dissolution, liquidation, or winding up of the Mortgagor or the Mortgagee and such trustees or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within the thirty (30) days after appointment; or

(ix) if the Mortgagor or the Mortgagee shall make an assignment for the benefit of creditors, or shall admit in writing its or their insolvency or shall consent to the appointment of a receiver or trustee or liquidator of all or any portion of the Premises; or

(x) the untruth or falsity of any of the warranties contained herein or in the Note; or

(xi) the death of any of the Mortgagor

(xi) any default shall occur under any note, mortgage or other loan document evidencing or securing any indebtedness owned by Mortgagee and made or guaranteed by the Mortgagor or the Mortgagee;

(xii) any material adverse change in the financial condition of the Mortgagor or

UNOFFICIAL COPY

the Mortgagor or any material adverse change in the value of any collateral given or pledged as security for any indebtedness evidenced by the Note

(b) Upon the occurrence of an Event of Default, the entire indebtedness secured hereby, including, but not limited to, principal and accrued interest shall, at the option of the Mortgagee and without demand or notice to Mortgagor, become immediately due and payable with interest accruing thereafter on the unpaid principal balance of the Note at the Default Interest Rate, (as hereinafter defined) and, thereupon, or at any time after the occurrence of any such Event of Default, the Mortgagee may:

(i) proceed to foreclose this Mortgage by judicial proceedings according to the statutes in such case provided, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time.

(ii) advance cash, insofar as the Mortgagee deems practicable, to protect its security for payment to such persons or entities and for such purposes as Mortgagee deems necessary or desirable under the circumstances, either out of the proceeds of the Mortgage Loan, or, if the proceeds of the Mortgage Loan remaining undisbursed are insufficient for such purposes out of additional funds, and without limitation on the foregoing; (a) to pay any lien; (b) contest the validity thereof; (c) and (d) to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions or liens asserted against the Premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement, or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof, and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge; or payment otherwise relating to any other purpose herein and hereby authorized but not enumerated in this Paragraph, and may do so whenever, in its reasonable judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and, provided further, that in connection with any such advance, Mortgagee, in its option, may, and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing.

All such advances and indebtedness authorized by this Paragraph shall be repayable by Mortgagor upon demand with interest at the Default Interest Rate.

(iii) take such action and require such performance as it deems necessary.

The authority granted by this Paragraph 11 shall not, however, be construed as creating an obligation on the part of Mortgagee to prosecute or defend actions in connection with the Premises or to do any other act which it is empowered to do hereunder.

UNOFFICIAL COPY

(c) Expense of Litigation. In any suit to foreclose the lien of this Mortgage or enforce any other remedy of the Mortgagee under this Mortgage, the Note, or any other document given to secure any indebtedness represented by the Note, there shall be allowed and included as additional indebtedness in the judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and cost (which may be estimated as to items to be expended after entry of the decree), of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree, the true condition of the title to or value of the Premises. All expenditures and expenses of the nature in this Paragraph mentioned, and such expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney affecting this Mortgage, the Note or the Premises, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate.

(d) Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose this Mortgage, the Court may, upon application, appoint a receiver of the Premises. Such appointment may be made either before or after sale upon appropriate notice as provided by law and without regard to the solvency or insolvency at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the Premises, and without bond being required of the applicant. Such receiver shall have the power to take possession, control, and care of the Premises and to collect the rents, issues, and profits of the Premises during the pendency of such foreclosure suit, and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by the Mortgagor), as well as during any further times when the Mortgagor, their respective heirs, administrators, executors, successors, or the assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the Premises during the whole of said period, to extend or modify any then new lease(s) or management agreement(s), and to make new lease(s) or management agreement(s), which extensions, modifications, and new lease(s) or management agreement(s) may provide for terms to expire, or for options to lease(s) to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder, it being understood and agreed that any such lease(s) and management agreement(s) and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

(e) Application Of Proceeds of Foreclosure Suit. The proceeds of any foreclosure sale of

UNOFFICIAL COPY

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 Paragraph (b) hereof; SECOND, all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the Default Interest Rate; THIRD, all principal and interest (calculated at the Default Interest Rate) remaining unpaid on the Note; and, FOURTH, any overplus to Mortgagor, their respective heirs, successors or assigns, as their rights may appear.

(f) Rescission of or Failure to Exercise. The failure of the Mortgagee to exercise the option for acceleration of maturity and/or foreclosure following any Event of Default as aforesaid, or to exercise any other option granted to the Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments hereunder, shall not constitute a waiver of any such Event of Default nor extend or affect any cure period, if any, but such option shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by the Mortgagee and shall not affect the Mortgagee's right to accelerate the maturity for any future Event of Default.

(g) Sale of Separate Parcels. Right of Mortgagee to Purchase. In the event of any foreclosure sale of said Premises, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

(h) Default Interest Rate. The term "Default Interest Rate" shall be the Default Interest Rate as specified in the Note.

11. RIGHTS AND REMEDIES ARE CUMULATIVE. All rights and remedies herein provided are cumulative and the holder of the Note secured hereby and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right afforded by this Mortgage.

12. GIVING OF NOTICE. Any notice or demands which either party hereto may desire or be required to give to the other party, shall be in writing and shall be hand delivered or mailed by certified mail, return receipt requested, addressed to such other party at the addresses, hereinbefore or hereinafter set forth, or at such other address as either party hereto may, from time to time, by notice in writing, designate to the other party, as a place for service of notice. All such notices and demands which are mailed shall be effectively given three (3) business days after the date of post marking. All such notices and demands which are hand delivered, shall be effectively given on the date of such delivery. In case no other address has been so specified, notices and demands hereunder shall be sent to the following address:

Mortgagee: AztecAmerica Bank
2136 S. Oak Park Avenue
Berwyn, IL 60402

UNOFFICIAL COPY

Attention: Christene Robinson

Mortgago: Julio C. Gonzales
and Rosa Gonzales
3343 North Pulaski Road
Chicago, IL 60641

13. TIME IS OF THE ESSENCE. It is specifically agreed that time is of the essence of this Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights. Except as otherwise specifically required, notice of the exercise of any option granted to the Mortgagee herein, or in the Note secured hereby is not required to be given.

14. COVENANTS TO RUN WITH THE LAND. All the covenants hereof shall run with the land.

15. GOVERNING LAW. Mortgagor does hereby acknowledge that all negotiations relative to the loans evidenced by the Note, this Mortgage, and all other documents and instruments securing the Note, took place in the State of Illinois. Mortgagor and Mortgagee (by making the loan evidenced by the Note) do hereby agree that the Note, this Mortgage and all other documents securing the Note shall be construed and enforced according to the laws of the State of Illinois.

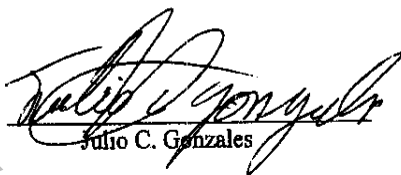
16. APPLICATION OF INSURANCE PROCEEDS. In the event of any such loss or damage to the Premises, as described in Paragraph 1(c)(1) hereof, Mortgagee may use or apply the proceeds of insurance, at its option, as follows: (i) as a credit upon any portion of the indebtedness secured hereby; or (ii) to reimbursement to Mortgagor for repairing and restoring the improvements in which event the Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the indebtedness secured hereby.

17. BINDING ON SUCCESSOR AND ASSIGNS. Without expanding the liability of any guarantor contained in any instrument of Guaranty executed in connection herewith, this Mortgage and all provisions hereof shall extend and be binding upon Mortgagor, and all persons claiming under or through Mortgagor, and the words "Mortgagor", when used herein, shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein, shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed the day and year first above written.

UNOFFICIAL COPY

Property of Cook County Clerk's Office


Julio C. Gonzales


Rosa Gonzales

STATE OF ILLINOIS))SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said county, in the state aforesaid, DO HEREBY CERTIFY that Julio C. Gonzales and Rosa Gonzales, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary acts for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of May, 2007



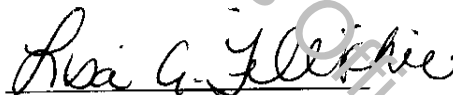

Notary Public

EXHIBIT "1"

LEGAL: LOT 57 IN HAENTZE AND WHEELER'S SUBDIVISION NUMBER 8, BEING A RESUBDIVISION OF BLOCK 8 IN K.K. JONES SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 13-23-310-020-0000

Address: 3450 North Springfield Avenue, Chicago, IL 60618