



0717211155

This instrument was prepared by
and after recording return to:

Doc#: 0717211155 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/21/2007 02:13 PM Pg: 1 of 19

Steven F. Ginsberg, Esq.
Levenfeld Pearlstein, LLC
2 North LaSalle Street
Suite 1300
Chicago, Illinois 60602

REAL ESTATE MORTGAGE

Made as of June 15, 2007

THIS REAL ESTATE MORTGAGE (this "Mortgage") is made by MONTESANO CAPITAL MANAGEMENT HOLDINGS, LLC-8707 SKOKIE, SERIES XXXI, a designated series of Montesano Capital Management Holdings, LLC, an Illinois limited liability company, whose address is 330 E. Main Street, 3rd Floor, Barrington, Illinois 60010 (the "Mortgagor") and NATIONAL CITY BANK, whose address is One North Franklin Street, Suite 2150, Chicago, Illinois 60601, Attention: Mr. Todd R. Olsen (the "Mortgagee"). Mortgagor is justly indebted to Mortgagee in the principal sum of Six Million One Hundred Sixty Two Thousand Five Hundred and No/100 Dollars (\$6,162,500.00) evidenced by a certain promissory note of even date herewith (the "Note") whereby the obligor promises to pay the principal and interest, at the rate provided in the Note and late charges and prepayment premiums, if any, all of which sums, if not sooner paid, are due and payable as of the date set forth in the Note. The Note contemplates a variable rate of interest.

FOR VALUE RECEIVED, the Mortgagor mortgages and warrants to Mortgagee the real estate located in the Village of Skokie, County of Cook, State of Illinois, described on Exhibit "A" attached hereto, together with the easements, improvements, hereditaments, and appurtenances, now or hereafter belonging thereto, and the rents, income and profits therefrom and all fixtures now or hereafter attached to or used in connection therewith, and all equipment, building materials, machinery, engines, boilers, elevators, and plumbing, electrical, heating, air conditioning, ventilating and mechanical equipment and all of which equipment and personal property of every kind and nature, now or hereafter located thereon (other than any of the foregoing owned by any tenants or any management company employed by Mortgagor) (all of which equipment and personal property being collectively termed the "Equipment") and deemed to be fixtures and a part of the realty, all the foregoing being collectively referred to herein as the "Premises".

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TO SECURE the payment of said principal sum of money and said interest and late charges and prepayment premiums in accordance with the terms, provisions and limitations of this Mortgage and the Note, and all extensions, modifications and renewals thereof, and for the purpose of further securing the payment of any and all sums, indebtedness and liabilities of any and every kind now or hereafter owing and to become due from the Mortgagor to the Mortgagee or to the holder or assignee of the Note or this Mortgage or under any other instrument, obligations, contracts or agreements, or dealings of any and every kind now or hereafter existing or entered into between the Mortgagor and the Mortgagee or otherwise and whether direct, indirect, primary, secondary, fixed or contingent, together with interest and charges as provided in the Note and in any other agreements obligations and liabilities of Mortgagor to Mortgagee, whether absolute or contingent, whether now existing or hereafter created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) under: (i) any agreement, device or arrangement designed to protect Mortgagor from fluctuations of interest rates, exchange rates or forward rates, including, but not limited to, dollar-denominated or cross-currency exchange agreements, forward currency exchange agreements, interest rate caps, collars or floors, forward rate currency or interest rate options, puts, warrants, swaps, swap options, U.S. Treasury locks and U.S. Treasury options; (ii) any other interest rate hedging transactions, such as, but not limited to, managing the Mortgagor's interest rate risk associated with any pending or potential capital market transactions such as fixed rate bond issues; and (iii) any and all cancellations, buybacks, reversals, terminations or assignments of any of the foregoing by and between the parties herein, and including all present and future indebtedness incurred or arising by reason of a guaranty to Mortgagee by Mortgagor of present or future indebtedness or obligations of third parties to Mortgagee, and of present and future indebtedness originally owing by Mortgagor to third parties and assigned by said third parties to Mortgagee, and any and all renewals or extensions of any of the foregoing (hereinafter collectively with the Note called the "**Indebtedness**"), and further to secure the prompt and faithful performance and observance by the Mortgagor of all the terms, undertakings, covenants and conditions by the Mortgagor to be kept, observed or performed under or according to any and all instruments, obligations, contracts or agreements entered into or to be entered in the future between the Mortgagor and the Mortgagee.

Mortgagor hereby covenants, warrants and agrees as follows:

1. All capitalized terms used but not defined herein shall have the meanings set forth in that certain Loan Agreement of even date herewith by and between Mortgagor, as borrower, and Mortgagee, as Lender, with regard to the Indebtedness (the "**Loan Agreement**").
2. To pay the sum of money mentioned in the Note, and the interest thereon, without relief from valuation or appraisal laws, and to also pay or cause to be paid, the Indebtedness at the time and in the manner described therein.

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3. After an Event of Default, if required by Mortgagee, to make monthly deposits with Mortgagee, in a non-interest bearing account, at the same times as installments of principal and interest are payable, of a sum equal to one-twelfth (1/12) of the estimated yearly taxes and assessments levied or to be levied against the Premises and insurance premiums, all as estimated by Mortgagee, but with an initial payment into escrow which initial payment, together with such subsequent monthly payments, will be sufficient to pay such estimated taxes and assessments and insurance premiums as and when they become due and payable. Such deposits shall be applied by Mortgagee to the payment of such taxes and assessments and insurance premiums when due. Any insufficiency of such account to pay such taxes, assessments and insurance premiums when due shall be payable by Mortgagor on demand. Upon any default under this Mortgage, Mortgagee may apply any funds in said account to any obligation then due under this Mortgage. The enforceability of the covenants relating to taxes, assessments and insurance premiums herein otherwise provided will not be affected except insofar as the obligations thereunder shall have been actually met by compliance with the terms of this Paragraph. Mortgagee may at any time hereafter at its option waive, and after such waiver reinstate, any or all of the provisions of this Paragraph with respect to the making of monthly deposits for estimated yearly taxes, assessments and insurance premiums by notifying Mortgagor in writing of such waiver or reinstatement. While any such waiver is in effect, Mortgagor will pay taxes, assessments and insurance premiums for which monthly deposits have been waived as elsewhere provided in this Mortgage. During such time as Mortgagee does not elect to escrow the aforesaid payments, Mortgagor shall provide Mortgagee, within five (5) days of Mortgagee's request therefore, evidence that the aforesaid payments have been timely paid.

4. So long as any part of the Indebtedness shall be unpaid: to remove from the Premises all statutory lien claims (other than liens which Mortgagor is contesting in good faith and which have been insured over as provided in the Loan Agreement or for which appropriate reserves have been established); to protect the title and possession of said real estate; and to pay when the same shall become due and before any interest or penalty for nonpayment attaches thereto, all taxes and assessments, general and special, now existing, or hereafter levied or assessed, upon said real estate or the interest therein created by this Mortgage, or which by the laws of Illinois may be levied or assessed against said Mortgagee or its mortgage interest in said land, or the Indebtedness or upon this Mortgage, and deliver to the Mortgagee satisfactory evidence of payment thereof.

5. To abstain from the commission of waste on the Premises and to keep the buildings thereon and the Equipment in good repair, and promptly comply with all statutes, ordinances, regulations and requirements of all departments of government, affecting the Premises. Subject to the provisions of Paragraph 7 of this Mortgage, the Mortgagor will promptly repair, restore, replace or rebuild any part of the Premises now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty whatsoever or which may be affected by any proceeding of the character referred to in

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Paragraph 10 of this Mortgage; provided, however, that in the event of the damage or destruction of any building existing on the Premises as of the date of this Mortgage, or any portion of any such building, Mortgagor shall not be required to repair, restore, replace or rebuild any portion of any such building. The Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting the uses which may be made of the Premises or any part thereof.

6. To keep said buildings, and any which may hereafter be erected upon the Premises and the Equipment insured against loss or damage by fire and such other hazards or risks as may be required by said Mortgagee in such amount or amounts as may be required by said Mortgagee but not less than 100% of the full insurable value in such insurance company or companies as the said Mortgagee, its successor or assigns, may approve, and to deliver to said Mortgagee (attention: Rachel Booker), as additional security hereto the policies of such insurance and of any additional insurance which shall be taken out upon such buildings and the Equipment while any part of the Indebtedness shall remain unpaid having attached to said policies such mortgage indemnity clauses as said Mortgagee shall direct; provided, however, that Mortgagee shall not be required to insure any building existing on the Premises as of the date of this Mortgage so long as such building shall remain vacant. Renewals of such policies shall be so delivered at least ten days before any such insurance shall expire. All such insurance carried shall be reasonably satisfactory to Mortgagee. Each policy evidencing such insurance shall be in a form and substance reasonably acceptable to Mortgagee, and name the Mortgagee as "mortgagee" under a standard loss-payable clause and with respect to the Equipment shall contain a separate lender's loss-payable clause insuring the Bank's security interest in the Equipment regardless of any act or neglect of the Mortgagor. Each such policy shall provide that at least ten (10) day's prior written notice of any cancellation of, or any material change in such insurance shall be given Mortgagee by the insurer. Mortgagee may procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in like amount, as it may determine, provided Mortgagor fails to replace any such insurance within ten days after being notified that the insuring company is no longer approved by Mortgagee.

7. In case Mortgagor shall neglect or refuse to keep the Premises in good repair and condition, to pay promptly when due all taxes and assessments; as aforesaid, or to remove any statutory liens on the Premises (subject to right to insure over as set forth in Loan Agreement), or to keep the buildings, the Equipment and improvements insured, as aforesaid, and deliver the policy or policies of insurance, or the renewals thereof, to Mortgagee, as aforesaid, then Mortgagee may, if it shall so elect, make repairs, pay such taxes and assessments, with the accrued interest, penalties, officer's fees, and expenses thereon, redeem the Premises which may be sold or forfeited for taxes or assessments, with the accrued interest, penalties, officer's fees, and expenses thereon purchase any tax title thereon, remove any tax title thereon, remove any statutory liens and prosecute or defend any suits in relation thereto, insure and keep insured said buildings in the sum, as aforesaid,

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or for any less sum and for such time, as Mortgagee may deem proper. Any sums which may be so paid out by Mortgagee, and all sums paid out for substituted insurance, as aforesaid, including the costs, expenses and reasonable attorney's fees paid in any suit affecting the Premises, when necessary to protect the lien hereof, shall bear interest from the dates of such payments at a rate equal to the highest rate set forth in the Note, shall be paid by Mortgagor to Mortgagee upon demand and shall be deemed a part of the Indebtedness, and recoverable as such in all respects. Any such liens, claims, taxes, assessments, or tax title so purchased, paid, or redeemed by said Mortgagee shall, as between the parties hereto and their successors in interest, be deemed valid, so that in no event shall the necessity or validity of any such payments be disputed.

8. The Mortgagor's failure to pay any insurance premium upon policies covering any of the Premises or failure to pay any taxes or assessments, or both, assessed against the Premises, or any installments thereof, before any interest or penalty for nonpayment attaches thereto, shall constitute waste and the Mortgagor agrees to and hereby does consent to the appointment of a receiver with such powers as the court making such appointment shall confer. Payment by the Mortgagee for and on behalf of the Mortgagor of any such delinquent tax, assessment or insurance premium, properly payable by Mortgagor under the terms of this Mortgage, shall not cure the default herein described nor shall it in any manner impair the Mortgagee's right to the appointment of a receiver on account thereof.

9. As additional security for payment of the Indebtedness, interest thereon, insurance premiums, taxes and assessments, at the time and in the manner herein agreed, and for the performance of the covenants and agreements herein contained, the Mortgagor hereby assigns to Mortgagee, the rents, issues and profits of the Premises, and in the event of a default in the terms, conditions, covenants or promises contained in this Mortgage or in the Note, Mortgagee may receive and collect said rents, issues and profits so long as such default shall exist and during the pendency of any foreclosure proceedings and during any redemption period; provided, however, that Mortgagee as a result of the receipt and collection of such rents, issues and profits shall not be deemed an owner or operator of the Premises as may be defined in any state or federal environmental law or regulation. As additional security, Mortgagor hereby assigns to Mortgagee all written or oral leases, whether now in existence or which may hereafter come into existence during the term of this Mortgage, or any extension hereof, and the rents thereunder, covering the Premises. The collection of rents by Mortgagee shall in no way waive the right of the Mortgagee to foreclose this Mortgage in the event of said Default or Defaults. This Mortgage shall run with the land and be good and valid as against the Mortgagor herein, or those claiming by, under or through the Mortgagor, from the date of the recording of this instrument. In the event of a sale on foreclosure which shall result in a deficiency, this assignment shall stand as security during the redemption period, for the payment of such deficiency. The Mortgagor will not assign the whole or any part of the rents, income or profits arising from the Premises without written consent of the Mortgagee. So long as no Default has occurred, Mortgagor may, as trustee for the use and benefit of Mortgagee, collect, receive

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and accept the rents as they become due and payable (but in no event for more than two (2) months in advance); provided, however, that if the rents exceed the payments due under the Note, the Mortgagor may use such excess, first, for the operation and benefit of the Premises and, second, for the general benefit of the Mortgagor. Upon the occurrence of a Default, Mortgagee may, at its option, remove the Mortgagor as trustee for the collection of the rents and appoint any other person including, but not limited to, itself as a substitute trustee to collect, receive, accept and use all such rents in payment of the obligations secured hereby, in such order as Mortgagee shall elect in its sole and absolute discretion, whether or not Mortgagee takes possession of the Premises. Mortgagor hereby directs each of the respective tenants under the leases, and any rental agent, to pay to Mortgagee all such rents, as may now be due or shall hereafter become due, upon demand for payment thereof by Mortgagee without any obligation on the part of any such tenant or rental agent to determine whether or not an event of default has in fact occurred. Upon a Default, the permission hereby given to Mortgagor to collect, receive and accept such rents as trustee shall terminate and such permission shall not be reinstated upon a cure of the Default without Mortgagee's specific written consent. Further, upon Default, Mortgagor shall immediately turn over to Mortgagee all rents in the actual or constructive possession of Mortgagor, its affiliates, contractors, or its agents, together with an accounting thereof. Exercise of Mortgagee's rights under this Paragraph, and the application of any such rents to the obligations secured hereby, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto, but shall be cumulative and in addition to all other rights and remedies of Mortgagee.

10. Notwithstanding any taking by eminent domain, or injury to or decrease in value of the Premises by any public or quasi-public authority, the Mortgagor shall continue to pay interest on the entire principal sum secured by this Mortgage until any such award or payment shall have been actually received by the Mortgagee and no reduction of principal shall be deemed to take effect until such receipt. Any such award or payment may at the option of the Mortgagee, be retained and applied by the Mortgagee toward payment of the Indebtedness. If prior to any receipt by the Mortgagee of such award or payment the Premises shall have been sold on foreclosure of this Mortgage, the Mortgagee shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not such deficiency judgment on this Mortgage shall have been sought or recovered or denied, and of the counsel fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment. The Mortgagee is hereby appointed attorney-in-fact for the foregoing purpose and as such is duly authorized and empowered to receive, receipt for discharge and satisfy any such award or judgment, whether joint or several, on behalf of the Mortgagor, which said receipt, discharge and satisfaction shall be legally effective and binding as if given directly by the Mortgagor; provided, however, that nothing herein contained shall deprive the Mortgagor of the right to contest either the necessity of any such condemnation or the value placed on the Premises therein.

11. The entire Indebtedness, together with interest thereon, shall become due

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and payable, and this Mortgage subject to foreclosure at the option of the Mortgagee without notice except as may be otherwise provided herein, upon the occurrence of any of the foregoing (a "**Default**"):

(a) after default in the payment when due (whether by acceleration or otherwise) of any installment of principal of or interest on the Note or on the Indebtedness; or

(b) if Mortgagor defaults in the performance of any of its non-monetary covenants, agreements and obligations under this Mortgage (specifically excluding defaults relating to any such non-monetary covenants, agreements and obligations that are (i) by their nature incurable, and/or (ii) otherwise explicitly covered in this Paragraph 11, and fails to cure such default within thirty (30) days after written notice thereof from Mortgagee provided, however, that so long as Mortgagor: (A) has commenced all necessary actions to cure the default referred to in such notice within such 30-day period, and (B) continues to diligently and in good faith make all efforts necessary to cure such default described in such notice, then no Default pursuant to this clause (c) shall occur due to the default described in such notice for 60 days following the sending of such notice by Mortgagee to Mortgagor; provided, further, that if during the one year period immediately preceding the sending of such notice, Mortgagee has given Mortgagor written notice of substantially the same default, then Mortgagor shall only be entitled to the original 30-day notice period and shall not be entitled to any additional cure period described in this proviso; or

(c) upon the election by the Mortgagee to accelerate the maturity of said principal sum pursuant to the provisions of the Note, this Mortgage or any of the Loan Documents; or

(d) if Mortgagor (or, if Mortgagor is more than one person, any of such persons) or any guarantor of the Indebtedness shall die, dissolve, become insolvent, or make an assignment for the benefit of its creditors; or

(e) if any guaranty that now or hereafter secures payment or performance of all or any part of the Indebtedness shall be terminated or limited, for any reason, without the prior written consent of the Mortgagee; or

(f) If a voluntary, or involuntary case in bankruptcy or receivership shall be commenced by or against Mortgagor (or if Mortgagor is more than one person any of such persons) or any guarantor of any of the Indebtedness, provided that if involuntary, the same is not dismissed within 60 days; or

(g) Upon default in the observance or performance of any of the provisions of Section 23 of this Mortgage, or if any warranty, representation or statement made or furnished to the Mortgagee by or on behalf of the Mortgagor, in connection with the

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environmental condition of the Premises or to induce the Mortgagee to make a loan to the Mortgagor, proves to have been false in any material respect.

Further upon occurrence of any Default described above, any agreement between the Mortgagor and the Mortgagee concerning release of any portion of the Premises or the consideration to be paid or payable for such release shall be null, void and of no further effect.

12. The Mortgagee and any persons authorized by the Mortgagee shall have the right from time to time to appraise or cause Mortgagor to appraise the Premises and to enter and inspect the Premises at all reasonable times.

13. That the Mortgagee shall have the right from time to time to sue for any sums whether interest, damages for failure to pay principal or any installment thereof taxes, installments of principal, or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not the principal sum secured or any other sums secured by this Mortgage shall be due and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure, or any other action for a default or defaults by the Mortgagor existing at the time such earlier action was commenced.

14. Mortgagee shall have all rights and remedies provided for in this Mortgage and otherwise permitted by law. In addition, upon occurrence of a Default by Mortgagor under the terms of this Mortgage or the Note, Mortgagee shall have the right, and is hereby authorized:

(a) To the extent permitted by law, to collect and receive all rents, profits, and other amounts that are due or shall hereafter become due under the terms of any leases, land contracts, or other agreements, now or hereafter in effect, by which Mortgagor is or shall be leasing or selling the Premises or any interest therein, and to exercise any other right or remedy of Mortgagor under any such lease, land contract, or other agreement, provided, that Mortgagee shall have no obligation to make any demand or inquiry as to the nature or sufficiency of any payment received or to present or file any claim or take any other action to collect or enforce the payment of any amounts to which Mortgagee may become entitled hereunder, nor shall Mortgagee be liable for any of the Mortgagor obligations under any such lease, land contract, or other agreement;

(b) To obtain or update abstracts of title, title searches, title insurance and environmental reports, audits and investigations and with respect to the Premises and all sums expended therefor shall be part of the Indebtedness and shall bear interest at the highest rate set forth in the Note;

(c) To foreclose this Mortgage by action pursuant to applicable law;

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(d) To sell, release and convey the Premises at public sale, and to execute and deliver to the purchasers at such sale good and sufficient deeds of conveyance, rendering any surplus funds, after payment of the Indebtedness in full and the expenses of such sale, including attorneys' fees as provided by law, to Mortgagor, all in accordance with 735 ILCS 5/15-1512, as the same may be amended from time to time, and any similar statutory provisions which may hereafter be enacted in addition thereto or in substitution therefore; and

(e) Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, to have a receiver appointed to take possession of and collect the rents and profits from the Premises during foreclosure proceedings and during the period of redemption, and to take such other actions permitted by law that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Premises during the whole of any such period.

All rights and remedies of Mortgagee under this Mortgage, whether or not exercisable only on default, shall be cumulative and may be exercised from time to time and no delay by Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof. No single or partial exercise of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy, except to the extent otherwise provided by law. In this Mortgage, "maturity" means such time as the Indebtedness shall be or shall become due and payable, whether by the terms of the instruments or pursuant to Paragraph 11 hereof or otherwise.

15. That in case of any sale under this Mortgage, by virtue of judicial proceedings or otherwise, the Premises may be sold in one parcel and as an entirety or in such parcels, or portions thereof, manner or order as the Mortgagee in its sole discretion may elect.

16. Mortgagor or any other person hereafter obtaining a mortgage or lien upon, or any other interest in the Premises, releases and waives all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois and waives with respect to any foreclosure of this Mortgage, (i) any right to marshalling of the Premises and any right to require a minimum bid or "upset" price, and (ii) the benefit of any stay, extension, exemption or moratorium laws, now existing or hereafter enacted, and (iii) any right to reinstatement or redemption provided by any law now existing or hereafter enacted.

17. If the ownership of the Premises, or any part thereof, becomes vested in a person other than the Mortgagor, the Mortgagee may deal with such successor or successors in interest with reference to this Mortgage, and the debt hereby secured, in the same manner as with the Mortgagor, without in any manner vitiating or discharging the Mortgagor's liability hereunder or upon the debt hereby secured. The Mortgagor shall at all times continue primarily liable on the Indebtedness until this Mortgage is fully discharged or Mortgagor is formally released by an instrument in writing duly executed by the

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Mortgagee.

18. Subject to Mortgagor's right and obligations set forth in Paragraph 39 hereof, Mortgagor(s) jointly and severally understand, agree and expressly consent, that Mortgagee hereby reserves and shall have the optional right to declare all sums secured by this Mortgage to be immediately due and payable, in the event the Mortgagor without Mortgagee's prior written consent, grants any other mortgage, lien or encumbrance upon the Premises or sells, transfers, assigns, or conveys any interest in the mortgaged Premises, exclusive of and excepting any sale, transfer or conveyance (a) by and to any initial Mortgagor, or (b) by testamentary device, inheritance or by operation of law upon the death of a joint tenant or a tenant by the entirety; Mortgagee's option to accelerate in any such cases may be exercised by the written notice thereof to any one or more of the Mortgagors or to any one or more of the parties to whom such mortgage, lien or encumbrance was granted or such interest was sold, transferred, assigned or conveyed; and no one waiver by the Mortgagee shall estop or bar an exercise of such optional right to accelerate by the Mortgagee upon any subsequent mortgage, lien or encumbrance or the sale or sales, assignment or assignments, transfer or transfers or conveyance or conveyances.

19. In the event of a payment to Mortgagee, pursuant to the provisions hereof, of any rents or profits, or any proceeds of insurance or of proceeds of any condemnation or eminent domain award, or proceeds from any sale of the Premises at foreclosure, Mortgagee shall have the right to apply such rents or profits or proceeds, in such amounts and in proportions as Mortgagee shall, in its sole discretion, determine, to the full or partial satisfaction of any or all of the Indebtedness and obligations of Mortgagor's secured hereby, including any contingent or secondary obligations, whether or not the same shall then be due and payable by the primary obligor.

20. Mortgagor warrants that it owns all Equipment used in the maintenance and operation of any building on the Premises (other than that owned by Tenants) free and clear of any and all liens, security interest, or both except for the security interest and lien granted by this Mortgage. Mortgagor further warrants that, as to all Equipment brought on the Premises to be used in the operation and maintenance of any building on the Premises, it will own all such Equipment at the time such Equipment is brought on the Premises and thereafter free and clear of any and all liens or security interests, or both, except for the lien and security interest granted by this Mortgage. Mortgagor further warrants that it has the right to convey a security interest in such property to the Mortgagee.

21. Mortgagor agrees as follows: (a) That, upon Default hereunder and acceleration of the Indebtedness pursuant to the provisions hereof, the Mortgagee may, at its discretion, require the Mortgagor to assemble the movable Equipment, or any part thereof and make it available to the Mortgagee at a place reasonably convenient to both parties to be designated by the Mortgagee; (b) that the Mortgagee shall give the Mortgagor notice, by registered mail, postage prepaid, of the time and place of any public sale of any of the Equipment or of the time after which any private sale or other intended disposition thereof is to be made by sending notice to the Mortgagor at least ten (10) days before the

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time of the sale or other disposition, which provisions for notice the Mortgagor and Mortgagee agree are reasonable; provided, however, that nothing herein shall preclude the Mortgagee from proceeding as to both real and personal property in accordance with Mortgagee's rights and remedies in respect of real property as provided in Article 9 of the Illinois Uniform Commercial Code (the "Code") and particularly 810 ILCS 5/ 9-601; (c) that in the event of a Default under this Mortgage, the Mortgagee shall have the rights and remedies provided in Article 9 of the Code and, in addition, those provided in this Mortgage; (d) that any proceeds of any disposition of any of the Equipment may be applied by the Mortgagee to the payment of expenses incurred in connection with disposition of any of the Equipment including reasonable attorneys' fees and legal expenses, and any balance of such proceeds may be applied by the Mortgagee towards the payment of the obligation secured by this Mortgage.

22. Mortgagor shall execute, acknowledge and deliver, from time to time, such further instruments as may be requested by Mortgagee to confirm and protect the lien of this Mortgage on the Equipment and fixtures under the provisions of the Code, or otherwise, and this Mortgage shall be considered to be and shall be construed as a security agreement in which Mortgagor grants Mortgagee a security interest in the fixtures and Equipment as previously described herein.

23. Mortgagor will not create or permit to exist any lien, encumbrance or security interest in the Premises to, or in favor of, any one other than the Mortgagee.

24. (a) Mortgagor covenants that to the best of its knowledge and except as set forth in that certain Phase I Environmental Audit delivered to Lender relating to the Premises, the Premises is not contaminated by Hazardous Materials (as defined herein), that there is no present or threatened action regarding the environmental condition, and further covenants, so long as the Indebtedness remains outstanding: (i) that it shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Mortgagor, any tenant, subtenant or occupant, the discharge, dispersal, release or disposal of Hazardous Materials onto the Premises; and (ii) that it shall not allow any conditions to exist that would subject it to damages, penalties, injunctive relief or clean-up costs under any applicable federal, state or local statutes, laws or regulations, or at common law.

(b) Mortgagor shall comply with and ensure compliance by all tenants, subtenants and occupants with all applicable federal, state and local laws ordinances, rules and regulations with respect to environmental matters, and shall keep the Premises free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations.

(c) Mortgagor represents that no notice has been served on Mortgagor or to the best of its knowledge any others previously in possession of the Premises regarding the environmental condition of the Premises. In the event that Mortgagor receives any information, notice or advice from any source that an environmental impact or threatened or actual release affecting the environmental condition of the Premises is alleged, suspected

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or observed or with regard to Hazardous Materials, Mortgagor shall immediately notify the Mortgagee and in no event later than 24 hours after such receipt. The phrase "environmental condition" includes any adverse effect on the surface or ground water, drinking water supply, land surface or subsurface strata and the ambient air.

(d) If Mortgagor breaches any covenant, warranty or representation contained herein or if Mortgagor permits any condition or substance on the Premises which impairs the environmental condition of the Premises, the Mortgagor, at its own expense, shall conduct all investigations, removal, remedial and all other actions necessary to evaluate and correct any condition or substance causing degradation of the environmental condition of the Premises in accordance with governmental or judicial direction and all applicable federal, state and local laws, ordinances, rules, regulations and policies and to the satisfaction of the Mortgagee. Mortgagor shall provide Mortgagee with copies and verification of all reports concerning such investigations and other actions so taken.

(e) If an environmental assessment has been conducted at Mortgagee request, such assessment shall not be deemed a waiver or relinquishment of Mortgagee's right to rely on the covenants, representations, warranties or agreements made herein and in the Loan Documents or to receive the protection and indemnity contained herein. If at any time during the term of the Indebtedness, the Mortgagee reasonably believes that any federal, state and local law, ordinance, rule or regulation, with respect to Hazardous Materials or the environmental condition of the Premises, has been or is being violated, the Mortgagee shall have the right to require Mortgagor, at Mortgagor's expense to have an environmental assessment or assessments completed and to furnish evidence satisfactory to Mortgagee that no such violation has occurred. Until receipt of such evidence the Mortgagee shall not be required to make any advances or loans to the Mortgagor. Mortgagee's exercise of its rights under this subparagraph (e) shall in no way limit its other rights and remedies outlined herein and in the Loan Documents.

(f) The Mortgagor shall provide the Mortgagee with reasonable access to the Premises, the Mortgagor's business records and Mortgagor's agents and employees for the purpose of confirming compliance with the provisions of this Mortgage, to conduct environmental assessment of the property, and to protect the Mortgagee's security interest. The Mortgagee shall be under no duty to exercise such access, the nonexercise of which shall in no way prejudice the rights of the Mortgagee under this Mortgage or otherwise.

(g) Mortgagor has a continuing duty to notify the Mortgagee of any change of conditions affecting the continuing accuracy and truthfulness of any covenant, representation, or warranty of the Mortgagor, contained in this Mortgage.

(h) The Mortgagor agrees to indemnify, defend and hold harmless, the Mortgagee against any and all claims, losses, costs, damages, liabilities, and expenses (including all attorney's fees), asserted against or incurred by the Mortgagee and directly or indirectly arising out of or attributable to the Mortgagor's breach of any covenant, warranty

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or representation herein, Mortgagor's use of Hazardous Materials, violation of federal, state or local laws, ordinances, rules or regulations by the Mortgagor, or degradation of the environment in connection with the Premises, whether by the Mortgagor or by others, and whether occurring before or after the execution of this Mortgage.

(i) All obligations, covenants, warranties, representations and liabilities of the Mortgagor under this Mortgage, including, but not limited to, the indemnity contained herein, shall survive discharge of the Mortgage as a result of foreclosure or deed given in lieu thereof, or any other exercise by the Mortgagee of any remedies available to it for any default under this Mortgage and shall be in full force and effect at the time any claim or action is asserted by or against the Mortgagee; provided, however, that the indemnity contained herein shall not apply to any Hazardous Materials first introduced to the Premises after the Lender obtains possession of the Premises pursuant to a foreclosure or deed in lieu of foreclosure.

(j) For purposes of this Mortgage, "Hazardous Materials" shall include, without limitation, any chemical or other material which is or may become injurious to the public health, safety, or welfare, or to the environment, flammable explosives, petroleum fractions, pesticides, radioactive materials, hazardous materials, hazardous waste, regulated substances, hazardous or toxic substances, asbestos-containing materials, polychlorinated biphenyls, contaminating pollutants or related or similar materials, including by way of example, substances or materials defined by any federal, state or local environmental law, ordinance, rule or regulation, including without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; and any other local, state or federal environmental statutes, and all rules, regulations, orders and decree now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

25. Unless specifically provided otherwise, any notice for purposes of this Agreement shall be given in writing and shall be addressed or delivered in accordance with Section 11.3 of the Loan Agreement.

26. That if the Mortgagor consists of more than one person such Mortgagor shall be jointly and severally liable under any and all obligations, covenants, and agreements of the Mortgagor contained herein. If the Mortgagor is a land trust, then the term Mortgagor as used herein shall include the beneficiaries of such land trust.

27. The terms, conditions and covenants contained herein shall bind, and the benefits and advantages thereof inure to, the respective heirs, executors, administrators,

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assigns, personal representatives, and successors of the parties hereto.

28. (a) Mortgagee may at any time release all or any part of the Premises from the lien of this Mortgage or release the personal liability without giving notice to, or obtaining the consent of, the holder of any mortgage or lien upon, the other interest in, the Premises. Any such release shall not impair or affect the validity or priority of this Mortgage, regardless of the effect of such release upon any such mortgage, lien or other interest or the holder thereof. Nothing in this subparagraph constitutes consent by Mortgagee to the placing of a mortgage, lien or other encumbrance on the Premises.

(b) Mortgagor (i) waives notice of any advances or other extensions of credit included in the Indebtedness, (ii) waives any right to require Mortgagee to sue upon or otherwise enforce payment of the Indebtedness or to enforce any security therefor before exercising its rights and remedies under this Mortgage, and (iii) agrees that the validity and enforceability of this Mortgage shall not be impaired or affected by any failure of Mortgagee to obtain or perfect, or secure priority of, any other security at any time given, or agreed to be given, by any person of the Indebtedness.

(c) Mortgagee is authorized from time to time and without notice to or consent by Mortgagor and with or without consideration, to give and make such extensions, renewals, modifications, waivers, settlements, and compromises, on such terms and conditions as Mortgagee may see fit, with regard to any of the Indebtedness as to which Mortgagor is not the obligor or with regard to any security for the Indebtedness that is not owned by Mortgagor. Any such action shall not impair or affect the validity or enforceability of this Mortgage.

29. After an event of default, Mortgagor at the request of the Mortgagee shall cause the Premises to be appraised or re-appraised to determine its value. The Mortgagor shall pay all costs and fees of such appraisals or re-appraisals.

30. If the Mortgagee shall incur or expend any sums, including reasonable attorney's fees, whether in connection with any action or proceeding or not, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of its rights hereunder, or to recover any indebtedness hereby secured, or for any title examination or title policy relating to title to the Premises, or for any appraisal or re-appraisal of the Premises, or for environmental audits or reports, all such sums shall on notice and demand be paid by the Mortgagor, together with interest thereon at the default rate described in the Note and shall be a lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

31. The rights of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; that no act of the Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provisions, anything herein or otherwise to the contrary notwithstanding.

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32. This Mortgage cannot be changed except by agreement in writing signed by the party against whom enforcement of the change is sought.

33. If any provision of this Mortgage shall be prohibited or unenforceable by any application of law, the provision shall be ineffective only to the extent and for the duration of such prohibition or unenforceability, and the unenforceability or prohibition thereof shall not invalidate any of the remaining provisions hereof.

34. Nothing contained in this Mortgage or any exhibit attached hereto or any agreement given pursuant hereto shall be deemed or construed as creating any relationship other than that of Mortgagor and Mortgagee. There is no partnership or joint venture between the Mortgagee and Mortgagor, or between Mortgagee and any other person and the Mortgagee is not responsible in any way for the debts or obligations of the Mortgagor or any other person. Nothing in this Mortgage or its attachments makes the Mortgagee a fiduciary for the Mortgagor or any other person, or an owner or operator of the Premises.

35. Any appraisals of the Mortgagor's property or evaluation of the potential profitability of the enterprise to be engaged in by the Mortgagor in connection with the extension of credit from the Mortgagee to the Mortgagor, are for the sole benefit of the Mortgagee and do not constitute a representation of the likelihood of profitability of such enterprises by the Mortgagee to the Mortgagor.

36. This Mortgage shall be governed by Illinois law.

37. The pronouns and relative words herein used shall be read as if written in the singular, plural, feminine or neuter forms so as to appropriately refer to the party or parties designated.

38. The Mortgagor agrees not to set up or claim the benefit of homestead, curtesy or dower laws, or any exemption or insolvency laws against any claim of the Mortgagee, for any sum of money which may become due and payable to it, under the covenants and agreements of the Note, or of this Mortgage, or any other instrument securing said Note, or against the securing of execution of any judgment sought thereon, all of said rights and exemptions being hereby expressly waived.

39. At all times, this Mortgage secures in addition to the Note, any other amounts as provided herein; provided, however, that in no event shall the aggregate principal indebtedness secured by this Mortgage exceed the aggregate original principal amount of the Note, multiplied by a factor of three.

40. (a) Mortgagor shall pay all costs and expenses in connection with the loan and the preparation, execution, and delivery of the Loan Documents including, but not limited to, fees and disbursements of counsel appointed by Mortgagee, and all recording costs and expenses, documentary stamp tax and intangible tax on the entire amount of funds disbursed under the loan, and other taxes, surveys, appraisals, premiums for policies

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of title and other insurance and all other fees, costs and expenses, if any, set forth in the loan commitment letter, the loan agreement, or otherwise connected with the loan transaction.

(b) Mortgagor shall pay or reimburse Mortgagee for all costs, charges, expenses, and reasonable attorneys' fees paid or incurred by Mortgagee pursuant to this Mortgage including but not limited to those costs, charges, expenses and fees paid or incurred for the payment of real estate taxes, assessments, utility charges, governmental and non-governmental charges or levies, insurance, completion of construction, repairs, or in any action, proceeding or dispute of any kind in which Mortgagee is a party because of any obligation not being duly and promptly performed or being violated, including, but not limited to, the foreclosure or other enforcement of this Mortgage, any condemnation or eminent domain action involving the Premises or any part thereof, any action to protect the security hereof, or any proceeding in probate, reorganization, bankruptcy, or forfeiture in rem. All such amounts paid or incurred by Mortgagee, together with interest thereon at the default rate from the date incurred by Mortgagee, shall be secured by this Mortgage and shall be due and payable by Mortgagor immediately, whether or not there be notice or demand therefor.

(c) Wherever provision is made herein for payment of attorneys' or counsels' fees or expenses incurred by the Mortgagee, said provision shall include, but not be limited to, such fees or expenses incurred in any and all judicial, bankruptcy, reorganization, administrative, or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced or after entry of a final judgment.

THE UNDERSIGNED AND MORTGAGEE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS MORTGAGE OR THE INDEBTEDNESS.

[Signature page follows]

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

MORTGAGOR:

MONTESANO CAPITAL MANAGEMENT HOLDINGS, LLC-8707 SKOKIE, SERIES XXXI, a designated series of Montesano Capital Management, LLC, an Illinois limited liability company

By: 

Name: James Montesano

Title: Manager

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

BEFORE ME, a Notary Public in and for said County and State, personally appeared James Montesano, by me known to be the Manager of **MONTESANO CAPITAL MANAGEMENT HOLDINGS, LLC-8707 SKOKIE, SERIES XXXI**, a designated series of Montesano Capital Management Holdings, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager of such limited liability company, and who, being duly sworn, stated that he, being authorized so to do, signed and delivered the foregoing Real Estate Mortgage as such Manager of such limited liability company as his own free and voluntary act and as the free and voluntary act of such limited liability company, for the uses and purposes therein set forth.

WITNESS my hand and Notary Seal this 15th day of June, 2007.

Patricia Butler

 Notary Public

My Commission expires: _____



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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOTS 17 TO 19, IN EVANSTON GOLF CLUB'S WEST BORDER LOT SUBDIVISION IN THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 10, 1924 AS DOCUMENT 8503410 IN COOK COUNTY, ILLINOIS

PARCEL 2:

THAT PART OF LOT 9 IN THE SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF LOT 20 IN EVANSTON GOLF CLUB'S WEST BORDER LOT SUBDIVISION; AND RUNNING THENCE EAST, ALONG THE SOUTH LINE OF SAID LOT 20, EXTENDED EAST, A DISTANCE OF 200 FEET, TO THE EXTENSION OF THE EAST LINE OF LOT 24; THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 24, EXTENDED SOUTH, A DISTANCE OF 70 FEET, TO A POINT ON THE SAID LINE, 295 FEET SOUTH OF THE SOUTHEAST CORNER OF SAID LOT 24; THENCE SOUTHWESTERLY 308.25 FEET TO THE SOUTHEAST CORNER OF SAID LOT 17, AS AFORESAID; THENCE NORTH 300 FEET TO THE POINT OF BEGINNING ALL IN COOK COUNTY, ILLINOIS

Common Address: 8707 Skokie Boulevard, Skokie, Illinois 60010

Parcel I.D. #: 10-22-100-013-0000; 10-22-100-014-0000; 10-22-100-015-0000;
and 10-22-100-040-0000