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After Recording, Return to:  
Phillip Grossman  
8707 Skokie Boulevard  
Suite 202  
Skokie, Illinois 60077



Doc#: 0824933122 Fee: \$64.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/05/2008 11:27 AM Pg: 1 of 15

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## COLLATERAL ASSIGNMENT AND SUBORDINATION OF ARTICLES OF AGREEMENT FOR DEED AND ADDITIONAL COVENANTS

THIS COLLATERAL ASSIGNMENT AND SUBORDINATION OF ARTICLES OF AGREEMENT FOR DEED AND ADDITIONAL COVENANTS (the "Assignment") is made as of the 21 day of August, 2008, by KENNETH G. ROSS (the "Borrower") to EDWARD DIAMOND, of Deerfield, Illinois ("Lender").

### RECITALS

A. Lender has agreed to loan to Borrower the principal amount of \$450,000.00 (the "Loan"). The Loan is evidenced by a certain Promissory Note in the principal amount of \$450,000.00 (the "Note") of even date herewith made by Borrower payable to the order of Lender. The Note is secured by, among other things, a certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith (the "Mortgage") made by CHICAGO TITLE LAND TRUST COMPANY, not personally but solely as Trust Agreement dated August 13, 2003 and known as Trust No. 03-9858 (the "Seller Trust") encumbering the real property legally described in Exhibit "A" attached hereto, together with all buildings, structures and improvements now or hereafter erected thereon (collectively, the "Property") and certain additional collateral as more particularly described in the Mortgage (the Note, the Mortgage and all of the other documents and instruments, evidencing, securing or otherwise executed in connection with the Loan are hereinafter referred to as the "Loan Documents").

B. Borrower and KENNETH G. ROSS and PATRICIA J. KERAN, as Successor Trustees of a Trust Agreement dated March 30, 1971 and known as The Perry W. Ross Revocable Trust (the "PWR Trust"), and as Successor Trustees of a Trust Agreement dated March 30, 1971 and known as The Florence B. Ross Revocable Trust (the "FBR Trust"), and together with the PWR Trust, the "Beneficiary") (the Beneficiary and the Seller Trust are hereinafter referred to as the "Seller") have entered into Articles of Agreement for Deed dated as

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of December 21, 1999 (the "Articles of Agreement") pursuant to which Beneficiary has agreed to sell the Property to Borrower. Beneficiary is the sole beneficiary of the Seller Trust.

C. One of the conditions precedent to the closing of the Loan (the "Closing" is the execution and delivery of this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby agrees as follows:

1. Definitions. Capitalized terms used but not otherwise defined herein that are defined in the Note shall have the meanings ascribed to such terms in the Note.
2. Assignment. Borrower hereby grants, transfers and assigns to Lender all of Borrower's right, title and interest in and to the Articles of Agreement. This Assignment is made for the purpose of securing the payment and performance of Borrower's obligations arising under and pursuant to the Note and Borrower's or Seller's obligations arising under the other Loan Documents to which Seller or Borrower are parties (collectively, the "Obligations") and is for collateral security purposes only. Lender shall not by virtue of this Assignment obtain rights against Seller greater than the rights Borrower has against Seller with respect to the Articles of Agreement and shall have all other rights and remedies of a secured creditor under all applicable laws.
3. Limitation of Lender's Liability. Notwithstanding anything to the contrary contained in the Articles of Agreement, the interest of Borrower therein is assigned and transferred to Lender by way of collateral security only and the Lender, by its acceptance hereof, shall not be deemed to have assumed or become liable for any of the obligations or liabilities of Borrower under such document, whether provided for by the terms thereof, arising by operation of law or otherwise. Borrower hereby acknowledges that Borrower shall remain liable for the due performance of Borrower's obligations under the Articles of Agreement to the same extent as though this Assignment had not been made. The relationship between Lender and Borrower is solely that of a lender and borrower, and nothing contained herein shall in any manner be construed as making the parties hereto partners or joint venturers or creating any other relationship other than lender and borrower.
4. Covenants.
  - (a) Borrower covenants with Lender (i) to observe and perform in a timely manner all of the covenants, agreements and obligations imposed upon Borrower under the Articles of Agreement, (ii) not to assign such Borrower's interest under the Articles of Agreement except pursuant to this Assignment and the other Loan Documents, (iii) not to waive, alter, modify or change the terms of the Articles of Agreement or terminate the same, (iv) to enforce diligently the performance by the Seller of its obligations imposed upon it under the Articles of Agreement, (v) not to settle, compromise or offset any amounts payable by any Seller to Borrower without the prior written consent of Lender, and (vi) to notify Lender promptly of all circumstances relating to the Articles of Agreement and the rights and obligations of Borrower thereunder

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including, without limitation, furnishing Lender with copies of all notices claiming a default thereunder.

(b) Borrower shall sign and execute alone or with Lender any financing statement or other document or procure any documents and pay all costs, expenses and fees, including court costs and reasonable attorneys' fees, necessary to protect the security interest granted to Lender under this Assignment against the rights, interests and claims of third parties.

5. Subordination of Articles of Agreement. The interest created by the Articles of Agreement in the Property shall hereafter be subject and subordinate to the liens and security interests created by the Mortgage and each of the other Loan Documents, as the same may be modified or amended, to the full extent of the Loan. Borrower shall have no right to participate in the adjustment or settlement of insurance losses and/or condemnation claims with respect to all or any portion of the Property. Borrower hereby further agrees, upon the request and at the direction of Lender, to endorse in favor of Lender any and all checks payable to Borrower which represents insurance or condemnation proceeds paid for claims relating to the Property in any way. Borrower hereby appoints Lender as its attorney-in-fact, in its place and stead to settle all insurance claims relating to the Property and to receive all payments and endorse all checks with regard thereto to the full extent of all amounts secured by the Loan Documents. All insurance or condemnation proceeds received by Lender in excess of the outstanding amounts secured by the Loan Documents shall be promptly remitted jointly to Borrower and Seller as their interests may appear.

6. Forfeiture.

(a) Borrower hereby covenants and agrees that upon the occurrence of an Event of Default under the Note, the Mortgage, this Assignment or any of the other Loan Documents, Lender may, at its sole discretion, after providing written notice to Borrower of such Event of Default and providing borrower with an opportunity to cure such Event of Default within ten (10) days after the expiration of any applicable grace period expressly provided under the Note, the Mortgage or the other Loan Documents (or if no such grace period is provided, then within ten (10) days after receipt of the notice of such Event of Default) cause Borrower's interest under the Articles of Agreement and in all escrows, deeds of conveyance and other instruments and documents in connection therewith to be conveyed, assigned or otherwise transferred to Lender or a nominee designated by Lender. Borrower hereby waives the right to assert any and all claims and defenses against Lender relating to or arising from any action taken by Lender pursuant to this subsection, including without limitation, the right to assert that the Mortgage was merged into any deed or instrument of conveyance to a nominee for Lender. Lender hereby waives any right to have a receiver appointed in connection with any foreclosure action filed by Lender against the Property.

7. Maintenance, Repair, Restoration, Prior Liens, Parking. Borrower covenants that, so long as any portion of the Indebtedness (as defined in the Mortgage) remains unpaid, Borrower will:

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- (a) promptly repair, restore or rebuild any Improvements (as defined in the Mortgage) now or hereafter on the Property which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose;
- (b) keep the Property free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to Borrower's right to contest liens as permitted by the terms of paragraph 22 hereof);
- (c) pay when due the Indebtedness in accordance with the terms of the Note and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Borrower under the Note, this Assignment and the other Loan Documents.
- (d) pay when due any indebtedness which may be secured by a permitted lien or charge on the Property on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Lender (subject to Borrower's right to contest liens as permitted by the terms of paragraph 22 hereof);
- (e) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Property;
- (f) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Property and the use thereof;
- (g) obtain and maintain in full force and effect and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Agreement;
- (h) make no material alterations in the Property or demolish any portion of the Property without Lender's prior written consent, except as required by law or municipal ordinance;
- (i) suffer or permit no change in the use or general nature of the occupancy of the Property, without the Lender's prior written consent;
- (j) pay when due all operating costs of the Property;
- (k) not initiate or acquiesce in any zoning reclassification with respect to the Property, without Lender's prior written consent;
- (l) provide and thereafter maintain adequate parking areas within the Property as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress,

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egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; and

(m) cause the Property at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations.

8. Payment of Taxes and Assessments. Borrower will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against Borrower, if applicable to the Property or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to Borrower's right to contest the same, as provided by the terms hereof; and Borrower will, upon written request, furnish to the Lender duplicate receipts therefor within ten (10) days after Lender's request.

9. Tax Deposits. In the event that Borrower fails to pay when due, or furnish to Lender, duplicate receipts of payment for any Taxes, Borrower covenants to deposit with Lender, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12<sup>th</sup>) of 105% of the most recent ascertainable annual Taxes on the Property.

10. Lender's Interest in and Use of Deposits. Upon an Event of Default, Lender may, at its option, apply any monies at the time on deposit pursuant to paragraph 9 hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as Lender may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, Borrower shall immediately, upon demand by Lender, deposit with Lender an amount equal to the amount expended by Borrower from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to Borrower.

11. Insurance.

(a) Borrower shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Property insured against loss or damage by fire and such other hazards as may reasonably be required by Lender, in accordance with the terms, coverages and provisions described on Exhibit "B" attached hereto and made a part hereof, and such other insurance as Lender may from time to time reasonably require. Unless Borrower provides Lender evidence of the insurance coverages required hereunder, Lender may purchase insurance at Borrower's expense to cover Lender's interest in the Property. The insurance may, but need not, protect Borrower's interest. The coverages that Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by this Assignment. If Lender purchases insurance for the Property, Borrower will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may

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be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

(b) Borrower shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Lender is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to Lender and such separate insurance is otherwise acceptable to Lender.

(c) In the event of loss, Borrower shall give prompt notice thereof to Lender, whom, if such loss exceeds the lesser of ten percent (10%) of the Indebtedness or Four Hundred Thousand Dollars (\$400,000.00) ("Threshold"), shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i), (ii), and (iii) of the immediately succeeding sentence are not satisfied, then Lender, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or less than the Threshold, (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and (iii) Lender determines that the work required to complete the repair or restoration of the Property necessitated by such loss can be completed no later than six (6) months prior to the Maturity Date, then Lender shall endorse to Borrower any such payment and Borrower may collect such payment directly. Lender shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Lender pursuant to the terms of this paragraph, after the payment of all of Lender's expenses, either (i) on account of the Indebtedness, irrespective of whether such principal balance is then due and payable, whereupon Lender may declare the whole of the balance of the Indebtedness plus any Prepayment Premium/Make Whole Costs (as defined in the Note) to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in subparagraph (d) below, if (i) Lender has received satisfactory evidence that such restoration or repair shall be completed no later than the date that is six (6) months prior to the Maturity Date, and (ii) no Event of Default, or event that with the passage of time, the giving of notice or both would constitute an Event of Default, then exists. If insurance proceeds are made available to Borrower by Lender as hereinafter provided, Borrower shall repair, restore or rebuild the damaged or destroyed portion of the Property so that the condition and value of the Property are substantially the same as the condition and value of the Property prior to being damaged or destroyed.

(d) If insurance proceeds are made available by Lender to Borrower, Borrower shall comply with the following conditions:

(i) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Property, whether by fire or other casualty, Borrower shall obtain from Lender its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(ii) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Property to the extent permitted in subparagraph (c) above (which payment or application may be made, at Lender's option,

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through an escrow, the terms and conditions of which are satisfactory to Lender and the cost of which is to be borne by Borrower), Lender shall be satisfied as to the following:

a. no Event of Default or any event which, with the passage of time or giving of notice would constitute an Event of Default, has occurred;

b. either such Improvements have been fully restored or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuilding the Property, free and clear of all liens, claims and encumbrances, except the lien of the Mortgage and the Permitted Exceptions, or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Property, Borrower has deposited with Lender such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Property;

(iii) If Borrower shall fail to restore, repair or rebuild the Improvements within a time deemed satisfactory by Lender, then Lender, at its option, may (a) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of Borrower, or (b) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

12. Lease Assignment. Borrower acknowledges that, concurrently herewith, Borrower has executed and delivered to Lender, as additional security for the payment of the Loan, an Assignment of Rents and Leases ("Assignment") pursuant to which Borrower has assigned to Lender interests in the Leases of the Property and the rents and income from the Property. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Assignment. Borrower agrees to abide by all of the provisions of the Assignment.

13. Effect of Extensions of Time and Other Changes. If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Property or having an interest in Borrower, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation, release or change.

14. Lender's Performance of Defaulted Acts and Expenses Incurred by Lender. If an Event of Default has occurred, Lender shall have the right to enforce the Articles of Agreement and shall have all other rights and remedies of a secured creditor under applicable law. In addition, Lender may, but need not, make any payment or perform any act herein required of Borrower in any form and manner deemed expedient by Lender, and may, but need not, make

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full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Property or consent to any tax or assessment or cure any default of Borrower in any lease of the Property. 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 Lender in regard to any tax referred to in paragraph 8 above or to protect the Property or the lien hereof, shall be so much additional indebtedness secured by this Assignment, the Mortgage and other Loan Documents, and shall become immediately due and payable by Borrower to Lender, upon demand, and with interest thereon at the Default Rate then in effect. In addition to the foregoing, any costs, expenses and fees, including attorneys' fees, incurred by Lender in connection with (a) sustaining the lien of the Mortgage or its priority, (b) protecting or enforcing any of Lender's rights under the Mortgage; (c) recovering any indebtedness secured by this Assignment, the Mortgage or the other Loan documents, (d) any litigation or proceedings affecting the Note, this Assignment, the Mortgage, any of the other Loan Documents or the Property, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Assignment, the Mortgage, any of the other Loan Documents or the Property, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender, upon demand, and with interest thereon at the Default Rate.

## 15. Expenses Relating to Note/Mortgage.

(a) Borrower will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, the Mortgage or any of the other Loan Documents, including without limitation, Lender's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, the Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgement of the Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Borrower shall not be required to pay any income or franchise taxes of Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and the Mortgage. Borrower recognizes that, during the term of the Mortgage, Lender:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Lender shall be a part by reason of the Loan Documents or in which the Loan Documents or the Property are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;



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(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Lender's taking possession of and managing the Property, which event may or may not actually occur;

(b) All expenses, charges, costs and fees described in this paragraph 15 shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Borrower forthwith upon demand.

16. Statement of Indebtedness. Borrower, within seven days after being so requested by Lender, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Assignment, the Mortgage and the other Loan Documents, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

17. Additional Indebtedness Secured. All persons and entities with any interest in the Property or about to acquire any interest should be aware that the Mortgage secures more than the stated principal amount of the Note and interest thereon; the Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Lender to operate, manage or maintain the Property or to otherwise protect the Property or the lien of the Mortgage.

18. Indemnity. Borrower hereby covenants and agrees that no liability shall be asserted or enforced against Lender in the exercise of the rights and powers granted to Lender in the Mortgage, and Borrower hereby expressly waives and releases any such liability. Borrower shall indemnify and save Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) (collectively, the "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Lender at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Lender may or does become a party, either as plaintiff or as a defendant, by reason of the Mortgage or for the purpose of protecting the lien of the Mortgage; (b) the offer for sale or sale of all or any portion of the Property; and (c) the ownership, leasing, use, operation or maintenance of the Property, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Property to Lender in accordance with the terms of the Mortgage; provided, however, that Borrower shall not be obligated to indemnify or hold Lender harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Lender.

19. Subordination of Property Manager's Lien. Any property management agreement for the Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Property shall be subject and subordinate to the lien of the Mortgage and shall provide that Lender may terminate such agreement at any time after the occurrence of an Event of Default hereunder.

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20. Compliance with Environmental Laws. Borrower acknowledges that concurrently herewith Borrower has executed and delivered to Lender an Environmental Indemnity Agreement (“Indemnity”) pursuant to which Borrower has fully indemnified Lender for certain environmental matters concerning the Property, as more particularly described therein. The provisions of the Indemnity are hereby incorporated herein and this Agreement shall secure the obligations of Borrower thereunder. Borrower agrees to abide by all of the provisions of the Indemnity.

21. Miscellaneous.

(a) Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the powers and rights granted hereunder shall be deemed to be a waiver by Lender of its rights and remedies hereunder or with respect to any of the other collateral securing the Obligations. The right of Lender to enforce any other security for the Obligations may be exercised prior to, simultaneously with, or subsequent to any action taken by Lender hereunder.

(b) Time is of the essence with respect to the performance of the provisions of this Assignment. The headings of paragraphs in this Assignment are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

(c) This Assignment, together with the representations, warranties and covenants herein contained, shall inure to the benefit of Lender and its successors and assigns and shall be binding upon Borrower and its successors and assigns.

(d) If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretations placed thereon by any administrative agency or any court, Borrower and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

(e) All notices and communications under this Assignment shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Lender: Edward Diamond  
1826 S. Clinton St.  
Chicago, IL 60616

With copy to: Phillip Grossman  
8707 Skokie Blvd.  
Suite 202  
Skokie, IL 60077

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To Borrower: Kenneth G. Ross  
 c/o Jameson Realty Group  
 425 W. North Avenue  
 Chicago, IL 60610

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

22. Contests. Notwithstanding anything to the contrary herein contained, Borrower shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Property or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Property (all herein called "Contested Liens"), and no Contested Liens shall constitute an Event of Default hereunder, if, but only if:

(a) Borrower shall forthwith give notice of any Contested Lien to Lender at the time the same shall be asserted;

(b) Borrower shall either pay under protest or deposit with Lender the full amount (herein called "Lien Amount") of such Contested Lien, together with such amount as Lender may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Borrower may furnish to Lender a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Lender;

(c) Borrower shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Property, and shall permit Lender to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of Lender's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);

23. Consent to Jurisdiction. **TO INDUCE LENDER TO ACCEPT THE NOTE, BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS ASSIGNMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON BORROWER, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT**

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THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

24. **Waiver of Jury Trial.** BORROWER AND LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES.

25. **Municipal and Zoning Requirements.** Borrower shall not by act or omission permit any building or other improvement on Property not subject to the lien of the Mortgage to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Borrower hereby assigns to Lender any and all rights to give consent for all or any portion of the Property or any interest therein to be so used. Similarly, no building or other improvement on the Property shall rely on any Property not subject to the lien of the Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Borrower which would result in a violation of any of the provisions of this subparagraph shall be void.

IN WITNESS WHEREOF, this Assignment has been made by Borrower as of the day and year first above written.



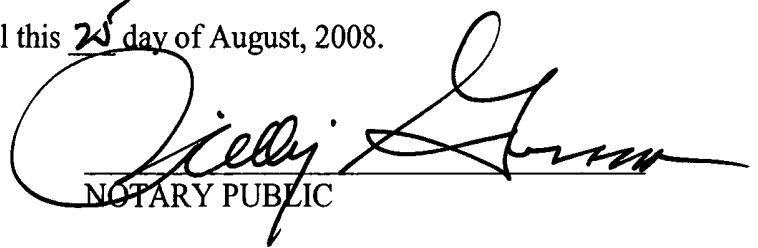
KENNETH G. ROSS

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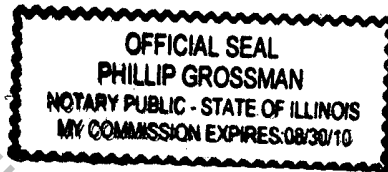
STATE OF ILLINOIS     )  
  )SS:  
COUNTY OF COOK     )

I, Phillip Grossman, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Kenneth G. Ross, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 25 day of August, 2008.

  
\_\_\_\_\_  
NOTARY PUBLIC

Commission expires:



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Assignment and Subordination.doc

# UNOFFICIAL COPY

## EXHIBIT "A"

### LEGAL DESCRIPTION OF REAL ESTATE

Lot 84 in Sheldon's Subdivision of Lot 61 through 90 inclusive, in Bronson's Addition to Chicago in Northeast ¼ of Section 4, Township 30 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Address of Property:

1350 North Wells, Chicago, Illinois

PIN:

17-04-215-005-0000

# UNOFFICIAL COPY

## EXHIBIT "B"

### INSURANCE REQUIREMENTS

