

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 0826333124 Fee: \$86.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/19/2008 01:47 PM Pg: 1 of 26

The property identified as: **PIN:** 17-16-110-005-0000

**Address:**

**Street:** 750 W. Jackson

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60661

**Lender:** First Bank and Trust Company of Illinois

**Borrower:** CCD-halsted Jackson, LLC

**Loan / Mortgage Amount:** \$4,000,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Box 400-CTCC

**Certificate number:** 74F4380B-4633-4F85-BE4F-1BBF69998ED6

**Execution date:** 09/12/2008

26  
g

Property of Cook County Clerk's Office

8452046-DJ

# UNOFFICIAL COPY

**RECORDATION REQUESTED BY:**

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603

2 ALL  
8452 046-71  
Tch...

**WHEN RECORDED MAIL TO:**

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603  
Attention: Tonya M. Parravano

**SEND TAX NOTICES TO:**

First Bank and Trust Company of Illinois  
300 East Northwest Highway  
Palatine, Illinois 60067  
Attention: ~~Jason Godraitis~~ ?  
Dennis Anger

**This Instrument prepared by:**

Tonya M. Parravano  
Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603

[This Space For Recorder's Use Only]

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

**THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Mortgage") is made as of September 12, 2008, by **CCD-HALSTED JACKSON, LLC**, an Illinois limited liability company ("Mortgagor"), in favor of **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, an Illinois state commercial bank, having an office at 300 East Northwest Highway, Palatine, Cook County, Illinois 60067 ("Lender"). Lender and Mortgagor are parties to that certain Loan Agreement dated of even date herewith (as modified or restated from time to time, the "Loan Agreement"). Initially capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Loan Agreement.

# UNOFFICIAL COPY

## WITNESSETH:

**WHEREAS**, Mortgagor has executed and delivered to Lender that certain Promissory Note, of even date herewith, payable to the order of Lender in the principal amount of FOUR MILLION AND NO/100THS DOLLARS (\$4,000,000.00) (as modified or restated from time to time, the "Note"), or such lesser amount as may be disbursed thereon, which note bears interest and is payable to Lender as more fully described therein and which note shall mature as provided therein, but in no event later than March 12, 2010; and

**WHEREAS**, Lender is desirous of securing the prompt payment of the Note, and of any replacement notes (together with the Note, referred to collectively herein as the "Notes"), together with interest and any premium thereon in accordance with the terms of the Notes and the Loan Agreement, and any additional indebtedness accruing to Lender on account of any future payments, advances or expenditures made by Lender pursuant to, or any other obligation of Mortgagor arising under, any of the Loan Documents (all of the foregoing, the "Secured Obligations"); provided, however, at no time shall the principal amount of the Secured Obligations, not including sums advanced to protect the security of this Mortgage, exceed \$8,000,000.00;

**NOW, THEREFORE**, to secure the payment, performance and observance by Mortgagor all of the terms, covenants and conditions contained herein and by Mortgagor of all of the terms, covenants and conditions contained in the Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Mortgagor has executed and delivered this Mortgage and does hereby grant a lien and/or security interest, as applicable, in, and grant, convey, assign mortgage and warrant and confirm, to Lender and Lender's successors and assigns forever, all of the property now or hereafter owned by Mortgagor described in the following GRANTING CLAUSES (the "Mortgaged Property"):

A. All those certain tracts, pieces or parcels of land located in Chicago, Illinois, and legally described in **Exhibit A** attached hereto and hereby made a part hereof and all surface and subsurface soils, minerals and water located thereon and thereunder (the "Land"); and

B. All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all furnishings, furniture, fixtures, machinery, inventory, equipment, appliances, systems, building materials, vehicles and personal property of every kind and nature whatsoever including, without limitation, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures and systems, carpeting and other floor coverings, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus and systems, refrigerating plant, refrigerators, computers and all hardware and software therefor, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be attached to said buildings, structures or improvements, or which are or shall be located in, on or about the Land, or which, wherever located (including, without limitation, in warehouses or other storage facilities or in the possession of or on the premises of vendors or manufacturers thereof), are used or intended to be used in or in connection with the construction, fixturing, equipping, furnishing, use, operation or enjoyment of the Land or the improvements thereon, now or hereafter owned by Mortgagor,

# UNOFFICIAL COPY

including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing, together with all warehouse receipts or other documents of title relating to any of the foregoing and the benefit of any deposits or payments now or hereafter made by Mortgagor in connection with any of the foregoing; and

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

D. Each and every lease, license and other document or instrument, including, without limitation, those described in Granting Clause C above, granting to any Person any right to use or occupy, and any other agreement with respect to the use or occupancy of, all or any portion of the Land or the improvements of any type or nature located thereon (the "**Improvements**"), whether heretofore, now or hereafter entered into (the "**Leases**"); and

E. The rents, deposits, issues, profits, proceeds, revenues, awards and other benefits of the Mortgaged Property from time to time accruing (including, without limitation, all payments under the Leases, licenses and documents described in Granting Clause D above, proceeds of insurance, condemnation awards and payments in lieu thereof, tenant security deposits, escrow funds, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Mortgaged Property, or personalty located thereon, or rendering of services by Mortgagor or any operator or manager of the Mortgaged Property or acquired from others including, without limitation, from the rental of any space, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same) (collectively, the "**Rents**"); and

F. All proceeds and avails from rentals, mortgages, sales, conveyances or other dispositions or realizations of any kind or character of or from the foregoing Rents now or hereafter existing, all of which shall constitute proceeds of collateral pursuant to Article 9 of the Uniform Commercial Code ("**UCC**"), as adopted in the state in which the Mortgaged Property is located (the "**State**"); and

G. All of the aforementioned personal property and any and all other personal property, whether tangible or intangible, not otherwise described herein and now or at any time hereafter owned by the Mortgagor and now or at any time hereafter located in or on or otherwise utilized in any one or more of the ownership, use, enjoyment, construction, occupancy, management, maintenance, repair and operation of the Land, the Improvements or the equipment located thereon, including, without limitation, trade names, trademarks, service marks, copyrights, patents and other intellectual property and any and all funds of Mortgagor from time

# UNOFFICIAL COPY

to time in Lender's possession, all of which shall constitute proceeds of collateral pursuant to Article 9 of the UCC (the "**Personalty**"); and

H. All of the aforementioned contracts and agreements and any and all other contracts or agreements, whether written or oral, to which Mortgagor is or hereafter becomes a party, to the extent assignment is permitted therein, including, without limitation, purchase contracts for the sale of all or any portion of the Land, contracts pertaining to architectural services, contracts pertaining to engineering services, and contracts relating in any manner to the ownership, use, enjoyment, construction, occupancy, management, maintenance, operation or repair of all or any portion of the Land, the Improvements, the equipment located thereon or the Personalty or otherwise related to all or any part of the real and personal property described elsewhere herein; and

I. To the extent assignment thereof is legally permissible, all franchises, permits, licenses, entitlements and rights therein respecting the ownership, use, enjoyment, occupation, management, maintenance, repair and operation of any of the foregoing; and

J. Any and all rights, titles, interests, estates and other claims, at law or in equity, that Mortgagor now has or may hereafter acquire in or to any proceeds from the sale, assignment, conveyance, hypothecation, grant, pledge or other transfer of any or all of the foregoing real or personal property; and

K. Any and all refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally registered credits (such as emissions reduction credits) and payments of any kind due from or payable by any governmental authority or any insurance or utility company relating to any or all of the Mortgaged Property; and

L. All refunds, rebates, reimbursements and payments of any kind due from or payable by any governmental authority for any taxes, assessments or governmental or quasi-governmental charges or levies imposed upon Mortgagor with respect to the Mortgaged Property or upon any or all of the Mortgaged Property; and

M. All monies relating to the Mortgaged Property held in any cash collateral or operating account maintained with Lender or any Affiliate of Lender now or at any time hereafter, all monies held in any capital expenditure escrows or other operational escrows or reserve funds and any other escrows, reserves or letters of credit benefiting or relating to the Mortgaged Property; and

N. All right, title and interest of Mortgagor arising from the operation of the Mortgaged Property in and to all payments for goods or property sold or leased or for services rendered, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper including, without limiting the generality of the foregoing, all accounts, accounts receivable, contract rights, book debts, and notes arising from the operation of the Mortgaged Property and Mortgaged Property-related services on the Mortgaged Property or arising from the sale, lease or exchange of goods or other property and/or the performance of services.

# UNOFFICIAL COPY

**TO HAVE AND TO HOLD** the Mortgaged Property and all parts thereof unto Lender, its successors and assigns, to their own proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions herein contained.

**WITHOUT LIMITATION OF THE FOREGOING**, Mortgagor hereby further grants unto Lender, pursuant to the provisions of the UCC, a security interest in all of the Mortgaged Property, which property includes, without limitation, goods which are or are to become fixtures, the Leases and the Rents.

**THIS MORTGAGE IS GIVEN TO SECURE** payment of the principal and interest evidenced by the Loan Documents, each of which shall be equally secured by this Mortgage without priority or preference to one over another, and performance of each and every of the covenants, conditions and agreements of the Mortgagor contained in this Mortgage or in any of the other Loan Documents (all of which obligations are included in the Secured Obligations).

**PROVIDED, HOWEVER, THE FOREGOING PRESENTS** are made upon the condition that, if Mortgagor (i) shall pay or cause to be paid to Lender all of the Secured Obligations, (ii) shall pay or cause to be paid all amounts to be paid by Mortgagor under this Mortgage, and (iii) shall keep, perform and observe (or cause to be kept, performed and observed) each and every one of the covenants and promises in this Mortgage or in any of the other Loan Documents expressed to be kept, performed and observed by and on the part of Mortgagor, then this Mortgage shall cease, terminate and be void; however, if such conditions are not all satisfied, this Mortgage shall otherwise remain in full force and effect.

MORTGAGOR FURTHER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

## **1. MORTGAGOR'S COVENANTS, REPRESENTATIONS AND WARRANTIES.**

**1.1. Warranty of Title.** At the time of the recordation of this Mortgage, Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Property which constitutes real property and owns good title to the portion of the Mortgaged Property which constitutes personal property, and Mortgagor has good right, full power and lawful authority to convey, mortgage and grant a security interest therein and to assign the Rents. Said title of Mortgagor in the Mortgaged Property is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, other than the Permitted Exceptions as defined in the Loan Agreement, including, as to the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature. Mortgagor shall and will forever defend the title to the Mortgaged Property against the claims of all Persons whomsoever.

## **1.2. Taxes and Insurance Deposits.**

**1.2.1.** To assure payment of taxes, assessments, and other similar charges that are assessed, levied, confirmed or imposed, or which have the potential to become a lien upon or against the Mortgaged Property, or any portion thereof, or which become payable with respect

# UNOFFICIAL COPY

thereto or with respect to the occupancy, use or possession of the Mortgaged Property ("Taxes") and insurance premiums for the insurance required by the Loan Agreement ("Premiums") as and when the same shall become due and payable, at the option of Lender, Mortgagor shall deposit and maintain tax and insurance reserve escrows with Lender pursuant to Section 8.1.5 of the Loan Agreement.

1.2.2. In the event Mortgagor desires to contest the validity of any such Taxes, Mortgagor shall do so in accordance with Section 8.2 of the Loan Agreement.

1.3. **Mortgage Taxes.** In the event of the passage of any federal, state or local governmental law, order, rule or regulation subsequent to the date hereof which changes or modifies in any manner the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to materially and adversely affect Lender, all sums secured by this Mortgage and all interest accrued thereon shall become due forthwith at the option of Lender and be payable 60 days after notice to Mortgagor. Notwithstanding the foregoing, instead of paying all the sums secured by this Mortgage and all interest accrued thereon as provided above, Mortgagor shall have the right to pay to Lender an amount which will place Lender in exactly the same position Lender would have been in had the events outlined above not occurred, provided, however, if such payment may, in Lender's judgment, be considered unlawful by a court of competent jurisdiction, then such payment may not be made and all sums secured by this Mortgage and all interest accrued thereon shall become due forthwith at the option of Lender and payable 60 days after notice to Mortgagor as aforesaid.

1.4. **No Tax Credits.** Mortgagor shall not claim or demand or be entitled to receive any credit or credits on any principal or interest payable with respect to any Secured Obligations, for so much of the taxes, assessments or similar charges assessed against the Mortgaged Property, or any part thereof, as are applicable to the Secured Obligations or to Lender's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Secured Obligations or this Mortgage.

1.5. **Utilities.** Mortgagor shall pay or cause to be paid when due any and all charges for utilities, whether public or private, with respect to the Mortgaged Property or any part thereof, and all license fees, rents or other charges for the use of any appurtenance to the Mortgaged Property.

1.6. **Liens.** The Mortgaged Property shall be kept free and clear of all liens and encumbrances (unless the same are contested, bonded or insured over as set forth in the Loan Agreement) of every nature or description, including, without limitation, liens and encumbrances arising from past due taxes or assessments and from charges for labor, materials, supplies or services, other than liens expressly permitted under the Loan Agreement.

1.7. **Subrogation.** Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of any indebtedness secured hereby.

1.8. **Insurance.** Mortgagor shall, at its expense, maintain insurance policies in accordance with the terms and conditions of the Loan Documents.

# UNOFFICIAL COPY

**1.9. Casualty.** Mortgagor shall give immediate notice to Lender of any damage to or loss of the Mortgaged Property or any portion thereof in excess of \$25,000.00. In case of such damage or loss which is covered by any of the insurance policies maintained by Mortgagor, Lender is hereby authorized to adjust, collect and compromise all claims thereunder during the continuance of an Event of Default hereunder; and in such case, Mortgagor shall sign immediately upon demand by Lender, or, in the event Mortgagor fails to do so, Lender may sign or endorse on Mortgagor's behalf, all necessary proofs of loss, receipts, releases and other papers required by the insurance companies to be signed by Mortgagor. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. In all other cases, Mortgagor shall have the right to adjust and compromise such insurance claims and any proceeds shall be payable to Lender and Mortgagor jointly. Lender may deduct from such insurance proceeds any reasonable expenses incurred by Lender in the settlement and collection thereof, including, without limitation, attorneys' fees and expenses. The remaining proceeds are referred to herein as the "**Net Insurance Proceeds**".

**1.10. Condemnation.** If all or any part of the Mortgaged Property, other than a part the loss of which, in Lender's sole discretion, would not adversely affect the operation of the Mortgaged Property, shall be damaged or taken through condemnation (which term, when used herein, shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily, if in Lender's judgment such taking causes a material, adverse impact on (i) the Mortgaged Property and (ii) Mortgagor's ability to pay or perform the Secured Obligations in accordance with the Loan Documents, or permanently, all of the Secured Obligations and obligations under the Loan Documents shall, at the option of Lender, become due and payable sixty (60) days after the date of such condemnation. Lender shall be entitled to all compensation, awards and other payments or relief therefor and all such compensation, awards, damages, claims, rights, actions and proceedings, and the right thereto, are hereby assigned by Mortgagor to Lender. Mortgagor agrees to execute such further assignments of, or payment directions relating to, any compensation, awards, damages, claims, rights, actions and proceedings as Lender may require. Lender may deduct from such compensation, awards and other payments any reasonable expenses incurred by Lender in the collection and settlement thereof, including, without limitation, attorneys' fees and expenses. The remaining amount is referred to herein as the "**Net Award Proceeds**". Lender is hereby authorized, at its option, to commence, appear in and prosecute, in its own name or in the name of Mortgagor, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith during the continuance of an Event of Default hereunder; in all other cases, Mortgagor shall have the right to prosecute, settle or compromise any such claim and any proceeds therefrom shall be payable to Mortgagor and Lender jointly. Lender shall not be liable to Mortgagor for any failure to collect any amount in connection with any such proceeding regardless of the cause of such failure.

**1.11. Restoration.** If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause, Mortgagor shall promptly and with all due diligence restore and repair the Mortgaged Property so long as the Net Insurance Proceeds or the Net Award Proceeds (in either event, the "**Proceeds**") are available or sufficient to pay the cost of such restoration or repair and are released by Lender for such purpose. Restoration and repair shall be commenced within



# UNOFFICIAL COPY

30 days after the damage or destruction and completed within 180 days thereof. Lender may require that all plans and specifications for such restoration or repair be submitted to and approved by Lender in writing prior to commencement of the work. Lender may require evidence of the estimated cost of completion of such restoration or repair reasonably satisfactory to Lender and, thereafter, such architect's certificates, waivers of lien, contractors' sworn statements, title insurance endorsements, plats of survey and other evidence of cost, payment and performance relating to such restoration or repair work which are reasonably satisfactory to Lender. Lender shall not be obligated to make any Loan disbursements hereunder to fund such restoration. Lender shall not be obligated to make disbursements under this Agreement until such restoration has been accomplished.

**1.12. Application of Insurance Proceeds.** At Lender's election, to be exercised by written notice to Mortgagor within 30 days following Lender's unrestricted receipt in cash or the equivalent thereof of the Proceeds, the entire amount of the Proceeds shall be either (i) applied to the amounts outstanding with respect to the Loan Documents and in such order and manner as Lender may elect, or (ii) made available to Mortgagor on the terms and conditions set forth in this Section to finance the cost of restoration or repair, with any excess to be applied to the Secured Obligations (without application of any Prepayment Fee) and amounts outstanding under the Loan Documents in an order determined by Lender in its sole and absolute discretion. Notwithstanding the foregoing, if (i) in the reasonable judgment of Lender, the Mortgaged Property which has been destroyed, damaged or taken can be repaired or restored to an architectural and economic unit of the same character and not less valuable than it was prior to such damage and destruction, (ii) the insurers, in the case of a casualty, do not deny liability to the insured, (iii) Mortgagor shall have delivered evidence satisfactory to Lender in its reasonable judgment that the Mortgaged Property, as an ongoing enterprise, continues to be feasible notwithstanding such damage, destruction or taking, (iv) the amount necessary to repair or restore the Mortgaged Property as determined by Lender shall be less than Two Hundred Fifty Thousand Dollars (\$250,000.00), (v) no Event of Default shall have occurred and remain uncured after any applicable cure period, and (vi) the repair or restoration will, in the reasonable opinion of the Lender, be completed not later than the Maturity Date, then Lender will make the Proceeds, after deducting from such Proceeds all expenses incurred by Lender in the collection thereof or in connection with the release of such Proceeds, including reasonable attorneys' fees, available for repair or restoration on the conditions herein contained. If the amount of Proceeds to be made available to Mortgagor pursuant to this Section is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Mortgagor shall cause to be deposited with Lender the amount of such deficiency within thirty (30) days after Lender's written request therefor (but in no event later than the commencement of the work) and Mortgagor's deposited funds shall be disbursed prior to any such Proceeds. If Mortgagor is required to deposit funds under this Section, the deposit of such funds shall be a condition precedent to Lender's obligation to disburse any Proceeds held by Lender hereunder. Without limitation of Lender's rights hereunder, it shall be an additional condition precedent to any disbursement of Proceeds held by Lender (or, at Lender's option, in an insured construction escrow with a title insurance company) hereunder that Lender shall have approved (in its reasonable discretion) all plans and specifications for any proposed repair or restoration. The amount of Proceeds which is to be made available to Mortgagor, together with any deposits made by Mortgagor hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either, at Lender's option, to Mortgagor or directly to contractors,

# UNOFFICIAL COPY

subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such reasonable conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof, including, without limitation, requiring third party inspections and the use of an insured construction escrow. Lender may commingle any such funds held by it with its other general funds. Lender shall not be obligated to pay interest in respect of any such funds held by it, nor shall Mortgagor be entitled to a credit against any of Mortgagor's Indebtedness except and to the extent the funds are applied thereto pursuant to this Section. Notwithstanding any other provision of this Section, if an Event of Default shall be existing at the time of such casualty, taking or other event or if an Event of Default occurs thereafter and remains continuing, Lender shall have the right to immediately apply all Proceeds to the payment of Mortgagor's indebtedness in such order and manner as Lender may determine. Lender shall have the right, but not the obligation, at all times to apply such net Proceeds to the cure of any Event of Default or the performance of any obligations of Mortgagor hereunder or under the Related Documents.

**1.13. Governmental Authority Payments.** Mortgagor agrees with respect to the collateral described in Granting Clauses K and L hereof (the "**Governmental Authority Payments**") as follows: (i) that Mortgagor shall, at Mortgagor's sole expense, promptly take all actions necessary to obtain all proceeds to which Mortgagor is entitled in connection with the Governmental Authority Payments, including, without limitation, the filing of applications or claims and the prosecution of appeals or litigation, if reasonably necessary and cost effective, (ii) that, in the event of an Event of Default by Mortgagor under this Mortgage that remains uncured after any applicable cure period, Mortgagor shall direct the payor with regard to any of the Governmental Authority Payments to remit same directly to Lender when due, (iii) that Mortgagor shall forward promptly to Lender all notices and correspondence relating in any manner to any of the Governmental Authority Payments and any proceeds received by Mortgagor in connection with any of the Governmental Authority Payments, (iv) that, during the continuance of an Event of Default hereunder, the proceeds of any of the Governmental Authority Payments received by Lender shall be applied toward the repayment of the Secured Obligations in a manner determined by Lender in its discretion or, at the request of Mortgagor and with the consent of Lender, said proceeds shall be deposited in a secured deposit account maintained with Lender or an Affiliate of Lender, as designated by Lender, and applied from time to time toward the payment of any expenses relating to the Mortgaged Property, in a manner determined by Lender in its discretion, and (v) that, after an Event of Default by Mortgagor under this Mortgage that remains uncured after any applicable cure period, Lender shall be and hereby is appointed as Mortgagor's agent with respect to any of the Governmental Authority Payments and in that capacity Lender shall have the right to take all such actions that Lender deems necessary and expedient in order to obtain all proceeds to which Mortgagor is entitled with respect to any of the Governmental Authority Payments.

**1.14. General Care of the Property.** Mortgagor shall preserve and maintain or cause to be preserved and maintained the Mortgaged Property in good condition and repair, shall not commit or suffer any waste thereof, and shall keep the same in a clean, orderly and attractive condition. Mortgagor shall not do or suffer to be done anything which will increase the risk of fire or of any other hazard to the Mortgaged Property or any part thereof. Except as expressly contemplated by the Loan Documents or as required by law, no buildings, structures,

# UNOFFICIAL COPY

improvements, fixtures, personal property or other part of the Mortgaged Property shall be removed, added to, demolished or altered structurally to any extent or altered non-structurally in any material respect without the prior written consent of Lender (except that Borrower may sell or otherwise dispose of obsolete personal property or fixtures). Mortgagor shall promptly comply, and cause the Mortgaged Property and the occupants or users thereof to comply, with all present and future laws, ordinances, orders, rules and regulations and other requirements of any governmental authority affecting the Mortgaged Property or any part thereof or the use or occupancy thereof. Lender and its representatives are hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours, upon reasonable advance notice to Mortgagor, during the term of this Mortgage.

**1.15. Leases and Other Agreements Affecting the Mortgaged Property.** Mortgagor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon Mortgagor or the Mortgaged Property under any Lease or any other agreement or instrument of any nature whatsoever which involves or affects the Mortgaged Property or any part thereof. Mortgagor represents and warrants that Mortgagor has heretofore furnished Lender with true and complete copies of all such Leases, agreements and instruments existing on the date of this Mortgage. Mortgagor agrees to furnish Lender with executed copies of all Leases hereafter entered into with respect to all or any part of the Mortgaged Property. Mortgagor shall not, except as provided in the Loan Agreement, enter into any new Lease or modify, surrender, terminate, extend or renew, either orally or in writing, any Lease now existing or hereafter created upon the Mortgaged Property or any part thereof, nor permit an assignment or sublease thereof. If Lender so requests, Mortgagor shall cause the tenant under each or any of such Leases to enter into subordination and attornment agreements with Lender which are satisfactory to Lender. Mortgagor shall not accept payment of advance Rents equal, in the aggregate, to more than one month's Rent without the express written consent of Lender. In order to further secure payment of the Secured Obligations, Mortgagor hereby assigns, transfers and sets over to Lender all of Mortgagor's right, title and interest in, to and under all of the Leases now or hereafter affecting the Mortgaged Property or any part thereof and in and to all of the Rents, issues, profits, revenues, awards and other benefits now or hereafter arising from the Mortgaged Property or any part thereof. Unless an Event of Default occurs and remains uncured after any applicable cure period, Mortgagor shall be entitled to collect the Rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property (except as otherwise provided in this Mortgage) as and when they become due and payable. Lender shall be liable to account only for Rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property actually received by Lender pursuant to any provision of this Mortgage.

# UNOFFICIAL COPY

**1.16. Impairment of Security.** Without limitation of any other provision hereof, Mortgagor shall not assign, in whole or in part, the Rents, issues, profits, revenues, awards and other benefits from the Mortgaged Property without the prior written consent of Lender; any such assignment made without Lender's prior written consent shall be null and void and of no force and effect and the making thereof shall constitute an Event of Default under this Mortgage. Without limitation of the foregoing, Mortgagor shall not in any other manner impair the security of this Mortgage for the payment of any Secured Obligations.

**1.17. Prohibition of Further Encumbrance.** Except as expressly permitted in the Loan Agreement, Mortgagor shall not, without the prior written consent of Lender, further mortgage, hypothecate, pledge or otherwise encumber, whether by operation of law or otherwise, any interest in the Mortgaged Property. Any such encumbrance made without Lender's prior written consent shall be null and void and of no force or effect, and any attempt by Mortgagor to create or cause an encumbrance in default of the terms hereof shall constitute an Event of Default under this Mortgage.

**1.18. Prohibition of Transfer.** Subject to the terms of the Loan Agreement, Mortgagor shall not, without the prior written consent of Lender, sell, assign or otherwise transfer, whether directly or indirectly, by operation of law or otherwise, all or any portion of any interest in the Mortgaged Property, except replacements of personal property in the ordinary course of business. Any such transfer made without Lender's prior written consent shall be null and void and of no force and effect, and any attempt by Mortgagor to create or cause a transfer in default of the terms hereof shall constitute an Event of Default under this Mortgage.

**1.19. Further Assurances; After Acquired Property.** At any time and from time to time, upon request from Lender, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, to cause to be recorded or filed, or both, and from time to time thereafter to be re-recorded or refiled, or both, at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further mortgages, security agreements, financing statements, continuation statements, instruments of further assurances, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (i) the obligations of Mortgagor under this Mortgage and the other Loan Documents, and (ii) the lien and security interest of this Mortgage as a first and prior lien and security interest upon all of the Mortgaged Property, whether now or hereafter acquired by Mortgagor. Upon any failure by Mortgagor to so make, execute and deliver each of such documents after written demand, Lender may make, execute, record, file, re-record and refile, as appropriate, any and all such mortgages, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender as its agent and attorney-in-fact in connection therewith. The lien and security interest hereof will automatically attach, without further act, to all after-acquired property owned by Mortgagor attached to or used in connection with the operation of the Mortgaged Property or any part thereof.

# UNOFFICIAL COPY

## 2. MORTGAGOR'S DEFAULT.

### 2.1. Mortgagor's Defaults and Lender's Remedies.

**2.1.1. Events of Default.** A default in the performance of any obligation hereunder or any Event of Default under the Loan Agreement, subject to any applicable notice or cure period, shall constitute an "Event of Default" hereunder.

**2.1.2. Lender's Remedies.** Upon the happening of any Event of Default, Lender shall have the right, if such Event of Default shall then be continuing, in addition to all the remedies conferred upon Lender by law or equity or the terms of any Loan Document, to do any or all of the following, concurrently or successively, without notice to Mortgagor:

**2.1.2.1.** Declare any and all amounts due under the Loan Documents to be, and they shall thereupon become, immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Loan Documents to the contrary notwithstanding; or

**2.1.2.2.** Terminate Lender's obligations under the Loan Documents to extend credit of any kind or to make any disbursement, whereupon the commitment and obligation of Lender to extend credit or to make disbursements shall terminate; or

**2.1.2.3.** Enter upon and take possession of the Mortgaged Property and do anything necessary or desirable to sell, manage, maintain, repair and protect the Mortgaged Property, and, without restricting the generality of the foregoing and for the purposes aforesaid, Mortgagor hereby authorizes Lender (A) to pay, settle or compromise all existing bills and claims which may be liens or security interests, or to avoid such bills and claims becoming liens or security interests against the Mortgaged Property or as may be necessary or desirable for the clearance of title or otherwise, (B) to use any funds of any escrowee, including, without limitation, any loan balance which might not have been disbursed and customer deposits, for the purpose of completing any improvements to the Mortgaged Property, (C) to make necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty or other property, (D) to insure or keep the Mortgaged Property insured, (E) to manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor to the same extent as Mortgagor could in the name of Mortgagor or otherwise with respect to the same, (F) to do any and every act which Mortgagor might do, including, without limitation, to enter into leases of any portion of the Mortgaged Property and to enter into contracts for the sale of, and to sell and convey title to, the Mortgaged Property or any portion thereof and Mortgagor agrees to execute and deliver such contracts, deeds, leases and other instrument as may be required by Lender or Lender's title company to carry out the intent of this Section, (G) to prosecute or defend any and all actions or proceedings involving the Mortgaged Property or any fixtures, equipment or other installations thereon, and (H) to exclude Mortgagor and the representatives of Mortgagor from the Mortgaged Property or any portion thereof, and Lender shall have joint access with Mortgagor to the books and accounts of Mortgagor; furthermore, in connection with an exercise by Lender of the foregoing remedy:

# UNOFFICIAL COPY

- (i) Lender and its representatives shall be entitled to the entry, possession and use contemplated herein upon demand and without the consent of any party and without any legal process or other condition precedent whatsoever; however, if Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring the delivery of immediate possession of all or part of the Mortgaged Property to Lender, and Mortgagor hereby specifically consents to the entry of such judgment or decree;
- (ii) Mortgagor acknowledges that any denial of such entry, possession and use by Lender will cause irreparable injury and damage to Lender and agrees that Lender may forthwith sue for any remedy to enforce the immediate enjoyment of such right, and Mortgagor hereby waives the posting of any bond as a condition for granting such remedy; and
- (iii) Mortgagor shall pay to Lender, upon demand, all expenses (including, without limitation, reasonable attorneys' fees and expenses) of obtaining such judgment or decree or of otherwise seeking to enforce its rights under this Mortgage or any of the other Loan Documents; and all such expenses shall, until paid, be secured by the Loan Documents and shall bear interest at the Default Rate; or

**2.1.2.4.** Offset and apply any indebtedness now or hereafter owing from Lender to Mortgagor (including, without limitation, any amounts on deposit in any demand, time, savings, passbook, certificate of deposit or like account maintained by Mortgagor with Lender or any Affiliate of Lender) against any and all amounts due from Mortgagor to Lender hereunder or under the other Loan Documents; or

**2.1.2.5.** Collect and receive all the Rents, issues, profits and revenues of the Mortgaged Property, including those past due as well as those accruing thereafter, after deducting therefrom (A) all expenses of taking, holding, managing and operating the Mortgaged Property (including, without limitation, compensation for the services of all Persons employed for such purposes), (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, (C) the cost of such insurance, (D) such taxes, assessments and other similar charges as Lender may determine to pay, (E) other proper charges upon the Mortgaged Property or any part thereof, and (F) Lender's reasonable attorneys' fees and expenses.

**2.2. Protective Advances.** If an Event of Default occurs, Lender may (but shall in no event be required to) cure any such Event of Default and any amounts expended by Lender in so

# UNOFFICIAL COPY

doing, including, without limitation, all funds furnished by Lender pursuant to **Section 2.1.2.3** above, shall (i) be deemed advanced by Lender under an obligation to do so regardless of the identity of the Person or Persons to whom such funds are furnished, (ii) constitute additional advances hereunder, the payment of which is additional indebtedness evidenced by the Note, and (iii) become due and owing, at Lender's demand, with interest accruing from the date of disbursement thereof until fully paid at the Default Rate.

**2.3. Other Remedies.** If any Event of Default shall occur and be continuing, Lender may, in addition to any other rights and remedies hereunder, exercise any and all remedies provided at law or in equity or in any of the other Loan Documents.

**2.4. No Lender Liability.** To the extent permitted by law, Lender shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission by it, or any of its representatives, which was taken, omitted or made in good faith except losses, damages, injuries, costs or expenses resulting from Lender's gross negligence or willful misconduct.

**2.5. Lender's Attorneys' Fees.** In case of any Event of Default hereunder, Mortgagor shall pay Lender's reasonable attorneys' fees and expenses in connection with the enforcement of this Mortgage or any of the other Loan Documents.

**2.6. Receiver or Mortgagee in Possession.** If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and on an ex parte basis and without regard to the occupancy or value of any security for the Secured Obligations or the insolvency of any party bound for its payment to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the Rents, issues, profits, revenues, awards and other benefits thereof or to have Lender placed as a mortgagee in possession. The receiver (or Lender if acting as a mortgagee in possession) shall have all of the rights and powers to the fullest extent permitted by law. Mortgagor shall pay to Lender upon demand all of Lender's costs and expenses, including, without limitation, receiver's fees and expenses and reasonable attorneys' fees and expenses, incurred pursuant to this Section plus interest thereon accruing at the Default Rate, and all such amounts shall be additional indebtedness comprising Secured Obligations.

**2.7. Lender's Power of Enforcement.** If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Secured Obligations or the performance of any term, covenant, condition or agreement of this Mortgage or any other right, (ii) to foreclose this Mortgage and to sell the Mortgaged Property as an entirety or otherwise, as Lender may determine, and (iii) to pursue any other remedy available to it, including, without limitation, any remedy available to it under any of the Loan Documents, all as Lender shall deem most effectual for such purposes. Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine. Lender may elect to pursue any one or more or all of the foregoing.

# UNOFFICIAL COPY

**2.8. Purchase by Lender.** Upon any foreclosure sale, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of any indebtedness or obligation secured hereby as a credit to the purchase price.

**2.9. Fees and Expenses; Application of Proceeds of Sale.** In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness secured hereby (and part of the Secured Obligations) in the decree for sale, to the extent permitted by law, all costs and expenses which may be paid or incurred by or on behalf of Lender or the holder of the Notes for reasonable attorneys' fees and expenses, appraiser's fees and expenses, receiver's fees and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication cost and costs of procuring all abstracts of title, title searches and examinations, and similar data and assurances with respect to title as Lender or the holder of the Notes may deem to be 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 Mortgaged Property, or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the decree for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby (and part of the Secured Obligations) in the decree for sale. In the event of a foreclosure sale of the Mortgaged Property, the proceeds of said sale shall be applied first to the expenses of such sale and of all proceedings in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, then to insurance premiums, liens, assessments, taxes and charges, including, without limitation, utility charges, then to payment of the outstanding principal balance of any indebtedness secured hereby, then to the accrued interest on all of the foregoing, and, finally, the remainder, if any, shall be paid to Mortgagor.

**2.10. Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.** Mortgagor agrees, to the fullest extent permitted by law, that if an Event of Default occurs hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, homestead or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim by, through or under it, hereby waives and releases, to the fullest extent permitted by law, the benefit of all such laws and any and all rights to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

**2.11. Leases.** Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by Lender to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

**2.12. Discontinuance of Proceedings and Restoration of the Parties.** In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure,



# UNOFFICIAL COPY

entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case, Mortgagor and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken.

**2.13. Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**2.14. Suits to Protect the Mortgaged Property.** Upon the occurrence of an Event of Default hereunder that remains uncured after any applicable cure period, Lender shall have the power (i) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (ii) to preserve or protect its interest in the Mortgage Property and in the Rents, issues, profits, revenues, awards and other benefits arising therefrom; and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, regulation, rule, order or other requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, regulation, rule, order or other requirement would impair the security hereunder or be prejudicial to the interest of Lender, and all costs and expenses incurred by Lender in connection therewith (including, without limitation, reasonable attorneys' fees and expenses) shall be paid by Mortgagor to Lender on demand with interest at the Default Rate, and all such amounts shall be additional indebtedness secured hereby (and part of the Secured Obligations).

**2.15. Lender May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

**2.16. Deficiency of Proceeds.** If after any foreclosure sale of the Mortgage Property, a deficiency exists in the net proceeds of such sale, Lender shall be entitled to a deficiency judgment or decree for such deficiency which shall bear interest at the statutory rate.

### 3. ASSIGNMENT OF LEASES AND RENTS.

**3.1. Assignment.** For \$10.00 and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged, Mortgagor has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey absolutely unto Lender the Leases and the Rents, subject only to the hereinafter referenced License, to have and to hold the Leases and the Rents unto Lender, forever, and Mortgagor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Leases and the Rents unto Lender against every Person whomsoever

# UNOFFICIAL COPY

lawfully claiming or to claim the same or any part thereof by or through Mortgagor; provided, however, if Mortgagor shall pay or cause to be paid and shall perform and discharge or cause to be performed and discharged, the Secured Obligations on or before the date same are to be paid, performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles and interests conveyed pursuant to this assignment shall become revested in Mortgagor without the necessity of any further act or requirement by Mortgagor or Lender.

**3.2. Limited License.** Lender hereby grants to Mortgagor a limited license (the "License"), nonexclusive with the rights of Lender reserved in this Mortgage, to exercise and enjoy all incidences of ownership of the Leases and the Rents, including specifically but without limitation the right to collect, demand, sue for, attach, levy, recover and receive the Rents, and to give proper receipts, releases and acquittances therefor. Mortgagor hereby agrees to receive all Rents and hold the same as a trust fund to be applied, and to apply the Rents so collected, to the payment, satisfaction and discharge of the indebtedness described in the Loan Documents as and when the same shall become due and payable. Thereafter, Mortgagor may use the balance of the Rents collected in any manner not inconsistent with the Loan Documents.

**3.3. Enforcement of Leases.** Subject to and in accordance with the terms and conditions of **Section 1.15** of this Mortgage, Mortgagor shall (a) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon the landlord under any Lease, (b) maintain each of the Leases in full force and effect during the term thereof, (c) to the extent commercially reasonable, appear in and defend any action or proceeding in any manner connected with any of the Leases, (d) deliver to Lender copies of executed counterparts of all Leases and (e) deliver to Lender such further information, and execute and deliver to Lender such further assurances and assignments, with respect to the Leases as Lender may from time to time reasonably request. Without Lender's prior written consent, Mortgagor shall not materially discount any future accruing Rent, or assign or grant a security interest in or to the License or any of the Leases.

**3.4. Suits; Attornment.** Subject to the License and the provisions of **Section 2.1.2** of this Mortgage, Lender hereby reserves and may exercise the right and Mortgagor hereby acknowledges that Lender has the right (but not the obligation), upon the occurrence and during the continuance of an Event of Default, to collect, demand, sue for, attach, levy, recover and receive any Rent, to give proper receipts, releases and acquittances therefor and, after deducting the expenses of collection, to apply the net proceeds thereof as a credit upon any portion of any indebtedness secured hereby selected by Lender, notwithstanding that such portion selected may not then be due and payable or that such portion is otherwise adequately secured. Mortgagor hereby authorizes and directs any lessee of the Mortgaged Property to deliver any such payment to, and otherwise to attorn all other obligations under the Leases directly to, Lender. Mortgagor hereby ratifies and confirms all that Lender shall do or cause to be done by virtue and in compliance with the terms of this assignment. No lessee shall be required to inquire into the authority of Lender to collect any Rent, and any lessee's obligation to Mortgagor shall be absolutely discharged to the extent of its payment to Lender.

# UNOFFICIAL COPY

**3.5. Remedies.** Upon or at any time after the occurrence of any Event of Default that remains uncured after any applicable cure period, Lender, at its option and in addition to the remedies provided in this Mortgage, shall have the complete, continuing and absolute right, power and authority to terminate the License solely by the giving of written notice of termination to Mortgagor. Upon Lender's giving of such notice, the License shall immediately terminate without any further action being required of Lender. Thereafter, as long as any Event of Default shall exist, Lender shall have the exclusive right, power and authority to take any and all action as described above, regardless of whether a foreclosure sale of the remainder of the Mortgaged Property has occurred under this Mortgage, or whether Lender has taken possession of the remainder of the Mortgaged Property or attempted to do any of the same. No action referred to above or in this Section taken by Lender shall constitute an election of remedy. Notwithstanding any term to the contrary herein, in the event of such a termination of Mortgagor's License, such License shall be reinstated when and if the applicable Event of Default shall have been cured or waived.

**3.6. No Obligation of Lender.** Neither the acceptance by Lender of the assignment granted in this Mortgage, nor the granting of any other right, power, privilege or authority in this Mortgage, nor the exercise of any of the aforesaid, shall (a) prior to the actual taking of physical possession and operational control of the Mortgaged Property by Lender, be deemed to constitute Lender as a "mortgagee in possession" or (b) at any time thereafter, obligate Lender (i) to appear in or defend any action or proceeding relating to the Leases, the Rents or the remainder of the Mortgaged Property, (ii) to take any action hereunder, (iii) to expend any money or incur any expenses or perform or discharge any obligation, duty or liability with respect to any Lease, (iv) to assume any obligation or responsibility for any deposits which are not physically delivered to Lender or (v) for any injury or damage to person or property sustained in or about the Mortgaged Property, provided that nothing herein shall relieve Lender of liability for the willful misconduct or gross negligence or omissions of Lender or its agents or representatives.

**3.7. Mortgagor's Indemnities.** So long as the License is in effect, Mortgagor shall indemnify and hold Lender harmless from and against any and all liability, loss, cost, damage or expense which Lender incurs under or by reason of this assignment, or for any action taken by Lender hereunder in accordance with the terms hereof, or by reason of or in defense of any and all claims and demands whatsoever which are asserted against Lender arising out of the Leases. In the event Lender incurs any such liability, loss, cost, damage or expense, the amount thereof together with all reasonable attorneys' fees and interest thereon at the Default Rate shall be payable by Mortgagor to Lender, within 10 days after demand by Lender, and shall be secured by this Mortgage, provided that Mortgagor shall have no duty or liability hereunder to indemnify and hold Lender harmless from matters resulting from the willful misconduct or gross negligence of Lender or its agents or representatives.

## 4. MISCELLANEOUS.

**4.1. Time of the Essence.** Time is of the essence of this Mortgage.

# UNOFFICIAL COPY

**4.2. Severability.** Any provision of this Mortgage which is unenforceable or invalid or contrary to law, or the inclusion of which would adversely affect the validity, legality or enforcement of this Mortgage, shall be of no effect and, in such case, all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage as though any such invalid portion had never been included herein. Notwithstanding any of the foregoing to the contrary, if any provisions of this Mortgage or the application thereof are held invalid or unenforceable only as to particular Persons or situations, the remainder of this Mortgage, and the application of such provision to Persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law.

**4.3. Notices.** Any notice which either party hereto may be required or may desire to give hereunder shall be deemed to have been given if in writing and if delivered personally, or if mailed, postage prepaid, by United States registered or certified mail, return receipt requested, or if delivered by a responsible overnight courier, addressed:

if to Mortgagor: CCD-Halsted Jackson, LLC  
1 East Wacker Drive  
Suite 3600  
Chicago, Illinois 60601  
Attn: Mr. George Marks  
Tel: 312-832-9100  
Fax: 312-832-9111

with a copy to: Holland & Knight LLP  
131 South Dearborn  
30th Floor  
Chicago, Illinois 60603  
Attn: Philip Wong, Esq.  
Tel: 312-715-5791  
Fax: 312-578-6666

if to Lender to: First Bank and Trust Company of Illinois  
300 East Northwest Highway  
Palatine, Illinois 60067  
Attn: C. Richard Schuler, President

with a copy to: First Bank and Trust Company of Illinois  
300 East Northwest Highway  
Palatine, Illinois 60067  
Attn: Dennis R. Ainger, Esq.  
Vice President/In-House Counsel

# UNOFFICIAL COPY

and a copy to:

Crowley Barrett & Karaba, Ltd.  
20 S. Clark, Suite 2310  
Chicago, Illinois 60603  
Attn: Tonya M. Parravano, Esq.  
Tel: 312-726-2468  
Fax: 312-726-2741

or to such other address or addresses as the party to be given notice may have furnished in writing to the party seeking or desiring to give notice, as a place for the giving of notice, provided that no change in address shall be effective until seven days after being given to the other party in the manner provided for above. Any notice given in accordance with the foregoing shall be deemed given when delivered personally or, if mailed, five (5) Business Days after it shall have been deposited in the United States mails as aforesaid or, if sent by overnight courier, the Business Day following the date of delivery to such courier. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the Persons designated above to receive copies, if any, shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

**4.4. Documentation.** All documents and other matters required by any of the provisions of this Mortgage to be submitted or furnished to Lender shall be in form and substance reasonably satisfactory to Lender.

**4.5. Additional Assurances.** Mortgagor agrees that, at any time or from time to time, upon the written request of Lender, Mortgagor will execute all such further documents and do all such other acts and things as Lender may reasonably request to effectuate the transaction herein contemplated.

**4.6. Choice of Law.** This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois. Nothing herein shall be deemed to limit any rights, powers or privileges which Lender may have pursuant to any law of the United States of America or any rule, regulation or order of any department or agency thereof and nothing herein shall be deemed to make unlawful any transaction or conduct by Lender which is lawful pursuant to, or which is permitted by, any of the foregoing.

**4.7. No Third Party Beneficiary.** This Mortgage is made for the sole benefit of Mortgagor and Lender, and no other Person shall be deemed to have any privity of contract hereunder nor any right to rely hereon to any extent or for any purpose whatsoever, nor shall any other person have any right of action of any kind hereon or be deemed to be a third party beneficiary hereunder.

# UNOFFICIAL COPY

**4.8. Interpretation.** All references herein to a party's best knowledge shall be deemed to mean the best knowledge of such party based on all appropriate and thorough inquiry. Unless specified to the contrary herein, all references herein to an exercise of discretion or judgment by Lender, to the making of a determination or designation by Lender, to the application of Lender's discretion or opinion, to the granting or withholding of Lender's consent or approval, to the consideration of whether a matter or thing is satisfactory or acceptable to Lender, or otherwise involving the decision making of Lender, shall be deemed to mean that Lender shall decide unilaterally using its sole and absolute discretion or judgment.

**4.9. No Waiver.**

**4.9.1. General Waiver Provisions.** No waiver of any term, provision, condition, covenant or agreement herein contained shall be effective unless set forth in a writing signed by Lender, and any such waiver shall be effective only to the extent set forth in such writing. No failure by Lender to exercise or delay by Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right or remedy provided by law. The rights and remedies provided in this Mortgage are cumulative and not exclusive of any right or remedy provided by law or equity. No notice or demand on Mortgagor in any case shall, in itself, entitle Mortgagor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lender to any other or further action in any circumstances without notice or demand.

**4.9.2. Specific Waiver Provisions.** If Lender (i) grants forbearance or an extension of time for the payment of any indebtedness or obligation secured hereby; (ii) takes other or additional security for the payment of any indebtedness or obligation secured hereby; (iii) waives or does not exercise any right granted herein or in the Loan Documents or in any other document or instrument securing the Secured Obligations; (iv) releases with or without consideration any of the Mortgaged Property from the lien of this Mortgage or any other security for the payment of the indebtedness secured hereby; (v) changes any of the terms, covenants, conditions or agreements of any Loan Document or this Mortgage or in any other document or instrument securing the Secured Obligations; (vi) consents to the filing of any map, plat or replat or condominium declaration affecting the Mortgaged Property; (vii) consents to the granting of any easement or other right affecting the Mortgaged Property; or (viii) makes or consents to any agreement subordinating the lien hereof; any such act or omission shall not release, discharge, modify, change or affect (except to the extent of the changes referred to in clause (v) above) the original liability under this Mortgage or any other Loan Documents or any other obligation of Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted upon the occurrence of an Event of Default then existing or of any subsequent Event of Default, except to the extent expressly agreed to in writing by Lender, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage or the priority thereof be altered thereby, whether or not there are junior lienors and whether or not they consent to any of the foregoing.

# UNOFFICIAL COPY

**4.9.3. Sale or Transfer.** In the event of the sale, assignment or other transfer, by operation of law or otherwise, of all or any part of the Mortgaged Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Secured Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings. The foregoing shall not limit the prohibition against transfer set forth in **Section 1.18** hereof.

**4.9.4. Partial Releases.** Without limitation of the foregoing, Lender hereby reserves the right to make partial release or releases of the Mortgaged Property, or of any other security held by Lender with respect to all or any part of the Secured Obligations, without notice to, or the consent, approval or agreements of, other parties in interest, including junior lienors, which partial release or releases shall not impair in any manner the validity or priority of this Mortgage on the portion of said property not so released.

**4.10. Security Agreement.** This Mortgage shall be construed as a "**Security Agreement**" within the meaning of and shall create a security interest under the UCC, with respect to any part of the Mortgaged Property which constitutes fixtures or personal property. Lender shall have the rights with respect to such fixtures and personal property afforded to it by the UCC in addition to, but not in limitation of, the other rights afforded Lender by this Mortgage or any of the other Loan Documents.

**4.11. Fixture Filing.** As to all of the Mortgaged Property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under Article 9 of the UCC.

**4.12. No Merger.** It being the desire and the intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereunder understood and agreed that, should Lender acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by Lender as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, such that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

**4.13. Delivery of Summons, Etc.** If any action or proceeding shall be instituted which (i) is intended to evict Mortgagor or recover possession of the Mortgaged Property or any part thereof, or (ii) could result in a money judgment in excess of \$50,000 for failure to pay any obligation relating to the Mortgaged Property or this Mortgage (which judgment would not be covered and fully paid by applicable insurance), Mortgagor, shall immediately, upon service thereof on or by Mortgagor, deliver to Lender a true copy of each petition, summons, complaint, notice of motion, order to show cause and all other process, pleadings and papers, however designated, served in any such action or proceeding.

**4.14. Successors and Assigns.** This Mortgage shall be binding upon Mortgagor and its legal representatives, successors and assigns.

# UNOFFICIAL COPY

**4.15. Legal Tender of United States.** All payments hereunder shall be made in coin or currency which at the time of payment is legal tender in the United States of America for public and private debts.

**4.16. Compliance with Mortgage Foreclosure Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the statutes or common law of the State governing the foreclosure of this Mortgage (collectively, the "Foreclosure Laws"), the provisions of the Foreclosure Laws shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Laws.

**4.17. Definitions; Captions.** With respect to any reference in this Mortgage to any defined term, (i) if such defined term refers to a person, or a trust, corporation, partnership or other entity, then it shall also mean all heirs, personal representatives, successors and assigns of such person or entity, and (ii) if such defined term refers to a document, instrument or agreement, then it shall also include any replacement, extension or other modification thereof. Captions contained in this Mortgage in no way define, limit or extend the scope or intent of their respective provisions.

**4.18. WAIVER OF RIGHT TO JURY TRIAL.** MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT MORTGAGOR MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, ANY OF THE OTHER LOAN DOCUMENTS OR ANY OTHER STATEMENTS OR ACTIONS OF LENDER. MORTGAGOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO EACH OF THE LOAN DOCUMENTS IT EXECUTES, AND THAT THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF THE OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

[SIGNATURE PAGE FOLLOWS]



# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by its duly authorized representatives as of the date first above written.

**MORTGAGOR:**

**CCD-HALSTED JACKSON, LLC,**  
an Illinois limited liability company

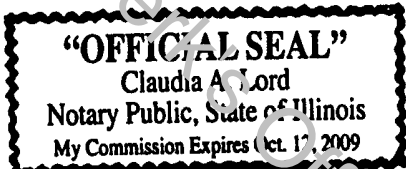
By: [Signature]  
Name: John L. Marks  
Title: Manager

By: [Signature]  
Name: George J. Marks  
Title: Manager

STATE OF ILLINOIS )  
  ) SS  
COUNTY OF COOK )

This instrument was acknowledged before me, CLAUDIA A. LORD, a notary public in and for said state, on September 12, 2008 by JOHN L. MARKS, as one of the Managers of **CCD-HALSTED JACKSON, LLC**, an Illinois limited liability company, for and on behalf of said company.

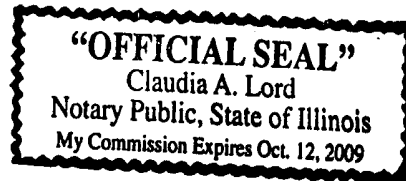
[Signature]  
NOTARY PUBLIC



STATE OF ILLINOIS )  
  ) SS  
COUNTY OF COOK )

This instrument was acknowledged before me, CLAUDIA A. LORD, a notary public in and for said state, on September 12, 2008 by GEORGE J. MARKS, as one of the Managers of **CCD-HALSTED JACKSON, LLC**, an Illinois limited liability company, for and on behalf of said company.

[Signature]  
NOTARY PUBLIC



# UNOFFICIAL COPY

## EXHIBIT A

### Legal Description

PARCEL A:

PARCEL 1:

THE WEST 55.00 FEET OF LOT 7 (EXCEPT THAT PART OFF THE NORTH END THEREOF TAKEN FOR QUINCY STREET) IN BLANCHARD'S SUBDIVISION OF BLOCK 3 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 3 AND THE SOUTH 58-11/12 FEET OF LOT 4 IN THE SUBDIVISION OF LOT 8 IN BLANCHARD'S SUBDIVISION OF BLOCK 3 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL B:

THE EAST 46.00 FEET OF LOT 7 AND THE WEST 29.00 FEET OF LOT 6 IN BLOCK 3 IN SCHOOL SECTION ADDITION TO CHICAGO (EXCEPTING THAT PART OF SAID LAND TAKEN FOR THE OPENING OF QUINCY STREET) IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 235-239 South Halsted & 750-768 West Jackson  
Chicago, Illinois

Permanent Index Nos.: 17-16-110-005-0000 (1 of 3)  
17-16-110-006-0000 (2 of 3)  
17-16-110-007-0000 (3 of 3)

G:\CLIENTS\FIRST BANK AND TRUST (2042)\MARKS-HALSTED AND JACKSON\MORTGAGE 3.DOC