

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 0829418016 Fee: \$76.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/20/2008 10:31 AM Pg: 1 of 21

Property of Cook County Clerk's Office

The property identified as: **PIN:** 10-18-218-012-0000

Address:

Street: 9266 Nagle Drive

Street line 2:

City: Morton Grove

State: IL

ZIP Code: 60053

Lender: The National Republic Bank of Chicago

Borrower: M. Arif Kasbati and Farzana N. Kasbati

Loan / Mortgage Amount: \$1,250,000.00

This property is located within Cook County and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the loan application was dated before July 1, 2008.

First American Title Order # *NC 232913*

DEL 2 OF 3 AMK

Certificate number: BE1FE2B9-6604-4D52-822C-4E5B472B7A06

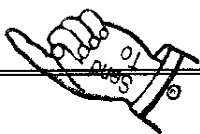
Execution date: 09/25/2008

20

UNOFFICIAL COPY

UPON RECORDATION RETURN TO:

Edward Fitzgerald
The National Republic Bank of Chicago
1201 West Harrison Street
Chicago, Illinois 60607



(Space Above For Recorder's Use)

M. ARIF KASBATI AND FARZANA N. KASBATI, as Mortgagor

to

THE NATIONAL REPUBLIC BANK OF CHICAGO, as Lender

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

SECURING DEBT IN THE AMOUNT OF \$1,250,000.00

COLLATERAL IS OR INCLUDES FIXTURES

Dated: As of September 25, 2008

Property Address: 9266 Nagle Drive
Morton Grove, Illinois

Tax Parcel: 10-18-218-012-0000

County: Cook

Loan No.: 6279000

UNOFFICIAL COPY

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of September 25, 2008, by **M. ARIF KASBATI AND FARZANA N. KASBATI**, husband and wife, having an address at 9266 Nagle Drive, Morton Grove, Illinois 60053 ("Mortgagor"), to **THE NATIONAL REPUBLIC BANK OF CHICAGO**, a national association, having an address at 1201 West Harrison Street, Chicago, Illinois 60607 ("Lender").

WITNESSETH:

WHEREAS, A Z S Gas & Food Corporation, an Illinois corporation ("Borrower") has requested that Lender make a loan to Borrower in the aggregate principal amount of ONE MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,250,000.00) (the "Loan");

WHEREAS, Lender and Borrower have entered into a Loan Agreement dated of even date herewith (the "Loan Agreement"). Capitalized terms used but not defined shall have the meaning set forth in the Loan Agreement;

WHEREAS, Lender has agreed to make the Loan to Borrower upon, and subject to, the terms and conditions set forth herein and in the other Loan Documents;

WHEREAS, concurrently herewith, Borrower has delivered to Lender its Promissory Note of even date herewith in the amount of the Loan (as the same may hereafter from time to time be modified, amended, replaced, restated, supplemented, renewed, or extended, and any note(s) issued in exchange therefor or in substitution thereof, collectively, the "Note") in evidence of the Loan, with interest from the date hereof at the rates set forth in the Note, such interest and the principal amount thereof to be payable in accordance with the terms and conditions provided in the Note;

WHEREAS, the Note is due and payable on **September 25, 2013**, if not sooner in accordance with the terms and conditions thereof;

WHEREAS, Mortgagor is a principal of Borrower and will derive substantial economic benefit from Lender making the Loan to Borrower; and

WHEREAS, Mortgagor desires to secure the payment of the Debt and the performance of all of the Obligations (as hereinafter defined) and grant additional security for the loan up to One Million Two Hundred Fifty Thousand and 00/100 Dollars (\$1,250,000.00).

NOW THEREFORE, in consideration of the making of the Loan and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Borrower hereby agrees, covenants, represents and warrants with and to Lender as follows:

Article 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Mortgagor does hereby irrevocably mortgage, grant, bargain, pledge, assign, warrant, transfer and convey to Lender, and grant a security interest to Lender in, with power of sale, all of Mortgagor's right, title and interest in and

UNOFFICIAL COPY

to the following property, rights, interests and estates now owned or hereafter acquired by Mortgagor, whether now existing or hereafter created (collectively, the "Property");

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. All buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land or the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land to the center line thereof, and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment as such term is defined in Article 9 of the Uniform Commercial Code, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land or the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Borrower has or shall have an interest, now or hereafter located upon the Land or the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land or the Improvements (collectively, the "Personal Property"), and all proceeds and products of the above;

(f) Leases and Rents. All leases, subleases and other agreements affecting the use, enjoyment or occupancy of all or any portion of the Land or the Improvements heretofore or hereafter entered into (the "Leases"), whether before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code, and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or other collateral deposited to secure the performance by the

UNOFFICIAL COPY

lessees of their obligations thereunder; and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents;

(g) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(h) Insurance Proceeds. All insurance proceeds in respect of the Property under insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction, whether arising or accruing before or after the date hereof;

(j) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(k) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(l) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, signage, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(m) Accounts. All deposits, reserves, escrows and accounts of Mortgagor made with or for the benefit of Lender under any of the Loan Documents; and

(n) Other Rights; Replacements and Conversions. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (m) above and all renewals, substitutions, improvements, accessions, attachments, additions, replacements and all proceeds (whether cash or non-cash, movable or immovable, tangible or intangible) to or of each of the items set forth in Subsections (a) through (m) above,

UNOFFICIAL COPY

including without limitation, all insurance proceeds and condemnation awards, and all conversions of the security constituted thereby (whether voluntary or involuntary and in whatever form).

Section 1.2 ASSIGNMENT OF RENTS. Mortgagor hereby absolutely and unconditionally assigns to Lender Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2, Lender grants to Mortgagor a revocable license to collect and receive the Rents. Mortgagor shall hold a sufficient portion of the Rents in trust for the benefit of Lender to discharge all current sums due on the Debt.

Section 1.3 SECURITY AGREEMENT; FIXTURE FILING. (a) This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code as adopted and enacted by the State or Commonwealth where the Mortgagor is located (as amended, modified or replaced from time to time, the "UCC"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature of Mortgagor in the Property. Mortgagor hereby grants to Lender, as security for the Obligations, a security interest in the Property to the full extent that the Property may be subject to the UCC (said portion of the Property so subject to the UCC, the "UCC Collateral"). Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing, continuation or other statements signed only by Lender, as secured party, in connection with the UCC Collateral.

(b) From the date of its recording, this Security Instrument further constitutes a financing statement filed as a fixture filing and covers goods which are or are to become fixtures on the Property. For this purpose, Mortgagor is the "Debtor," and its name and mailing address are set forth in the preamble of this Security Instrument. Lender is the "Secured Party," and its name and mailing address also are set forth in the preamble of this Security Instrument. This document covers goods which are or are to become fixtures and personal property. The statement describing the portion of the Property comprising the fixtures and personal property secured hereby is set forth as Section 1.1(e) of this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, WITH POWER OF SALE, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower and/or Mortgagor shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall well and truly perform the other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void.

UNOFFICIAL COPY

Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made herein are given for the purpose of additionally securing the Debt up to One Million Two Hundred Fifty Thousand and 00/100 Dollars (\$1,250,000.00), not including any costs or expenses of Lender of foreclosure or collection of the amount of the Loan or to preserve or protect the Property.

Section 2.2 OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made herein are also given for the purpose of securing the performance of the following (the "Other Obligations"): (a) all other obligations of the Mortgagor under this Security Instrument, (b) each obligation of Borrower contained in the Loan Agreement and any other Loan Documents, and (c) each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation or substitution or replacement for the Note, the Loan Agreement or any other Loan Documents. Mortgagor's obligation for payment of the Debt and the performance of the Other Obligations shall be referred to collectively as the "Obligations."

Article 3 - BORROWER COVENANTS

Mortgagor covenants and agrees that:

Section 3.1 PAYMENT OF DEBT. [Intentionally omitted.]

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note, (b) the Loan Agreement, and (c) any and all of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein, to the extent as may be applicable.

Section 3.3 PERFORMANCE OF OTHER AGREEMENTS. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to Mortgagor or the Property, or given by Mortgagor to Lender for the purpose of further securing an Obligation and any amendments, modifications or changes thereto.

Section 3.4 PAYMENT FOR LABOR AND MATERIALS. Mortgagor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest (other than the Security Instrument) even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances. Mortgagor represents there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the liens created by the Loan Documents.

UNOFFICIAL COPY

What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's right to disapprove Mortgagor's choice, which right shall not be exercised unreasonably. Lender may require Mortgagor to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Mortgagor shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Mortgagor.

If Mortgagor fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Mortgagor's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Mortgagor, Mortgagor's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Mortgagor acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section shall become additional debt of Mortgagor secured by this Security Instrument. These amounts shall bear interest at the Default Rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Mortgagor requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Mortgagor shall promptly give to Lender all receipts of paid premiums and renewal notices. If Mortgagor obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Mortgagor. Unless Lender and Mortgagor otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Mortgagor any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Mortgagor shall not be paid out of the insurance proceeds and shall be the sole obligation of Mortgagor. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this

UNOFFICIAL COPY

Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor. Such insurance proceeds shall be applied in such order as Lender shall determine.

If Mortgagor abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Mortgagor does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property through foreclosure or otherwise, Mortgagor hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Mortgagor's rights (other than the right to any refund of unearned premiums paid by Mortgagor) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

Section 4.7 CONDEMNATION. Mortgagor assigns all awards and compensation for any condemnation or other taking or any purchase in lieu thereof, to Lender, and authorizes Lender to collect and receive such awards and compensation and to give proper receipts therefor.

Section 4.8 OCCUPANCY. Mortgagor shall occupy, establish, and use the Property as Mortgagor's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Mortgagor's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Mortgagor's control.

Section 4.9 HAZARDOUS SUBSTANCES. Mortgagor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Mortgagor shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, or (b) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property, except for the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Mortgagor shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Mortgagor learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

UNOFFICIAL COPY

Article 5 - FURTHER ASSURANCES

Section 5.1 CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Mortgagor will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Mortgagor would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(b) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to any of the Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Article 6 - RIGHTS AND REMEDIES UPON DEFAULT

Section 6.1 REMEDIES. Upon the occurrence of any Event of Default, Mortgagor agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) to the extent permitted and pursuant to the procedures provided by Applicable Law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in

UNOFFICIAL COPY

parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;

(h) subject to any Applicable Law, the license granted to Mortgagor under Section 1.2 shall automatically be revoked and Lender may, but without any obligation to do so, enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto, and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, negotiate, execute, cancel, enforce, extend, renew or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in the possession of Mortgagor or any Affiliate of Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise immediately and without demand any and all rights and remedies granted to a secured party upon default under the UCC, including, without limitation, to

UNOFFICIAL COPY

the extent permitted by Applicable Law: (i) the right to take possession of the UCC Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the UCC Collateral, and (ii) request Mortgagor at its expense to assemble the UCC Collateral and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the UCC Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action shall constitute commercially reasonable notice to Mortgagor. Any disposition pursuant to the UCC of so much of the Property as may constitute UCC Collateral shall be considered commercially reasonable if made pursuant to a public sale which is advertised at least twice in a newspaper in which sheriffs' sales are advertised in the county where the Land is located. The proceeds of any disposition of the UCC Collateral, or any part thereof, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper;

(j) apply any sums then deposited and any other sums held in reserve or otherwise by Lender in accordance with the terms of this Security Instrument or any other Loan Document, together with interest thereon, to the payment of the following items in any order in its uncontrolled discretion; (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to any of the Loan Documents, including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument;

(k) apply the undisbursed balance of any Net Proceeds, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its sole discretion, or

(l) pursue such other remedies as Lender may have under Applicable Law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 6.2 APPLICATION OF PROCEEDS. The proceeds of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 6.3 RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the

UNOFFICIAL COPY

extent permitted by law), with interest as provided in this Section, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period from that the incurrence of such cost or expense by Lender to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 6.4 RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

Section 6.5 EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right to examine and audit the records, books, management and other papers of Mortgagor which reflect upon their financial condition or which pertain to the income, expenses and operation of the Property, at the Property or at any office regularly maintained by Mortgagor where the books and records are located at all reasonable times and, except during an emergency or following the occurrence and during the continuance of an Event of Default, upon reasonable advance notice (which may, for such purpose alone, be given orally). Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers and, at Mortgagor's expense, the right to prepare any of the statements and reports that Mortgagor shall be required to deliver hereunder upon any failure to do so. Mortgagor shall furnish to Lender and its agents convenient facilities for the examination and audit of such books and records.

Section 6.6 OTHER RIGHTS, ETC. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Mortgagor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents. Acceptance of any payment after the occurrence of a default shall not be deemed to waive or cure such default; and every power and remedy given to Lender may be exercised from time to time as often as may be deemed expedient by Lender. Mortgagor hereby waives any right to require Lender at any time to pursue any remedy in Lender's power whatsoever.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the

UNOFFICIAL COPY

amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

(d) In the event Lender determines from time to time that the Property is not being maintained as required under this Security Instrument, Lender may require that Mortgagor establish a monetary reserve therefor in an amount determined by Lender, in its reasonable discretion. Mortgagor hereby agrees to fully comply with any such additional requirements imposed by Lender, including, without limitation, depositing with Lender in full or in installments such sums as Lender shall determine. Any such reserve shall be established with Lender on Lender's form of reserve agreement.

Section 6.7 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 6.8 VIOLATION OF LAWS. If the Property is not in compliance with all Legal Requirements, Lender may impose additional requirements upon Mortgagor in connection therewith including, without limitation, monetary reserves or financial equivalents. Any such reserve shall be established with Lender on Lender's form of reserve agreement.

Section 6.9 RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times and, except during an emergency or following the occurrence and during the continuance of an Event of Default, upon reasonable advance notice (which may, for such purpose alone, be given orally).

Section 6.10 RESTORATION OF RIGHTS. In case Lender shall have proceeded to enforce any right by foreclosure sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to Lender, then, in every such case, Mortgagor and Lender shall be restored to their former positions and rights thereunder.

UNOFFICIAL COPY

Article 7 - WAIVERS

Section 7.1 MARSHALLING AND OTHER MATTERS. Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Law.

Section 7.2 WAIVER OF NOTICE. Mortgagor shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Mortgagor and except with respect to matters for which Lender is required by Applicable Law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Mortgagor.

Section 7.3 WAIVER OF STATUTE OF LIMITATIONS. To the fullest extent permitted by law, Mortgagor hereby expressly waives and releases the pleading of any statute of limitations as a defense to payment of the Debt or performance of its other Obligations.

Section 7.4 WAIVER OF COUNTERCLAIM. **MORTGAGOR HEREBY KNOWINGLY WAIVES THE RIGHT TO ASSERT ANY COUNTERCLAIM, OTHER THAN A COMPULSORY OR MANDATORY COUNTERCLAIM, IN ANY ACTION OR PROCEEDING BROUGHT AGAINST BORROWER BY LENDER OR ITS AGENTS.**

Section 7.5 WAIVER OF FORECLOSURE DEFENSE. Mortgagor hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

Section 7.6 WAIVER OF JURY TRIAL. **MORTGAGOR AND LENDER, TO THE FULL EXTENT PERMITTED BY LAW, EACH HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, BROUGHT BY ANY OF THEM AGAINST THE OTHER BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO OR IN CONNECTION WITH THIS SECURITY INSTRUMENT, THE LOAN OR ANY COURSE OF CONDUCT, ACT, OMISSION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, SUCH PERSON'S DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH SUCH PERSON), IN CONNECTION WITH THE LOAN OR THIS SECURITY INSTRUMENT, INCLUDING,**

UNOFFICIAL COPY

WITHOUT LIMITATION, IN ANY COUNTERCLAIM WHICH MORTGAGOR MAY BE PERMITTED TO ASSERT THEREUNDER OR WHICH MAY BE ASSERTED BY LENDER OR ITS AGENTS AGAINST MORTGAGOR, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THIS WAIVER BY MORTGAGOR OF ITS RIGHT TO A JURY TRIAL IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN.

Section 7.7 WAIVER OF HOMESTEAD. Mortgagor hereby waives and releases all rights under and by virtue of any homestead exemption under any Applicable Law.

Article 8 – GENERAL PROVISIONS

Section 8.1 ATTORNEY'S FEES FOR ENFORCEMENT. Mortgagor shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Property, in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property, whether or not any legal proceeding is commenced hereunder or under any other Loan Document, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

Section 8.2 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Mortgagor's obligations hereunder, under the Note and the other Loan Documents and the performance and discharge of the other Obligations.

Section 8.3 SEVERABILITY. Whenever possible, each provision of this Security Instrument shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision shall be prohibited by or invalid or unenforceable under the applicable law of any jurisdiction with respect to any Person or circumstance, such provision shall be ineffective to the extent of such prohibition, invalidity or unenforceability, without invalidating the remaining provisions or affecting the validity or enforceability of such provisions in any other jurisdiction or with respect to other Persons or circumstances.

Section 8.4 NO ORAL MODIFICATIONS. This Security Instrument, and any of the provisions thereof, cannot be altered, modified, amended, waived, extended, changed, discharged or terminated orally or by any act on the part of Mortgagor or Lender, but only by an agreement in writing signed by the party against whom enforcement of any alteration, modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 8.5 JURISDICTION, COURT PROCEEDINGS. EACH OF LENDER AND MORTGAGOR, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON

UNOFFICIAL COPY

THE ADVICE OF COMPETENT COUNSEL, (I) SUBMITS TO PERSONAL, NONEXCLUSIVE JURISDICTION IN THE STATE OR COMMONWEALTH WHERE THE PROPERTY IS LOCATED WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM, RELATING TO OR IN CONNECTION WITH SUCH INSTRUMENT OR THE LOAN, (II) AGREES THAT ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN THE COUNTY WHERE THE PROPERTY IS LOCATED, AND (III) SUBMITS TO THE JURISDICTION OF SUCH COURTS. MORTGAGOR, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, FURTHER AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY FORUM OTHER THAN IN THE COUNTY AND STATE WHERE THE PROPERTY IS LOCATED (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM), AND IRREVOCABLY AGREES NOT TO ASSERT ANY OBJECTION WHICH IT MAY EVER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT WHERE THE PROPERTY IS LOCATED AND ANY CLAIM THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

Section 8.6 TIME OF THE ESSENCE. Time shall be of the essence in the performance of all obligations of Mortgagor thereunder.

Section 8.7 GOVERNING LAW. This Security Instrument shall be governed by, and construed in accordance with, the laws of the state or commonwealth where the Property is located, except to the extent that the applicability of any of such laws may now or hereafter be preempted by federal law, in which case such federal law shall so govern and be controlling.

Section 8.8 EXHIBITS INCORPORATED; HEADINGS. The information set forth on the cover, the table of contents, the headings and the exhibits annexed thereto, if any, shall be deemed to be incorporated therein as a part thereof with the same effect as if set forth in the body thereof. The headings and captions of the various articles, sections and paragraphs of such instrument are for convenience of reference only and shall not be construed as modifying, defining or limiting, in any way, the scope or intent of the provisions thereof.

Section 8.9 NOTICES. Any notice, demand or other communication which any part hereto may desire or may be required to give to any other party under this Agreement or the other Loan Documents shall be in writing, and shall be deemed given (i) if and when personally delivered, (ii) upon receipt if sent by any nationally recognized overnight courier addressed to a party at its address set forth below, or (iii) upon receipt if deposited in United States registered or certified mail, postage prepaid, or at such other place as such party may have designated to all other parties by notice in writing in accordance with this Section:

- (a) If to Mortgagor: M. Arif Kasbati and Farzana N. Kasbati
9266 Nagle Drive
Morton Grove, Illinois 60053

UNOFFICIAL COPY

with a copy to: Thomas J. Walsh
735 South Boulevard
Evanston, Illinois 60202
Facsimile No.: 847/869-1744

(b) If to Lender: The National Republic Bank of Chicago
1201 West Harrison Street
Chicago, Illinois 60607
Attention: Edward Fitzgerald
Facsimile No.: 312/738-4929

with a copy to: Wolin, Kelter & Rosen, Ltd.
55 West Monroe Street
Suite 3600
Chicago, Illinois 60603
Attention: Julie L. Kaminski
Facsimile No.: 312/424-0660

Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Agreement is not required to be given. Failure to deliver copies of notice shall not render the notice invalid.

IN WITNESS WHEREOF THIS SECURITY INSTRUMENT has been executed by Mortgagor as of the day and year first above written.

MORTGAGOR:



M. ARIF KASBATI



FARZANA N. KASBATI, for purposes of waiving
homestead rights

This instrument was prepared by:

Wolin, Kelter & Rosen, Ltd., 55 W. Monroe Street, Suite 3600, Chicago, IL 60603
Attention: Julie L. Kaminski, W&R File No.: 9400/1012

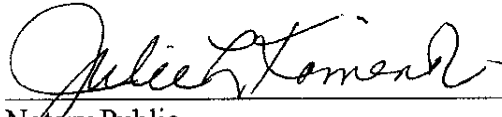
UNOFFICIAL COPY

[ACKNOWLEDGMENT]

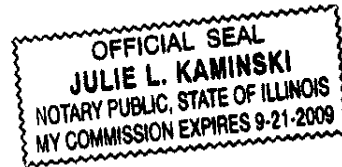
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a notary public, in and for the county and state aforesaid, DO HEREBY CERTIFY, that **MOHAMMED ARIF KASBATI**, personally known to me to be the same person whose name is subscribed to within the Document, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and official seal this 25th day of September, 2008.



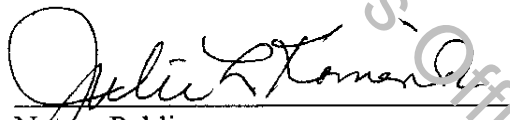
Notary Public



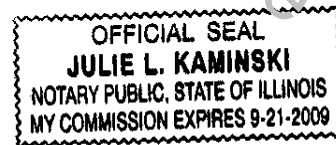
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a notary public, in and for the county and state aforesaid, DO HEREBY CERTIFY, that **FARZANA N. KASBATI**, personally known to me to be the same person whose name is subscribed to within the Document, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and official seal this 25th day of September, 2008.



Notary Public



UNOFFICIAL COPY

EXHIBIT A

Description of Land

LOT 37 IN DELAINE FARM SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST ¼ OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 9266 Nagle Drive, Morton Grove, Illinois

PIN: 10-18-218-012-0000

Property of Cook County Clerk's Office

FATIC has made an accommodation
recording of the instrument
First American Title Insurance Company