

Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption



Doc#: 0835933058 Fee: \$112.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 12/24/2008 09:13 AM Pg: 1 of 39

LYNES # 84-54-404-D1

Property of Cook County Clerk's Office

The property identified as: PIN: 17-09-127-019-0000

Address:

Street: 434 W. ONTARIO

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60610

Lender: COLE TAYLOR BANK

Borrower: 434 W. ONTARIO, LLC

Loan / Mortgage Amount: \$2,100,000.00

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

39
J

Certificate number: 98129C4B-416C-4533-9EE9-EEBF8A2339F8

Execution date: 12/17/2008

UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY:

Bennett L. Cohen
Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

AND AFTER RECORDING MAIL TO:

James M. Sisk, Senior VP
Cole Taylor Bank
9550 West Higgins Road
Rosemont, Illinois 60018

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND UCC FIXTURE FILING (this "Mortgage") made as of this 17th day of December, 2008 by 434 W. ONTARIO, LLC, an Illinois limited liability company (herein called the "Mortgagor") whose address is 605 E. Algonquin Road, Suite 300, Arlington Heights, Illinois 60005, to COLE TAYLOR BANK (herein together with its successors and assigns, including each and every from time to time holder of the Notes hereinafter referred to, called the "Mortgagee") whose address is 9550 West Higgins Road, Rosemont, Illinois 60018.

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee a Mortgage Note dated the date hereof, payable to the order of Mortgagee, in the principal sum of Two Million One Hundred Thousand and 00/100 (\$2,100,000.00) Dollars (herein called the "Mortgage Note"), evidencing a \$2,100,000.00 mortgage loan made by Mortgagee to Mortgagor, payable to the order of Mortgagee in installments of principal (plus interest as therein provided and bearing interest at the applicable floating interest rate set forth in the Mortgage Note), commencing on January 29, 2009 and continuing on the same day of each month thereafter, followed by a final balloon payment of the entire unpaid principal balance and all accrued and unpaid interest due on December 29, 2013, the terms and provisions of which Mortgage Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, AmeriCorp Properties Group, L.L.C., an Illinois limited liability company ("AmeriCorp") has, concurrently herewith, executed and delivered to the Mortgagee the following promissory notes (collectively, the "AmeriCorp Notes" and singularly, an "AmeriCorp Note"): (i) a Mortgage Note dated the date hereof, payable to the order of Mortgagee, in the principal sum of One Million Three Hundred Twenty Thousand and 00/100 Dollars (\$1,320,000.00) (herein called the "First AmeriCorp Mortgage Note"), evidencing a \$1,320,000.00 mortgage loan made by Mortgagee to AmeriCorp, payable to the order of

Higgins #84-54-404-D1

UNOFFICIAL COPY

Mortgagee in installments of principal (plus interest as therein provided and bearing interest at the applicable floating interest rate set forth in the First AmeriCorp Mortgage Note), commencing on January 29, 2009 and continuing on the same day of each month thereafter, followed by a final balloon payment of the entire unpaid principal balance and all accrued and unpaid interest due on December 29, 2013, the terms and provisions of which First AmeriCorp Mortgage Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and (ii) a Mortgage Note dated the date hereof, payable to the order of Mortgagee, in the principal sum of One Million Nine Hundred Twenty Thousand and 00/100 Dollars (\$1,920,000.00) (herein called the "Second AmeriCorp Mortgage Note"), evidencing a \$1,920,000.00 mortgage loan made by Mortgagee to AmeriCorp, payable to the order of Mortgagee in installments of principal (plus interest as therein provided and bearing interest at the applicable floating interest rate set forth in the Second AmeriCorp Mortgage Note), commencing on January 29, 2009 and continuing on the same day of each month thereafter, followed by a final balloon payment of the entire unpaid principal balance and all accrued and unpaid interest due on December 29, 2013, the terms and provisions of which Second AmeriCorp Mortgage Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and (iii) a Mortgage Line Note dated the date hereof, payable to the order of Mortgagee, in the principal sum of Two Million and 00/100 Dollars (\$2,000,000.00) (herein called the "AmeriCorp Mortgage Line Note"), evidencing a \$2,000,000.00 non-revolving mortgage line of credit loan made by Mortgagee to AmeriCorp (which loan shall automatically convert to a five year installment term loan after an interim draw period equal to the lesser of twelve months after closing or full disbursement of such loan), payable to the order of Mortgagee in installments of principal plus interest as therein described, bearing interest calculated at the applicable floating or fixed rates set forth in the AmeriCorp Mortgage Line Note, the terms and provisions of which AmeriCorp Mortgage Line Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, 805 MCHENRY, LLC, an Illinois limited liability company ("805 McHenry") has, concurrently herewith, executed and delivered to the Mortgagee a Mortgage Note dated the date hereof, payable to the order of Mortgagee, in the principal sum of One Million Ten Thousand and 00/100 Dollars (\$1,010,000.00) (herein called the "805 McHenry Mortgage Note"), evidencing a \$1,010,000.00 mortgage loan made by Mortgagee to 805 McHenry, payable to the order of Mortgagee in installments of principal (plus interest as therein provided and bearing interest at the applicable floating interest rate set forth in the 805 McHenry Mortgage Note), commencing on January 29, 2009 and continuing on the same day of each month thereafter, followed by a final balloon payment of the entire unpaid principal balance and all accrued and unpaid interest due on December 29, 2013, the terms and provisions of which 805 McHenry Mortgage Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, 5404 – F ELM STREET, LLC, an Illinois limited liability company ("5404 F Elm") has, concurrently herewith, executed and delivered to the Mortgagee a Mortgage Note dated the date hereof, payable to the order of Mortgagee, in the principal sum of One Hundred Eighty Thousand and 00/100 Dollars (\$180,000.00) (herein called the "5404 F Elm Mortgage Note"), evidencing a \$180,000.00 mortgage loan made by Mortgagee to 5404 F Elm, payable to the order of Mortgagee in installments of principal (plus interest as therein provided and bearing

UNOFFICIAL COPY

interest at the applicable floating interest rate set forth in the 5404 F Elm Mortgage Note), commencing on January 29, 2009 and continuing on the same day of each month thereafter, followed by a final balloon payment of the entire unpaid principal balance and all accrued and unpaid interest due on December 29, 2013, the terms and provisions of which 5404 F Elm Mortgage Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, 1057 N. NORTHWEST HIGHWAY, LLC, an Illinois limited liability company ("1057 N. Northwest") has, concurrently herewith, executed and delivered to the Mortgagee a Mortgage Note dated the date hereof, payable to the order of Mortgagee, in the principal sum of Seven Hundred Twenty Thousand and 00/100 Dollars (\$720,000.00) (herein called the "1057 N. Northwest Mortgage Note"), evidencing a \$720,000.00 mortgage loan made by Mortgagee to 1057 N. Northwest, payable to the order of Mortgagee in installments of principal (plus interest as therein provided and bearing interest at the applicable floating interest rate set forth in the 1057 N. Northwest Mortgage Note), commencing on January 29, 2009 and continuing on the same day of each month thereafter, followed by a final balloon payment of the entire unpaid principal balance and all accrued and unpaid interest due on December 29, 2013, the terms and provisions of which 1057 N. Northwest Mortgage Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, the Mortgage Note, the AmeriCorp Notes, the 805 McHenry Mortgage Note, the 5404 F Elm Mortgage Note, and the 1057 N. Northwest Mortgage Note shall collectively hereinafter be called the "Notes" and individually a "Note"; and

WHEREAS, AmeriCorp, 805 McHenry, 5404 F Elm, and 1057 N. Northwest shall hereafter collectively be called the "Affiliated Borrowers" and singularly, an "Affiliated Borrower"; and

WHEREAS, in connection with one or more of the Notes, Mortgagor and/or the Affiliated Borrowers may also now or in the future enter into one or more ISDA Master Agreements or other interest rate, currency or commodity swap agreements, cap agreements, hedging agreements or collar agreements with Mortgagee or its affiliates from time to time (collectively, "Interest Rate Agreements"); and

WHEREAS, the indebtedness evidenced by the Notes, including the principal thereof and interest and premium, if any, thereon, and any extensions, refinancings, amendments, renewals, modifications, consolidations and conversions thereof, in whole or in part, any and all other sums which may be at any time due or owing or required to be paid as provided in this Mortgage, the Notes, the Interest Rate Agreements and in any of the other Loan Documents (as hereinafter defined) and the Related Debt (as hereinafter defined), are herein collectively called the "Indebtedness Hereby Secured".

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Notes according to its tenor and effect and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and

UNOFFICIAL COPY

agreements herein and in the Notes contained (whether or not the Mortgagor is personally liable for any such payment, performance and observance), and in consideration of the premises, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby **RELEASE, REMISE, ALIENATE, MORTGAGE, CONVEY** unto the Mortgagee, and **GRANT** the Mortgagee a security interest in, all of Mortgagor's sundry rights, interests and property hereinafter described (all herein together called the "Premises"):

- (a) All of the real estate (herein called the "Real Estate") described in **Exhibit "A"** attached hereto and made a part hereof;
- (b) All buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such building or improvements (all herein generally called the "Improvements");
- (c) All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;
- (d) All leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (all herein generally called "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;
- (e) All rents, issues, profits, royalties, income, avails, and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (all herein generally called "Rents"), subject to the right, power and authority given to the Mortgagor in Section 25 hereof, to collect and apply the Rents;
- (f) All right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or Improvements or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by Mortgagor;
- (g) Any interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;
- (h) All right, title and interest of Mortgagor now owned or hereafter acquired in and to (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate; (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connection with the Real Estate and Im-

UNOFFICIAL COPY

provements; (iii) any and all rights and interests of every name or nature forming part of or used in connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto; and (v) all water rights and shares of stock evidencing the same;

- (i) All right, title and interest of Mortgagor in and to all tangible personal property (herein called "Personal Property"), owned by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or Improvements or used or useful in connection therewith, including, but not limited to:
- (i) all furniture, furnishings and equipment furnished by Mortgagor to tenants of the Real Estate or Improvements;
 - (ii) all building materials and equipment located upon the Real Estate and intended to be incorporated in the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements;
 - (iii) all machines, machinery, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all fire sprinklers, alarm systems, electronic monitoring equipment and devices;
 - (iv) all window or structural cleaning rigs, maintenance equipment relating to exclusion of vermin or insects and removal of dust, refuse or garbage;
 - (v) all lobby and other indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, wall beds, wall safes, and other furnishings;
 - (vi) all rugs, carpets and other floor coverings, drapery rods and brackets, awnings, window shades, venetian blinds and curtains;
 - (vii) all lamps, chandeliers and other lighting fixtures;
 - (viii) all recreational equipment and materials;
 - (ix) all office furniture, equipment and supplies;
 - (x) all kitchen equipment, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units;
 - (xi) all laundry equipment, including washers and dryers;

UNOFFICIAL COPY

- (xii) all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of exterior portions of the Real Estate; and
- (xiii) all maintenance supplies and inventories;

provided that the enumeration of any specific articles of Personal Property set forth above shall in no way exclude or be held to exclude any items of property not specifically enumerated; but provided that there shall be excluded from and not included within the term "Personal Property" as used herein and hereby mortgaged and conveyed, any equipment, trade fixtures, furniture, furnishings or other property of tenants of the Premises; and

- (j) All the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding, or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (all herein generally called "Awards").

TO HAVE AND TO HOLD all and sundry the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the Mortgagee forever, for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default (as defined in Section 19 hereof);

FOR THE PURPOSE OF SECURING:

- (a) Payment of the indebtedness with interest thereon evidenced by the Notes (plus all other sums payable thereunder) and any and all extensions, refinancings, amendments, renewals, modifications, consolidations and conversions thereof or thereto, and all other Indebtedness Hereby Secured;
- (b) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under this Mortgage;
- (c) Performance and observance by the Mortgagor, each Affiliated Borrower and any other guarantor, obligor or grantor of all of the terms, provisions, covenants and agreements on the Mortgagor's and each Affiliated Borrower's (or such other guarantors', obligors' or grantors') part to be performed or observed under all other mortgages and other loan documents entered into by and between Mortgagee and Mortgagor or each Affiliated Borrower (or such other guarantors, obligors or grantors) in connection with the Notes (the Notes, this Mortgage, all

UNOFFICIAL COPY

Interest Rate Agreements, and all such other mortgages and all other loan documents securing the Notes or any of them, collectively herein the "Loan Documents"); and

- (d) Performance by any guarantor of its or his obligations under any guaranty or other instrument given to further secure the payment of any of the Indebtedness Hereby Secured, or any portion thereof, or the performance of any obligation secured hereby; and
- (e) All other present and future loans, indebtedness, obligations, sums and liabilities of any and every kind and nature whether heretofore, now or hereafter owing to the Mortgagee by (i) the Mortgagor, (ii) any one or more of the Affiliated Borrowers, and/or (iii) any other corporation, limited liability company or limited partnership in which AmeriCorp is or shall hereafter become the sole shareholder, member or general partner thereof, as applicable, and all extensions, refinancings, amendments, renewals, modifications, consolidations and conversions thereof, in whole or in part (all of the foregoing debt described in this subsection (e) collectively, the "Related Debt").

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness Hereby Secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then Mortgagee shall release this Mortgage at the expense of Mortgagor.

AND IT IS FURTHER AGREED THAT:

1. Payment of Indebtedness. The Mortgagor will promptly pay each and every installment of the principal of and interest and premium, if any, on the Mortgage Note, and all other Indebtedness Hereby Secured payable by the Mortgagor, as the same becomes due, and will cause the Affiliated Borrowers to promptly pay each and every installment of the principal of and interest and premium, if any, on the other Notes and all other Indebtedness Hereby Secured payable by the Affiliated Borrowers, as the same becomes due. The Mortgagor will duly perform and observe all of the covenants, agreements and provisions on the part of Mortgagor to be performed and observed under this Mortgage and all other Loan Documents executed by the Mortgagor.

2. Maintenance, Repair, Restoration, Prior Liens, Parking. The Mortgagor will:

- (a) promptly, within a commercially reasonable time (not to exceed six months unless such time period is extended by Mortgagee in its sole discretion, and subject to any applicable law that may shorten such period) repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for the purpose;

UNOFFICIAL COPY

- (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens, materialmen's or like liens or claims, or any other liens or claims for lien;
- (c) pay, when due, any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;
- (d) complete, within a reasonable time, any Improvements now or at any time in the process of erection upon the Premises;
- (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
- (f) make no material alterations in the Premises, except as required by law or municipal ordinance or otherwise consented to by Mortgagee in writing;
- (g) suffer or permit no change in the general nature of the occupancy of the Premises without the Mortgagee's prior written consent;
- (h) pay when due all operating costs of the Premises;
- (i) initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent; and
- (j) provide, improve, grade, surface and thereafter maintain, clean, repair, police and adequately light parking areas within the Premises as may be required by law, ordinance or regulation, together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof.

3. Taxes. The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor; provided that the Mortgagor may contest the amount or propriety of any Taxes in accordance with the provisions of Section 29 hereof; provided that (a) in the event that any law or court decree has the effect of deducting from the value of land for the purposes of taxation any lien thereon, or imposing upon the Mortgagee the payment in whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or in the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the holder thereof, then, and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor and (b) nothing in this Section 3 contained shall

UNOFFICIAL COPY

require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

4. Insurance Coverage. The Mortgagor will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

- (a) Insurance against loss to the Improvements caused by fire, lightning and risks covered by the so-called "all perils" endorsement and such other risks as the Mortgagee may reasonably require, in amounts, but in no event less than the full replacement value of the Improvements, plus the cost of debris removal, with full replacement cost endorsement;
- (b) Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may reasonably require and in any event not less than \$2,000,000.00 single limit coverage for each building on the Premises;
- (c) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's contingent liability not covered by the insurance provided in Subsection (b) above; (ii) Worker's Compensation insurance covering all persons engaged in making such alterations or improvements; and (iii) builder's risk insurance complete form;
- (d) Federal Flood Insurance in the maximum obtainable amount up to the amount of the Indebtedness Hereby Secured evidenced by the Notes (or if less, the current appraised value of the Premises), if the Premises is in a "flood plain area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended;
- (e) Rental value insurance (or, at the discretion of the Mortgagee, business interruption insurance) in amounts sufficient to pay during any period of up to one (1) year in which the Improvements may be damaged or destroyed (i) all rents derived from the Premises and (ii) all amounts (including, but not limited to, all taxes, assessments, utility charges and insurance premiums) required herein to be paid by the Mortgagor or by tenants of the Premises; and
- (f) If any part of the Premises is now or hereafter used for the sale or dispensing of beer, wine, spirits or any other alcoholic beverages, so-called "Dram Shop" or "Innkeeper's Liability" insurance against claims or liability arising directly or indirectly to persons or property on account of such sale or dispensing of beer, wine, spirits or other alcoholic beverages, including in such coverage loss of means of support, all in amounts as may be required by law or as the Mortgagee may specify, but in no event less than \$2,000,000.00 single limit coverage.

UNOFFICIAL COPY

5. Insurance Policies. All policies of insurance to be maintained and provided as required by Section 4 hereof shall:

- (a) be in forms, companies having a Best Insurance Guide rating of A+ or A and are licensed to transact business in the State of Illinois and amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee;
- (b) contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee;
- (c) be written in amounts sufficient to prevent Mortgagor from becoming a coinsurer; and
- (d) provide for thirty (30) days prior written notice of cancellation or material modification to Mortgagee.

Mortgagor will deliver all policies and insurance certificates in form acceptable to Mortgagee, and including additional and renewal policies to Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than fifteen (15) days prior to the respective dates of expiration.

6. Deposits for Taxes. In order to assure the payment of Taxes payable with respect to the Premises as and when the same shall become due and payable:

- (a) Subject in all respects to the last paragraph of this Section 6, the Mortgagor shall deposit with the Mortgagee on the first day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Mortgage Note, an amount equal to One-Twelfth (1/12) of the Taxes next to become due upon the Premises; provided that, in the case of the first such deposit, there shall be deposited in addition an amount as estimated by Mortgagee which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to Mortgagee's satisfaction that there will be sufficient funds on deposit to pay Taxes as they come due;

provided that the amount of such deposits (herein generally called "Tax Deposits") shall be based upon Mortgagee's reasonable estimate as to the amount of Taxes next to be payable; and all Tax Deposits shall be held by the Mortgagee in an interest bearing account for the benefit of Mortgagor.

- (b) Intentionally Deleted.
- (c) The Mortgagee will, out of the Tax Deposits, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the Taxes or will, upon

UNOFFICIAL COPY

presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor. If the total Tax Deposits on hand shall not be sufficient to pay all of the Taxes when the same shall become due, then the Mortgagor shall pay to the Mortgagee on demand any amount necessary to make up the deficiency. If the total of such Deposits exceed the amount required to pay the Taxes, such excess shall be credited on subsequent payments to be made for such items.

- (d) Upon the occurrence of an Event of Default, the Mortgagee may, at its option, without being required so to do, apply any Tax Deposits on hand on any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, then any remaining Tax Deposits shall be paid to the Mortgagor. All Tax Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held in trust to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor.
- (e) Notwithstanding anything to the contrary herein contained, the Mortgagee shall not be liable for any failure to apply to the payment of Taxes any amounts deposited as Tax Deposits unless the Mortgagor, while no Event of Default exists hereunder and within a reasonable time prior to the due date, shall have requested the Mortgagee in writing to make application of such Deposits on hand to the payment of the particular Taxes for the payment of which such Deposits were made, accompanied by the bills therefor.

Notwithstanding the foregoing provisions of this Section 6, Mortgagor shall not be required to make the tax deposits required hereby provided that an Event of Default shall not have occurred and be continuing under any of the Notes, this Mortgage or any of the other Loan Documents.

7. Proceeds of Insurance. The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and,

- (a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagor may itself adjust losses aggregating not in excess of Fifty Thousand Dollars (\$50,000.00), and provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand;

UNOFFICIAL COPY

- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty") and if, in the reasonable judgment of the Mortgagee, the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness Hereby Secured and the insurers do not deny liability to the insured, then, if no Event of Default shall have occurred and be then continuing, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoring") the Premises or any part thereof subject to Insured Casualty, as provided for in Section 9 hereof;
- (c) If in the reasonable judgment of Mortgagee the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Insured Casualty, upon sixty (60) days written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such sixty (60) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;
- (d) Except as provided for in Subsection (b) of this Section 7, Mortgagee shall apply the proceeds of insurance (including amounts not required for Restoring effected in accordance with Subsection (b) above) consequent upon any Insured Casualty toward the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect;
- (e) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the restoring of the Premises, Mortgagor hereby covenants to restore the same so that the Premises will be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (f) Any portion of the insurance proceeds remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;
- (g) No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagee.

8. Condemnation. The Mortgagor will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises, including damages to grade; and,

- (a) Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any Award consequent upon any Taking;

UNOFFICIAL COPY

- (b) If in the reasonable judgment of the Mortgagee the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the Premises prior to such Taking and adequately securing the outstanding balance of the Indebtedness Hereby Secured, then if no Event of Default shall have occurred and be then continuing, the Award shall be applied to reimburse Mortgagor for the cost of Restoring the portion of the Premises remaining after such Taking, as provided for in Section 9 hereof;
- (c) If in the reasonable judgment of Mortgagee the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Taking, upon sixty (60) days written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such sixty (60) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;
- (d) Except as provided for in Subsection (b) of this Section 8, Mortgagee shall apply any Award (including the amount not required for Restoring effected in accordance with Subsection (b) above) toward the Indebtedness Hereby Secured in such order or manner as Mortgagee may elect;
- (e) In the event that any Award shall be made available to the Mortgagor for Restoring the portion of the Premises remaining after a Taking, Mortgagor hereby covenants to restore the remaining portion of the Premises so that it will be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by Mortgagee;
- (f) Any portion of any Award remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;
- (g) No interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagee.

9. Disbursement of Insurance Proceeds and Condemnation Awards. In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificate, waivers of lien, contractor's sworn statements and such other evidence of cost and of payment as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of

UNOFFICIAL COPY

such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien.

10. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Notes or this Mortgage, the Mortgagor shall pay such tax in the manner required by such law.

11. Prepayment Privilege. Mortgagor shall have the privilege of making prepayments on the principal of the Mortgage Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Mortgage Note or any related Interest Rate Agreement, but not otherwise.

12. Effect of Extensions of Time, Amendments on Junior Liens and Others. If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extensions, variation or release. Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee herein to amend, modify and supplement this Mortgage and the Notes, and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section contained shall be construed as waiving any provision of Section 17 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered.

13. Effect of Changes in Tax Laws. In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided that if in the opinion of counsel for the Mortgagee the payment by Mortgagor of any such taxes or assessments shall be unlawful, then the Mortgagee may, by notice to the Mortgagor, declare the entire principal balance of the Indebtedness Hereby Secured to be due and payable on a date specified in such notice not less than 180 days after the date of such notice, and the Indebtedness Hereby Secured shall then be due and payable without premium or penalty on the date so specified in such notice.

UNOFFICIAL COPY

14. Mortgagee's Performance of Mortgagor's Obligations. In case of an Event of Default, the Mortgagee either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein which is required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and the Mortgagee may, but shall not be required to make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment, and may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and Improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including attorney's fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such Improvements or to pay any such operating costs and expenses thereof or to keep the Premises and Improvements operational and usable for their intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Notes, and shall become immediately due and payable without notice, and with interest thereon calculated at the default rate specified in the Mortgage Note (herein called the "Default Rate"). Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any Event of Default. The Mortgagee, in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

15. Inspection of Premises. The Mortgagee shall have the right to inspect the Premises at all reasonable times upon forty-eight hours prior written notice (except that no such prior notice shall be required if an Event of Default shall have occurred and be continuing), and access thereto shall be permitted for that purpose.

16A. Maintenance of Operating Accounts. Mortgagor covenants to Mortgagee that, for so long as the Notes or any other Indebtedness Hereby Secured remains unpaid, Mortgagee shall be the depository bank for the operating account(s) for the Premises.

16B. Representations and Warranties: Mortgagor hereby represents and warrants to the Mortgagee that:

UNOFFICIAL COPY

- a. The Mortgagor is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Illinois, and is qualified or licensed to do business in the State of Illinois. The Mortgagor has the full limited liability company power and authority to own and operate its properties and to carry on its business as now being and hereafter proposed to be conducted, and to enter into and perform all of its obligations under this Mortgage, the Mortgage Note and all other Loan Documents executed by it. The execution, delivery and performance by the Mortgagor of this Mortgage, the Mortgage Note and all other Loan Documents executed by it have been duly authorized by all necessary limited liability company action and will not violate any provision of law or Mortgagor's articles of organization or operating agreement, or result in the breach of or constitute a default or require any consent under, or result in the creation of any lien, charge, or encumbrance upon any property or assets of Mortgagor (except liens in favor of Mortgagee) pursuant to any indenture or other agreement or instrument to which Mortgagor is a party or by which Mortgagor or its property may be bound or affected. This Mortgage, the Mortgage Note and all other Loan Documents executed and delivered by Mortgagor are the legal, valid and binding obligations of Mortgagor enforceable against Mortgagor in accordance with their respective terms. No authorization, approval or other action by, and no notice to or filing with, any governmental authority that have not already been taken or made and which are in full force and effect, is required for the Mortgagor's execution, delivery or performance of this Mortgage, the Mortgage Note or the other Loan Documents executed by it;
- b. That Robert G. Brunetti is currently the sole manager of the Mortgagor, and has full power and authority to execute this Mortgage, the Mortgage Note and the other Loan Documents executed by him in connection herewith, on behalf of and as the sole manager of the Mortgagor.
- c. As of the date hereof, there has been no material change in the financial condition of Mortgagor or any guarantor from that set forth in Mortgagor's most recent financial statement, and, to the best of Mortgagor's knowledge, the financial statements of such guarantor, and the financial information contained therein was true and correct on the date the statements were issued and there has been no material adverse changes as of the date hereof;
- d. There are no suits or proceedings pending, or to the knowledge of Mortgagor threatened against or affecting Mortgagor, which, if adversely determined, would have a material adverse effect on the financial condition or business of Mortgagor or its ability to perform its obligations under this Mortgage, the Mortgage Note or any of the other Loan Documents executed by it, and there are no proceedings by or before any court, governmental commission, board, bureau, or other administrative agency pending or, to the knowledge of Mortgagor, threatened against Mortgagor, which, if adversely determined, would have a material adverse effect on the financial condition or business of Mortgagor or its ability to perform its obligations under this Mortgage, the Mortgage Note or any of the other Loan Documents executed by it;
- e. Mortgagor has filed all federal, state and local tax returns required to be filed by it (including, but not limited to, income and payroll tax returns) and other reports, which such Mortgagor is required by law, rule or regulation to file, and all taxes, assessments and related sums that are due and payable have been paid;

UNOFFICIAL COPY

f. Mortgagor is in compliance with all other statutes, ordinances, governmental rules and regulations to which it is subject, and has not and shall not fail to obtain any licenses, permits, franchises, or other governmental authorizations necessary to the ownership of its properties or to the conduct of its business, which violation or failure to obtain would materially adversely affect the business, prospects, profits, properties, condition (financial or otherwise) of the Mortgagor, or the security interest, liens, or rights of the Mortgagee in the Premises or the Collateral;

g. Mortgagor is not a party to any indenture, loan or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or limited liability company restriction which could have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of the Mortgagor, or the ability of the Mortgagor to carry out its obligations under this Mortgage, the Mortgage Note and the other Loan Documents executed by it. Mortgagor is not in default in any material respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument (material to its business) to which it is a party; and

h. Mortgagor has satisfied all judgments and is not in default with respect to any judgment, writ, injunction, decree, rule, or regulation of any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign.

16C. Financial Statements and Financial Information. The Mortgagor will furnish, or cause to be furnished, to Mortgagee, the following financial statements and financial information:

a. As soon as available, but not later than one hundred twenty (120) days after the end of each fiscal year of AmeriCorp, Mortgagor shall furnish the Mortgagee with annual financial statements of AmeriCorp for each such fiscal year. Such financial statements shall (a) be in form and reporting basis satisfactory to the Mortgagee, and (b) be prepared in accordance with GAAP and compiled by an independent certified public accounting firm selected by AmeriCorp and reasonably acceptable to the Mortgagee.

b. As soon as available, but not later than forty-five (45) days after the end of each quarter of AmeriCorp, Mortgagor shall furnish the Mortgagee with internally prepared quarterly financial statements of AmeriCorp, consisting of a balance sheet and related statements of income, retained earnings and cash flows. The validity and accuracy of said financial statements shall be certified by the manager of Americorp, in a form satisfactory to the Mortgagee.

c. Mortgagor will provide to the Mortgagee annually, concurrently with the aforesaid compiled financial statements of AmeriCorp, the updated annual personal financial statement of Robert G. Brunetti, in form satisfactory to the Mortgagee.

d. Mortgagor will provide to the Mortgagee annually, within thirty (30) days after filing, a complete copy of the federal income tax return filed by Robert G. Brunetti.

e. Mortgagor shall promptly provide the Mortgagee with such other information, financial or otherwise, concerning the Mortgagor, the Affiliated Borrowers, the guarantors, the Premises

UNOFFICIAL COPY

or any other collateral securing the Notes, as the Mortgagee may reasonably request from time to time.

16D. Financial Covenant. Mortgagor covenants to the Mortgagee that so long as this Mortgage remains outstanding, AmeriCorp will maintain, as of the end of each fiscal year of AmeriCorp, a minimum annual Debt Service Coverage Ratio of not less than 1.00 to 1.00. This covenant will be tested annually by the Mortgagee. For purposes of testing such Debt Service Coverage Ratio, it is acknowledged and agreed that all references to AmeriCorp in this Section 16D shall include AmeriCorp and all Affiliated Borrowers.

"Debt Service Coverage Ratio" shall mean, for any period of AmeriCorp, the ratio of (a) EBITDA for such period plus adjusted gross income reported on Robert Brunetti's annual federal tax return, to (b) all scheduled payments of principal and interest on the Notes during such period (whether or not such payments are made) plus all payments of principal and interest on any other indebtedness of AmeriCorp actually made by AmeriCorp during such period, minus the sum of all the following for such period: (i) the annual real estate taxes on the personal residence of Robert Brunetti, (ii) the annual federal, state, and local income taxes paid by Robert Brunetti, and (iii) the annual personal debt service actually paid by Robert Brunetti.

"EBITDA" shall mean, for any period, AmeriCorp's Net Income for such period plus all amounts deducted in arriving at such Net Income amount in respect of (i) AmeriCorp's Interest Expense for such period, plus (ii) federal, state and local income taxes for such period, plus (iii) all amounts properly charged for depreciation of fixed assets and amortization (without duplication) of intangible assets during such period on the books of AmeriCorp.

"GAAP" shall mean, generally accepted accounting principles in the United States as in effect from time to time, applied by AmeriCorp on a basis consistent with AmeriCorp's recent financial statements furnished to the Mortgagee pursuant to Section 16C hereof.

"Interest Expense" shall mean, for any period, the sum of all interest charges (including imputed interest charges with respect to capitalized lease obligations and all amortization of debt discount and expense) of AmeriCorp for such period determined in accordance with GAAP.

"Net Income" shall mean, with respect to any period, the net income (or net loss) of AmeriCorp for such period as computed in accordance with GAAP, and without limiting the foregoing, after deduction from gross income of all expenses and reserves, including reserves for all taxes on or measured by income, but excluding any extraordinary profits and also excluding any taxes on such profits.

17. Restrictions on Transfer. It shall be an immediate Event of Default hereunder if, without the prior written consent of the Mortgagee, any of the following shall occur, and in any event Mortgagee may condition its consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a reasonable fee, all as Mortgagee may in its sole discretion require:

- (a) If the Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mort-

UNOFFICIAL COPY

gage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, excepting only sales or other disposition of Collateral as defined in Section 18 no longer useful in connection with the operation of the Premises (herein called "Obsolete Collateral");

- (b) If the Mortgagor is a trustee, then if any beneficiary of the Mortgagor shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagor;
- (c) If the Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation shall create, effect contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's shares in such corporation; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over The Counter" market, then this Section 17(c) shall be inapplicable;
- (d) If the Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee Mortgagor is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any partnership interest or joint venture interest, as the case may be, of such partner or joint venturer; or
- (e) If there shall be any change in control (by way of transfers of stock ownership, partnership interest or otherwise) in any general partner which directly or indirectly controls or is a general partner of a partnership or joint venture beneficiary as described in Subsection 17(d) above;
- (f) If the Mortgagor is a limited liability company, or if any limited liability company is a beneficiary of a trustee mortgagor, then if any member or manager of such limited liability company shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such member's membership interests in such limited liability company;

(each event described in the foregoing Sections 17(a) thru (f), inclusive, being sometimes hereinafter referred to as "Unpermitted Transfer") in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this Section 17 shall not apply (i) to liens securing the Indebtedness Hereby Secured, (ii) to the lien of current taxes and assessments not yet due and payable or (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests as the case may be, in the Mortgagor or any beneficiary of a trustee Mortgagor by or on behalf of an owner thereof

UNOFFICIAL COPY

who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee. The provisions of this Section 17 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, share of stock of or partnership or joint venture interest in the Mortgagor or any beneficiary of a trustee Mortgagor.

18. Uniform Commercial Code. This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State in which the Premises is located (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all herein called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 18 shall not limit the generality or applicability of any other provisions of this Mortgage but shall be in addition thereto:

- (a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof.
- (b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises.
- (c) The Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person unless removed in the ordinary course of business; and the Collateral may be affixed to such Real Estate but will not be affixed to any other real estate.
- (d) The only persons having any interest in the Collateral are the Mortgagor, Mortgagee and any tenants thereof reasonably approved by Mortgagee.
- (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto and except in favor of Mortgagor's existing lender provided that such existing lender's Financing Statement will be promptly released following Mortgagor's execution and delivery of this Mortgage; and Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statements and other documents in form satisfactory to the Mortgagee and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances, and the Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this

UNOFFICIAL COPY

instrument, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.

- (f) Upon any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Event of Default not having previously been cured), the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Section 19 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to the Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations as provided in the Code. The Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Premises. The Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. The Mortgagee will give at least ten (10) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of Mortgagor determined as provided in Section 37 hereof, at least ten (10) days before the time of the sale or disposition. The Mortgagee may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Real Estate comprised within the Premises, the Collateral and Real Estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied toward the Indebtedness Hereby Secured. The Mortgagee will account to the Mortgagor for any surplus realized on such disposition. The Mortgagor will remain liable to the Mortgagee for any deficiency remaining after any such disposition.
- (g) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the Real Estate upon any foreclosure thereof so long as any part of the Indebtedness Hereby Secured remains unsatisfied.

UNOFFICIAL COPY

- (h) The terms and provisions contained in this Section 18 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.
- (i) Mortgagor represents and warrants that:
- i. Mortgagor is the record owner of the Premises;
 - ii. Mortgagor's chief executive office is located in the State of Illinois;
 - iii. Mortgagor's state of formation is the State of Illinois and its OID Number issued by the Secretary of State of Illinois is 01322125;
 - iv. Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage.
- (j) Mortgagor agrees that:
- i. If required by Mortgagee, Mortgagee is authorized to file a UCC financing statement against Mortgagor (and amendments thereto) describing the Collateral in any public filing office deemed necessary by Mortgagee;
 - ii. Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;
 - iii. Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper; and
 - iv. Until the Indebtedness Hereby Secured is paid in full, Mortgagor will not change the state of its organization, its organizational identification number or change its limited liability company name without giving the Mortgagee at least 30 days prior written notice in each instance.

18A. Fixture Filing. THIS MORTGAGE SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE PREMISES. FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE, THE FOLLOWING INFORMATION IS FURNISHED:

- (a) The name and address of the Debtor (who is also the record owner of the Premises) is:

434 W. ONTARIO, LLC OID: 01322125

UNOFFICIAL COPY

605 E. Algonquin Road, Suite 300
Arlington Heights, Illinois 60005

- (b) The name and address of the Secured Party is:

Cole Taylor Bank
9550 West Higgins Road
Rosemont, Illinois 60018
- (c) Information concerning the security interest evidenced by this instrument may be obtained from the Secured Party at its address above.
- (d) This document covers goods which are or are to become fixtures.
- (e) Proceeds and products of collateral are also covered.

19. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur:

- (a) If default is made in the due and punctual payment of any Note or any installment thereof, either principal or interest, as and when the same is due and payable, and such default shall not be cured within ten (10) days after written notice thereof to Mortgagor; or
- (b) If default is made in the making of any payment of any other monies required to be made under any Note or hereunder and such default shall not be cured within ten (10) days after written notice thereof to Mortgagor; or
- (c) If an Unpermitted Transfer as described in Section 17 hereof shall occur and be continuing without notice or period of grace of any kind; or
- (d) If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered hereunder, without notice or grace of any kind; or
- (e) If (and for the purpose of this Section 19(e) only, the term Mortgagor shall mean and include not only Mortgagor, but each Affiliated Borrower, and each other person who, as guarantor, comaker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein),
 - (i) The Mortgagor shall file a voluntary petition for relief under the United States Bankruptcy Code (the "Bankruptcy Code") or any similar law, state or federal, now or hereafter in effect, or
 - (ii) The Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or

UNOFFICIAL COPY

- (iii) Within sixty (60) days after the filing against Mortgagor of any involuntary proceedings under such Bankruptcy Code or similar law, such proceedings shall not have been vacated or stayed, or
- (iv) The Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the Mortgagor or for all or the major part of the Mortgagor's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgagor's property or the Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days, or
- (v) The Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises; or
- (f) If any default shall exist under the provisions of Section 25 hereof; or
- (g) If default shall continue for thirty (30) days after notice thereof by the Mortgagee to the Mortgagor in the due and punctual performance or observance of any other agreement or condition herein contained, provided, however, that in the event of a default which is not capable of being cured within said 30 day period, the time to cure the same shall be extended for an additional 30 day period if within said 30 day period, Mortgagor shall, in the reasonable opinion of Mortgagee, initiate and diligently pursue a course of action reasonably expected to cure such default; or
- (h) If the Premises shall be abandoned; or
- (i) If any default shall exist under the provisions of any of the other Loan Documents or any other document securing any of the Notes or other Indebtedness Hereby Secured, and such default not be cured within any applicable grace period, if any; or
- (j) If any representation made by Mortgagor or any other obligor in connection with the Indebtedness Hereby Secured, shall prove untrue in any material respect; or
- (k) If any guarantor of the Notes shall terminate, repudiate or revoke or disavow any of its or his obligations under its or his guaranty thereof or breach any of the terms of such guaranty or shall die or become incompetent; or
- (l) If Mortgagee fails to have a legal, valid, binding and enforceable first priority mortgage lien on the Premises or any portion thereof or on any material portion of the Collateral; or

UNOFFICIAL COPY

- (m) If Mortgagor has entered into, or shall hereafter enter into, any property management agreement pertaining to the Premises, or any portion thereof, unless such agreement shall be made expressly subject and subordinate to this Mortgage pursuant to a written subordination agreement acceptable to Mortgagee; or
- (n) If a default shall occur under any of the Related Debt or any loan document or instrument evidencing or securing such Related Debt, and such default shall not be cured within the applicable grace period therein set forth; or
- (o) If a default shall occur under any loan now or hereafter made by Mortgagee to PROCARE DENTAL GROUP, P.C. (hereafter, "PROCARE") or any loan document or instrument evidencing or securing any such loan, and such default shall not be cured within the applicable grace period therein set forth;

then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice all Indebtedness Hereby Secured to be immediately due and payable, whether or not such Event of Default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Notes, any other loan document, or by law or in equity conferred.

In any case in which under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after judgment thereunder, and at all times until confirmation of sale, Mortgagor shall forthwith, upon demand of Mortgagee, surrender to Mortgagee and Mortgagee shall be entitled to take and upon Mortgagee's request to the court to be placed in actual possession of the Premises or any part thereof, personally, or by its agent or attorneys as provided in Subsections (b)(2) and (c) of Section 5/15-1701 of the Illinois Mortgage Foreclosure Law (such act, as amended, restated or replaced from time to time, the "Act"). In such event Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and

UNOFFICIAL COPY

new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to enter into any management, leasing or brokerage agreements covering the Premises; (e) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious; (f) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (g) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, with it notice to Mortgagor. Without limiting the generality of the foregoing provisions of this Section, Mortgagee shall also have all power, authority and duties as provided in Section 5/15-1703 of the Act.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur by reason of its performance of any action authorized under this Section 19 and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor. Should Mortgagee incur any such liability, loss or damage, by its performance or nonperformance of actions authorized by this Section, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest on any such amount at the Default Rate shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefore immediately upon demand.

20. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Notes or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or

UNOFFICIAL COPY

threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate. If the Premises consist of multiple parcels, Mortgagee, in its sole and absolute discretion, may elect to foreclosure on less than all of the parcels.

21. Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 20 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured (other than Related Debt) additional to that evidenced by the Notes, with interest on such items as herein provided; Third, to interest and any premium remaining unpaid upon the Notes; Fourth, to the principal remaining unpaid upon the Notes; Fifth, to the payment of any outstanding Related Debt; and lastly, any overplus to the Mortgagor, and its successor or assigns, as their rights may appear. Mortgagee may obtain a judgment against Mortgagor for any deficiency remaining in the indebtedness due to Mortgagee after application of all amounts received from such foreclosure sale, and Mortgagor shall pay such deficiency to Mortgagee forthwith.

22. Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee hereunder or any holder of the Notes may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period, the court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

- (a) The Indebtedness Hereby Secured or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made to the foreclosure sale; or
- (b) The deficiency in case of a sale and deficiency.

23. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said

UNOFFICIAL COPY

casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redepton may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redepton. In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of said insurance policies.

24. Waiver. The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. THE MORTGAGOR HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE, ON ITS OWN BEHALF, ON BEHALF OF THE BENEFICIARIES OF MORTGAGOR, AND ON BEHALF OF ALL OTHER PERSONS CLAIMING OR HAVING AN INTEREST (DIRECT OR INDIRECT) BY, THROUGH OR UNDER MORTGAGOR, AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES SUBSEQUENT TO THE DATE HEREOF, IT BEING THE INTENT HEREOF THAT ANY AND ALL SUCH RIGHTS OF REDEMPTION OF THE MORTGAGOR AND OF ALL OTHER PERSONS ARE AND SHALL BE DEEMED TO BE HEREBY WAIVED TO THE FULL EXTENT PERMITTED BY THE PROVISIONS OF CHAPTER 735, SECTION 5/15-1601 OF THE ILLINOIS COMPILED STATUTES OR OTHER APPLICABLE LAW OR REPLACEMENT STATUTES. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee, but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

25. Assignment. As further security for the Indebtedness Hereby Secured, the Mortgagor hereby sells, assigns and transfers to Mortgagee all of its right, title and interest in and to all Leases and rentals, issues, proceeds and profits now due and which may hereafter become due pursuant thereto, it being the intention hereby to establish an absolute transfer and assignment thereof to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its agent, in its name and stead (with or without taking possession of the Premises), to rent, lease or let all or any part of the Premises to any party or parties, at such rental and upon such terms as Mortgagee shall, in its discretion, determine and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter and all presently due or which may hereafter become due pursuant to each and every Lease or any other tenancy existing or which hereafter exists on the Premises, with the same rights and powers and subject to the same rights and powers as Mortgagor would

UNOFFICIAL COPY

have. If no Event of Default under this Mortgage has occurred, Mortgagor shall have the right to collect all of the rents arising from Leases or renewals thereof. Upon an occurrence of an Event of Default, Mortgagee, at any time or times thereafter, may notify any and all of the tenants of the Leases that the Leases have been assigned to Mortgagee and Mortgagee may direct said tenants thereafter to make all rentals and payments due from tenants under the Leases directly to Mortgagee and shall have the right to enforce the terms of the Leases and obtain payment of and collect the rents, by legal proceedings or otherwise in the name of the Mortgagor. Mortgagor will at all times deliver to the Mortgagee duplicate originals or certified copies of all leases, agreements and documents relating to the Premises and shall permit access by the Mortgagee to its books and records, insurance policies and other papers for examination and making copies and extracts thereof.

The Mortgagor further agrees that it will duly perform and observe all the terms and provisions on lessor's part to be performed and observed under any and all leases of the Premises to the end that no default on the part of lessor shall exist thereunder. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of lessor under any lease of the Premises, and the Mortgagor shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur under any lease of the Premises or by reason of the foregoing assignment; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense of any claims or demands therefor (whether successful or not), shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest at the Default Rate from the date of demand to the date of payment.

Mortgagor will not (i) execute any further assignment of any of its right, title or interest in any lease or rents and profits of the Premises (except to Mortgagee); or (ii) terminate or consent to the cancellation or surrender of any lease of the Premises to PRCCARE without the prior written consent of Mortgagee; or (iii) accept prepayments in excess of one month of any installments of rent to become due under any of said leases, except prepayments in the nature of security for the performance by a lessee of its obligations thereunder; or (iv) in any other manner impair the value of the Premises or the security of this Mortgage; or (v) permit any lease of the Premises or any part thereof to become subordinate to any lien other than the lien of this Mortgage.

26. Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee.

27. Business Loans. It is understood and agreed that the loans evidenced by the Notes and secured hereby are business loans within the purview of Section 205/4 of Chapter 815 of Illinois Compiled Statutes (or any substitute, amended, or replacement statutes).

28. Environmental Conditions. Except as previously disclosed in writing by Mortgagor to Mortgagee (including delivery of any environmental reports or assessments with respect to the Premises), Mortgagor represents that: (i) Mortgagor has not used Hazardous Materials (as defined hereinafter) on, from or affecting the Premises in any manner which violates federal,

UNOFFICIAL COPY

State of Illinois or any Illinois unit of local government's laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best knowledge of Mortgagor, no prior owner of the Premises or any tenant, subtenant, occupant, prior tenant, prior subtenant or prior occupant has used Hazardous Materials on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials; (ii) Mortgagor has never received any notice of any violations of federal, State of Illinois or Illinois local governmental unit laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and, to the best knowledge of Mortgagor, there have been no actions commenced or threatened by any party for noncompliance. For purposes of this Mortgage, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (42 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto.

Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor a release of Hazardous Materials onto the Premises or onto any other property, and Mortgagor shall use commercially reasonable efforts to prevent any intentional act or omission on the part of any tenant, subtenant or occupant from releasing Hazardous Materials onto the Premises or onto any other property.

Mortgagor shall (i) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, under, from or affecting the Premises in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the reasonable satisfaction of Mortgagee, and in accordance with the orders and directives of all federal, state, and local governmental authorities and (ii) defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from, or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals thereon; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials, and/or (d) any violation of laws, orders, regulations, or requirements of Mortgagee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses.

UNOFFICIAL COPY

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

- (a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;
- (b) Mortgagor shall deposit with Mortgagee the full amount (herein called the "Lien Amount") of such Contested Lien, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;
- (c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand);
- (d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection 29(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

30. Title in Mortgagor's Successors. In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor. The Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Section 30 contained shall vary or negate the provisions of Section 17 hereof.

UNOFFICIAL COPY

31. Rights Cumulative. Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

32. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and the successors and assigns of the Mortgagor (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein), and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Notes, whether so expressed or not; and each such from time to time holder of the Notes shall have and enjoy all of the rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagee.

33. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

34. Waiver of Defense. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Notes.

35. Captions and Pronouns. The captions and headings of the various sections of this Mortgage are for convenience only, and not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular number shall include the plural, the plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.

36. Maximum Indebtedness Hereby Secured and Future Advances. In no event shall the Indebtedness Hereby Secured exceed two times the stated aggregate principal amount of the Notes. This Mortgage secures the repayment of all advances that Mortgagee may now or hereafter extend to the Mortgagor and each Affiliated Borrower under the Notes, and secures not only existing indebtedness, but also secures future advances, with interest thereon, whether such advances are obligatory or to be made at the option of Mortgagee to the same extent as if such future advances were made on the date of the execution of this Mortgage, and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage

UNOFFICIAL COPY

shall be valid as to all such indebtedness and future advances from the time this Mortgage is filed for record in the recorder's office of the county where the Premises are located.

37. Addresses and Notices. Any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied or sent by overnight courier or U.S. Mail and shall be deemed given: (a) if served in person, when served; (b) if telecopied, on the date of transmission if before 5:00 p.m. (Chicago time) on a business day; provided that a hard copy of such notice is also sent pursuant to clause (c) or (d) below; (c) if by overnight courier, on the first business day after delivery to the courier; or (d) if by U.S. Mail, on the fourth (4th) day after deposit in the mail, postage prepaid, certified mail, return receipt requested.

If to Mortgagor: 434 W. Ontario, LLC
605 E. Algonquin Road, Suite 300
Arlington Heights, Illinois 60005
Attn: Robert G. Brunetti
Fax No. 847/621-6217

with a copy to: Chuhak & Tecson, P.C.
30 S. Wacker Drive – Suite 2600
Chicago, Illinois 60606
Attn: Mitchell D. Weinstein
Fax No. 312/444-9027

If to Mortgagee: Cole Taylor Bank
9550 West Higgins Road
Rosemont, Illinois 60018
Attn: James M. Sisk, Senior VP
Fax No. 847/698-5700

with a copy to: Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062
Attn: Bennett L. Cohen
Fax No. 847/480-7882

or to either party at such other addresses as such party may designate in a written notice to the other party. "Business Day" shall mean any day when Mortgagee is open for business other than Saturday, Sunday or any other day on which state banks in Chicago, Illinois are not open for business.

38. Mortgagor Will Not Discriminate. Mortgagor covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, but not limited to, the requirements of Title VIII of the 1968 Civil Rights Act, or any substitute, amended or replacement Acts.

UNOFFICIAL COPY

39. Interest at the Default Rate. Without limiting the generality of any provision herein or in the Mortgage Note contained, from and after the occurrence of any Event of Default hereunder, all of the Indebtedness Hereby Secured shall bear interest at the Default Rate (except that with respect to amounts due under all Notes, the specific default rate therein described shall be applicable thereto).

40. Condition of Title. Mortgagor warrants to Mortgagee that Mortgagor holds good and marketable title of record to the Real Estate as so described on Exhibit "A" hereto, in fee simple, free and clear of all liens and encumbrances other than those set forth in the title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Mortgagee in connection with this Mortgage.

Mortgagor warrants and will forever defend the title to the Real Estate against the claims of all persons. In the event any action or proceeding is commenced that questions Mortgagor's title or the interest of Mortgagee under this Mortgage, Mortgagor shall defend the action at Mortgagor's expense. Mortgagor may be the nominal party in such proceeding, but Mortgagee shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Mortgagee's own choice, at Mortgagor's expense, and Mortgagor will deliver, or cause to be delivered, to Mortgagee, such instruments as Mortgagee may request from time to time to permit such participation.

41. Governing Law; Litigation. The place of the location of the Premises being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State. To the extent that this Mortgage may operate as a security agreement under the Uniform Commercial Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURT LOCATED IN THE ILLINOIS COUNTY WHERE THE PREMISES ARE LOCATED, OR, AT THE SOLE OPTION OF MORTGAGEE, IN ANY OTHER COURT IN WHICH MORTGAGEE SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

42. JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF MORTGAGOR AND MORTGAGEE HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MORTGAGE, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF MORTGAGOR AND MORTGAGEE WITH RESPECT TO THIS MORTGAGE, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF

UNOFFICIAL COPY

MORTGAGOR, AND MORTGAGEE HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT MORTGAGOR OR MORTGAGEE MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF MORTGAGOR AND MORTGAGEE TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

SIGNATURE PAGE FOLLOWS

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage all on and as of the day, month and year first above written.

MORTGAGOR:

434 W. ONTARIO, LLC,
an Illinois limited liability company

By: _____

Name: Robert G. Brunetti

Title: Manager



Property of Cook County Clerk's Office

UNOFFICIAL COPY

ACKNOWLEDGMENT OF SIGNATURE

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, GAIL ALBANO, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY Robert G. Brunetti, the Manager of 434 W. ONTARIO, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 18 day of December, 2008.



Gail Albano
 Notary Public

My Commission Expires: 11-10-2011

UNOFFICIAL COPY

EXHIBIT "A"

Legal Description

PIN: 17-09-127-019-0000

Address: 434 W. Ontario, Chicago, Illinois 60610

THE WEST 49.37 FEET OF LOTS 21 AND 22, TAKEN AS A TRACT, IN YOUNGS SUBDIVISION OF PART OF THE KINGSBURY TRACT IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office