



Doc#: 0907216018 Fee: \$74.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/13/2009 09:18 AM Pg: 1 of 20

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

This JUNIOR MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage") is made as of June 14, 2008 between M. Reza Baniassadi, a single person, (hereinafter referred to as "Mortgagor"), and MB Financial Bank, N.A., a national banking association, having an office at 6111 N. River Road, Rosemont, IL 60018 (hereinafter referred to as "Mortgagee").

WITNESS:

WHEREAS, 740 Orleans Partnership, Inc., an Illinois corporation, d/b/a 740 Orleans Partnership ("Borrower") is indebted to Mortgagee in the principal amount of \$1,500,000.00 (the "Loan") with interest thereon from and after the date hereof at the rates provided in that certain Promissory Note dated September 29, 2005 in the original principal amount not to exceed \$1,269,691.22 executed and delivered by Borrower to the Mortgagee as increased from an outstanding principal balance of \$1,163,115.95 to a principal amount not to exceed \$1,500,000.00, modified and extended by that certain Note Modification, Increase and Extension Agreement of even date herewith (the "Modification Agreement") between Borrower, Mortgagor and Mortgagee (the "Note") payable in monthly installments of principal and interest with the final payment of the entire outstanding principal balance with any accrued interest thereon due and payable on June 14, 2008 (the "Maturity Date"). Mortgagor owns and controls Borrower, has unconditionally guaranteed the repayment of the Loan pursuant to that certain Commercial Guaranty executed and delivered by Guarantor to Mortgagee contemporaneously with the execution and delivery by Borrower of the Note to Mortgagee, as such Guaranty has been reaffirmed by the Modification Agreement (the "Guaranty") and the Loan will be of substantial economic benefit to Mortgagor;

WHEREAS, as a condition of increasing, modifying and extending the Loan, Mortgagee has required that Mortgagor mortgage the "Premises" (as hereinafter defined) to the Mortgagee, and Mortgagor has executed, acknowledged, and delivered this Mortgage to secure any indebtedness of Borrower existing at the date hereof or hereafter arising and evidenced by the Note and any modifications, renewals or extensions thereof and to secure any indebtedness of Mortgagor existing at the date hereof or hereafter

FIRST AMERICAN
185 5902

20K9

UNOFFICIAL COPY

arising and evidenced by the Guaranty and any modifications, renewals or extensions thereof; and

Mortgagor does, by these presents, grant, convey, pledge, hypothecate, bargain, sell, alien, remise, confirm and mortgage unto Mortgagee, its successors and assigns forever, the Real Estate and all of their estates, rights, titles, and interests therein situated in the County of Cook, State of Illinois, legally described on Exhibit "1" attached hereto and made a part hereof (sometimes herein referred to as the "Real Estate"), which Real Estate, together with the following described property, is collectively referred to as the "Premises", together with:

A. All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, and alleys adjoining the Premises;

B. All and singular the tenements, hereditaments, easements, appurtenances, passages, liberties, and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license, and the reversion and reversions and remainder and remainders thereof;

C. All leases, purchase agreements or other contracts of whatever nature or kind affecting the use, occupancy, purchase or ownership of the Premises, or any part thereof, now existing or which may be executed at any time in the future during the life of this Mortgage and all amendments, extensions, and renewals of said leases or other contracts of whatever nature or kind, and any of them, all of which are hereinafter called the "Assigned Contracts" and all rents, purchase payments, earnest money deposits, profits, proceeds, issues, other income, and other payments of whatever nature or kind, which may now or hereafter be or become due or owing under the Assigned Contracts and any of them or on account of the use, occupancy, purchase or ownership of any interest of or in the Premises, it being intended hereby to establish a collateral transfer of all Assigned Contracts hereby assigned and all the rents, purchase payments, earnest money deposits, proceeds, profits, issues, other income, and other payments of whatever nature or kind arising thereunder or on account of the use, occupancy, purchase or ownership of any interest of or in the Premises (the "Amounts Herein Assigned"); and

D. All buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Premises, and all fixtures, equipment, materials and other types of personal property used in the ownership and operation of the improvement situated thereon with parking and other related facilities, in possession of Mortgagor now or hereafter located in, on, or upon, or installed in or affixed to, the Real Estate legally described herein, or any improvements or structures thereon, together with all accessories and parts now attached to or used in connection with any such equipment, materials and

UNOFFICIAL COPY

personal property or which may hereafter, at any time, be placed in or added thereto, and also any and all replacements and proceeds of any such equipment, materials and personal property, together with the proceeds of any of the foregoing; it being mutually agreed, intended, and declared, that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the Real Estate and for the purpose of this Mortgage to be Real Estate, and covered by this Mortgage; and as to any of the property aforesaid which does not so form a part and parcel of the Real Estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code), this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as the Secured Party (as such term is defined in the Uniform Commercial Code).

TO HAVE AND TO HOLD, the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

Provided, however, that if the Borrower shall pay the principal and all interest as provided by the Note, and Borrower and Mortgagor shall pay all other sums or perform and observe all other covenants, terms and conditions owing to Mortgagee herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

I. MORTGAGOR'S COVENANTS. To protect the security of this Mortgage, Mortgagor agrees and covenants with the Mortgagee that Mortgagor shall:

A. PAYMENT OF PRINCIPAL AND INTEREST. Pay and cause Borrower to pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner herein and in each of the Note provided.

B. TAXES AND DEPOSITS THEREFOR. (1) Pay immediately when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and other charges which may be levied against the Premises, and to furnish to Mortgagee upon request therefor, duplicate receipts therefor within thirty (30) days after payment thereof.

(2) If required by Mortgagee, deposit each month on the first (1st) day of each month an amount equal to 1/12th of the annual general real estate taxes for the Premises, all as reasonably estimated by Mortgagee on a "when issued and payable" basis, with such additional reserve as may be required by Mortgagee. Mortgagee shall not be obligated to pay interest or earnings of any kind on funds on deposit with it pursuant to this Paragraph. Provided no Event of Default then exists, sums on deposit in such real estate tax reserve shall be made available to Mortgagor to pay real estate taxes due and payable.

UNOFFICIAL COPY

C. INSURANCE. (1) Hazard. Keep the improvements now existing or hereafter erected on the Premises insured under a replacement cost form of insurance policy against loss or damage resulting from fire, windstorm, and other hazards as may be required by Mortgagee, and to pay promptly, when due, any premiums on such insurance, provided however, Mortgagee may make such payments on behalf of Mortgagor. All insurance shall be in form and content as reasonably approved by the Mortgagee (which shall be carried in companies reasonably acceptable to Mortgagee) and the policies and renewals marked "PAID", shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the old policies and shall have attached thereto standard noncontributing mortgage clause(s) in favor of and entitling Mortgagee to collect any and all of the proceeds payable under all such insurance, as well as standard waiver of subrogation and assignment, if available. Mortgagor shall not carry separate insurance concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of any casualty loss, Mortgagor will give immediate notice by mail to the Mortgagee.

(2) Liability, Flood and Business Interruption Insurance. Carry and maintain comprehensive public liability insurance, flood insurance and business interruption (or loss of rentals) insurance as may be required from time to time by the Mortgagee in forms, amounts, and with companies reasonably satisfactory to the Mortgagee. Such liability policy, flood insurance and business interruption insurance shall name Mortgagee as an additional insured party hereunder. Certificates of such insurance, premiums prepaid, shall be deposited with the Mortgagee and shall contain provision for thirty (30) days' notice to the Mortgagee prior to any cancellation thereof.

(3) If required by the Mortgagee, deposit each month on the first day (1st) day of each month an amount equal to 1/12th of the annual insurance premiums for the insurance required by this Mortgage, as reasonably estimated by Mortgagee. Mortgagee shall not be obligated to pay interest or earnings of any kind on funds on deposit with it pursuant to this Paragraph. Provided no Event of Default then exists, sums on deposit in such insurance premium reserve shall be made available to Mortgagor to pay insurance premiums due and payable.

D. PRESERVATION AND RESTORATION OF PREMISES AND COMPLIANCE WITH GOVERNMENTAL REGULATIONS. Not permit any building or other improvement on the Premises to be materially altered, removed, or demolished, nor shall any fixtures or appliances on, in, or about said buildings or improvements be severed, removed, sold, or mortgaged, without the prior written consent of Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels, or articles of personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto. Subject to the provisions of Paragraph 16 hereof, Mortgagor shall promptly repair, restore, or rebuild any buildings or improvements now or hereafter

UNOFFICIAL COPY

on the Premises which may become damaged or be destroyed. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction.

Mortgagor further agrees to permit, commit, or suffer no waste, impairment, or deterioration of the Premises or any part or improvement thereof; to keep and maintain the Premises and every part thereof in good repair and condition, subject to ordinary wear and tear, to effect such repairs as the Mortgagee may reasonably require, and, from time to time, to make all needful and proper replacements and additions thereto so that said buildings, fixtures, machinery, and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed; to comply with all statutes, orders, requirements or decrees relating to said Premises as provided in any notice given by any federal, state, or municipal authority; and to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions, and nonconforming uses) privileges, franchises, and concessions which are applicable to the Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the said Premises.

E. CREATION OF LIENS AND TRANSFER OF OWNERSHIP. (1) Except for mortgage liens existing as of the date hereof (the "Prior Mortgage(s)"), not create, suffer, or permit to be created or filed against the Premises, any mortgage lien or other lien whether superior or inferior to the lien of this Mortgage, without the written consent of Mortgagee; or

(2) Not permit the Premises, in whole or in part, to be alienated, transferred, conveyed or assigned to any person or entity.

Any default in the performance or observance of any of the provisions of this Paragraph shall constitute an Event of Default as described in Paragraph (1) below and, thereafter, in addition to any other remedies hereunder, the entire indebtedness secured hereby, including, but not limited to, principal and accrued interest shall, at the option of the Mortgagee and without demand or notice to Mortgagor, become immediately due and payable with interest accruing thereafter on the unpaid principal balance of the Note at the Default Interest Rate specified in the Note and Mortgagee may proceed to foreclose this Mortgage.

Any waiver by Mortgagee of the provisions of this Paragraph shall not be deemed to be a waiver of the right of Mortgagee to insist upon strict compliance with the provisions of this Paragraph in the future.

F. ENVIRONMENTAL COVENANTS AND INDEMNIFICATION. (1) Not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, or about the Premises, or transport to or from the Premises any Hazardous Substance (as defined herein) or allow any other person or entity to do so.

UNOFFICIAL COPY

(2) Keep and maintain the Premises in compliance with, and shall not cause or permit the premises to be in violation of any Environmental Laws (as defined herein) or allow any other person or entity to do so.

For the purposes of this Paragraph, the following terms shall have the meanings as set forth below:

(a) "Environmental Laws" shall mean any federal, state, or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental condition, on, under, or about the premises, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. Section 9601 et seq., and the Resource Conservation and Recovery Act of 1976, as amended, ("RCRA"), 42 U.S.C. Section 6901 et seq.

(b) The term "Hazardous Substance" shall include without limitation:

(i) Those substances included within the definitions of any one or more of the terms "hazardous substances", "hazardous materials", "toxic substances", and "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1801 et seq., and in the regulations promulgated pursuant to said laws or under applicable state law;

(ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.010 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR, Part 302 and amendments thereof);

(iii) Such other substances, materials and wastes which are or become regulated under applicable local, state, or federal laws, or which are classified as hazardous or toxic under federal, state, or local laws or regulations; and

(iv) Any material, waste, or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251, et seq. (33 U.S.C. Section 1321), or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (E) flammable explosives; or (F) radioactive materials.

G. OTHER COVENANTS. Assigned Contracts. Mortgagor covenants not to alter, modify, amend, or change the terms of the Assigned Contracts or give any consent or permission or exercise any option required or permitted by the terms thereof or intentionally waive any obligation required to be performed by any of the parties thereto without the prior written consent of Mortgagee which shall not be unreasonably withheld or delayed, or cancel or terminate any of such Assigned Contracts, or accept a surrender thereof, except in accordance with the terms of the Assigned Contracts, and Mortgagor will not make any further transfers or assignments thereof. Mortgagor further covenants

UNOFFICIAL COPY

to promptly deliver to Mortgagee, upon written request therefor, copies of any and all Assigned Contracts and demands, claims and notices of default received by it from any parties to any of the Assigned Contracts.

2. MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS. Upon the occurrence of an Event of Default, Mortgagee may, but need not, at any time after the giving of any notice and the lapse of any time thereafter which may be required by Paragraph 11 hereof, and subject to the provisions of this Mortgage make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, 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 or junior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the Default Interest Rate as defined herein. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

3. EMINENT DOMAIN. So long as any portion of the principal balance evidenced by the Note remains unpaid, any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, of the whole or any part of the Premises or any improvement located thereon, or any easement therein or appurtenant thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof) are hereby assigned by Mortgagor to Mortgagee, to the extent of the unpaid indebtedness evidenced by the Note, which award Mortgagee is hereby authorized to give appropriate receipts and acquittances therefore, and, Mortgagee shall apply the proceeds of such award as a credit upon any portion of the indebtedness secured hereby or, at its option, permit the same to be used to repair and restore the improvements. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of the said Premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Mortgagee, at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards in accordance with and subject to the provisions hereof, and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. Notwithstanding anything aforesaid to the contrary, Mortgagor shall have the sole authority to conduct the defense

UNOFFICIAL COPY

of any condemnation or eminent domain proceeding and (so long as the amount of any condemnation or eminent domain award exceeds the aggregate unpaid principal balance evidenced by the Note) the sole authority to agree to and/or accept the amounts, terms, and conditions of any and all condemnation or eminent domain awards.

4. WAIVER OF HOMESTEAD. MORTGAGOR HEREBY WAIVES ALL RIGHT OF HOMESTEAD EXEMPTION IN THE PREMISES.

5. MORTGAGOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE INDEBTEDNESS EVIDENCED BY THE NOTE, THIS MORTGAGE, THE NOTE, OR ANY ACTS OR OMISSIONS OF THE MORTGAGEE, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

6. ILLEGALITY OF TERMS HEREOF. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (a) to require Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, or shall require payment of interest only to the extent of such lawful rate; or (b) to require Mortgagor to make any payment or do any act contrary to law, and if any clause and provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such clause or clauses and provisions only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall be given a reasonable time to correct any such error.

7. SUBROGATION. In the event the proceeds of the loan made by the Mortgagee to the Mortgagor, or any part thereof, or any amount paid out or advanced by the Mortgagee, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then the Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

8. EXECUTION OF SECURITY AGREEMENT AND FINANCING STATEMENT. This Mortgage shall constitute a Security Agreement as defined in the Code with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage, the Note or any other documents or instruments evidencing or securing the loan evidenced by the Note, and (b) with respect to any of the personal property described in Paragraph D of the granting clause of this Mortgage and all replacements of, substitutions for, additions to, and the proceeds thereof (collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure the full and prompt payment of the Note and other obligations or liabilities secured by this Mortgage.

UNOFFICIAL COPY

Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral and has rights in the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted hereunder or by the other Loan Documents. The Collateral is to be used by Mortgagor solely for business purposes. The Collateral will be kept at the Premises and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may request at any time or from time to time as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral subject to no other liens or encumbrances, other than liens or encumbrances benefiting Mortgagee. Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable.

Upon an Event of Default hereunder, 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, so far as Mortgagor can give authority therefor, with or without judicial process, may 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 Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale of the Collateral 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 United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Mortgagee so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

UNOFFICIAL COPY

This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. Mortgagor's chief executive offices are located in the State of Illinois. The address of Mortgagor (Debtor) and Mortgagee (Secured Party) are herein below set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located. To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Assigned Contracts between Mortgagor or its agents as a party thereto and various other parties as may be named therein, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Assigned Contracts, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

Mortgagor agrees that this Mortgage shall constitute a financing statement describing the Collateral and that Mortgagee is authorized to file any other financing statements describing the Collateral. To the extent permitted by the provisions of the Code, Mortgagor herewith specifically authorizes Mortgagee to file or record unsigned Financing Statements, or Financing Statements signed only by the Mortgagee as secured party, from time to time to perfect Mortgagor's security interest in the Collateral.

9. MORTGAGEE'S PAYMENT OF GOVERNMENTAL, MUNICIPAL, OR OTHER CHARGES OR LIENS. Upon the occurrence of an Event of Default hereunder Mortgagee is hereby authorized subject to the terms and provisions of this Mortgage, to make or advance, in place and stead of the Mortgage, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the Premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the adequacy of the bill, statement, or estimate, or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof, and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge; or payment otherwise relating to any purpose herein and hereby authorized but not enumerated in this Paragraph, and may do so whenever, in its reasonable judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and, provided further, that in connection with any such advance, Mortgagee, in its option, may, and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing.

All such advances and indebtedness authorized by this Paragraph shall be repayable by Mortgagor upon demand with interest at the Default Interest Rate.

10. BUSINESS LOAN. Mortgagor warrants, represents and agrees that the proceeds of the Note will be used for business purposes, and that the indebtedness evidenced by the Note constitute a business loan.

UNOFFICIAL COPY

II. DEFAULT AND FORECLOSURE.

(a) Events of Default and Remedies. The following shall constitute an Event of Default under this Mortgage:

- (i) Borrower fails or neglects to make timely payment of any amount due under the Note or hereunder;
- (ii) Borrower fails or neglects to make any timely payment of any amount due under any other note, instrument, document or agreement which, after notice or the lapse of any applicable grace or cure period, shall cause or permit the holder thereof to cause the obligations of Borrower to become due prior to maturity;
- (iii) Mortgagor fails or neglects to comply with or to perform in accordance with any non-monetary representation, warranty, covenant, condition or other provision contained hereunder;
- (iv) Any statement, application or agreement furnished at any time or from time to time to the Mortgagee by any of the Mortgagor or Borrower is false or incorrect in any material respect in light of the circumstances under which it was made;
- (v) The insolvency of Mortgagor or Borrower or the inability of Mortgagor or Borrower to pay their respective debts as they mature;
- (vi) Any admissions, either verbal or written, by the Mortgagor or Borrower of the inability to pay their respective debts as they mature;
- (vii) The execution of an assignment for the benefit of creditors by the Mortgagor or Borrower or file or commence any proceedings for relief under the Bankruptcy Code, as may be amended from time to time, or other insolvency laws or any laws relating to the relief of debtors, readjustment of any indebtedness, reorganization, composition, extension of debt, or a receivership or a trusteeship;
- (viii) There shall be any proceedings filed or commenced against Mortgagor or Borrower for relief under the Bankruptcy Code, as may be amended from time to time, or insolvency laws or any other laws relating to the relief of debtors, readjustment of any indebtedness, reorganization, composition, extension of debt, or a receivership or a trusteeship filed or commenced against Mortgagor or Borrower and the continuance of any such Event of Default for more than sixty (60) calendar days thereafter;
- (ix) Any judgment, attachment, lien, forfeiture, execution or levy against the Mortgagor or Borrower, or against any property of the Mortgagor or

UNOFFICIAL COPY

Borrower, in any amount which is not promptly paid, discharged, released, bonded, stayed on appeal or otherwise fully satisfied and continuance of such Event of Default for a period of forty-five (45) days;

- (x) Garnishment summons or a writ of attachment is issued against or served upon the Mortgagee for the attachment of any property of the Mortgagor or Borrower in the Mortgagee's possession or any indebtedness owing to the Mortgagor or Borrower;
- (xi) The death or incompetency of Mortgagor or Borrower;
- (xii) Any and all other events or circumstances which cause the Mortgagee, in its sole discretion exercised in good faith, to deem itself insecure for any reason whatsoever, including without limitation any adverse change in the financial condition or operations of the Mortgagor or Borrower or the Premises;
- (xiii) Any failure of Mortgagor to comply with the provisions of Paragraph 1(C)(1) and 1(C)(2) herein;
- (xiv) Any default in the performance or observance of any of the terms, covenants or conditions of the Prior Mortgage(s) or any of the documents or instruments evidencing or securing any indebtedness evidenced by any of the Prior Mortgage(s);
- (xv) any "Event of Default", which continues after notice or lapse of any applicable grace or cure period, under the Note or any of the other documents or instruments evidencing or securing the Loan.

(b) Upon the occurrence of an Event of Default, the entire indebtedness secured hereby, including, but not limited to, principal and accrued interest shall, at the option of the Mortgagee and without demand or notice to Mortgagor, become immediately due and payable with interest accruing thereafter on the unpaid principal balance of the Note at the Default Interest Rate, (as hereinafter defined) and, thereupon, or at any time after the occurrence of any such Event of Default, the Mortgagee may:

- (i) proceed to foreclose this Mortgage by judicial proceedings according to the statutes in such case provided, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time;
- (ii) advance cash, insofar as the Mortgagee deems practicable, to protect its security for payment to such persons or entities and for such purposes as Mortgagee deems necessary or desirable under the circumstances, either out of the proceeds of the Mortgage Loan, or, if the proceeds of the Mortgage Loan remaining undisbursed are insufficient for such purposes out of additional funds, and without limitation on the foregoing; (a) to pay any lien; (b) contest the

UNOFFICIAL COPY

validity thereof; (c) and (d) to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions or liens asserted against the Premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement, or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof, and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of title, encumbrance, claim, or charge; or payment otherwise relating to any other purpose herein and hereby authorized but not enumerated in this Paragraph, and may do so whenever, in its reasonable judgment and discretion, such advance or advance shall seem necessary or desirable to protect the full security intended to be created by this instrument, and, provided further, that in connection with any such advance, Mortgagee, in its option, may, and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing;

(iii) collect any and all of said Amounts Herein Assigned which may become due. Mortgagor hereby appoints Mortgagee, for purposes of collecting any of the Amounts Herein Assigned, the true and lawful attorney of Mortgagor with full power of substitution and with power for it and in its name, place, and stead, to demand, collect, receipt, and give complete acquittance for any and all Amounts Herein Assigned, which may be or become due and payable by any of the parties pursuant to the Assigned Contracts or any occupants, purchasers or users of the Premises or any portion thereof, and at its direction to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Mortgagor or otherwise, which Mortgagee may reasonably deem necessary or desirable in order to collect and endorse the payment of any and all Amounts Herein Assigned. The parties under the Assigned Contracts, or any part thereof, are hereby expressly authorized and directed to pay all Amounts Herein Assigned to Mortgagee or such nominee as Mortgagee may designate in writing delivered to and received by such nominee as Mortgagee may designate in writing, delivered to and received by such parties under the Assigned Contracts, who are expressly relieved of any and all duty, liability, or obligation to Mortgagor in respect to all payments so made; Mortgagee is hereby vested with full power to use all measures, legal and equitable, reasonably deemed by it necessary or proper to enforce the assignment of the Assigned Contracts and to collect the Amounts Herein Assigned and the Assigned Contracts assigned hereunder, including the right to enter upon the Premises, or any part thereof, and take possession thereof forthwith to the extent necessary to affect cure of any default on the part of Mortgagor as a party to any of the Assigned Contracts; and Mortgagor hereby grants full power and authority to Mortgagee to exercise all rights, privileges, and powers herein granted at any and all times hereafter, without notice to Mortgagor, with full power to use and apply all the Amounts Herein Assigned to the payment of the amounts due under

UNOFFICIAL COPY

any of the Assigned Contracts and of any indebtedness or liability of Mortgagor to Mortgagee, including, but not limited to, the payment of taxes, special assessments, insurance premiums, damage, claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Premises, or of making same rentable or saleable, attorneys' fees incurred in connection with the enforcement of this Mortgage, and of principal and interest payment or interest payment due from Mortgagor to Mortgagee on the Note and this Mortgage, all in such order as Mortgagee may reasonably determine. Mortgagee shall be under no obligation to press any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the Mortgagor under any of the Assigned Contracts and does not assume any of the liabilities in connection with or arising, or growing out of the covenants and agreements of Mortgagor in the Assigned Contracts; and Mortgagor covenants and agrees that he will faithfully perform all of the obligations imposed under any and all of the Assigned Contracts and hereby agrees to indemnify Mortgagee and to hold it harmless from any liability, loss, or damage, which may or might be incurred by it under said Assigned Contracts or by reason of this Mortgage, and from any and all claims and demands whatsoever, which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on their part to perform or discharge any of the terms, covenants or agreements contained in any of the Assigned Contracts. It is further understood that this Mortgage shall not, operate to place responsibility for the control, care, management or repair of the Premises, or parts thereof, upon Mortgagee, nor shall it operate to make Assignee liable for the carrying out of any of the terms and conditions of any of the Assigned Contracts, or for any waste of the Premises by any of the parties under any of the Assigned Contracts or any other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair, or control of said Premises resulting in the loss or injury or death to any lessee, licensee, employee or stranger or other person.

(iv) take such action and require such performance as it deems necessary.

All such advances and indebtedness authorized by this Paragraph shall be repayable by Mortgagor upon demand with interest at the Default Interest Rate.

The authority granted by this Paragraph 11 shall not, however, be construed as creating an obligation on the part of Mortgagee to prosecute or defend actions in connection with the Premises or to do any other act which it is empowered to do hereunder.

(c) Expense of Litigation. In any suit to foreclose the lien of this Mortgage or enforce any other remedy of the Mortgagee under this Mortgage, the Note, or any other document given to secure any indebtedness represented by the Note, there shall be allowed and included as additional indebtedness in the judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert

UNOFFICIAL COPY

evidence, stenographers' charges, publication costs, survey costs, and cost (which may be estimated as to items to be expended after entry of the decree), of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree, the true condition of the title to or value of the Premises. All expenditures and expenses of the nature in this Paragraph mentioned, and such expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney affecting this Mortgage, the Note or the Premises, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate.

(d) Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose this Mortgage, the Court may, upon application, appoint a receiver of the Premises. Such appointment may be made either before or after sale upon appropriate notice as provided by law and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the Premises, and without bond being required of the applicant. Such receiver shall have the power to take possession, control, and care of the Premises and 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 (provided that the period of redemption has not been waived by the Mortgagor), as well as during any further times when the Mortgagor, his heirs, administrators, executors, successors, or the assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the Premises during the whole of said period, to extend or modify any then new lease(s) or management agreement(s), and to make new lease(s) or management agreement(s), which extensions, modifications, and new lease(s) or management agreement(s) may provide for terms to expire, or for options to lease(s) to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder, it being understood and agreed that any such lease(s) and management agreement(s) 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.

(e) Application Of Proceeds of Foreclosure Suit. 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 Paragraph (b) hereof; **SECOND**, all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the Default Interest Rate; **THIRD**, all

UNOFFICIAL COPY

principal and interest (calculated at the Default Interest Rate) remaining unpaid on the Note; and, FOURTH, any overplus to Mortgagor, his heirs, successors or assigns, as their rights may appear.

(f) **Rescission of or Failure to Exercise.** The failure of the Mortgagee to exercise the option for acceleration of maturity and/or foreclosure following any Event of Default as aforesaid, or to exercise any other option granted to the Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments hereunder, shall not constitute a waiver of any such Event of Default nor extend or affect any cure period, if any, but such option shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by the Mortgagee and shall not affect the Mortgagee's right to accelerate the maturity for any future Event of Default.

(g) **Sale of Separate Parcels, Right of Mortgagee to Purchase.** In the event of any foreclosure sale of said Premises, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

(h) **Default Interest Rate.** The term "Default Interest Rate" shall be the Default Interest Rate as specified in the Note.

(i) **Waiver of Statutory Rights.** Mortgagor, for himself, and all who may claim through or under him, waives any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and agrees that any Court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagor and on behalf of each and every person, except decree or judgment creditors of Mortgagor acquiring any interest in or title to the Premises described herein subsequent to the date of this Mortgage.

MORTGAGOR HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY THE PROVISIONS OF THE STATUTES AND LAWS OF THE STATE OF ILLINOIS, ANY AND ALL RIGHTS OF REDEMPTION FROM SALE OR OTHERWISE UNDER ANY ORDER OR DECREE OF FORECLOSURE AND DISCLAIMS ANY STATUS AND RIGHTS WHICH IT MAY HAVE AS AN "OWNER OF REDEMPTION" AS THAT TERM MAY BE DEFINED IN SECTION 15-1212 OF THE ILLINOIS MORTGAGE FORECLOSURE LAW ("IMFL"). ON BEHALF OF THE MORTGAGOR, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN, OR TITLE TO, THE PREMISES SUBSEQUENT TO THE DATE OF THIS MORTGAGE, AND ON BEHALF OF ALL OTHER PERSONS TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING IMFL, MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHT TO REINSTATE THIS MORTGAGE OR TO CURE ANY DEFAULTS, EXCEPT SUCH RIGHTS OF REINSTATEMENT AND

UNOFFICIAL COPY

CURE AS MAY BE EXPRESSLY PROVIDED BY THE TERMS OF THIS MORTGAGE OR THE NOTE.

12. RIGHTS AND REMEDIES ARE CUMULATIVE. All rights and remedies herein provided are cumulative and the holder of the Note secured hereby and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right afforded by this Mortgage.

13. GIVING OF NOTICE. Any notice or demands which either party hereto may desire or be required to give to the other party, shall be in writing and shall be hand delivered or mailed by certified mail, return receipt requested, addressed to such other party at the address hereinbefore or hereinafter set forth, or at such other address as either party hereto may, from time to time, by notice in writing, designate to the other party, as a place for service of notice. All such notices and demands which are mailed shall be effectively given three (3) business days after the date of post marking. All such notices and demands which are hand delivered, shall be effectively given on the date of such delivery. In case no other address has been so specified, notices and demands hereunder shall be sent to the following address:

Mortgagee: MB Financial Bank, N.A.
6111 N. River Road
Rosemont, IL 60018
Attn: Richard Berthold, Commercial Banking Officer

Mortgagor: M. Reza Baniassadi
180 N. LaSalle Street
Suite 1921
Chicago, IL 60601

14. TIME IS OF THE ESSENCE. It is specifically agreed that time is of the essence of this Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights. Except as otherwise specifically required, notice of the exercise of any option granted to the Mortgagee herein, or in the Note secured hereby is not required to be given.

15. COVENANTS TO RUN WITH THE LAND. All the covenants hereof shall run with the land.

16. GOVERNING LAW. Mortgagor does hereby acknowledge that all negotiations relative to the loans evidenced by the Note, this Mortgage, and all other documents and instruments securing the Note, took place in the State of Illinois. Mortgagor, and Mortgagee (by making the loan evidenced by the Note) do hereby agree that the Note, this Mortgage and all other documents securing the Note shall be construed and enforced according to the laws of the State of Illinois.

UNOFFICIAL COPY

17. APPLICATION OF INSURANCE PROCEEDS. In the event of any such loss or damage to the Premises, as described in Paragraph 1(c)(1) hereof, Mortgagee may use or apply the proceeds of insurance, at its option, as follows: (i) as a credit upon any portion of the indebtedness secured hereby; or (ii) to reimbursement to Mortgagor for repairing and restoring the improvements in which event the Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the indebtedness secured hereby.

18. BINDING ON SUCCESSOR AND ASSIGNS. Without expanding the liability of any guarantor contained in any instrument of Guaranty executed in connection herewith, this Mortgage and all provisions hereof shall extend and be binding upon Mortgagor, and all persons claiming under or through Mortgagor, and the words "Mortgagor", when used herein, shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein, shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed as of the day and year first above written.

Reza Baniassadi

Name: M. Reza Baniassadi

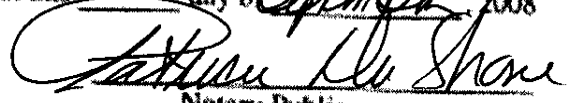
This Document Prepared By:
 Timothy S. Breems
 Ruff, Weidenaar & Reidy, Ltd.
 222 N. LaSalle Street
 Suite 700
 Chicago, IL 60601

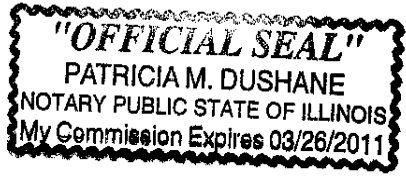
UNOFFICIAL COPY

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said county, in the state aforesaid,
DO HEREBY CERTIFY that M. Reza Baniassadi, appeared before me this day in person
and acknowledged that he signed and delivered the said instrument as his own free and
voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 24th day of September, 2008


Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "1"

UNIT 1607 AND PARKING SPACE UNIT P46 AND P47 IN THE LANCASTER CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLOWING DESCRIBED PARCEL OF REAL ESTATE:

LOT 11 IN LAKESHORE EAST SUBDIVISION OF PART OF THE UNSUBDIVIDED LANDS LYING EAST OF AND ADJOINING FORT DEARBORN ADDITION TO CHICAGO, SAID ADDITION BEING IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 4, 2003 AS DOCUMENT NUMBER 0030301045, IN COOK COUNTY, ILLINOIS

P.I.N.: 17-10-400-031-1104; 17-10-400-031-1248; 17-10-400-031-1249

Address: 201 N. Westshore, Unit 1607, Chicago, IL