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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



**Doc#:** 0914233025 **Fee:** \$78.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/22/2009 09:06 AM Pg: 1 of 22

**Report Mortgage Fraud**  
**800-532-8785**

The property identified as: **PIN:** 19-08-202-053-0000

**Address:**

**Street:** 5750-5800 W 51ST STREET

**Street line 2:** (PARCELS 4, 5 AND 6)

**City:** BEDFORD PARK

**State:** IL

**ZIP Code:** 60638

**Lender:** MERRILL LYNCH COMMERCIAL FINANCE CORP.

**Borrower:** SILVER BEAUTY LLC

**Loan / Mortgage Amount:** \$6,000,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS (7/7) et seq. because it is commercial property.

**Box 400-CTCC**

**Certificate number:** 1DC3BDDDB-CBD9-48EF-A68B-7282EF0C1C4A

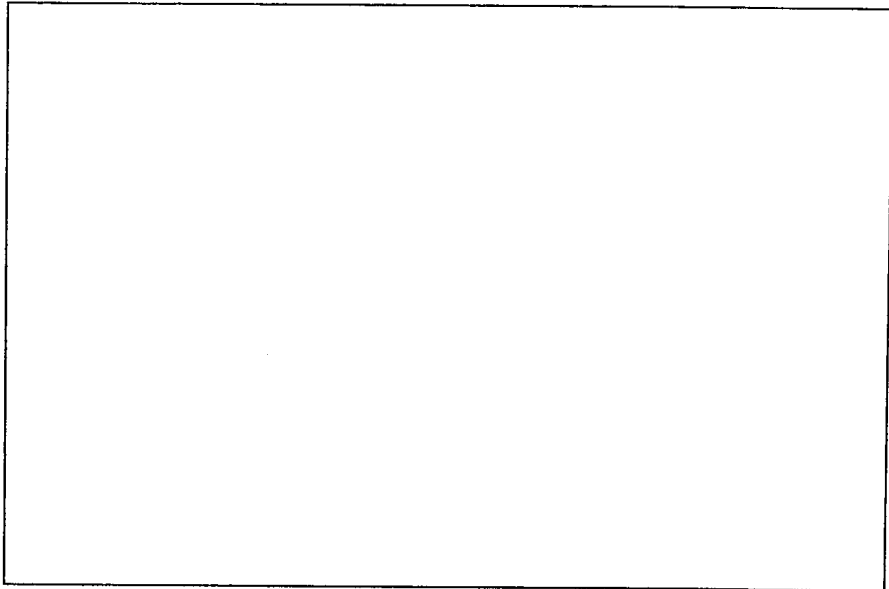
**Execution date:** 04/25/2009

8457105 D2 DG 6046

Property of Cook County Clerk's Office

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This instrument prepared by and  
upon recording should be returned to:  
Merrill Lynch Commercial Finance Corp.  
Tara Slomka  
222 North LaSalle Street  
Chicago, Illinois 60601



## COMMERCIAL MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS

This COMMERCIAL MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "Mortgage") is entered into at Chicago, Illinois, as of MAY 13, 2009, between Silver Beauty LLC, a Delaware limited liability company, with an address of 2920 Norwalk, Aurora, Illinois 60504 (the "Mortgagor") and Merrill Lynch Commercial Finance Corp., a Delaware Corporation, with an address of 222 North LaSalle Street, Chicago, Illinois 60601 (the "Lender").

The real property which is the subject matter of this Mortgage has the following address(es): 5750 - 5800 West 51st Street, Bedford Park, Illinois 60638 (the "Address(es)") Parcel 4, 5 and 6;

### 1. MORTGAGE, OBLIGATIONS AND FUTURE ADVANCES

1.1 Mortgage. For valuable consideration paid and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby irrevocably and unconditionally mortgages, warrants, grants, bargains, transfers, sells, conveys, sets over and assigns to the Lender and its successors and assigns forever, all of Mortgagor's right, title and interest in and to the "Property" described below, to secure the prompt payment and performance of the Obligations (as hereinafter defined), including, without limitation, all amounts due and owing to the Lender and all obligations respecting that certain Collateral Installment Note, dated MAY 13, 2009, by Silver Beauty LLC in favor of the Lender in the original principal amount of \$6,000,000.00 (the "Note"; and collectively, along with all other agreements, documents, certificates and instruments delivered in connection therewith, the "Loan Documents"), and any substitutions, modifications, extensions or amendments to any of the Loan Documents.

The amount of principal obligations outstanding and evidenced by the Loan Documents and secured by this Mortgage total \$6,000,000.00 as of the date of this Mortgage but this Mortgage shall nevertheless secure payment and performance of all Obligations.

1.2 Security Interest in Property. As continuing security for the Obligations the Mortgagor hereby pledges, assigns and grants to the Lender, and its successors and assigns, a security interest in any of the Property (as hereinafter defined) constituting personal property or fixtures. This Mortgage is and shall be deemed to be a security agreement and financing statement pursuant to the terms of the Uniform Commercial Code of Illinois (810 ILCS 5/1-101 et seq.) (the "Uniform Commercial Code") as to any and all personal property and fixtures and

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as to all such property the Lender shall have the rights and remedies of a secured party under the Uniform Commercial Code in addition to its rights hereunder. This Mortgage constitutes a financing statement filed as a fixture filing under Section 5/9-502(c) of the Uniform Commercial Code covering any Property which now is or later may become a fixture. For this purpose, the respective addresses of Mortgagor and Lender are set forth in the preambles of this Mortgage and Mortgagor's organizational number is set forth on the signature page of this Mortgage.

**1.3 Collateral Assignment of Leases and Rents.** The Mortgagor hereby irrevocably and unconditionally assigns to the Lender, and its successors and assigns, as collateral security for the Obligations all of the Mortgagor's rights and benefits under any and all Leases (as hereinafter defined) and any and all rents and other amounts now or hereafter owing with respect to the Leases or the use or occupancy of the Property. This collateral assignment shall be absolute and effective immediately, but the Mortgagor shall have a license, revocable by the Lender, to continue to collect rents owing under the Leases until an Event of Default (as hereinafter defined) occurs and the Lender exercises its rights and remedies to collect such rents as set forth herein.

**1.4 Conditions to Grant.** The Lender shall have and hold the above granted Property unto and to the use and benefit of the Lender, and its successors and assigns, forever; provided, however, the conveyances, grants and assignments contained in this Mortgage are upon the express condition that, if Mortgagor shall irrevocably pay and perform the Obligations in full, including, without limitation, all principal, interest and premium thereon and other charges, if applicable, in accordance with the terms and conditions in the Loan Documents and this Mortgage, shall pay and perform all other Obligations as set forth in this Mortgage and shall abide by and comply with each and every covenant and condition set forth herein and in the Loan Documents, the conveyances, grants and assignments contained in this Mortgage shall be appropriately released and discharged.

**1.5 Property.** The term "Property," as used in this Mortgage, shall mean the Real Property and the Other Property, collectively. The term "Real Property" shall mean that certain parcel of land and the fixtures, structures and improvements and all personal property constituting fixtures, as that term is defined in the Uniform Commercial Code, as more particularly described in Exhibit A attached hereto, and all rights of Mortgagor now or hereafter existing, belonging, pertaining or appurtenant thereto. The term "Other Property" shall mean the Mortgagor's right, title and interest in unto the following, if any: (i) all right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the rights-of-ways, streets, avenues, sidewalks, and alleys adjoining the Real Property, (ii) each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges of the Real Property in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license and the reversions and remainders thereof, (iii) all machinery, equipment, fittings, apparatus, appliances, furniture, furnishings, tools, fixtures (including, without limitation, all heating, air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, and all plumbing, lighting, communications and elevator fixtures) and other property of every kind and description now or hereafter owned by Mortgagor and located upon or in, and used in connection with operation, maintenance, or occupancy of the Real Property or the Other Property (expressly excluding any such items either owned by tenants of the Real Property or used in connection with a business operated by tenants on the Real Property and not the operation, maintenance or occupancy of the Real Property); (iv) all judgments, awards of damages or settlements related to and all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including but not limited to proceeds of insurance and/or any Taking (as hereinafter defined), (v) all of the rights and benefits of the Mortgagor under any present or future leases and agreements relating to the Property, including, without limitation, rents, issues and profits, or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of the Mortgagor of any kind arising thereunder (the "Leases"); (vi) all contracts, permits and licenses respecting the use, operation or maintenance of the Property; and (vii) all proceeds and products and renewals of, additions and accretions to, substitutions and replacements for and changes in any of the property described above and any and all after-acquired right, title or interest of Mortgagor in and to any property of the types described above.

**1.6 Obligations.** The term "Obligation(s)," as used in this Mortgage, shall mean the Note and amounts related thereto including without limitation, all loans, advances, indebtedness, notes, liabilities and amounts, liquidated or unliquidated, now or hereafter owing by the Mortgagor to the Lender at any time, of each and every kind, nature and description, arising under this Mortgage, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Mortgagor to the Lender; or are due indirectly by the Mortgagor to the Lender as endorser, guarantor or other surety, or as obligor of obligations due third persons which have been endorsed or assigned to the Lender, or otherwise), absolute or contingent, due or to become due, now existing or hereafter contracted, including, without limitation, payment of all amounts outstanding when due pursuant to the terms of any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Mortgagor or due from the Mortgagor to the Lender from time to time in connection with the Note and other Loan Documents and all advances, reasonable and actual costs and expenses referred to in this Mortgage, including without limitation the costs and expenses related thereto and (including reasonable attorney's fees) of enforcement of the Lender's rights hereunder or pursuant to any document or instrument executed in connection herewith.

**1.7 Future Advances.** This Mortgage secures the Obligations and any and all current and future advances to the Mortgagor evidenced by (or pursuant to) the Note and all extensions, renewals and modifications thereof, such other note or notes as may be issued at any time and from time to time by the Mortgagor to the Lender and such other agreement(s) as may be entered into by the Mortgagor with the Lender. The lien granted hereunder shall relate back to the date of this Mortgage, and shall secure any and all such future advances made not more than twenty (20) years after the date thereof. The total amount of the principal indebtedness secured hereby may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed 12,000,000.00 times the principal amount of the Note plus the

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interest thereon and any disbursements made for the payment of taxes, levies, insurance or otherwise hereunder with interest thereon.

## 2. REPRESENTATIONS, WARRANTIES, COVENANTS

2.1 Representations and Warranties. The Mortgagor represents and warrants that:

- (a) This Mortgage has been duly executed and delivered by the Mortgagor and is the legal, valid and binding obligation of the Mortgagor enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally;
- (b) The Mortgagor is the sole legal owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others, other than as set forth in detail in Exhibit B hereto (the "Permitted Encumbrances");
- (c) The Mortgagor is the sole legal owner of the entire lessor's interest in Leases, if any, with full power and authority to encumber the Property in the manner set forth herein, and the Mortgagor has not executed any other assignment of Leases or any of the rights or rents arising thereunder;
- (d) As of the date hereof, to Mortgagor's knowledge, there are no Hazardous Substances (as hereinafter defined) in, on or under the Property, except as disclosed in writing to and acknowledged by the Lender; and except limited quantities of hazardous materials used in the ordinary application, storage and usage and in accordance with Hazardous Substances Laws;
- (e) Each Obligation is a commercial obligation, will be used solely for the purposes specified in 815 ILCS 205/4(1)(c) and does not represent a loan used for personal, family or household purposes and is not a consumer transaction.

2.2 Recording; Further Assurances. The Mortgagor covenants that it shall, at its sole cost and expense and upon the request of the Lender, cause this Mortgage, and each amendment, modification or supplement hereto, to be recorded and filed in such manner and in such places, and shall at all times comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the interest of the Lender in the Property and the rights of the Lender under this Mortgage. Mortgagor will from time to time execute and deliver to the Lender such documents, and take or cause to be taken, all such other or further action, as the Lender may request in order to effect and confirm or vest more securely in the Lender all rights contemplated by this Mortgage (including, without limitation, to correct clerical errors) or to vest more fully in, or assure to the Lender the security interest in, the Property or to comply with applicable statute or law. To the extent permitted by applicable law, Mortgagor authorizes the Lender to file financing statements, continuation statements or amendments, and any such financing statements, continuation statements or amendments may be filed at any time in any jurisdiction. The Lender may at any time and from time to time file financing statements, continuation statements and amendments thereto that describe the Property as defined in this Mortgage and which contain any other information required by Article 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor; Mortgagor also authorizes the Lender to file financing statements describing any agricultural liens or other statutory liens held by the Lender. Mortgagor agrees to furnish any such information to the Lender promptly upon request. In addition, Mortgagor shall at any time and from time to time, take such steps as the Lender may reasonably request for the Lender (i) to obtain an acknowledgment, in form and substance satisfactory to the Lender, of any bailee having possession of any of the Property that the bailee holds such Property for the Lender, and (ii) otherwise to insure the continued perfection and priority of the Lender's security interest in any of the Property and the preservation of its rights therein. Mortgagor hereby constitutes the Lender its attorney-in-fact to execute and file all filings required or so requested for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; and such power, being coupled with an interest, shall be irrevocable until this Mortgage terminates in accordance with its terms, all Obligations are paid in full and the Property is released.

2.3 Restrictions on the Mortgagor. The Mortgagor covenants that it will not, nor will it permit any other person to, directly or indirectly, without the prior written approval of the Lender in each instance:

- (a) Sell, convey, assign, transfer, mortgage, pledge, hypothecate, lease or dispose of all or any part of any legal or beneficial interest in the Mortgagor or the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of this Mortgage;
- (b) Permit to be created or suffer to exist any mortgage, lien, security interest, attachment or other encumbrance or charge on the Property or any part thereof or interest therein (except for the Permitted Encumbrances), including, without limitation, (i) any lien arising under any Federal, state or local statute, rule, regulation or law pertaining to the release or cleanup of Hazardous Substances and (ii) any mechanics' or materialmen's lien. The Mortgagor further agrees to give the Lender prompt written notice of the imposition, or notice, of any lien referred to in this Section and to take any action necessary to secure the prompt discharge or release of the same. The Mortgagor agrees to defend its title to the Property and the Lender's interest therein

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against the claims of all persons and, unless the Lender requests otherwise, to appear in and diligently contest, at the Mortgagor's sole cost and expense, any action or proceeding that purports to affect the Mortgagor's title to the Property or the priority or validity of this Mortgage or the Lender's interest hereunder.

## 2.4 Operation of Property. The Mortgagor covenants and agrees as follows:

- (a) The Mortgagor will not permit the Property to be used for any unlawful or improper purpose, will at all times comply with all Federal, state and local laws, ordinances and regulations, and the provisions of any Lease, easement or other agreement affecting all or any part of the Property, and will obtain and maintain all governmental or other approvals relating to the Mortgagor, the Property or the use thereof, including without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or cleanup of Hazardous Substances, and will give prompt written notice to the Lender of (i) any violation of any such law, ordinance or regulation by the Mortgagor or relating to the Property, (ii) receipt of notice from any Federal, state or local authority alleging any such violation and (iii) the presence or release on the Property of any Hazardous Substances;
- (b) The Mortgagor will at all times keep the Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which the Lender may require, provided that, in any case, the Mortgagor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property; (ii) flood insurance and as required by applicable Federal law and as otherwise required by the Lender; (iii) comprehensive commercial general liability insurance; (iv) rent loss and business interruption insurance; and (v) such other insurance as the Lender may require from time to time, including builder's risk insurance in the case of construction loans. All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in the state where the Property is located, be otherwise acceptable to the Lender, provide deductible amounts acceptable to the Lender, name the Lender as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least Thirty (30) days prior written notice to the Lender. Such policies shall include (i) a mortgage endorsement determined by the Lender in good faith to be equivalent to the "standard" mortgage endorsement so that the insurance, as to the interest of the Lender, shall not be invalidated by any act or neglect of the Mortgagor or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; (iv) a contingent liability from operation endorsement; and (v) such other endorsements as the Lender may request. The Mortgagor will furnish to the Lender upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to the Lender. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, the Mortgagor shall insure the Property in an amount sufficient to prevent the application of the coinsurance provisions;
- (c) Subject to this section 2.4(c), Mortgagor will not enter into or modify the Leases in any material respect without the prior written consent of the Lender, execute any assignment of the Leases except in favor of the Lender, or accept any rentals under any Lease for more than one month in advance and will at all times perform and fulfill every term and condition of the Leases; With respect to properties which are multi-family residential projects, all Leases shall contain an automatic attornment provision whereby in the event of a foreclosure, the tenant automatically shall recognize the successor owner as landlord and such tenant shall have no right to terminate its Lease in the event of such foreclosure. Except with respect to multi-family residential projects, if Mortgagor enters into any new Lease or any modification or renewal of any existing Lease, at Lender's request, Mortgagor shall cause the Tenant thereunder to execute a subordination, non-disturbance and attornment agreement (or, in the case of Leases with affiliates of Mortgagor, a subordination agreement) in form and substance satisfactory to Lender. Mortgagor shall provide Lender with a copy of the fully executed original of all Leases promptly following their execution. Notwithstanding the foregoing, so long as no Event of Default exists Mortgagor may, without Lender's prior written consent, enter into any Lease or amend an existing lease so long as the terms of such Lease, including without limitation rent, lease term, tenant allowances, free rent and other landlord concessions, are no less favorable to the landlord than "market" terms for properties of similar geographic location and property type as the Real Property. Lender, in its sole discretion, may at any time elect to subordinate the lien of this Mortgage to one or more Leases;
- (d) Mortgagor will at all times (i) maintain complete and accurate records and books regarding the Property in accordance with generally accepted accounting principles and (ii) permit the Lender and the Lender's agents, employees and representatives, at such reasonable times as the Lender may request, to enter and inspect the Property and such books and records;
- (e) If there is a third party manager of the Property as of the date hereof, Mortgagor shall not change the manager of the Property or enter into, modify, amend, terminate or cancel any management contracts for the Property, without the prior written approval of Lender;

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- (f) Mortgagor will not cause or permit any change in the use of the Property from its current use and shall not initiate or acquiesce in any change in zoning of the Property in each case without the prior written consent of Lender; and
- (g) Mortgagor will at all times keep the Property in good and first-rate repair and condition (damage from casualty not excepted) and will not commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof.

2.5 Payments. The Mortgagor covenants to pay when due: all Federal, state, municipal, real property and other taxes, betterment and improvement assessments and other governmental levies, water rates, sewer charges, insurance premiums and other charges on the Property, this Mortgage or any Obligation secured hereby that could, if unpaid, result in a lien on the Property or on any interest therein. If and when requested by the Lender, the Mortgagor shall deposit from time to time with the Lender sums determined by the Lender to be sufficient to pay when due the amounts referred to in this Section. The Mortgagor shall have the right to contest any notice, lien, encumbrance, claim, tax, charge, betterment assessment or premium filed or asserted against or relating to the Property; provided that it contests the same diligently and in good faith and by proper proceedings and, at the Lender's request, provides the Lender with adequate cash security, in the Lender's reasonable judgment, against the enforcement thereof. The Mortgagor shall furnish to the Lender the receipted real estate tax bills or other evidence of payment of real estate taxes for the Property within thirty (30) days prior to the date from which interest or penalty would accrue for nonpayment thereof. The Mortgagor shall also furnish to the Lender evidence of all other payments referred to above within fifteen (15) days after written request therefor by the Lender. If Mortgagor shall fail to pay such sums, the Lender may, but shall not be obligated to, advance such sums. Any sums so advanced by the Lender shall be added to the Obligations, shall bear interest at the highest rate specified in any note evidencing the Obligations, and shall be secured by the lien of this Mortgage.

2.6 Notices; Notice of Default. The Mortgagor will deliver to the Lender, promptly upon receipt of the same, copies of all notices or other documents it receives that affect the Property or its use, or claim that the Mortgagor is in default in the performance or observance of any of the terms hereof or that the Mortgagor or any tenant is in default of any terms of the Leases. The Mortgagor further agrees to deliver to the Lender written notice promptly upon the occurrence of any Event of Default hereunder or event that with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder.

2.7 Takings. In case of any condemnation or expropriation for public use of, or any damage by reason of the action of any public or governmental entity or authority to, all or any part of the Property (a "Taking"), or the commencement of any proceedings or negotiations that might result in a Taking, the Mortgagor shall immediately give written notice to the Lender, describing the nature and extent thereof. The Lender may, at its option, appear in any proceeding for a Taking or any negotiations relating to a Taking and the Mortgagor shall immediately give to the Lender copies of all notices, pleadings, determinations and other papers relating thereto. The Mortgagor shall in good faith and with due diligence and by proper proceedings file and prosecute its claims for any award or payment on account of any Taking. The Mortgagor shall not settle any such claim without the Lender's prior written consent. The Mortgagor shall hold any amounts received with respect to such awards or claims, by settlement, judicial decree or otherwise, in trust for the Lender and immediately pay the same to the Lender. The Mortgagor authorizes any award or settlement due in connection with a Taking to be paid directly to the Lender in amounts not exceeding the Obligations. With respect to a Taking of all or substantially all of the Real Property, the Lender may apply such amounts to the Obligations in such order as the Lender may determine. In the event of any Taking of less than substantially all of the Real Property, Lender shall make available the proceeds of any award received in compensation for any such Taking, less Lender's reasonable costs of collection, for the purpose of rebuilding and restoring the Real Property, subject to the same terms and conditions as set forth in the Section of this Mortgage entitled "Insurance Proceeds". If any of the foregoing conditions are not or cannot be satisfied, then Lender may use or apply the award to the Obligations.

2.8 Insurance Proceeds. In the event of any casualty loss, Mortgagor shall give immediate notice thereof to Lender. Mortgagor hereby authorizes Lender, at Lender's option, to adjust and compromise any such losses under any of the aforesaid insurance and, after deducting Lender's reasonable and actual costs of collection, to use, apply, or disburse the balance of such insurance proceeds toward repairing, restoring and rebuilding the improvements comprising a portion of the Real Property, provided such repair, restoration or rebuilding is economically feasible and the security of this Mortgage is not thereby impaired. In the event that the Property is not repaired, restored or rebuilt, then the proceeds from any such insurance policy will be applied to reduce the outstanding balance of the Obligations (without prepayment or other penalty), with the excess, if any, paid to Mortgagor; provided, however, that so long as no Event of Default shall exist and no Event of Default shall exist at any time during the period of any repair, restoration and/or rebuilding of the aforesaid improvements, and subject to the provisions of this Section, upon Mortgagor's written request to Lender made on or before the disbursement of such insurance proceeds to Lender, such insurance proceeds shall be used to repair, restore and/or rebuild the aforesaid improvements; provided that (1) all insurance proceeds are deposited with Lender, (2) in Lender's reasonable judgment the amount of insurance proceeds available for restoration of the improvements is sufficient to pay the full and complete costs of such restoration, or if not sufficient, Mortgagor has deposited with Lender an amount, which together with the amount of the insurance proceeds available for restoration of the improvements, in Lender's reasonable judgment, will be sufficient to pay the full and complete costs of such restoration, (3) no material Leases (which for this purpose shall mean Leases demising more than five percent (15%) of the rentable square feet of space in the improvements) in effect at the time of such casualty or Taking are or will be terminated as a result of such casualty or Taking, (4) the income from the Property (including any business interruption insurance proceeds) will not decrease more than five percent (10%) as a result of such casualty or Taking (5) the cost of restoration will not exceed twenty-five percent (25%) of the Obligations, (6) in Lender's sole determination after completion of restoration, the Obligations will not exceed seventy-five (75%) of the fair market value of the Property, (7) in Lender's reasonable determination the Property can be restored to an

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architecturally and economically viable project in compliance with applicable laws, (8) each guarantor reaffirms in writing its/his/her obligations under the Guarantees, and (9) in Lender's reasonable determination such restoration is likely to be completed not later than six (6) months prior to the maturity date of the Note(s). Unless Mortgagor and Lender otherwise agree in writing, any such application of proceeds to the sums secured by this Mortgage shall not extend or postpone the due date of any portion of the indebtedness secured hereby or change the amount of any installment due on such indebtedness.

To the extent any such insurance proceeds are used toward repairing, restoring and rebuilding such improvements, such proceeds shall be made available, from time to time, upon Lender being furnished with satisfactory evidence of the estimated cost of such repairs, restoration and rebuilding and with such architect's certificates, waivers of lien, certificates, contractors' sworn statements and other evidence of the estimated cost thereof and of payments as Lender may reasonably require and approve, and if the estimated cost of the work exceeds 5% of the original principal amount of the Note, with all plans and specifications for such plans, restoration and rebuilding as Lender may reasonably require and approve. Payments made prior to the final completion of the work shall not exceed 90% of the value of the work performed, from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of Lender shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens except the lien of this Mortgage. Lender shall have the right to require that all funds shall be paid through a construction escrow with a title insurance company selected by Lender. In the event of foreclosure of this Mortgage or other transfer of title to the Property in extinguishment of the Obligations, all right, title and interest of Mortgagor in and to any such insurance policies then in force, and any claims or proceeds thereunder, shall pass to Lender or any purchaser or grantee therefrom.

## 2.9 Environmental Matters. Mortgagor hereby covenants, represents, warrants and agrees as follows:

(a) Except as disclosed by the Phase One Environmental Site Assessment, prepared by LandAmerica as order number 08-62453.1, and the Phase Two Environmental Site Assessment, prepared by LandAmerica as job number 09-62941-1, Mortgagor hereby represents and warrants to Lender that no Hazardous Substances (as defined in subparagraph (b) of this section) are presently stored or otherwise located on the Real Property except for the customary and ordinary application, storage and use of limited quantities of Hazardous Materials, in compliance with Hazardous Materials Laws and, to the best of its knowledge, on any adjacent parcels of real estate, except in accordance with all applicable Hazardous Substances Laws (as defined in subparagraph (b) of this section).

(b) Neither Mortgagor nor any other persons from time to time present on the Real Property shall use, generate, treat, manufacture, store, release, dispose of, or permit or suffer to exist in, on, under or about the Real Property or transport to or from the Real Property any flammable materials, explosives, petroleum products (including crude oil), radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any asbestos, asbestos containing materials, PCB's or any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" (collectively, the "Hazardous Substances"), under any Federal, state or local law, ordinance or regulation dealing with or otherwise pertaining to toxic or hazardous substances, wastes or materials or to occupational safety (collectively, the "Hazardous Substances Laws"). Notwithstanding the foregoing, Mortgagor and its agents, employees and subcontractors may bring limited quantities of Hazardous Substances onto the Real Property for their customary and ordinary application, storage and use for landscape purposes, janitorial services and pest control purposes.

(c) Upon the written request of Lender to Mortgagor, Lender's attorneys, employees, agents or other persons or entities designated by Lender shall, from time to time, and at any reasonable time, be allowed to enter upon the Real Property and conduct environmental examinations and environmental audits of the Real Property, all in form, manner and type as Lender may then reasonably require in its sole discretion. Mortgagor shall fully cooperate and make the Real Property available to Lender at such times as Lender may reasonably request in order to conduct such environmental examinations and environmental audits.

(d) Mortgagor hereby agrees to give immediate notice of any violation of any Hazardous Substances Laws affecting the Real Property. Mortgagor covenants and agrees to promptly contain and clean up any and all releases of Hazardous Substances on the Real Property. Notwithstanding any language or provision of this Mortgage to the contrary, Mortgagor hereby unconditionally gives Lender the right, but not the obligation, and Lender does not so obligate itself, to undertake to contain and clean up releases of Hazardous Substances on the Real Property if required by Hazardous Substance Laws. Mortgagor hereby indemnifies and saves Lender harmless of and from any and all loss, costs (including reasonable attorneys' fees), liability and damage whatsoever incurred by Lender, by reason of any violation of any applicable Hazardous Substances Laws or by reason of the imposition of any governmental lien for the recovery of environmental clean-up costs related to the Real Property expended by reason of such violation; provided that, to the extent that Lender is strictly liable under any Hazardous Substances Laws, Mortgagor's obligation to Lender under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of Hazardous Substances Laws that results in liability to Lender. Mortgagor further agrees that this indemnity shall continue and remain in full force and effect beyond the term of Obligations and shall be terminated only when there is no further obligation of any kind whether in law or in equity or otherwise of Lender in connection with any such

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Hazardous Substances involving the Real Property.

(e) In the event that any operations and maintenance plans or other programs for the management and handling of Hazardous Materials ("O & M Plan") are received by Lender in connection with any environmental reports or surveys prepared for Lender in connection with the Property, Mortgagor shall comply with the terms and recommendations of any such O & M Plan and upon Lender's request shall provide to Lender evidence of such compliance.

### 3. CERTAIN RIGHTS OF THE LENDER

3.1 Legal Proceedings. The Lender shall have the right, but not the duty, to intervene or otherwise participate in any legal or equitable proceeding that, in the Lender's reasonable judgment, might affect the Property or any of the rights created or secured by this Mortgage. The Lender shall have such right whether or not there shall have occurred an Event of Default hereunder.

3.2 Appraisals/Assessments. The Lender shall have the right, at the Mortgagor's sole cost and expense, to obtain appraisals, environmental site assessments or other inspections of the portions of the Property that are real estate at such times as the Lender deems necessary or as may be required by applicable law, or its prevailing credit or underwriting policies. Provided however that Mortgagor will not be required to pay for more than one (1) appraisal, environmental assessment or other inspection more frequently than every three years for each item, unless a material adverse change has occurred with respect to the property or is otherwise required by applicable law.

3.3 Leases and Rent Roll. The Mortgagor shall deliver to the Lender (i) during each calendar year and at such other times as the Lender shall request a rent roll for the Property, in form acceptable to the Lender, listing all tenants and occupants and describing all of the Leases; and (ii) at such times as the Lender shall request executed copies of all the Leases.

### 4. DEFAULTS AND REMEDIES

4.1 Events of Default. Event of Default shall mean the occurrence of any one or more of the following events:

- (a) default of any liability, obligation, covenant or undertaking of the Mortgagor or any guarantor of the Obligations to the Lender, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Mortgagor or any guarantor of the Obligations under any other Loan Document or any other agreement with the Lender continuing for 5 business days with respect to the payment of money or continuing for 30 business days with respect to any other default (provided that if such non-monetary default cannot be reasonably cured within 30 days, then provided Borrower or Mortgagor, as applicable, to cure within 30 days and diligently prosecute to cure, then such cure period will be extended for a period not to exceed 90 days;
- (b) failure by the Mortgagor or any guarantor of the Obligations to perform, observe or comply with any of the covenants, agreements, terms or conditions set forth in this Mortgage or the Loan Documents continuing for 30 business days provided however, if such non-monetary default cannot reasonably be cured within 30 days then provided Borrower commences to cure, within 30 days and diligently prosecutes to cure then such cure period will be extended for a period not to exceed 90 days.;
- (c) the issuance or making of any levy, seizure, attachment, execution or similar process on a material portion of the Property which is not released within 60 days;
- (d) if any statement, representation or warranty heretofore, now or hereafter made by the Mortgagor or any guarantor of the Obligations in connection with this Mortgage or in any supporting financial statement of the Mortgagor or any guarantor of the Obligations shall be determined by the Lender to have been false or misleading in any material respect when made;
- (e) the occurrence of any default or event of default (however described) under any of the other Loan Documents which is not cured within any applicable notice or cure periods.;

4.2 Remedies. On the occurrence of any Event of Default the Lender may, at any time thereafter, at its option and, to the extent permitted by applicable law, without notice, exercise any or all of the following remedies:

- (a) Declare the Obligations due and payable, and the Obligations shall thereupon become immediately due and payable, without presentment, protest, demand or notice of any kind, all of which are hereby expressly waived by the Mortgagor except for Obligations due and payable on demand, which shall be due and payable on demand whether or not an event of default has occurred hereunder;



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- (b) Enter, take possession of, manage and operate the Property (including all personal property and all records and documents pertaining thereto) and any part thereof and exclude the Mortgagor therefrom, take all actions it deems necessary or proper to preserve the Property and operate the Property as a mortgagee in possession with all the powers as could be exercised by a receiver or as otherwise provided herein or by applicable law; provided, however, the entry by the Lender upon the Property for any reason shall not cause the Lender to be a mortgagee in possession, except upon the express written declaration of the Lender;
- (c) With or without taking possession, receive and collect all rents, income, issues and profits ("Rents") from the Property (including all real estate and personal property and whether past due or thereafter accruing), including as may arise under the Leases, and the Mortgagor appoints the Lender as its true and lawful attorney with the power for the Lender in its own name and capacity to demand and collect Rents and take any action that the Mortgagor is authorized to take under the Leases. The Lender shall (after payment of all reasonable and actual costs and expenses incurred) apply any Rents received by it to the Obligations in such order as the Lender determines, or in accordance with any applicable statute, and the Mortgagor agrees that exercise of such rights and disposition of such funds shall not be deemed to cure any default or constitute a waiver of any foreclosure once commenced nor preclude the later commencement of foreclosure for breach thereof. The Lender shall be liable to account only for such Rents actually received by the Lender. Lessees under the Leases are hereby authorized and directed, following notice from the Lender, to pay all amounts due the Mortgagor under the Leases to the Lender, whereupon such lessees shall be relieved of any and all duty and obligation to the Mortgagor with respect to such payments so made;
- (d) In addition to any other remedies, to sell the Property or any part thereof or interest therein pursuant to exercise of its power of sale or otherwise at public auction on terms and conditions as the Lender may determine, or otherwise foreclose this Mortgage in any manner permitted by law, and upon such sale the Mortgagor shall execute and deliver such instruments as the Lender may request in order to convey and transfer all of the Mortgagor's interest in the Property, and the same shall operate to divest all rights, title and interest of the Mortgagor in and to the Property. In the event this Mortgage shall include more than one parcel of property or subdivision (each hereinafter called a "portion"), the Lender shall, in its sole and exclusive discretion and to the extent permitted by applicable law, be empowered to foreclose upon any such portion without impairing its right to foreclose subsequently upon any other portion or the entirety of the Property from time to time thereafter. In addition, the Lender may in its sole and exclusive discretion subordinate this Mortgage to one or more Leases for the sole purpose of preserving any such Lease in the event of a foreclosure;
- (e) File a suit for foreclosure of this Mortgage and/or collect the Obligations in accordance with the Illinois Mortgage Foreclosure Act (735 ILCS 5/15-1101 et. seq.) (the "Act");
- (f) Cause one or more environmental assessments to be taken, arrange for the cleanup of any Hazardous Substances or otherwise cure the Mortgagor's failure to comply with any statute, regulation or ordinance relating to the presence or cleanup of Hazardous Substances, and the Mortgagor shall provide the Lender or its agents with access to the Property for such purposes; provided that the exercise of any of such remedies shall not be deemed to have relieved the Mortgagor from any responsibility therefor or given the Lender "control" over the Property or cause the Lender to be considered to be a mortgagee in possession, "owner" or "operator" of the Property for purposes of any applicable law, rule or regulation pertaining to Hazardous Substances; and
- (g) Take such other actions or proceedings as the Lender deems necessary or advisable to protect its interest in the Property and ensure payment and performance of the Obligations, including, without limitation, appointment of a receiver (and the Mortgagor hereby waives any right to object to such appointment) and exercise of any of the Lender's remedies provided herein or in any other document evidencing, securing or relating to any of the Obligations or available to a secured party under the Uniform Commercial Code or under other applicable law.

In addition, the Lender shall have all other remedies provided by applicable law, including, without limitation, the right to pursue a judicial sale of the Property or any portion thereof by deed, assignment or otherwise.

The Mortgagor agrees and acknowledges that the acceptance by the Lender of any payments from either the Mortgagor or any guarantor after the occurrence and during the continuance of any Event of Default, the exercise by the Lender of any remedy set forth herein or the commencement, discontinuance or abandonment of foreclosure proceedings against the Property shall not waive the Lender's subsequent or concurrent right to foreclose or operate as a bar or estoppel to the exercise of any other rights or remedies of the Lender. The Mortgagor agrees and acknowledges that the Lender, by making payments or incurring costs described herein, shall be subrogated to any right of the Mortgagor to seek reimbursement from any third parties, including, without limitation, any predecessor in interest to the Mortgagor's title or other party who may be responsible under any law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances.

**4.3 Priority of Payments.** Any rents, issues, deposits, profits, and avails of the Property received by Lender after taking possession of all or any part of the Property, or pursuant to any assignment thereof to Lender under the provisions of this Mortgage, shall (unless otherwise required by court order) be applied in payment of or on account of the following, in the order listed:

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(a) operating expenses of the Property (including reasonable compensation, any receiver of the Property, any agent or agents to whom management of the Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

(b) taxes, special assessments, and water and sewer charges now due or that may hereafter become a lien thereon prior to the lien of this Mortgage;

(c) any and all reasonable repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Property (including, without limitation, the cost of placing the Property in such condition as will, in the judgment of Lender or any receiver, make it readily rentable or salable);

(d) all indebtedness secured by this Mortgage and other Obligations, including, without limitation, any deficiency that may result from any foreclosure sale pursuant hereto; and

(e) any remaining funds to Mortgagor or its successors or assigns, as their interests and rights may appear or to whoever else may there be adjudged entitled thereto.

**4.4 Advances.** If the Mortgagor fails to pay or perform any of its obligations respecting the Property, the Lender may in its sole discretion do so without waiving or releasing Mortgagor from any such obligation. Any such payments may include, but are not limited to, payments for taxes, assessments and other governmental levies, water rates, insurance premiums, maintenance, repairs or improvements constituting part of the Property. Any amounts paid by the Lender hereunder shall be, until reimbursed by the Mortgagor, part of the Obligations and secured by this Mortgage, and shall be due and payable to the Lender, on demand, together with interest thereon to the extent permitted by applicable law, at the highest rate permitted under any of the notes evidencing the Obligations.

**4.5 Cumulative Rights and Remedies.** All of the foregoing rights, remedies and options (including without limitation the right to enter and take possession of the Property, the right to manage and operate the same, and the right to collect Rents, in each case whether by a receiver or otherwise) are cumulative and in addition to any rights the Lender might otherwise have, whether at law or by agreement, and may be exercised separately or concurrently and none of which shall be exclusive of any other. The Mortgagor further agrees that the Lender may exercise any or all of its rights or remedies set forth herein without having to pay the Mortgagor any sums for use or occupancy of the Property.

**4.6 Mortgagor's Waiver of Certain Rights.** To the extent permitted by applicable law, the Mortgagor hereby waives the benefit of all present and future laws (i) providing for any appraisal before sale of all or any portion of the Property or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made hereunder.

**4.7 Waiver of Right of Redemption and Other Rights.** Without limitation to anything contained herein, to the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever 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 take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in force to redeem the Property or any part thereof, or relating to the marshaling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights to redemption and reinstatement under 735 ILCS 5/15-1101 on its own behalf, on behalf of all 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 Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid on an action at law upon the Note. If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of redemption of rights) were made at the express direction of the Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor and are made on behalf of the trust estate of the Mortgagor and all beneficiaries of Mortgagor, as well as all other persons named above. Mortgagor acknowledges that the Property does not constitute agricultural real estate as defined in Section 735 ILCS 5/15-1201 or residential real estate as defined in Section 735 ILCS 5/15-1201.

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## 5. MISCELLANEOUS

5.1 Costs and Expenses. To the extent permitted by applicable law, the Mortgagor shall pay to the Lender, on demand, all reasonable and actual expenses (including reasonable attorneys' fees and actual expenses and reasonable consulting, accounting, appraisal, brokerage and similar professional fees and charges) incurred by the Lender in connection with the Lender's interpretation, recording of this Mortgage, exercise, preservation or enforcement of any of its rights, remedies and options set forth in this Mortgage and in connection with any litigation, proceeding or dispute whether arising hereunder or otherwise relating to the Obligations, together with interest thereon to the extent permitted by applicable law, until paid in full by the Mortgagor at the highest rate set forth in any of the notes evidencing the Obligations. If Lender is required by legislative enactment or judicial decision to pay any charge, imposition, assessment, levy or tax in or to any state, municipality or government on the Property (or on any interest therein), this Mortgage or the recording thereof, the other Loan Documents or the Obligations, other than taxes measured by the net income or gross income of the Lender, then to the extent permitted by law, Mortgagor shall pay, when payable, such charge, imposition, assessment, levy or tax. If under applicable law and for any reason whatsoever, Mortgagor is not permitted to pay, in full, all of such charges, impositions, assessments, levies and taxes, then all Obligations shall become and be due and payable, at the election of the Lender, within thirty (30) days following the Lender's notice to Mortgagor. Any amounts owed by the Mortgagor hereunder shall be, until paid, part of the Obligations and secured by this Mortgage, and the Lender shall be entitled, to the extent permitted by law, to receive and retain such amounts in any action for a deficiency against or redemption by the Mortgagor, or any accounting for the proceeds of a foreclosure sale or of insurance proceeds.

5.2 Indemnification Regarding Leases. The Mortgagor hereby agrees to defend, and does hereby indemnify and hold the Lender and each of its directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless from all losses, damages, claims, costs or expenses (including attorneys' fees and expenses) resulting from the assignment of the Leases and from all demands that may be asserted against such Indemnitees arising from any undertakings on the part of the Lender to perform any obligations under the Leases. It is understood that the assignment of the Leases shall not operate to place responsibility for the control or management of the Property upon the Lender or any Indemnitee or make them liable for performance of any of the obligations of the Mortgagor under Leases, respecting any condition of the Property or any other agreement or arrangement, written or oral, or applicable law.

5.3 Indemnification Regarding Hazardous Substances. The Mortgagor hereby agrees to defend, and does hereby indemnify and hold harmless each Indemnitee from and against any and all losses, damages, claims, costs or expenses, including, without limitation, litigation costs and attorneys' fees and expenses and fees or expenses of any environmental engineering or cleanup firm incurred by such Indemnitee and arising out of or in connection with the Property or resulting from the application of any current or future law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances on or affecting the Property. The Mortgagor agrees its obligations hereunder shall be continuous and shall survive termination or discharge of this Mortgage and/or the repayment of all debts to the Lender including repayment of all Obligations.

5.4 Indemnitee's Expenses. If any Indemnitee is made a party defendant to any litigation or any claim is threatened or brought against such Indemnitee concerning this Mortgage or the Property or any part thereof or therein or concerning the construction, maintenance, operation or the occupancy or use thereof by the Mortgagor or other person or entity, then the Mortgagor shall indemnify, defend and hold each Indemnitee harmless from and against all liability by reason of said litigation or claims, including reasonable attorneys' fees and actual expenses incurred by such Indemnitee in connection with any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Lender in favor of the Mortgagor.

5.5 Waivers. The Mortgagor waives notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof. No delay or omission of the Lender in exercising or enforcing any of its rights, powers, priorities, remedies, immunities or discretion (all of which are hereinafter collectively referred to as "the Lender's rights and remedies") hereunder shall constitute a waiver thereof; and no waiver by the Lender of any default of the Mortgagor hereunder or of any demand shall operate as a waiver of any other default hereunder or of any other demand. No term or provision hereof shall be waived, altered or modified except with the prior written consent of the Lender, which consent makes explicit reference to this Mortgage. Except as provided in the preceding sentence, no other agreement or transaction, of whatsoever nature, entered into between the Lender and the Mortgagor at any time (whether before, during or after the effective date or term of this Mortgage) shall be construed as a waiver, modification or limitation of any of the Lender's rights and remedies under this Mortgage (nor shall anything in this Mortgage be construed as a waiver, modification or limitation of any of the Lender's rights and remedies under any such other agreement or transaction) but all the Lender's rights and remedies not only under the provisions of this Mortgage but also under any such other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Lender at such time or times and in such order of preference as the Lender in its sole discretion may determine.

5.6 Waiver of Homestead. To the maximum extent permitted under applicable law, the Mortgagor hereby waives and terminates any homestead rights and/or exemptions respecting the Property under the provisions of any applicable homestead laws, including without limitation 735 ILCS 5/12-901.

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5.7 Joint and Several. If there is more than one Mortgagor, each of them shall be jointly and severally liable for payment and/or performance of all obligations secured by this Mortgage and the term "Mortgagor" shall include each as well as all of them.

5.8 Severability. If any provision of this Mortgage or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Mortgage (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

5.9 Complete Agreement. This Mortgage and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

5.10 Binding Effect of Agreement. This Mortgage shall run with the land and be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Lender shall be entitled to rely thereon) until all Obligations are fully and indefeasibly paid. The Lender may transfer and assign this Mortgage and deliver any collateral to the assignee, who shall thereupon have all of the rights of the Lender, and the Lender shall then be relieved and discharged of any responsibility or liability with respect to this Mortgage and such collateral. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Mortgage or the other Loan Documents.

5.11 Notices. Any notices under or pursuant to this Mortgage shall be deemed duly received and effective if delivered in hand to any officer or agent of the Mortgagor or Lender, or if mailed by registered or certified mail, return receipt requested, addressed to the Mortgagor or Lender at the address set forth in this Mortgage or as any party may from time to time designate by written notice to the other party.

5.12 Reproductions. This Mortgage and all documents which have been or may be hereinafter furnished by the Mortgagor to the Lender may be reproduced by the Lender by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

5.13 Governing Law. Illinois law shall govern all matters pertaining to the Loan Documents and this Mortgage other than "local issues," which shall be governed by the laws of the State where the Property is located. For purposes of this Mortgage, the term "local issues" refers to the provisions of this Mortgage which pertain to (a) whether a transaction transfers or creates an interest in real or personal property situated in the state where the Property is located for security purposes or otherwise, (b) the nature of an interest in real or personal property situated in the state where the Property is located that is transferred or created by a transaction, (c) a method for foreclosure of a lien or security interest in real or personal property situated in the state where the Property is located, (d) the nature of an interest in real or personal property situated in the state where the Property is located that results from a foreclosure, (e) the manner and effect of recording or failing to record evidence of a transaction that transfers or creates an interest in real or personal property situated in the State where the Property is located, or (f) any other matters contained in the Loan Documents which are purported to be governed by the Uniform Commercial Code.

5.14 Jurisdiction and Venue. The Mortgagor irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in Illinois, over any suit, action or proceeding arising out of or relating to this Mortgage. The Mortgagor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. The Mortgagor hereby consents to process being served in any such suit, action or proceeding (i) by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Mortgagor's address set forth herein or such other address as has been provided in writing to the Lender and (ii) in any other manner permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Mortgagor.

5.15 JURY WAIVER. THE MORTGAGOR AND THE LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS MORTGAGE, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith AND (B) AGREE NOT TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN WAIVED. THE MORTGAGOR CERTIFIES THAT NEITHER THE LENDER NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

5.16 Illinois Mortgage Foreclosure Act. It is the express intention of Lender and Mortgagor that the rights, remedies, powers and authorities conferred upon Lender pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided herein. In the event that any provision in this Mortgage is deemed inconsistent with any provisions in the Act, the provisions of the Act shall take precedence

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over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

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EXECUTED as of the date first above written.

Mortgagor:

Silver Beauty LLC

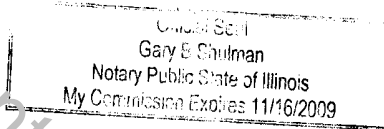
By Eugene Raymond  
(Eugene Raymond, Company Manager)

ORGANIZATIONAL NUMBER: 7266265

STATE OF ILLINOIS  
COUNTY OF Cook, SS.

The foregoing instrument was acknowledged before me this 25 day of April, 2009 by Eugene Raymond, Company Manager of Silver Beauty LLC, a Delaware Limited Liability Company, on behalf of such Limited Liability Company.

Gary B. Shulman, NOTARY PUBLIC  
MY COMMISSION EXPIRES: \_\_\_\_\_  
Gary B Shulman  
TYPE OR PRINT NAME



Property of Cook County Clerk's Office

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EXHIBIT "A"

Property Description

See attached



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## LEGAL DESCRIPTION

### PARCEL 1:

THAT PART OF SOUTH 1/2 OF NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 858.0 FEET NORTH OF SOUTH LINE OF NORTHEAST 1/4 OF SAID SECTION 8, ON A LINE DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF SAID NORTHEAST 1/4 THROUGH THE SOUTHEAST CORNER OF SOUTHWEST 1/4 OF NORTHEAST 1/4 OF SECTION 8 AFORESAID, THENCE CONTINUING NORTH ON THE DESCRIBED LINE 475.04 FEET TO A POINT IN THE NORTH LINE OF SAID SOUTH 1/2 OF THE NORTHEAST 1/4, THENCE WEST ALONG NORTH LINE OF SAID SOUTH 1/2 OF NORTHEAST 1/4 A DISTANCE OF 6.52 FEET, TO AN INTERSECTION WITH A CURVED LINE CONVEX TO THE SOUTHEAST, THENCE SOUTHWESTERLY ALONG SAID CURVED LINE, HAVING A RADIUS OF 392.56 FEET, A DISTANCE OF 222.82 FEET TO A POINT OF TANGENCY OF SAID CURVE, THENCE SOUTHWESTERLY ALONG SAID TANGENT 35.87 FEET TO THE POINT OF TANGENCY OF A CURVED LINE CONVEX TO THE NORTHWEST, THENCE SOUTHWESTERLY ALONG SAID CURVED LINE WITH A RADIUS OF 373.56 FEET A DISTANCE OF 285.85 FEET TO THE POINT OF TANGENCY OF SAID CURVE LYING ON A LINE 237.29 FEET WEST OF AND PARALLEL WITH A LINE DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF NORTHEAST 1/4 ABOVE DESCRIBED, SAID POINT OF TANGENCY BEING 853.60 FEET NORTH OF SOUTH LINE OF SAID NORTHEAST 1/4 OF SECTION 8; THENCE SOUTHERLY 27.29 FEET TO A POINT 234.56 FEET WEST OF THE LINE HERETOFORE DESCRIBED AS DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF NORTHEAST 1/4 OF SECTION 8 SAID POINT LYING ON A LINE 826.31 FEET NORTH OF THE SOUTH LINE OF SAID NORTHEAST 1/4, THENCE EAST ALONG THE LAST DESCRIBED LINE 209.56 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 31.69 FEET, THENCE EAST 25 FEET TO POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.



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## PARCEL 2:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY BEGINNING AT A POINT 1286.25 FEET NORTH OF THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION, AND ON A LINE DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF SAID QUARTER SECTION THROUGH THE AFORESAID SOUTHWEST CORNER OF THE SOUTHEAST 1/4 NORTHEAST 1/4 OF SAID SECTION; THENCE NORTH ALONG SAID "RIGHT ANGLE LINE" FOR A DISTANCE OF 46.79 FEET TO THE EAST AND WEST QUARTER LINE OF SAID NORTHEAST 1/4 OF SECTION 8; THENCE EAST ALONG SAID LINE 7.21 FEET TO AN INTERSECTION WITH THE NORTH AND SOUTH QUARTER LINE OF SAID NORTHEAST 1/4; THENCE NORTH ALONG SAID LINE 255.93 FEET TO AN INTERSECTION WITH A CURVED LINE; THENCE SOUTHEASTERLY ALONG SAID CURVED LINE, CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 392.56 FEET, FOR A DISTANCE OF 149.10 FEET; THENCE SOUTHEASTERLY TANGENT TO SAID CURVED LINE FOR A DISTANCE OF 87.57 FEET TO A POINT OF CURVE; THENCE SOUTHEASTERLY ALONG SAID CURVE, CONVEX NORTHEASTERLY, HAVING A RADIUS OF 349.76 FEET, A DISTANCE OF 132.03 FEET TO A POINT ON A LINE DRAWN AT RIGHT ANGLES TO THE AFOREMENTIONED "RIGHT ANGLE LINE" AND THROUGH THE POINT OF BEGINNING; THENCE WEST ALONG SAID LINE FOR A DISTANCE OF 212.48 FEET TO THE POINT OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS.

## PARCEL 3:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS BEGINNING AT A POINT 916.25 FEET NORTH OF THE SOUTHWEST CORNER OF SOUTH EAST 1/4 OF NORTHEAST 1/4 OF SAID SECTION AND ON A LINE DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF SAID 1/4 SECTION THROUGH THE AFORESAID SOUTHWEST CORNER OF SOUTH EAST 1/4 OF NORTHEAST 1/4 OF SAID SECTION, THENCE NORTH ALONG SAID RIGHT ANGLE LINE 370 FEET, THENCE EAST AT RIGHT ANGLE TO 1ST DESCRIBED LINE FOR A DISTANCE OF 212.48 FEET TO A POINT IN A CURVED LINE, CONVEX NORTHEASTERLY AND HAVING A RADIUS OF 349.76 FEET, THENCE SOUTHEASTERLY ALONG SAID CURVED LINE FOR A CHORD DISTANCE OF 125.60 FEET TO THE POINT OF TANGENCY OF SAID CURVED LINE WITH A LINE 235.0 FEET EAST OF AND PARALLEL WITH RIGHT ANGLES LINE 1ST DESCRIBED HEREIN; THENCE SOUTH ALONG SAID PARALLEL LINE FOR A DISTANCE OF 246.45 FEET TO A POINT 916.25 FEET NORTH OF THE SOUTH LINE OF SAID NORTHEAST 1/4 OF SECTION 8, THENCE WEST AT RIGHT ANGLES TO LAST DESCRIBED COURSE FOR A DISTANCE OF 225.0 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

## PARCEL 4:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY BEGINNING AT A POINT 486 FEET NORTH OF SOUTHWEST CORNER OF SOUTH EAST 1/4 OF NORTHEAST 1/4 OF SAID SECTION AND ON A LINE DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF SAID 1/4 SECTION THROUGH THE AFORESAID SOUTHWEST CORNER OF SOUTH EAST 1/4 OF NORTHEAST 1/4 OF SAID SECTION; THENCE NORTH ALONG SAID RIGHT ANGLES LINE 847.04 FEET TO THE EAST AND WEST 1/4 LINE OF SAID NORTHEAST 1/4 OF SECTION 8, THENCE EAST ALONG SAID LINE 7.21 FEET TO AN INTERSECTION WITH NORTH AND SOUTH 1/4 LINE OF SAID NORTHEAST 1/4, THENCE NORTH ALONG SAID LINE 255.93 FEET TO AN INTERSECTION WITH A CURVED LINE CONVEX TO THE SOUTHWEST, THENCE SOUTHEASTERLY ALONG SAID CURVED LINE WITH A RADIUS OF 392.56 FEET A DISTANCE OF 149.10 FEET, THENCE SOUTHEASTERLY TANGENT TO SAID CURVED LINE 87.57 FEET TO THE POINT OF TANGENCY OF A CURVED LINE CONVEX TO THE NORTHEAST, THENCE SOUTHEASTERLY ALONG SAID CURVED LINE WITH A RADIUS OF 349.76 FEET A DISTANCE OF 257.09 FEET TO THE POINT OF TANGENCY OF SAID CURVED LINE ON A LINE 235 FEET EAST OF AND PARALLEL WITH RIGHT ANGLES LINE 1ST ABOVE DESCRIBED, THENCE SOUTH ALONG SAID LINE 550 FEET, THENCE SOUTHWESTERLY 127.57 FEET TO A POINT 220.19 FEET EAST OF THE RIGHT ANGLES LINE 1ST ABOVE DESCRIBED WHICH IS 485 FEET NORTH OF SOUTH LINE OF NORTHEAST 1/4 OF SAID SECTION 8 AFORESAID, THENCE WEST TO THE POINT OF BEGINNING, EXCEPTING FROM THE ABOVE DESCRIBED TRACT OF LAND THE WEST 25 FEET

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OF SOUTH 372 FEET THEREOF AND EXCEPTING THEREFROM THAT PART OF NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS BEGINNING AT A POINT 916.25 FEET NORTH OF THE SOUTHWEST CORNER OF SOUTH EAST 1/4 OF NORTHEAST 1/4 OF SAID SECTION AND ON A LINE DRAWN AT RIGHT ANGLES TO SOUTH LINE OF SAID 1/4 SECTION THROUGH THE AFORESAID SOUTHWEST CORNER OF SOUTH EAST 1/4 OF NORTHEAST 1/4 OF SAID SECTION, THENCE NORTH ALONG THE SAID RIGHT ANGLES LINE 370 FEET, THENCE EAST AT RIGHT ANGLES TO LAST DESCRIBED LINE FOR A DISTANCE OF 212.48 FEET TO A POINT IN A CURVED LINE, CONVEX NORTHEASTERLY AND HAVING A RADIUS OF 349.76 FEET, THENCE SOUTHEASTERLY ALONG SAID CURVED LINE FOR A CHORD DISTANCE OF 125.60 FEET TO A POINT OF TANGENCY OF SAID CURVED LINE WITH A LINE 235.0 FEET EAST AND AND PARALLEL WITH RIGHT ANGLES LINE 1ST DESCRIBED HEREIN; THENCE SOUTH ALONG SAID PARALLEL LINE FOR A DISTANCE OF 246.45 FEET TO A POINT 916.25 FEET NORTH OF THE SOUTH LINE OF SAID NORTHEAST 1/4 OF SECTION 8, THENCE WEST AT RIGHT ANGLES TO LAST DESCRIBED COURSE FOR A DISTANCE OF 235.0 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS AND EXCEPTING THEREFROM THE FOLLOWING DESCRIBED LAND: THAT PART OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY BEGINNING AT A POINT 1286.25 FEET NORTH OF THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION, AND ON A LINE DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF SAID QUARTER SECTION THROUGH THE AFORESAID SOUTHWEST CORNER OF THE SOUTHEAST 1/4 NORTHEAST 1/4 OF SAID SECTION; THENCE NORTH ALONG SAID "RIGHT ANGLE LINE" FOR A DISTANCE OF 46.79 FEET TO THE EAST AND WEST QUARTER LINE OF SAID NORTHEAST 1/4 OF SECTION 8; THENCE EAST ALONG SAID LINE 7.21 FEET TO AN INTERSECTION WITH THE NORTH AND SOUTH QUARTER LINE OF SAID NORTHEAST 1/4; THENCE NORTH ALONG SAID LINE 255.93 FEET TO AN INTERSECTION WITH A CURVED LINE; THENCE SOUTHEASTERLY ALONG SAID CURVED LINE, CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 392.56 FEET, FOR A DISTANCE OF 149.10 FEET; THENCE SOUTHEASTERLY TANGENT TO SAID CURVED LINE FOR A DISTANCE OF 87.57 FEET TO A POINT OF CURVE; THENCE SOUTHEASTERLY ALONG SAID CURVE, CONVEX NORTHEASTERLY, HAVING A RADIUS OF 349.76 FEET, A DISTANCE OF 132.03 FEET TO A POINT ON A LINE DRAWN AT RIGHT ANGLES TO THE AFOREMENTIONED "RIGHT ANGLE LINE" AND THROUGH THE POINT OF BEGINNING; THENCE WEST ALONG SAID LINE FOR A DISTANCE OF 212.48 FEET TO THE POINT OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS.

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**PARCEL 5:**

THAT PART OF SOUTH 1/2 OF NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED BY BEGINNING AT THE SOUTHWEST CORNER OF SOUTH EAST 1/4 OF NORTHEAST 1/4 OF SAID SECTION; THENCE NORTH AT RIGHT ANGLES TO THE SOUTH LINE OF NORTHEAST 1/4 OF SAID SECTION, 486 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 254 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 486 FEET TO THE SOUTH LINE OF NORTHEAST 1/4 OF SECTION 8 AFORESAID; THENCE WEST 254 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM THENCE WEST 25 FEET AND SOUTH 40 FEET THEREOF; ALSO THAT PART OF SOUTH 1/2 OF NORTHEAST 1/4 OF SECTION 8 AFORESAID, DESCRIBED AS BEGINNING AT THE NORTHEAST CORNER OF THE ABOVE DESCRIBED PARCEL; THENCE NORTH 75 FEET TO A POINT; THENCE WEST AT RIGHT ANGLES 25.04 FEET TO A POINT; THENCE SOUTHWESTERLY 75.51 FEET TO A POINT 33.81 FEET DUE WEST OF THE POINT OF BEGINNING; THENCE EAST 33.81 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

**PARCEL 6:**

THE WEST HALF OF VACATED MENARD AVENUE LYING EAST AND ADJOINING PARCEL 1 AND THE EAST HALF OF VACATED MENARD AVENUE LYING WEST AND ADJOINING PARCELS 4 AND 5.

PINS:

19-08-203-026

19-08-203-041

19-08-203-042

19-08-203-043

Address: 5750-5800 W 51st St  
Bedford Park, IL 60638

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## EXHIBIT "B"

### Permitted Encumbrances

None



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## SCHEDULE B Permitted exceptions

### (Silver Beauty, LLC Mortgage)

1. Taxes and assessments for the second installment general real estate taxes for calendar year 2009 (billed in 2010) and subsequent years, which are a lien, but which are not yet billed, or are billed but are not yet delinquent, and any assessments not shown on the public record;
2. Any laws, regulations or ordinances (including, without limitation, zoning, building and environmental matters) as to the use, occupancy, subdivision or improvement of the subject property adopted or imposed by any governmental agency;
3. Easement across and north 10 feet of the south  $\frac{1}{2}$  of the northeast  $\frac{1}{4}$  of Section 8 aforesaid for public utilities recorded as Document 19140525;
4. Easement in favor of the Commonwealth Edison Company and the Illinois Bell Telephone Company their respective successors and assigns. As created by Grant from Silver Beauty Real Estate Corporation, a corporation of Illinois, dated October 27, 1966 and recorded November 15, 1966 ad Document 19993562;
5. Covenants and restrictions contained in deed recorded May 28, 1964 as Document 19140524 made by clearing industrial district, Inc., a corporation of Delaware, and Silver Beauty Real Estate Corporation, a corporation of Illinois, that grantee will pay all taxes and assessments, etc., relating to the maintenance of streets, cost and maintenance of sewer systems and use of the land;
6. Encroachment of the signs located mainly on the land onto the property northwesterly and adjoining by an undisclosed amount, as shown on plat of survey prepared by Millman Surveying, Inc. dated December 17, 2008;
7. Any lien, or right to a lien, for services, labor or material, heretofore or hereafter furnished, imposed by law and not shown by the public records;
8. Unrecorded leases in favor of Owens-Brockway Plastic Products, Inc.;
9. Subordination, non-disturbance and attornment agreement dated – and recorded – as Document Number – made by and between Owens-Brockway Plastic Products, Inc., 5800 West 51<sup>st</sup> Street Enterprises, LLC, Silver Beauty LLC, a Delaware limited liability company and Merrill Lynch Commercial Finance Corp;
10. Rights of way for railroad switch and spur tracks as disclosed by survey prepared by Millman Surveying, Inc. dated December 17, 2008;

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11. Rights of the municipality, the State of Illinois, the public and adjoining owners in and to vacated Menard Avenue;
12. Rights of the public and quasi-public utilities, if any, in said vacated Menard for maintenance therein of poles, conduits, sewers and other facilities; and
13. Reservation of an easement to any public or private utility to construct, operate, repair, maintain and located public and private utility systems as contained on the Plat of Vacation recorded January 23, 2004 as Document Number 0402310084.

F:\DOCS\C\15855\30.002 (Merrill Lynch Loan)\Permitted Exceptions Silver Beauty.doc

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