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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1012031116 Fee: \$106.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/30/2010 03:46 PM Pg: 1 of 36

Report Mortgage Fraud
800-532-8785

The property identified as:

PIN: 05-07-211-035-1022

Address:

Street: 630 Vernon Avenue

Street line 2:

City: Glencoe

State: IL

ZIP Code: 60022

Lender: Cole Taylor Bank

Borrower: Silver Fern, LLC

Loan / Mortgage Amount: \$500,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 777/1 et seq. because it is commercial property.

Certificate number: 753C1808-9BB7-4A80-BE99-D71ED19F8792

Execution date: 12/12/2009

NIS-363286

CL 1 of 2 HV DEC

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This document prepared by
and after recording return to:

Meltzer, Purtill & Stelle LLC
300 South Wacker Drive
Suite 3500
Chicago, Illinois 60606
Attention: Randall S. Kulat

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

THIS JUNIOR MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Mortgage") is made as of the 12th day of December, 2009, by **SILVER FERN, LLC**, an Illinois limited liability company ("Mortgagor"), to and for the benefit of **CULLE TAYLOR BANK**, an Illinois banking corporation, its successors and assigns ("Lender");

RECITALS:

(A) Lender has heretofore made a revolving line of credit loan to Optima, Inc., an Illinois corporation ("Borrower"), pursuant to the terms and conditions of that certain Revolving Line of Credit Loan Agreement dated as of June 10, 2008 (the "Original Agreement") entered into by and among Borrower, the Guarantor (as defined therein) and Lender, as amended by (i) that certain First Amendment to Loan Documents dated as of June 12, 2009 (the "First Amendment") among Borrower, Guarantor and Lender, and (ii) that certain Second Amendment to Loan Documents dated as of even date herewith (the "Second Amendment") among Borrower, Guarantor and Lender (the Original Agreement, as amended by the First Amendment and by the Second Amendment, is hereby referred to as the "Loan Agreement"). Pursuant to the Loan Agreement, Lender agreed to loan to Borrower an amount not to exceed Five Hundred Thousand and 00/100 Dollars (\$500,000.00) (the "Loan"). Pursuant to the Second Amendment, the Loan is evidenced by that certain Second Amended and Restated Revolving Line of Credit Promissory Note dated of even date herewith (as amended, restated or replaced from time to time, the "Note"), made by Borrower payable to Lender in the principal amount of the Loan and due on January 15, 2011 (the "Maturity Date"), except as may be accelerated pursuant to the terms hereof or of the Note, the Loan Agreement or any other Loan Document (as defined in the Note).

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(B) Lender requires as a condition precedent to modifying the Loan and accepting the Note pursuant to the Second Amendment that Mortgagor collaterally hypothecate and pledge to Lender certain real property legally described on **Exhibit A** attached hereto, and deliver this Mortgage to the Lender.

(C) Mortgagor is an affiliate of Borrower, under the common control of the Guarantor and will derive direct and indirect benefits by the financial accommodations afforded the Borrower under the Loan Agreement. Mortgagor desires to deliver this Mortgage to Lender in order to induce Lender to modify the Loan pursuant to the Second Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

Mortgagor hereby mortgages, hypothecates, grants, assigns, remises, releases, warrants and conveys to Lender, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

THE REAL ESTATE located in the State of Illinois and legally described on **Exhibit A** attached hereto and made a part hereof ("Real Estate");

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used in connection with the Real Estate or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf ("Improvements");

TOGETHER WITH all easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

TOGETHER WITH all rents, revenues, issues, profits, proceeds, income, royalties, "accounts," including "health-care-insurance receivables," escrows, letter-of-credit rights (each as defined in the Code hereinafter defined), security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by Mortgagor thereon, to be applied against the Indebtedness (hereinafter defined); provided, however, that Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder and is continuing, may collect rent as it becomes due, but not more than one (1) month in advance thereof (except that security deposits shall not be deemed rents collected in advance);

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TOGETHER WITH all interest of Mortgagor in all leases now or hereafter on the Premises, whether written or oral ("Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness (as hereinafter defined); notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code of the State of Illinois in effect from time to time ("Code"), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Lender, as a secured party, and Mortgagor, as Debtor, all in accordance with the Code; and

TOGETHER WITH all of Mortgagor's interests in "general intangibles" including "payment intangibles" and "software" (each as defined in the Code) now owned or hereafter acquired and related to the Premises, including, without limitation, all of Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Mortgagor is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to Mortgagor thereunder; (iii) all intellectual property related to the Premises; and (iv) all choses in action and causes of action relating to the Premises;

TOGETHER WITH all of Mortgagor's accounts now owned or hereafter created or acquired as relate to the Premises, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due to become due to Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of Mortgagor); (v) "securities", "investment property," "financial

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assets,” and “securities entitlements” (each as defined in the Code), and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Premises;

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

TO HAVE AND TO HOLD the Premises, unto Lender, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Event of Default; Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, prepayment premium and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower, Mortgagor or any other obligor to or benefiting Lender which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement to Lender of any and all sums incurred, expended or advanced by Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, the Note or any of the other Loan Documents, with interest thereon as provided herein or therein (collectively, “Indebtedness”).

IT IS FURTHER UNDERSTOOD AND AGREED THAT

1. **Title.** Mortgagor represents, warrants and covenants that (a) Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except (i) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of August 12, 2008 made by Mortgagor in favor of Lender and recorded with the Cook County Recorder of Deeds on August 15, 2008 as Document No. 0822822021 (the “Senior Mortgage”), and (ii) those liens and encumbrances in favor of Lender and as otherwise described on **Exhibit B** attached hereto (“Permitted Exceptions”); and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, Mortgagor will:

a. promptly repair, restore or rebuild, or cause to be repaired, restored or rebuilt, any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such

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damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose;

b. keep the Premises in good condition and repair, without physical waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to Mortgagor's right to contest liens as permitted by the terms of Section 27 hereof);

c. pay when due the Indebtedness in accordance with the terms of the Note and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Mortgagor under the Note, this Mortgage and the other Loan Documents;

d. pay when due any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Lender (subject to Mortgagor's right to contest liens as permitted by the terms of Section 27 hereof);

e. comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;

f. obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage;

g. make no material alterations in the Premises without Lender's prior written consent (which consent shall not unreasonably be withheld). For purposes of clarification under this Section 2(g), the following alterations may be undertaken by or on behalf of Mortgagor without Lender's prior consent: (i) such alterations that cost less than ten percent (10%) of the Loan apportioned for such Premises (as based on the Release Price) or (ii) such alterations are made in connection with (a) tenant improvement work performed pursuant to the terms of any Lease executed in accordance with the terms of the Loan Documents, (b) tenant improvement work performed pursuant to the terms and provisions of a Lease and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) alterations required by law or municipal ordinance, or (d) alterations performed in connection with the restoration of the Premises in accordance with the terms and provisions of this Agreement;

h. suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Lender's prior written consent;

i. pay when due all operating costs of the Premises;

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j. not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Lender's prior written consent (which consent shall not unreasonably be withheld); and

k. cause the Premises at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations.

3. **Payment of Taxes and Assessments.** Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against such Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to Mortgagor's right to contest the same, as provided by the terms hereof; and Mortgagor will furnish to the Lender duplicate receipts therefor within ten (10) days after payment of such Taxes.

4. **Tax Deposits.** After the occurrence of an Event of Default, Mortgagor shall deposit with Lender, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of 105% of the most recent ascertainable annual Taxes on the Premises. If requested by Lender, Mortgagor shall also deposit with Lender an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as estimated by Lender. Such deposits are to be held without any allowance of interest and are to be used for the payment of Taxes next due and payable when they become due.

If the funds so deposited are insufficient to pay any such Taxes for any year (or installments thereof, as applicable) when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Lender. Lender, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, or lien or title or claim thereof.

5. **Lender's Interest In and Use of Deposits.** Upon an Event of Default, Lender may, at its option, apply any monies at the time on deposit pursuant to Section 4 hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as Lender may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, Mortgagor shall immediately, upon written demand by Lender, deposit with Lender an amount equal to the amount expended by Mortgagor from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to Mortgagor. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of Mortgagor. Lender shall not be liable for any failure to apply to the payment of Taxes

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any amount so deposited unless Mortgagor, prior to an Event of Default, shall have requested Lender in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. Lender shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

6. Insurance.

a. Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Lender, in accordance with the terms, coverages and provisions described in this Section 6, and such other insurance as Lender may from time to time reasonably require. Unless Mortgagor provides Lender evidence of the insurance coverages required hereunder, Lender may purchase insurance at Mortgagor's expense to cover Lender's interest in the Premises. The insurance may, but need not, protect Mortgagor's interest. The coverages that Lender purchases may not pay any claim that Mortgagor make or any claim that is made against Mortgagor in connection with the Premises. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Lender purchases insurance for the Premises, Mortgagor will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which Lender may impose in connection with the placement of the insurance pursuant to the Note, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

b. All insurance policies referred to herein shall be in form and substance acceptable to Lender. Lender must receive evidence/certificates of insurance prior to the initial disbursement of Loan proceeds. Original policies, a copy certified as true, correct and complete by the insurance agent of such policies, or other evidence of the existence of the policies satisfactory to Lender in its sole and absolute discretion must be provided to Lender as soon as they are available from insurers. Certified copies should be available within sixty (60) to ninety (90) days of written request. Proof of coverage must be on an ACORD 28 - EVIDENCE OF PROPERTY INSURANCE form. Liability insurance must be written on ACORD 25S or its equivalent. Initials by an authorized representative should appear next to any deletions on the certificates. All property policies shall contain a standard mortgage clause in favor of Lender and shall provide for a thirty (30) day written notice to Lender of any material change or cancellation. Certificates with disclaimers will NOT be accepted. The Mortgagor must be the named insured. Property certificates must show Lender as a Mortgagee and Loss Payee as follows:

Cole Taylor Bank
225 West Washington Street, Ninth Floor
Chicago, Illinois 60606
Attention: Dennis Rourke

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Lender may be shown as "Mortgagee and Loss Payee As Their Interests May Appear" until the insurance agent receives release of interest from the prior lender. At that time, the insurance policies will need to be endorsed to show Lender as a Mortgagee and Loss Payee. The insured property must be identified as the address of the Premises. All insurance companies must have a Policy Rating of "A" and a Financial Rating of "VIII" from AM Best's Rating Guide, and the insurance documentation must be signed by an authorized representative of the Insurer. Rent Loss or Business Income coverage shall be in an amount equal to 100% of the projected annual rents or revenue with a minimum period of indemnity of 12 months, or such greater period as Lender may require. This coverage needs to be written on a Gross Rental Income, Gross Profits or Extended Period of Indemnity form, not on an actual loss sustained basis which may terminate as soon as the premises are tenantable or operational. Lender must be named as an Additional Insured for all general liability coverage, with a minimum limit of \$2,000,000 for any one occurrence.

c. Mortgagor shall not take out separate insurance for the Premises concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Lender is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to Lender and such separate insurance is otherwise acceptable to Lender.

d. In the event of loss, Mortgagor shall give prompt notice thereof to Lender, who, if such loss exceeds the lesser of ten percent (10%) of the Indebtedness or Five Hundred Thousand Dollars (\$500,000.00) ("Threshold"), shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i), (ii) and (iii) of the immediately succeeding sentence are not satisfied, then Lender, subject to the provisions hereof, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or less than the Threshold, (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and (iii) Lender determines that the work required to complete the repair or restoration of the Premises necessitated by such loss can be completed no later than six (6) months prior to the Maturity Date, then Lender shall endorse to Mortgagor any such payment and Mortgagor may collect such payment directly. Lender shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Lender pursuant to the terms of this paragraph, after the payment of all of Lender's expenses, either (i) on account of the Indebtedness, irrespective of whether such principal balance is then due and payable, whereupon Lender may declare the whole of the balance of Indebtedness to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in subparagraph "e" below; provided, however, and notwithstanding anything to the contrary contained herein, that Lender hereby agrees to permit the application of such proceeds to the restoration or repair of the damaged property, subject to the provisions of subparagraph "e" below, if (i) Lender has received satisfactory evidence that such restoration or repair shall be completed no later than the date that is six (6) months prior to the Maturity Date, and (ii) no Event of Default, or event that with the passage of time,

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the giving of notice or both would constitute an Event of Default, then exists. If insurance proceeds are made available to Mortgagor by Lender as hereinafter provided, Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

e. If insurance proceeds are made available by Lender to Mortgagor, Mortgagor shall comply with the following conditions:

i. Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, Mortgagor shall obtain from Lender its approval (which approval shall not be unreasonably withheld) of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

ii. Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Premises to the extent permitted in subparagraph d above (which payment or application may be made, at Lender's option, through an escrow, the terms and conditions of which are satisfactory to Lender and the cost of which is to be borne by Mortgagor), Lender shall be satisfied as to the following:

(a) no Event of Default or any event which, with the passage of time or giving of notice would constitute an Event of Default, has occurred;

(b) either such Improvements have been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances (subject to Mortgagor's contest right thereof, if any), except the lien of this Mortgage and the Permitted Exceptions, or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Premises, Mortgagor have deposited with Lender such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Premises; and

(c) prior to each disbursement of any such proceeds, Lender shall be furnished with a statement of Lender's architect (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Lender and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Lender shall be furnished with appropriate evidence of

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payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

iii. If Mortgagor shall fail to restore, repair or rebuild the Improvements within a time deemed satisfactory by Lender, then Lender, at its option, may (a) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of Mortgagor, or (b) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

7. **Condemnation.** If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to Lender, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Lender. Such award or monies shall be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable and, at any time from and after the taking Lender may declare the whole of the balance of the Indebtedness to be due and payable. Notwithstanding the provisions of this paragraph to the contrary, if any condemnation or taking of less than the entire Premises occurs and provided that no Event of Default and no event or circumstance which with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and if such partial condemnation, in the reasonable discretion of Lender, has no material adverse effect on the operation or value of the Premises, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by Mortgagor, and Lender hereby agrees that in such event it shall not declare the Indebtedness to be due and payable, if it is not otherwise then due and payable.

8. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, Mortgagor shall pay such tax in the manner required by any such law. Mortgagor further agree to reimburse Lender for any sums which Lender may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Lender.

9. **Lease Assignment.** Mortgagor acknowledges that, concurrently herewith, Mortgagor has executed and delivered to Lender, as additional security for the repayment of the Loan, a Junior Assignment of Rents and Leases ("Assignment") pursuant to which Mortgagor has assigned to Lender interests in the leases of the Premises and the rents and income from the Premises. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Mortgagor agrees to abide by all of the provisions of the Assignment.

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10. **Effect of Extensions of Time and Other Changes.** If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation, release or change.

11. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (b) the imposition upon Lender of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or Lender's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness or the holders thereof, then Mortgagor, upon demand by Lender, shall pay such Taxes or charges, or reimburse Lender therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Lender. Notwithstanding the foregoing, if in the opinion of counsel for Lender it is or may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may declare all of the Indebtedness to be immediately due and payable.

12. **Lender's Performance of Defaulted Acts and Expenses Incurred by Lender.** If an Event of Default has occurred, Lender may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Lender, and 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 lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Lender in regard to any tax referred to in Section 8 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any out-of-pocket costs, expenses and fees, including reasonable attorneys' fees, incurred by Lender in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Lender's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Section 12 shall be immediately due

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and payable by Mortgagor to Lender, and shall be additional Indebtedness evidenced by the Note and secured by this Mortgage. Lender's failure to act shall never be considered as a waiver of any right accruing to Lender on account of any Event of Default. Should any amount paid out or advanced by Lender hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. **Security Agreement.** Mortgagor and Lender agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by the Lender (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "supporting obligations" (as defined in the Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Lender, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Lender, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

a. Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral (except for the sale or disposition of Obsolete Collateral in the ordinary course of business which is being replaced or which is no longer necessary in connection with the operation of the Premises) and has rights in and the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Lender and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

b. The Collateral is to be used by Mortgagor solely for business purposes.

c. The Collateral will, to the extent appropriate, be kept at the Real Estate and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Lender (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

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d. The only persons having any interest in the Premises are Mortgagor, Lender and holders of interests, if any, expressly permitted hereby, including, without limitation, tenants.

e. No Financing Statement (other than Financing Statements showing Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at their own cost and expense, upon demand, will furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender upon written request and will do all such acts as Lender may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Lender and no other party and liens and encumbrances (if any) expressly permitted hereby; and 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 Lender to be desirable. Mortgagor hereby irrevocably authorizes Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Lender promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Lender in any jurisdiction prior to the date of this Mortgage.

f. Upon an Event of Default hereunder, and in accordance with applicable law, Lender 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 Lender shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Lender may render the Collateral

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unusable without removal and may dispose of the Collateral on the Premises. Lender may require Mortgagor to assemble the Collateral and make it available to Lender for its possession at a place to be designated by Lender which is reasonably convenient to both parties. Lender will give Mortgagor at least ten (10) days' 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. Lender may buy at any public sale. Lender 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 Lender 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 reasonable attorneys' fees and legal expenses incurred by Lender shall be applied against the indebtedness in such order or manner as Lender shall select. Lender will account to Mortgagor for any surplus realized on such disposition.

g. The terms and provisions contained in this Section 13, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

h. 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. The addresses of Mortgagor (Debtor) and Lender (Secured Party) are hereinbelow 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.

i. To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

j. Mortgagor represents and warrants that:

- i. Mortgagor is the record owner of the respective Premises;
- ii. Mortgagor's chief executive office is located in the State of Illinois;
- iii. Mortgagor's state of organization is the State of Illinois;
- iv. Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage; and
- v. Mortgagor's organizational identification number is 01487906.

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k. Mortgagor agrees that:

i. Where Collateral is in possession of a third party, Mortgagor will join with the Lender in notifying the third party of the Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender;

ii. Mortgagor will cooperate with the Lender in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

iii. Until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its company name without giving the Lender at least 30 days' prior written notice in each instance.

14. Restrictions on Transfer.

a. Mortgagor, without the prior written consent of Lender (which consent shall not be unreasonably withheld), shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

i. The Premises or any part thereof or interest therein;

ii. All or any part of David C. Hovey, Sr.'s beneficial interest in Mortgagor;

iii. If there shall be any change in control (by way of transfers of member interests or otherwise) in any member or members which directly or indirectly controls the day to day operations and management of Mortgagor and/or owns a controlling interest in Mortgagor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section 14 shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Premises, or part thereof, or interest therein, or any membership interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, including transfers by operation of law, (iv) to leases permitted by the terms of the Loan Documents, or (v) with respect to a member or indirect owner that is a trust, a transfer of the trustee to a successor trustee in accordance with the terms of its trust agreement.

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b. In determining whether or not to make the Loan, Lender evaluated the background and experience of Mortgagor and its members in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Lender's security for the Note. Mortgagor and its members are well experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor recognizes that Lender is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Lender to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Lender come into possession thereof with the intention of selling same; and (d) would impair Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by Lender would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (i) protecting Lender's security, both of repayment and of value of the Premises; (ii) giving Lender the full benefit of its bargain and contract with Mortgagor; (iii) allowing Lender to raise the interest rate and collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this Section 14 is deemed a restraint on alienation, that it is a reasonable one.

15. **Events of Default; Acceleration.** Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

a. Borrower fails to pay (i) any installment of principal or interest payable pursuant to the Note on the fifth (5th) day after the date when due, (ii) Mortgagor fails to pay when due any installment of principal or interest payable on any note or document executed by Mortgagor which is secured by the Real Property, or (iii) Borrower, Mortgagor or Guarantor fails to pay any other amount payable to Lender under the Note, this Mortgage or any of the other Loan Documents within five (5) days after the date when any such payment is due in accordance with the terms hereof or thereof;

b. Borrower or Mortgagor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by such party under the Note, this Mortgage or any of the other Loan Documents within thirty (30) days after the delivery of written notice from Lender of such failure; provided that if such default is not reasonably capable of being cured within such thirty (30) day period, such failure shall not constitute an Event of Default so long as either Borrower or Mortgagor commences the cure of such default within such thirty (30) day period, diligently prosecutes such cure to completion and completes the cure within sixty (60) days after delivery of such written notice from Lender;

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c. the existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to Lender;

d. Mortgagor, Borrower or any guarantor of the Note files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Mortgagor, Borrower or of all or any substantial part of the property of Borrower, Mortgagor or any guarantor of the Note or any of the Premises or all or a substantial part of the assets of Mortgagor, Borrower or any guarantor of the Note are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within thirty (30) days;

e. the commencement of any involuntary petition in bankruptcy against Mortgagor, Borrower or any guarantor of the Note or the institution against Mortgagor, Borrower or any guarantor of the Note of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor, Borrower or any guarantor of the Note which shall remain undismissed or undischarged for a period of sixty (60) days;

f. the dissolution, termination or merger of Mortgagor, Borrower or any Guarantor or the occurrence of the death or declaration of legal incompetency of any individual Guarantor, unless within the sixty (60) day period immediately following such death or declaration of legal incompetency (i) Mortgagor or Borrower provides Lender with a substitute guarantor whose creditworthiness and real estate experience and skills are comparable to that of the original guarantor and who is otherwise acceptable to Lender in Lender's sole discretion, and (ii) such substitute guarantor executes a guaranty in favor of Lender in form and substance substantially similar to the existing guaranty and otherwise satisfactory to Lender;

g. the occurrence of a Prohibited Transfer;

h. the occurrence of an "Event of Default" under the Note, the Loan Agreement or any of the other Loan Documents; or

i. the occurrence of an "Event of Default" under the Senior Indebtedness (as hereinafter defined) after the expiration of any applicable periods of notice or cure, under any document or agreement evidencing or securing any of the Senior Indebtedness.

If an Event of Default occurs, Lender may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to Mortgagor or Borrower, with interest thereon accruing from the date of such Event of Default until paid at the Default Rate.

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16. Foreclosure; Expense of Litigation.

a. When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 *et seq.*, Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Lender is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

b. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or actually incurred by or on behalf of Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Lender 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 the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

17. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Lender may determine in its sole and absolute discretion.

18. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Lender, appoint a receiver for the Premises in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents,

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issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

19. Lender's Right of Possession in Case of Default. At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Lender, surrender to Lender possession of the Premises. Lender, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Lender may then hold, operate, manage and control the Premises, either personally or by its agents. Lender shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Lender shall have full power to:

- a. cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, subject to the provisions of any executed subordination, non-disturbance and attornment agreements delivered to Mortgagor;
- b. elect to disaffirm any lease or sublease which is then subordinate to the lien hereof, subject to the provisions of any executed subordination, non-disturbance and attornment agreements delivered to Mortgagor;
- c. extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- d. make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Lender deems are necessary;

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e. insure and reinsure the Premises and all risks incidental to Lender's possession, operation and management thereof; and

f. receive all of such avails, rents, issues and profits.

20. **Application of Income Received by Lender.** Lender, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Lender may determine:

a. to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to Lender and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

b. to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

c. to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

21. **Compliance with Illinois Mortgage Foreclosure Law.**

a. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

b. If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 18 of this Mortgage 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.

c. Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Section 12, 16 or 28 of this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

22. **Rights Cumulative.** Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every

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right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

23. **Lender's Right of Inspection.** Lender and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times upon not less than twenty-four (24) hours prior notice to Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

24. **Release Upon Payment and Discharge of Mortgagor's Obligations.** Lender shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Lender in connection with the execution of such release.

25. **Notices.** Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) sent via facsimile, with a copy mailed either by registered or certified mail, postage prepaid, return receipt requested mailed, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagor:	Silver Fern, LLC 630 Vernon Avenue Glencoe, Illinois 60022 Attention: David C. Hovey Facsimile: (847) 835-3073
To Borrower:	Optima, Inc. 630 Vernon Avenue Glencoe, Illinois 60022 Attention: David C. Hovey Facsimile: (847) 835-3073
With copy to:	Perkins Coie LLP 131 South Dearborn Street, Suite 1700 Chicago, Illinois 60603 Attention: Phil Gordon, Esq. Facsimile: (312) 324-9600
To Lender:	Cole Taylor Bank 225 West Washington Street Ninth Floor Chicago, Illinois 60606 Attn: Dennis Rourke Facsimile: (847) 698-5720

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With a copy to: Meltzer, Purtil & Stelle LLC
 300 South Wacker Drive, Suite 3500
 Chicago, Illinois 60606
 Attn: Allen C. Balk, Esq.
 Facsimile: (312) 987-9854

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by via facsimile with a copy by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

26. **Waiver of Rights**. Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

a. Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of such Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15 - 1601 or other applicable law or replacement statutes; and

b. Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

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

a. Such Mortgagor shall forthwith give notice of any Contested Lien to Lender at the time the same shall be asserted;

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b. Such Mortgagor shall either pay under protest or deposit with Lender the full amount (herein called "Lien Amount") of such Contested Lien, together with such amount as Lender may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment such Mortgagor may furnish to Lender a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be reasonably satisfactory to Lender;

c. Such Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Lender to be represented in any such contest and shall pay all expenses incurred, in so doing, including out-of-pocket fees and expenses of Lender's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);

d. Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to such Mortgagor, or (ii) forthwith upon demand by Lender if, in the reasonable opinion of Lender, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if such Mortgagor shall fail so to do, Lender may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Lender to obtain the release and discharge of such liens; and any amount expended by Lender in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Lender may in such case use and apply monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

28. Expenses Relating to Note and Mortgage.

a. Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Lender's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other out-of-pocket expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Lender:

i. May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Lender shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

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ii. May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

iii. May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Lender's taking possession of and managing the Premises, which event may or may not actually occur;

iv. May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

v. May enter into negotiations with Mortgagor or any of their respective agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the Indebtedness or the transfer of the Premises in lieu of foreclosure; or

vi. May enter into negotiations with Mortgagor or any of their respective agents, employees or attorneys pertaining to Lender's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

b. All expenses, charges, costs and fees described in this Section 28 shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate thereafter until paid, and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

29. **Rent Roll.** The Mortgagor represents and warrants that the financial statements for the Mortgagor and the Premises previously submitted to the Lender are true, complete and correct in all material respects, disclose all actual and contingent liabilities of the Mortgagor or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of the Mortgagor or the Premises from the dates of said financial statements until the date hereof. The Mortgagor shall furnish to the Lender such financial information regarding the Mortgagor, its constituent partners or members, as the case may be, the Premises as the Lender may from time to time reasonably request, which shall include, without any further request therefor, quarterly rent rolls and operating statements for the Premises no later than thirty (30) days after the end of each calendar quarter, commencing with the quarter ending March 31, 2010, all in form, scope and detail satisfactory to the Lender and certified by the chief financial officer or other appropriate officer of the Mortgagor.

30. **Statement of Indebtedness.** Mortgagor, within seven (7) days after being so requested by Lender in writing, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and

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stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

31. **Further Instruments.** Upon written request from Lender, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

32. **Additional Indebtedness Secured.** All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Lender to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

33. **Indemnity.** Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Lender by Mortgagor in the exercise of the rights and powers granted to Lender in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability to the extent permitted by applicable law. Mortgagor shall indemnify and save Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) (collectively, "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Lender at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Lender in accordance with the terms of this Mortgage; provided, however, that Mortgagor shall not be obligated to indemnify or hold Lender harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Lender, including its agents, consultants and employees. All costs provided for herein and paid for by Lender shall be so much additional Indebtedness and shall become immediately due and payable upon demand by Lender and with interest thereon from the date incurred by Lender until paid at the Default Rate.

34. **Subordination of Property Manager's Lien.** Any property management agreement for the Premises entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Premises shall be subject and subordinate to the lien of this Mortgage and shall provide that Lender may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at Lender's request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Lender, in recordable

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form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

35. Miscellaneous.

a. **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its respective assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Lender, its successors and assigns and any holder or holders, from time to time, of the Note.

b. **Invalidity of Provisions; Governing Law.** In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

c. **Municipal Requirements.** Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Lender any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

d. **Rights of Tenants.** Lender shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Lender. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

e. **Option of Lender to Subordinate.** At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by Lender of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

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f. **Lender in Possession**. Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Premises by Lender pursuant to this Mortgage.

g. **Relationship of Lender and Mortgagor**. Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Lender shall not be deemed to be such partner, joint venturer, agent or associate on account of Lender becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of Mortgagor and Lender hereunder is solely that of debtor/creditor.

h. **Time of the Essence**. Time is of the essence of the payment by Mortgagor of all amounts due and owing to Lender under the Note and the other Loan Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

i. **No Merger**. The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Premises, and if Lender acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

j. **Maximum Indebtedness**. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to \$1,000,000.00; provided, however, in no event shall Lender be obligated to advance funds in excess of the face amount of the Note.

k. **Consent to Jurisdiction** TO INDUCE LENDER TO ACCEPT THE NOTE, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

l. **Waiver of Jury Trial**. MORTGAGOR AND LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A

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TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

m. Complete Agreement. This Mortgage, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by Mortgagor and Lender.

36. Subordination Provisions.

(a) Subordinate Lender (as hereinafter defined) hereby unconditionally subordinates the lien of this Mortgage, and all extensions, modifications, and renewals thereof, and any other liens in personal property securing the Loan, and all of Subordinate Lender's rights, remedies and privileges thereunder, to the lien of the Senior Mortgage and any other liens in personal property securing the loan to Mortgagor secured by the Senior Mortgage (the "Senior Indebtedness"), and all of the rights, remedies, and privileges thereunder of Senior Lender (as hereinafter defined), including without limitation, any judgment which may be obtained on any of the obligations or indebtedness described in the Senior Mortgage (and any amendments, modifications, renewals or extensions thereof). Nothing contained herein shall be deemed to operate to defeat, render invalid, or impair the priority and seniority of the lien of the Senior Lender under the Senior Mortgage. As used herein, "Subordinate Lender" shall mean the Lender or any other holder from time to time of the Note. As used herein, "Senior Lender" shall mean the Lender or any other holder or holders from time to time of that certain Promissory Note dated August 12, 2008 in the amount of \$11,244,000.00 from Mortgagor made payable to Lender.

(b) Subordinate Lender's obligation to release this Mortgage upon the closing of the sale of any parcel of the Premises shall not be affected by any default under the Senior Mortgage. Subordinate Lender acknowledges that Senior Lender would not make the Senior Loan to Borrower without this provision. Subordinate Lender agrees to execute and deliver such instruments as required by Senior Lender for release of such parcels from this Mortgage in accordance with the requirements of this Section 36 within five (5) business days after written request from Senior Lender or any escrow agent.

(c) Until the Senior Indebtedness is paid in full, the consent of the Subordinate Lender shall not be required for the sale of any portions of the Premises.

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(d) Subordinate Lender hereby subordinates all of its right, title, interest or claim in and to: (i) all proceeds of all policies of insurance covering the Premises, and (ii) all awards or other compensation made for any taking of all or any part of the Premises, to the rights of Senior Lender in and to such insurance proceeds and condemnation awards.

(e) So long as any indebtedness remains outstanding under the Loan Documents, Senior Lender shall be exclusively entitled to receive any and all insurance or condemnation awards or proceeds, either for application to such indebtedness or for such repair, reconstruction, or renewal of the Premises as Senior Lender shall direct in its sole discretion. If, following any such application or disposition of the insurance proceeds or condemnation awards and other compensation, any balance remains, then such excess shall be made payable to Subordinate Lender, or if Subordinate Lender's rights to receive such proceeds are disputed by the Mortgagor or the Borrower or other parties, then Senior Lender may either make such excess payable to the joint order of Borrower and Subordinate Lender as their interests may appear under the Loan Documents, or Senior Lender may interplead such excess into court for further disposition.

(f) Subordinate Lender agrees at any time and from time to time to execute such documents as Senior Lender or the insurer may reasonably require to confirm that any rights that Subordinate Lender may have as a loss payee or additional insured are expressly subject and subordinate to the rights of Senior Lender as an additional insured or loss payee. If any insurance or condemnation awards or proceeds are tendered or paid to Subordinate Lender in violation of this Section 36, Subordinate Lender shall immediately transfer such awards or proceeds to Senior Lender.

37. Revolving Loan.

This Mortgage is given to secure a revolving credit loan and shall secure not only presently existing indebtedness under the Note and the other Loan Documents, but also future advances, whether such advances are obligatory or to be made at the option of the Lender, or otherwise, as are made within twenty (20) years from the date hereof to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no Indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness including future advances, from the time of its filing for record in the recorder's or registrar's office of the county in which the real estate is located. This Mortgage secures, among other Indebtedness, a "revolving credit" arrangement within the meaning of 815 ILCS 205/4.1 and 205 ILCS 5/5d. The total amount of Indebtedness may increase or decrease from time to time, as provided in the Note, and any disbursements which the Lender may make under this Mortgage, the Note or any other document with respect hereto (e.g., for payment of taxes, insurance premiums or other advances to protect the Lender's liens and security interests, as permitted hereby) shall be additional Indebtedness secured hereby. This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.

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38. **MORTGAGOR'S WAIVER OF RIGHTS.** THE MORTGAGOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A TRANSACTION WHICH DOES NOT INCLUDE EITHER AGRICULTURAL REAL ESTATE (AS DEFINED IN THE ACT), OR RESIDENTIAL REAL ESTATE (AS DEFINED IN THE ACT). EXCEPT AS OTHERWISE SET FORTH HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, THE MORTGAGOR WAIVES THE BENEFIT OF ALL LAWS NOW EXISTING OR THAT MAY SUBSEQUENTLY BE ENACTED PROVIDING FOR (I) ANY APPRAISEMENT BEFORE SALE OF ANY PORTION OF THE MORTGAGED PROPERTY, (II) ANY EXTENSION OF THE TIME FOR THE ENFORCEMENT OF THE COLLECTION OF THE INDEBTEDNESS OR THE CREATION OR EXTENSION OF A PERIOD OF REDEMPTION FROM ANY SALE MADE IN COLLECTING SUCH DEBT OR (III) EXEMPTION OF THE MORTGAGED PROPERTY FROM ATTACHMENT, LEVY OR SALE UNDER EXECUTION OR EXEMPTION FROM CIVIL PROCESS. EXCEPT AS OTHERWISE SET FORTH HEREIN, TO THE FULL EXTENT THE MORTGAGOR MAY DO SO, THE MORTGAGOR AGREES THAT THE MORTGAGOR WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE PROVIDING FOR ANY APPRAISEMENT, VALUATION, STAY, EXEMPTION, EXTENSION, REINSTATEMENT OR REDEMPTION, OR REQUIRING FORECLOSURE OF THIS MORTGAGE BEFORE EXERCISING ANY OTHER REMEDY GRANTED HEREUNDER AND THE MORTGAGOR, FOR THE MORTGAGOR AND ITS SUCCESSORS AND ASSIGNS, AND FOR ANY AND ALL PERSONS EVER CLAIMING ANY INTEREST IN THE MORTGAGED PROPERTY, TO THE EXTENT PERMITTED BY LAW, HEREBY WAIVES AND RELEASES ALL RIGHTS OF REINSTATEMENT, REDEMPTION, VALUATION, APPRAISEMENT, STAY OF EXECUTION, NOTICE OF ELECTION TO MATURE OR DECLARE DUE THE WHOLE OF THE SECURED INDEBTEDNESS AND MARSHALLING IN THE EVENT OF FORECLOSURE OF THE LIENS HEREBY CREATED.

39. **Assignment of Rents.** Notwithstanding provisions hereof relating to the assignment of rents, Lender shall not exercise its right to receive such rents until it has taken possession, to the extent such possession is required by applicable law to exercise such right.

40. **Certain Insurance Disclosures.** Pursuant to the Illinois Collateral Protection Act and the Illinois Financial Institution Insurance Sales Law, Lender hereby notifies Mortgagor as follows:

You may obtain insurance required in connection with your loan or extension of credit from any insurance agent, broker, or firm that sells such insurance, provided the insurance requirements in connection with your loan are otherwise complied with. Your choice of insurance provider will not affect our credit decision or your credit terms. Unless you provide us with evidence of the insurance coverage required by your agreements with us, we may purchase insurance at your expense to protect our interest in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection

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with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreements. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

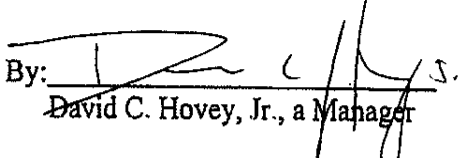
41. **Business Purposes.** Mortgagor certifies, represents and warrants to the Lender that the indebtedness secured by this Mortgage is a "business purpose loan" as provided in 815 ILCS 205/4(1)(c).

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IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage the day and year first above written.

SILVER FERN, LLC, an Illinois limited liability company

By: 
David C. Hovey, Jr., a Manager

Property of Cook County Clerk's Office

SIGNATURE PAGE
MORTGAGE

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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 David C. Hovey, Jr., a Manager of Silver Fern, LLC ("Mortgagor"), who is personally known to me to be the same person whose names is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act as the Manager of Mortgagor, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 29 day of January, 2010.



J. Oppenheimer

Notary Public

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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PARCEL 1: UNITS D, E AND I IN THE 630 VERNON CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED LAND: LOT 3 AND PARTS OF LOTS 1, 2 AND 4 (TOGETHER WITH THE EASTERLY HALF OF THE VACATED ALLEY WESTERLY OF AND ADJOINING LOTS 1, 2, 3 AND THE NORTHWESTERLY 10 FEET OF LOT 4) IN BLOCK 24 IN THE VILLAGE OF GLENCOE, A SUBDIVISION IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH SURVEY IS ATTACHED AS AN EXHIBIT TO THE DECLARATION OF CONDOMINIUM RECORDED JANUARY 3, 1996 AS DOCUMENT NUMBER 96006146 AS AMENDED FROM TIME TO TIME TOGETHER WITH ITS UNDIVIDED INTEREST IN THE COMMON ELEMENTS ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2: THE EXCLUSIVE RIGHT TO THE USE OF PARKING SPACE P-31 FOR THE BENEFIT OF UNIT E OF PARCEL 1, A LIMITED COMMON ELEMENT AS SET FORTH IN SAID DECLARATION.

PARCEL 3: THE EXCLUSIVE RIGHT TO THE USE OF STORAGE ROOM #18 FOR THE BENEFIT OF UNIT E OF PARCEL 1, A LIMITED COMMON ELEMENT AS SET FORTH IN SAID DECLARATION.

Address: 630 Vernon Avenue, Glencoe, Illinois

Permanent Index Number: 05-07-211-035-1022
05-07-211-035-1023
05-07-211-035-1028

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EXHIBIT B

PERMITTED EXCEPTIONS

1. General real estate taxes for the year 2009 and each year thereafter not yet due and payable.
2. Exceptions contained on Schedule B of First American Title Insurance Company Commitment No. NCS-427619-CHI2 dated January 19, 2010.

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