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PREPARED BY AND WHEN RECORDED
RETURN TO:



Alvin L. Kruse
Seyfarth Shaw LLP
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603

Doc#: 1018240061 Fee: \$70.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/01/2010 11:54 AM Pg: 1 of 18

Permanent Tax Index Numbers and Addresses:
See Exhibit A

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT AMENDS AND RESTATES, AND SUPERSEDES AND REPLACES, THE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT DATED JUNE 24, 2008, EXECUTED BY THE MORTGAGOR (AS DEFINED HEREIN) AND 1211 CHICAGO AVE., LLC, IN FAVOR OF THE MORTGAGEE (AS DEFINED HEREIN) AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS, ON JUNE 30, 2008, AS DOCUMENT NO. 0818233260, EFFECTIVE AS OF THE DATE OF THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT, AS AN AMENDMENT, RESTATEMENT AND CONTINUATION OF, AND NOT A NOVATION OF, THE SAID MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT. THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT IS BEING EXECUTED AND DELIVERED PURSUANT TO THE MODIFICATION AGREEMENT DATED AS OF JANUARY 23, 2010, BUT ACTUALLY EXECUTED AND DELIVERED ON THE DATE OF THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT, BY AND AMONG THE MORTGAGOR (AS DEFINED HEREIN), TERRENCE H. UPTON, AS GUARANTOR, AND THE MORTGAGEE (AS DEFINED HEREIN).

**AMENDED AND RESTATED
MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND
RENTS AND FIXTURE FINANCING STATEMENT**

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT (the "Mortgage") is made on June 22, 2010, between THE UPTON PROPERTIES, INC., an

Box 400-CTCC

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Illinois corporation, and **2722 GREEN BAY ROAD, LLC**, an Illinois limited liability company (collectively, the "**Mortgagor**"), whose addresses are 22950 West Route 173, Antioch, Illinois 60002, and **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois banking corporation, with offices at 120 South LaSalle Street, Chicago, Illinois 60603 (the "**Mortgagee**").

The Mortgagor MORTGAGES, CONVEYS AND WARRANTS to the Mortgagee certain real property located in the County of Cook, State of Illinois and all the buildings, structures and improvements on it more specifically described as:

See Exhibit A attached

Commonly known as 2722 Green Bay Road and 1111 Chicago Avenue all in Evanston, Illinois (the "**Premises**").

Tax Parcel Identification Numbers: 05-34-417-028-0000
 11-19-207-030-0000
 11-19-207-031-0000
 11-19-207-032-0000

The Premises also includes all of the Mortgagor's title and interest in the following:

- (1) All easements, rights-of-way, licenses, privileges and hereditaments.
- (2) Land lying in the bed of any road, or the like, opened, proposed or vacated, or any strip or gore, adjoining the Premises.
- (3) All machinery, apparatus, equipment, fittings, and articles of personal property of every kind and nature whatsoever located now or in the future in or upon the Premises and used or useable in connection with any present or future operation of the Premises (all of which is called "**Equipment**"). It is agreed that all Equipment is part of the Premises and appropriated to the use of the real estate and, whether affixed or annexed or not, shall for the purposes of this Mortgage unless the Mortgagee shall otherwise elect, be deemed conclusively to be real estate and mortgaged and warranted to the Mortgagee. Equipment excludes machinery, fixtures, equipment and articles of personal property used or useable in connection with the present or future operation of the business operated out of the Premises.
- (4) All mineral, oil, gas and water rights, royalties, water and water stock, if any.
- (5) All awards or payments including interest made as a result of the exercise of the right of eminent domain; the alteration of the grade of any street, any loss of or damage to any building or other improvement on the Premises, any other injury to or decrease in the value of the Premises, any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the Premises, and the reasonable attorneys' and paralegals' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of any such award or payment.
- (6) All of the rents, issues and profits of the Premises under present or future leases, or otherwise.

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The Mortgagor represents and warrants that the Premises are unencumbered except as follows: Those permitted exceptions set forth on Exhibit B attached (the "**Permitted Encumbrances**").

If the Premises are encumbered by Permitted Encumbrances, the Mortgagor shall perform all obligations and make all payments as required by the Permitted Encumbrances. The Mortgagor shall provide copies of all writings pertaining to Permitted Encumbrances, and the Mortgagee is authorized to request and receive that information from any other person without the consent or knowledge of the Mortgagor.

This Mortgage secures the following the Debt:

The term "**Debt**" in this Mortgage means all obligations, indebtedness and liabilities of the Mortgagor to the Mortgagee and any of its subsidiaries, affiliates or successors, now existing or later arising, including, without limitation, all loans, advances, interest, costs, overdraft indebtedness, credit card indebtedness, lease obligations, or obligations relating to any Rate Management Transaction (as defined below), all monetary obligations incurred or accrued during the pendency of any bankruptcy, insolvency, receivership or other similar proceedings, regardless of whether allowed or allowable in such proceeding, and all renewals, extensions, modifications, consolidations or substitutions of any of the foregoing, whether the Mortgagor may be liable jointly with others or individually liable as a debtor, maker, co-maker, drawer, endorser, guarantor, surety or otherwise, and whether voluntarily or involuntarily incurred, due or not due, absolute or contingent, direct or indirect, liquidated or unliquidated. The term "**Debt**" includes, without limitation, the following:

- (i) All the Mortgagor's obligations under that certain Amended and Restated Mortgage Note dated June 22, 2010, in favor of the Mortgagee executed by the Mortgagor in the original principal amount of \$8,500,000.00 (the "**Note**");
- (ii) All the Mortgagor's obligations under this Mortgage, and
- (iii) Including any amendments, extensions, renewals, modifications or replacements of the foregoing without limit as to number of frequency.

This Mortgage also secures all principal, interest and other amounts coming due to the Mortgagee from 1211 Chicago Ave., LLC, an Illinois limited liability company ("**1211**"), under a Mortgage Note of even date with this Mortgage in the original principal amount of \$1,000,000, as from time to time modified, amended, increased, renewed and extended (the "**1211 Note**"), which evidences a loan by the Mortgagee to 1211 (the "**1211 Loan**"). The 1211 Note and the other documents which evidence and secure the 1211 Loan, as from time to time modified, amended, increased, renewed and extended, are referred to herein as the "**1211 Loan Documents**".

FUTURE ADVANCES. CROSS-LIEN AND LIMITATION ON AMOUNT OF MORTGAGE: Notwithstanding anything to the contrary contained in this Mortgage, the amount secured by this Mortgage, including all other present and future, direct and indirect obligations and liabilities of the Mortgagor, or any one or more of them, with or without others, shall not exceed the principal sum of \$19,000,000.00 at any one time outstanding.

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The term "**Rate Management Transaction**" in this Mortgage means any transaction, (including an agreement with respect thereto) now existing or hereafter entered into by the Mortgagor, and the Mortgagee, or any of its subsidiaries or affiliates or their successors, which is a rate swap, basis swap, forward rate transactions, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transactions, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures.

This Mortgage shall also secure the performance of the promises and agreements contained in this Mortgage. The Mortgagor promises and agrees as follows:

1. **PAYMENT OF DEBT; PERFORMANCE OF OBLIGATIONS:** The Mortgagor shall promptly pay when due, whether by acceleration or otherwise, the Debt for which the Mortgagor is liable, and shall promptly perform all obligations to which the Mortgagor has agreed under the terms of this Mortgage and any loan documents evidencing the Debt.

2. **TAXES:** The Mortgagor shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions, and other charges which may become a lien prior to this Mortgage. Should the Mortgagor fail to make those payments, the Mortgagee may at its option and at the expense of the Mortgagor pay the amounts due for the account of the Mortgagor. Upon the request of the Mortgagee, the Mortgagor shall immediately furnish to the Mortgagee all notices of amounts due and receipts evidencing payment. The Mortgagor shall promptly notify the Mortgagee of any lien on all or any part of the Premises and shall promptly discharge any unpermitted lien or encumbrance.

3. **CHANGE IN TAXES:** In the event of the passage of any law or regulation, state, federal or municipal, subsequent to the date of this Mortgage, which changes or modifies the laws now in force governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting those taxes, the Debt shall become due and payable immediately at the option of the Mortgagee.

4. **INSURANCE:** Until the Debt and the 1211 Note are fully paid, the Mortgagor shall keep the Premises and the present and future buildings and other improvements on the Premises constantly insured for the benefit of the Mortgagee against fire and such other hazards and risks customarily covered by the standard form of extended coverage endorsement available in the State where the Premises is located, including risks of vandalism and malicious mischief, and shall further provide flood insurance (if the Premises are situated in an area designated as a flood risk area by the Director of the Federal Emergency Management Agency or as otherwise required by the Flood Disaster Protection Act of 1973 and regulations issued under it), and such other appropriate insurance as the Mortgagee may require from time to time. All insurance policies and renewals must be acceptable to the Mortgagee, must provide for payment to the Mortgagee in the event of loss, must require thirty (30) days notice to the Mortgagee in the event of nonrenewal or cancellation, and must be delivered to the Mortgagee within thirty (30) days prior to their respective effective dates. Should the Mortgagor fail to insure or fail to pay the

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premiums on any insurance or fail to deliver the policies or certificates or renewals to the Mortgagee, then the Mortgagee at its option may have the insurance written or renewed and pay the premiums for the account of the Mortgagor. In the event of loss or damage, the proceeds of the insurance shall be paid to the Mortgagee alone. No loss or damage shall itself reduce the Debt or the 1211 Note. The Mortgagor and Mortgagee shall work together. The Mortgagor can compromise any loss without the Mortgagee's consent so long as proceeds exceed sums claimed due by the Mortgagee. The proceeds shall be applied first toward reimbursement of all costs and expenses of the Mortgagee in collecting the proceeds and then toward payment of the Debt or any portion of it, and the 1211 Note, whether or not then due or payable, or the Mortgagee at its option may apply the proceeds, or any part to the repair or rebuilding of the Premises provided that the Mortgagor is not then or at any time during the course of restoration of the Premises in default under this Mortgage and has complied with all requirements for application of the proceeds to restoration of the Premises as the Mortgagee, in its sole discretion may establish. Proceeds paid to the Mortgagee shall not trigger any prepayment consideration under the Note.

5. RESERVES FOR TAXES AND INSURANCE: The Mortgagor shall, if requested by the Mortgagee, pay to the Mortgagee, at the time of and in addition to the scheduled installments of principal and/or interest due under the Debt, a sum equal to (a) the amount estimated by the Mortgagee to be sufficient to enable the Mortgagee to pay at least thirty (30) days before they become due and payable, all taxes, assessments and other similar charges levied against the Premises, plus (b) the amount of the annual premiums on any policies of insurance required to be carried by the Mortgagor, divided by (c) the number of installments due each year ((a) and (b) are collectively referred to as the "Charges"). Upon notice at any time, and after an uncured default has occurred, the Mortgagor will, within ten (10) days, deposit such additional sum as may be required for the payment of increased Charges. These sums may be commingled with the general funds of the Mortgagee, and no interest shall be payable on them nor shall these sums be deemed to be held in trust for the benefit of the Mortgagor. Notwithstanding payment of any sums by the Mortgagor to the Mortgagee under the terms of this Section, the Mortgagee shall have no obligation to pay any Charges. The obligation of the Mortgagor to pay the Charges is not affected or modified by the arrangements set out in this Section. Payment by the Mortgagee on any one or more occasions of all or any part of the Charges shall not be construed as obligating it to pay any Charges on any other occasion. If the Mortgagee elects to pay any Charge, it shall not be required to do so at any time prior to the date on which penalties, interest or collection fees begin to accrue. If the Mortgagee elects to pay any premium on any policy of insurance required to be carried by the Mortgagor, it may do so at any time prior to the cancellation of the policy. In the event of foreclosure of this Mortgage, any of the moneys then remaining on deposit with the Mortgagee or its agent shall be applied against the Debt and the 1211 Note prior to the commencement of foreclosure proceedings. Any default by the Mortgagor in the performance of the provisions of this Section shall constitute a default under this Mortgage.

6. WASTE: The Mortgagor shall not commit or permit waste on the Premises nor do any other act causing the Premises to become less valuable. The Mortgagor will keep the Premises in good order and repair and in compliance in all material respects with any law, regulation, ordinance or contract affecting the Premises and, from time to time, make all needful and proper replacements so that fixtures, improvements and Equipment will at all times be in good condition, fit and proper for their respective purposes. Should the Mortgagor fail to effect

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any necessary repairs, the Mortgagee may at its option and at the expense of the Mortgagor make the repairs for the account of the Mortgagor. The Mortgagor shall use the Premises in conformance with all applicable laws, ordinances and regulations. The Mortgagee or its authorized agent shall have the right to enter upon and inspect the Premises at all reasonable times. The Mortgagor unconditionally agrees to timely pay all fees with respect to inspections of the Premises.

7. ALTERATIONS, REMOVAL: No building, structure, improvement, fixture, personal property, or Equipment constituting any part of the Premises shall be removed, demolished or substantially altered without the prior written consent of the Mortgagee. Consent not to be unreasonably withheld or unduly delayed.

8. PAYMENT OF OTHER OBLIGATIONS: The Mortgagor shall also perform all of the Mortgagor's obligations and pay all other obligations which are or may become liens or charges against the Premises for any present or future repairs or improvements made on the Premises, or for any other goods, services, or utilities furnished to the Premises and shall not permit any lien or charge of any kind securing the repayment of borrowed funds (including the deferred purchase price for any property) to accrue and remain outstanding against the Premises other than those set forth in Exhibit B hereto. The Mortgagor shall have the right to contest any lien or charges provided it posts a bond, establishes a title indemnity, or otherwise establishes security reasonably satisfactory to the Mortgagee.

9. ASSIGNMENT OF LEASES AND RENTS: As additional security for the Debt and the 1211 Note, the Mortgagor assigns to the Mortgagee all oral or written leases, and the rents, issues, income and profits under all leases or licenses of the Premises, present and future. The Mortgagor will comply with all terms of all leases.

10. ASSIGNMENT OF INTEREST AS TENANT OR PURCHASER: If the Mortgagor's interest in the Premises is that of a tenant or a purchaser, the Mortgagor also assigns, mortgages and warrants to the Mortgagee, as additional security for the Debt and the 1211 Note, all of the Mortgagor's title and interest in and to the agreements by which it is leasing or purchasing any part or all of the Premises, including all modifications, renewals and extensions and any purchase options contained in that or any other agreement. The Mortgagor agrees to pay each installment of rent, principal and interest required to be paid by it under the lease, land contract or other agreement when each installment becomes due and payable whether by acceleration or otherwise. The Mortgagor further agrees to pay and perform all of its other obligations under the lease, land contract or other agreement.

If the Mortgagor defaults in the payment of any installment of rent, principal, interest or in the payment or performance of any other obligation under the agreements, the Mortgagee shall have the right, but not the obligation, to pay the installment or installments and to pay or perform the other obligations on behalf of and at the expense of the Mortgagor. If the Mortgagee receives a written notice of the Mortgagor's default under the lease, land contract or other agreement, it may rely on that notice as cause to take any action it deems necessary or reasonable to cure a default even if the Mortgagor questions or denies the existence of such default.

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11. SECURITY AGREEMENT: This Mortgage also constitutes a security agreement within the meaning of the Illinois Uniform Commercial Code (the "UCC") and the Mortgagor grants to the Mortgagee a security interest in any Equipment and other personal property included within the definition of Premises. Accordingly, the Mortgagee shall have all of the rights and remedies available to a secured party under the UCC. Upon the occurrence of an event of default under this Mortgage, the Mortgagee shall have, in addition to the remedies provided by this Mortgage, the right to use any method of disposition of collateral authorized by the UCC with respect to any portion of the Premises subject to the UCC.

12. REIMBURSEMENT OF ADVANCES: If the Mortgagor fails to perform any of its obligations under this Mortgage, or if any action or proceeding is commenced which materially affects the Mortgagee's interest in the Premises (including but not limited to a lien priority dispute, eminent domain, code enforcement, insolvency, bankruptcy or probate proceedings), then the Mortgagee at its sole option may with prior notice to the Mortgagor make appearances, disburse sums and take any action it deems necessary to protect its interest (including but not limited to disbursement of reasonable attorneys' and paralegals' fees and entry upon the Premises to make repairs). Any amounts disbursed shall become additional Debt, shall be immediately due and payable upon notice from the Mortgagee to the Mortgagor, and shall bear interest at the highest rate permitted under any of the instruments evidencing any of the Debt.

13. DUE ON TRANSFER: If all or any part of the Premises or any interest in the Premises is transferred without the Mortgagee's prior written consent, it may, at its sole option, declare the Debt to be immediately due and payable.

14. NO ADDITIONAL LIEN OR ENCUMBRANCE: The Mortgagor covenants not to execute any mortgage, security agreement, assignment of leases and rentals or other agreement granting a lien against the interest of the Mortgagor in the Premises, not to create, suffer or permit any lien, encumbrance, easement or other exception to the title to the Premises other than Permitted Encumbrances.

15. EMINENT DOMAIN: Notwithstanding any taking under the power of eminent domain, alteration of the grade of any road, alley, or the like, or other injury or damage to or decrease in value of the Premises by any public or quasi-public authority or corporation, the Mortgagor shall continue to pay the Debt in accordance with the terms of the underlying loan documents until any award or payment shall have been actually received by the Mortgagee. By executing this Mortgage, the Mortgagor signs the entire proceeds up to the amount claimed due by the Mortgagee under this Mortgage of any award or payment and any interest to the Mortgagee. The proceeds shall be applied first toward reimbursement of all costs and expenses of the Mortgagee in collecting the proceeds, including reasonable attorneys' and paralegals' fees, and then toward payment of the Debt and the 1211 Note whether or not then due or payable, and the balance shall be paid to the Mortgagor. Proceeds paid to the Mortgagee shall not trigger any prepayment consideration under the Note.

16. ENVIRONMENTAL PROVISIONS: From time to time the Mortgagor and/or members of the Mortgagor have or will execute and deliver an Environmental Indemnity Agreement to the Mortgagee, which include representations, warranties, covenants,

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indemnifications and a right of entry. The Environmental Indemnity Agreement and its provisions are incorporated into this Mortgage.

17. **EVENTS OF DEFAULT/ACCELERATION**: Upon the occurrence of any of the following, ("**Event of Default**") the Mortgagee shall be entitled to exercise its remedies under this Mortgage or as otherwise provided by law: (1) The Mortgagor or, if other than the Mortgagor or all of the undersigned, or any principal obligor or guarantor of the Debt fails to pay within five (5) business days of when due any amount payable under the Note or any other note or agreement evidencing the Debt or under this Mortgage; (2) the Mortgagor (a) fails to observe or perform any other material term of the Note, or any other agreement evidencing the Debt, which is not cured within thirty (30) days after written notice is delivered by the Mortgagee or (b) makes any materially incorrect or misleading representation in any financial statement or other information delivered to the Mortgagee; (3) there is any other default under the terms of this Mortgage, any loan agreement, mortgage, security agreement or other document executed as part of the Debt transaction, which is not cured within thirty (30) days after written notice is delivered by the Mortgagee, or any guaranty of the Debt becomes unenforceable in whole or in part, or any guarantor fails to promptly perform under its guaranty; (4) the Mortgagor becomes insolvent or unable to pay its debts as they become due; (5) the Mortgagor (a) makes an assignment for the benefit of creditors, (b) consents to the appointment of a custodian, receiver, or trustee for itself or for a substantial part of its assets, or (c) commences any proceeding under any bankruptcy, reorganization, liquidation, insolvency or similar laws of any jurisdiction; (6) a custodian, receiver or trustee is appointed for the Mortgagor or for a substantial part of its assets without its consent and is not removed within sixty (60) days after the appointment; or the Mortgagor consents to the appointment; (7) proceedings are commenced against the Mortgagor under any bankruptcy, reorganization, liquidation, or similar laws of any jurisdiction, and they remain undismissed for sixty (60) days after commencement; or the Mortgagor consents to the commencement of those proceedings; (8) any judgment is entered against the Mortgagor, or any attachment, levy, or garnishment is issued against any property of the Mortgagor that would have a material adverse effect; (9) any proceedings are instituted for the foreclosure or collection of any mortgage, judgment or lien affecting the Premises unless the Mortgagor posts security per Section 8 of this Mortgage; (10) the Mortgagor sells, transfers or hypothecates any part of the Premises except as provided in this Mortgage; (11) if the Mortgagor is a natural person, the Mortgagor dies; (12) the Mortgagor, without the Mortgagee's written consent, (a) is dissolved and not reinstated by the Mortgagor within 7 business days of receiving written notification of said dissolution from the Mortgagee, (b) merges or consolidates with any third party, and, only if the Mortgagee owns less than fifty percent (50%) of the resulting entity(ies); (c) sells or otherwise conveys a material part of its assets or business outside the ordinary course of its business, (d) leases, purchases or otherwise acquires a material part of the assets of any business entity outside the ordinary course of its business, or (e) agrees to do any of the foregoing; (13) there is a substantial change in the existing or prospective financial condition of the Mortgagor which the Mortgagee in good faith determines to be materially adverse; (14) an Event of Default occurs under the Note; or (15) an event of default occurs under the 2722/1111 Note which continues beyond the expiration of any applicable notice and grace periods. In the event that, pursuant to the express terms above, the Mortgagor or any other party obligated under any agreement evidencing the Debt or document executed as part of the Debt transaction is provided thirty (30) days to cure any default or failure to perform, but the cure will reasonably require more than thirty (30) days to cure, then provided that such default or failure to perform is

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susceptible of cure, does not involve the payment of money, and cannot be cured by the payment of money, such default or failure to perform to cure within such time shall not result in an Event of Default if the responsible party commences such cure within such thirty (30) days and continues to pursue it thereafter with reasonable diligence and continuity and such cure is made within ninety (90) days after written notice thereof is delivered by the Mortgagee; provided, however that in the event of any risk to persons or property, no such default or failure to perform shall delay or prevent the Mortgagee from taking all such actions to cure such default or failure to perform as the Mortgagee has the right to do under any document evidencing or executed as part of the Debt transaction.

18. **REMEDIES ON DEFAULT:** Upon the occurrence of any Event of Default, the Mortgagee may exercise all of the rights, powers and remedies expressly or impliedly conferred on or reserved to it under this Mortgage or any other related document, or now or later existing at law or in equity, including without limitation the following: (i) declare the Debt to be immediately due, (ii) proceed at law or in equity to collect the Debt and proceed to foreclose this Mortgage, or otherwise pursue any of its rights or remedies, and (iii) exercise any of its rights, powers or remedies pursuant to the UCC.

At any time after an Event of Default under this Mortgage has occurred and is continuing, the Mortgagor shall, upon demand of the Mortgagee, surrender to the Mortgagee possession of the Premises. The Mortgagee, 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 the Mortgagor and its employees, agents or servants therefrom, and the Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents. The Mortgagee 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, the Mortgagee shall have full power to:

- (a) Cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same;
- (b) Elect to disaffirm any lease or sublease which is then subordinate to this Mortgage;
- (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 the Mortgagor and all persons whose interests in the Premises are subject to this Mortgage 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;

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- (d) Make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as the Mortgagee deems are necessary;
- (e) Insure and reinsure the Premises and all risks incidental to the Mortgagee's possession, operation and management thereof; and
- (f) Receive all of such avails, rents, issues and profits.

The Mortgagee in any suit to foreclose this Mortgage shall be entitled to the appointment of a receiver of the rents, leases and profits of the Premises as a matter of right and without notice (without regard to the value of the Premises), and the Mortgagor specifically consents to that appointment without notice. The Premises may be sold in one parcel as an entirety or in such parcels, manner and order as the Mortgagee may elect. By executing this Mortgage, the Mortgagor waives, in the event of a foreclosure of this Mortgage or the enforcement by the Mortgagee of any other rights and remedies in this Mortgage, any right otherwise available in respect to marshalling of assets which secure the Debt or to require the Mortgagee to pursue its remedies against any other such assets. The Mortgagor waives all errors and imperfections in any proceedings instituted by the Mortgagee to enforce any of its rights and remedies.

19. REPRESENTATIONS BY MORTGAGOR: Each Mortgagor represents that: (a) the execution and delivery of this Mortgage and the performance of the obligations it imposes do not violate any law, conflict with any agreement by which it is bound, or require the consent or approval of any governmental authority or any third party; (b) this Mortgage is a valid and binding agreement enforceable according to its terms, and (c) any balance sheets, profit and loss statements, and other financial statements furnished to the Mortgagee are accurate and fairly reflect the financial condition of the organizations and persons to which they apply on their effective dates, including contingent liabilities of every type, which financial condition has not changed materially and adversely since those dates.

20. ATTORNEYS' FEES; EXPENSES: If the Mortgagee institutes any suit or action to enforce any of the terms of this Mortgage, the Mortgagee shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by the Mortgagee that in the Mortgagee's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the rate provided for in the Note. Expenses covered by this Section include, without limitation, however subject to any limits under applicable law, the Mortgagee's attorneys' fees and the Mortgagee's legal expenses whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports and appraisal fees, and title insurance, to the extent permitted by applicable law. The Mortgagor also will pay any court costs, in addition to all other sums provided by law.

21. NOTICES: Notice from one party to another relating to this Mortgage shall be deemed effective if made in writing and delivered to the recipient's address set forth above by

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any of the following means: (a) hand delivery, (b) registered or certified mail, postage prepaid, with return receipt requested, (c) first class or express mail, postage prepaid, or (d) Federal Express, Purolator Courier or like overnight courier service. Notice made in accordance with this Section shall be deemed delivered upon receipt if delivered by hand, three (3) business days after mailing if mailed by first class registered or certified mail or one (1) business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier. This notice provision shall be inapplicable to any judicial or non-judicial proceeding where state law governs the manner and timing of notices in foreclosure or receivership proceedings.

22. MISCELLANEOUS: If any provision of this Mortgage is in conflict with any statute or rule of law or is otherwise unenforceable for any reason whatsoever, then that provision is void to the extent of the conflict or unenforceability, and severed from but does not invalidate any other provision of this Mortgage. No waiver by the Mortgagee of any right or remedy granted or failure to insist on strict performance by the Mortgagor, waives any right or remedy of the Mortgagee, nor does the subsequent exercise of the same right or remedy by the Mortgagee for any subsequent default by the Mortgagor, and all rights and remedies of the Mortgagee are cumulative.

These promises and agreements bind and these rights benefit the parties and their respective successors, and assigns. If there is more than one Mortgagor, the obligations under this Mortgage are joint and several.

This Mortgage is governed by Illinois law except to the extent it is preempted by Federal law or regulations.

23. INDEMNIFICATION: In addition to the indemnification provisions described in the Section captioned "Environmental Provisions" of this Mortgage, the Mortgagor agrees to indemnify, defend and hold the Mortgagee, or any of its subsidiaries or affiliates or their successors, and each of their respective shareholders, directors, officers, employees and agents (collectively, the "**Indemnified Persons**") harmless from any and all obligations, claims, liabilities, losses, damages, penalties, fines, forfeitures, actions, judgments, suits, costs, expenses and disbursements of any kind or nature (including, without limitation, any Indemnified Person's attorneys' fees) (collectively, the "**Claims**") which may be imposed upon, incurred by or assessed against any Indemnified Person (whether or not caused by any Indemnified Person's sole, concurrent, or contributory negligence) arising out of or relating to this Mortgage; the Mortgagor's use of the property covered by this Mortgage; the lawful exercise of the rights and remedies granted under this Mortgage (including, without limitation, the enforcement of this Mortgage and the defense of any Indemnified Person's action or inaction in connection with this Mortgage); and in connection with the Mortgagor's failure to perform all of the Mortgagor's obligations under this Mortgage, except to the limited extent that the Claims against any such Indemnified Person are proximately caused by such Indemnified Person's gross negligence or willful misconduct. The indemnification provided for in this Section shall survive the termination of this Mortgage and shall extend to and continue to benefit each individual or entity who is or has at any time been an Indemnified Person. The Mortgagor's indemnity obligations under this Section shall not in any way be affected by the presence or absence of covering insurance, or by the amount of such insurance or by the failure or refusal of any insurance carrier

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to perform any obligation on its part under any insurance policy or policies affecting the Mortgagor's assets or the Mortgagor's business activities. Should any Claim be made or brought against any Indemnified Person by reason of any event as to which the Mortgagor's indemnification obligations apply, then, upon any Indemnified Person's demand, the Mortgagor, at its sole cost and expense, shall defend such Claim in the Mortgagor's name, if necessary, by the attorneys for the Mortgagor's insurance carrier (if such Claim is covered by insurance), or otherwise by such attorneys as any Indemnified Person shall approve. Any Indemnified Person may also engage its own attorneys at its reasonable discretion to defend the Mortgagor and to assist in its defense and the Mortgagor agrees to pay the fees and disbursements of such attorneys.

24. INFORMATION WAIVER. The Mortgagor agrees that the Mortgagee may provide any information or knowledge the Mortgagee may have about the Mortgagor or about any matter relating to this Mortgage or the loan secured hereby to any of its subsidiaries or affiliates or their successors, or to any one or more purchasers or potential purchasers of all or any part of the Note.

25. WAIVER OF RIGHT OF REDEMPTION: EXCEPT AS MAY OTHERWISE BE PROHIBITED OR IN THE EVENT THE PREMISES ARE AND CONTINUE TO QUALIFY AS RESIDENTIAL PROPERTY AS DEFINED BY THE LAWS OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, THE MORTGAGOR WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE, AND FROM ANY FORECLOSURE SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE, AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

26. WAIVER OF SPECIAL DAMAGES: THE MORTGAGOR WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM THE MORTGAGEE IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

27. WAIVER OF JURY TRIAL: THE MORTGAGEE AND THE MORTGAGOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS MORTGAGE, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS MORTGAGE, OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER OF THEM. NEITHER THE MORTGAGEE NOR THE MORTGAGOR SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT

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BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY EITHER THE MORTGAGEE OR THE MORTGAGOR EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY BOTH OF THEM. THE MORTGAGOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND MORTGAGOR AGREES TO ITS TERMS.

28. CONCERNING THE 1211 LOAN.

(a) This Mortgage and the undertakings of the Mortgagor hereunder and thereunder and the mortgages, security interests, assignments and other liens and encumbrances created hereby as security for the 1211 Loan shall be continuing and shall be binding upon the Mortgagor and the collateral described in the Documents, and shall remain in full force and effect, and shall not be discharged, impaired or affected by (i) the power or authority of 1211 to issue or to execute, acknowledge or deliver the 1211 Loan Documents; (ii) the existence or continuance of any obligation on the part of 1211 on or with respect to the obligations under the 1211 Loan Documents; (iii) the validity or invalidity of the obligations under the 1211 Loan Documents; (iv) any defense, set-off or counterclaim whatsoever that 1211 may or might have to the performance or observance of the obligations under the 1211 Loan Documents or to the performance or observance of any of the terms, provisions, covenants and agreements contained in any of the 1211 Loan Documents, including, without limitation, any defense based on any alleged failure of the Mortgagee to comply with the implied covenant of good faith and fair dealing, or any limitation or exculpation of liability on the part of 1211; (v) the existence or continuance of 1211 as a legal entity; (vi) the transfer by 1211 of all or any part of any property encumbered by the 1211 Loan Documents; (vii) any sale, pledge, assignment, surrender, indulgence, alteration, substitution, exchange, extension, renewal, release, compromise, change in, modification or other disposition of any of the obligations under the 1211 Loan Documents or of any of the 1211 Loan Documents, all of which the Mortgagee is hereby expressly authorized to make from time to time without notice to the Mortgagor or to anyone; (viii) the acceptance by the Mortgagee of the primary or secondary obligation of any party with respect to, or any security for, or any guarantors upon, all or any part of the obligations under the 1211 Loan Documents; or (ix) any failure, neglect or omission on the part of the Mortgagee to realize or protect any of the obligations under the 1211 Loan Documents or any collateral or appropriation of any moneys, credits or property of 1211 toward the liquidation of the obligations under the 1211 Loan Documents or by any application of any moneys received by the Mortgagee under the 1211 Loan Documents. The obligations of the Mortgagor under this Mortgage and the undertakings of the Mortgagor hereunder and the mortgages, security interests, assignments and other liens and encumbrances on the collateral created hereby as security for the 1211 Loan and the 1211 Loan Documents shall not be affected, discharged, impaired or varied by any act, omission or circumstance whatsoever, whether or not specifically enumerated above, except the due and punctual payment and performance of all of the obligations hereby secured and then, in each case, only to the extent thereof.

(b) The Mortgagee shall have the right to enforce this Mortgage for and to the full extent of the amounts hereby secured for the 1211 Loan and the 1211 Loan Documents, whether or not other proceedings or steps are pending or have been taken or have been concluded to enforce or otherwise realize upon the obligations of 1211 under the 1211 Loan Documents. The enforcement of this Mortgage against the collateral for the collection of the obligations of 1211

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under the 1211 Loan Documents hereby secured shall not in any way entitle the Mortgagor, either at law, or in equity or otherwise, to any right, title or interest in and to the 1211 Loan Documents or any of the other obligations hereby secured, or in and to any security therefor, or to any right of recovery against 1211, in each case whether by way of indemnity, reimbursement, contribution, subrogation or otherwise.

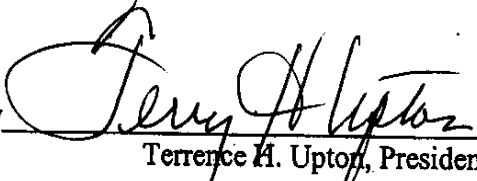
**[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]**

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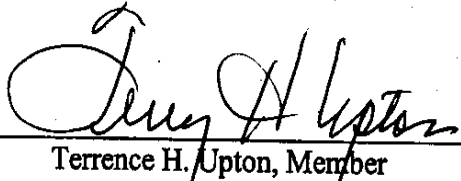
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MORTGAGOR:

THE UPTON PROPERTIES, INC.

By 
Terrence H. Upton, President

2722 GREEN BAY ROAD, LLC

By 
Terrence H. Upton, Member

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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

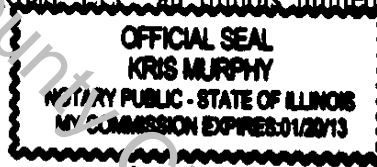
The foregoing instrument was acknowledged before me this 24 day of May, 2010, by Terrence H. Upton, President of The Upton Properties, Inc., an Illinois corporation, on behalf of the corporation.



Printed Name: Kris Murphy
Notary Public
Commission Expires: 01/20/13

STATE OF ILLINOIS)
)
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 24 day of May, 2010, by Terrence H. Upton, Member of 2722 Green Bay Road, LLC, an Illinois limited liability company, on behalf of the company.



Printed Name: Kris Murphy
Notary Public
Commission Expires: 01/20/13

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EXHIBIT A LEGAL DESCRIPTION

PARCEL 1:

LOT 1 OF LEVY'S PLAT OF CONSOLIDATION OF LOTS 12 TO 15 IN BLOCK 77 IN NORTHWESTERN UNIVERSITY SUBDIVISION OF THE NORTH 1/2 OF THE NORTH 1/2 (EAST OF CHICAGO AVENUE) OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE 15 1/2 ACRES IN THE NORTH EAST CORNER OF SAID TRACT), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

PLAT OF CONSOLIDATION OF LOTS 16, 17, 18, 19, 20 AND PART OF LOT 21 IN BLOCK 77 IN NORTHWESTERN UNIVERSITY IN THE NORTH 1/2 OF THE NORTH 1/2 OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF CHICAGO AVENUE, (EXCEPT 15 1/2 ACRES IN THE NORTHEAST CORNER THEREOF) IN COOK COUNTY, ILLINOIS

PARCEL 3:

JETCO'S CONSOLIDATION OF LOTS 1, 2, 3, 4, 5, 6 AND 7 IN BLOCK 24 IN STEWART'S RESUBDIVISION OF BLOCKS 22, 24 AND 26 IN NORTH EVANSTON, BEING A SUBDIVISION OF LOTS 11 TO 16 AND THE WEST 43 ACRES OF LOT 17 OF GEORGE SMITH'S SUBDIVISION OF (EXCEPT THE NORTH 240 ACRES) THE SOUTH SECTION OF OUILMETTE RESERVATION, IN TOWNSHIP 43 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as 2722 Green Bay Road, and 1111 Chicago Avenue, Evanston, Illinois

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EXHIBIT B PERMITTED ENCUMBRANCES

1. Leases to Office Depot and Whole Foods.
2. Special exceptions K, L, M, N, O, P, Q, R, S, U, V, W, Z, AA, AB, AC, AD, AE, AF, AG and AH in Schedule B of Chicago Title Insurance Company Policy 1409 008435921.

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