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1101029044

Doc#: 1101029044 Fee: \$72.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/10/2011 10:53 AM Pg: 1 of 19

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption

Report Mortgage Fraud  
800-532-8785

The property identified as: **PIN:** 13-15-320-067-0000

**Address:**

**Street:** 4330 WEST IRVING PARK ROAD

**Street line 2:**

**City:** CHICAGO

**State:** IL

**ZIP Code:** 60641

**Lender:** KOSTNER INVESTMENT CORPORATION

**Borrower:** IRVING PARK, LLC

**Loan / Mortgage Amount:** \$5,000,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

**Certificate number:** 7CA23491-006D-4A49-9C7D-5289E1E76C45

**Execution date:** 01/07/2011

CD 8531714  
PAR and No As 4/1/11

Property of Cook County Clerk's Office

Box 334

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This instrument was prepared by:

Martin Snow  
Snow & Snow, Ltd.  
33 North LaSalle Street  
Suite 2000  
Chicago, Illinois 60602

After recording, please mail to:

Martin Snow  
Snow & Snow, Ltd.  
33 North LaSalle Street  
Suite 2000  
Chicago, Illinois 60602

## MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS

This **Mortgage and Assignment of Leases and Rents** (this "Mortgage") is made the 7th day of January, 2011, by IRVING PARK LLC, an Illinois limited liability company, whose address is set forth below, as Mortgagor, to KOSTNER INVESTMENT CORPORATION, an Illinois corporation, as Mortgagee.

### Article 1

#### DEFINITIONS

##### 1.1 Definitions

As used herein, the following terms shall have the following meanings:

(a) **Assignment:** The assignment, contained in Article 3 of this Mortgage, from Mortgagor to Mortgagee, of all of Mortgagor's right, title and interest in and to the Leases and the Rents.

(b) **Awards:** All awards and payments made or hereafter to be made by any municipal, township, county, state, Federal or other governmental agencies, authorities or boards or any other entity having the power of eminent domain to Mortgagor, including any awards and payments for (i) any taking of all or a portion of the Mortgaged Property, as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain; (ii) any such taking of any appurtenances to the Mortgaged Property or of vaults, areas or projections outside the boundaries of the Mortgaged Property, or rights in, under or above the alleys, streets or avenues adjoining the Mortgaged Property, or rights and benefits of light, air, view or access to said alleys, streets, or avenues or for the taking of space or rights therein, below the level of, or above the Mortgaged Property; and (iii) any damage to the Mortgaged Property or any part thereof due to governmental action, but not resulting in, a taking of any portion of the Mortgaged Property, such as,

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without limitation, the changing of the grade of any street adjacent to the Mortgaged Property.

(c) **Buildings**: All buildings, improvements, alterations or appurtenances now, or at any time hereafter, located upon the Land or any part thereof.

(d) **Default Interest Rate**: Ten percent (10.0%) per annum.

(e) **Event(s) of Default**: The happenings and occurrences described in Article 5 of this Mortgage.

(f) **Fixtures**: All fixtures located upon or within the Land or Buildings or now or hereafter attached to, or installed in, or used in connection with, any of the Land or Buildings whether or not permanently affixed to the Mortgaged Property.

(g) **Guarantor**: Michael Berman, individually.

(h) **Guaranty**: The Guaranty of even date herewith executed by Guarantor.

(i) **Hazardous Materials**: Any flammable explosives, radioactive materials, oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable law.

(j) **Impositions**: All (i) real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Mortgaged Property which may be assessed, levied, or imposed upon the Mortgaged Property or the rent or income received therefrom or any use or occupancy thereof, and (ii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against Mortgagor or any of its properties.

(k) **Indebtedness**: The principal of and interest on, and all other amounts, costs, expenses, payments and premiums due under the Note, the Guaranty, and all other indebtedness of Mortgagor to Mortgagee under any amendments, modifications, renewals and extensions of any of the foregoing.

(l) **Land**: The real estate described in Schedule A attached hereto.

(m) **Leases**: Any and all leases, subleases, licenses, concessions or grants of other possessory interests now or hereafter in force, oral or written, covering or affecting the Mortgaged Property, or any part thereof, together with all rights, powers, privileges, options and other benefits of Mortgagor thereunder.

(n) **Mortgaged Property**: The Land, the Buildings, the Fixtures, the Leases and the Rents together with:

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- (i) all rights, privileges, profits, permits, licenses, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of the Land and/or the Buildings belonging or in any way appertaining thereto and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;
- (ii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Land, the Buildings, the Fixtures, the Leases and the Rents; and
- (iii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Awards, or payments with respect to casualties.
- (o) Mortgagee: Kostner Investment Corporation, an Illinois corporation, its successors and/or assigns and the holders, from time to time, of the Note.
- (p) Mortgagee's Address: c/o John Kronon, 8019 West Summerdale, Chicago, Illinois 60656.
- (q) Mortgagor: Irving Park, LLC, an Illinois limited liability company.
- (r) Mortgagor's Address: 4330 West Irving Park Rd., Chicago, Illinois 60641.
- (s) Intentionally deleted.
- (t) Note: The promissory note, dated of even date with this Mortgage, from Mortgagor to the order of Mortgagee, in the principal amount of \$5,000,000.00, together with all extensions, renewals, modifications and amendments thereof, secured, in part, by this Mortgage.
- (u) Obligations: Any and all of the covenants, promises and other obligations (other than the Indebtedness) made or owing by Mortgagor and others to or due to Mortgagee under and/or as set forth in the Note, and any and all extensions, renewals, modifications and amendments of any of the foregoing.
- (v) Permitted Encumbrances: The Leases and the encumbrances described, with particularity, in Schedule B attached hereto.
- (w) Personalty: All furniture, furnishings, equipment, machinery, trade fixtures and all other personal property (other than the Fixtures) now owned or hereafter acquired by Mortgagor which is now or hereafter used in connection with the Land and the Buildings or located in, upon or about the Land and the Buildings, together with all accessions, replacements and substitutions thereto or therefor and the proceeds and products thereof.
- (x) Rents: All of the rents, revenues, income, profits, deposits, tenders and other benefits payable under the Leases and/or arising from the use and enjoyment of all

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or any portion of the Mortgaged Property.

## Article 2

### GRANT

2.1 Grant. To secure the payment of the Indebtedness and the performance and discharge of the Obligations, Mortgagor by these presents hereby grants, bargains, sells, assigns, mortgages, conveys and warrants unto Mortgagee the Mortgaged Property subject, however, to the Permitted Encumbrances, to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever.

2.2 Condition of Grant. Provided always that if Mortgagor promptly shall pay the entire Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations, then the Mortgage encumbrance and the rights hereby granted shall cease, terminate and become void, and shall be released by Mortgagee, at the cost and expense of Mortgagor.

2.3 Doctrine of Merger. Upon the foreclosure of this Mortgage, no assigned Lease shall be destroyed or terminated by application of the doctrine of merger or as a matter of law unless Mortgagee or any purchaser at such foreclosure sale so elects. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any assigned or subordinate Lease unless Mortgagee or such purchaser gives written notice thereof to the applicable tenant or subtenant.

## Article 3

### ASSIGNMENT OF LEASES AND RENTS

3.1 Security Agreement/Financing Statement. This Mortgage shall be construed as a mortgage of a fee simple interest in real property and it shall also constitute an assignment of all rents and profits generated by the Mortgaged Property.

3.2 Assignment of Leases and Rents. In order to further secure payment of the Indebtedness and the observance, performance and discharge of the Obligations, Mortgagor hereby absolutely and irrevocably assigns and transfers to Mortgagee, all of Mortgagor's right, title and interest in and to the Leases and the Rents, subject to the limitations herein. Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact, with the limited right to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in Mortgagor's or Mortgagee's name, for all Rents. Notwithstanding the foregoing assignment, so long as no Event of Default has occurred which remains uncured, Mortgagor shall be permitted to collect, retain and enjoy all Rents, provided that the existence or exercise of such right of Mortgagor.

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## Article 4

### COVENANTS

#### 4. Covenants

Until the entire Indebtedness shall have been paid in full, Mortgagor hereby covenants and agrees as follows:

4.1 Compliance with Laws. Mortgagor will promptly and faithfully comply with, all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency and of every entity having jurisdiction over the use and occupancy of the Mortgaged Property, or any part thereof, provided that no such law, ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

4.2 Payment of Impositions. Mortgagor will duly pay and discharge, or cause the payment and discharge of, the Impositions. If any such Impositions or installments may be paid in installments, Mortgagor may pay the same in such installments.

4.3 Repair. Mortgagor will keep the Mortgaged Property in good order and condition and make all reasonable repairs, replacements and renewals thereof and will use reasonable efforts to prevent any act or omission which might impair the value or usefulness of the Mortgaged Property.

4.4 Insurance. Mortgagor will maintain insurance upon the Mortgaged Property against loss by fire and such other hazards, casualties and contingencies as are normally and usually covered by extended coverage policies in effect where the Mortgaged Property is situated, in amounts and with insurers acceptable to Mortgagee but not less than the full replacement value of the Buildings, Fixtures and Personalty. Mortgagor shall cause each insurance policy issued in connection therewith to provide (and the insurer issuing such policy to certify to Mortgagee) that (a) loss payments will be payable to Mortgagee as its interests may appear, such payments to be applied to the restoration, repair or replacement of the Mortgaged Property; provided, however, that if an Event of Default has occurred and is continuing or an event has occurred and is continuing which with the passage of time or the giving of notice would constitute an Event of Default, then, at the option of Mortgagee, such payments shall be applied to the payment of the Indebtedness; (b) the interest of Mortgagee shall be insured regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy; (c) if any such insurance policy be subject to cancellation or be endorsed or sought to be endorsed to effect a change in coverage for any reason whatsoever, such insurer will promptly notify Mortgagee and such cancellation or change shall not be effective as to Mortgagee until thirty (30) days after receipt by Mortgagee of such notice; and (d) Mortgagee may, but shall not be obligated to, make premium payments to prevent such cancellation, and that such payments shall be accepted by the insurer.

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4.5 Restoration Following Casualty. In the event of the happening of any casualty, of any kind or nature (whether insured against or not), resulting in damage to or destruction of the Mortgaged Property, Mortgagor will give prompt notice thereof to Mortgagee, and Mortgagor will promptly restore, repair, replace, rebuild or alter the Mortgaged Property as nearly as possible to its value and condition immediately prior to such damage or destruction.

4.6 Lease Agreement. Mortgagor agrees not to terminate, amend, or modify any of the Leases, or grant any concessions in connection therewith without the written consent of Mortgagee.

4.7 Performance of Leases and Other Agreements. Mortgagor will duly and punctually perform all covenants and agreements expressed as binding upon it under the Leases and other agreements to which it is a party with respect to the Mortgaged Property and will use its best efforts to enforce or secure the performance of each and every obligation and undertaking of the respective lessees under the Leases, and will appear and defend, at its cost and expense, any action or proceeding arising under or in any manner connected with the Leases or the obligations and undertakings of any lessee thereunder.

4.8 Payment of Rents. Mortgagor hereby agrees that the respective lessees under the Leases, upon notice from Mortgagee of the occurrence of an Event of Default, shall thereafter pay to Mortgagee the Rents due and to become due under the Leases without any obligation to determine whether or not such an Event of Default does in fact exist. Until the occurrence of an Event of Default, Mortgagor shall be entitled to collect the Rents as and when they become due and payable, but never more than two (2) months in advance.

4.9 Inspection. Mortgagor will permit Mortgagee, at all reasonable times and without interference in the conduct of Mortgagor's business, to inspect the Mortgaged Property.

4.10 Hold Harmless. Mortgagor will defend and hold Mortgagee harmless from any action, proceeding or claim affecting or arising out of Mortgagor's use of the Mortgaged Property. Mortgagor shall appear in and defend (or pay the expenses of Mortgagee to defend, if Mortgagee elects to handle such defense) any action or proceeding purporting to affect the security of this Mortgage and/or the rights and/or powers of Mortgagee hereunder, and Mortgagor shall pay all costs and expenses (including costs of evidence of title and attorneys' fees) in any action or proceeding in which Mortgagee may so appear and/or any suit brought by Mortgagee to foreclose this Mortgage, to enforce any obligations secured by this Mortgage, and/or to prevent the breach hereof. Mortgagor's obligations under this Section shall survive payment of the Indebtedness.

4.11 Licenses. Mortgagor shall keep in full force and effect all licenses, permits and other governmental approvals which are necessary for the operation of the Mortgaged Property and related facilities, and furnish evidence satisfactory to Mortgagee

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that the Mortgaged Property and the use thereof comply with all applicable zoning and building laws, regulations, ordinances and other applicable laws.

4.12 Representations and Warranties of Mortgagor. Mortgagor hereby represents and warrants to Mortgagee that:

(a) Mortgagor is qualified to do business in the State of Illinois, and, to Mortgagor's best knowledge, is in compliance with all applicable laws, regulations, ordinances and orders of public authorities.

(b) The Note and this Mortgage are duly authorized, enforceable and, to Mortgagor's best knowledge, will not violate any provision of law, any order of any court or other agency or government, or any indenture, agreement or other instrument to which Mortgagor is a party or by which Mortgagor or any of its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such agreement or other instrument, or violate the articles of organization, incorporation or by-laws, of the Mortgagor or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Mortgagor, except as contemplated by the Note and the Mortgage.

(c) No consent or approval of any regulatory body is required for the execution, delivery and performance of this Mortgage.

(d) There are no suits, proceedings or investigations pending or threatened against or affecting Mortgagor, at law or in equity, or before or by any governmental or administrative agency or instrumentality which, if adversely determined, would have a material adverse effect on the business or condition of Mortgagor.

(e) Mortgagor has good and marketable title in fee simple to the Land and Buildings, and good and marketable title to the Fixtures and Personalty, and the right to assign the Leases and Rents to Mortgagee free and clear of any prior assignment, liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances.

(f) Mortgagor has not executed any prior assignment of the Leases or of its right, title, interest therein or in the Rents to accrue thereunder. Mortgagor has delivered to Mortgagee a true and complete copy of all of the existing Leases assigned hereunder, together with all amendments, supplements and other modifications, and to the best of Mortgagor's knowledge, no material default by Mortgagor or any other person under any existing Lease remains uncured.

(g) The Mortgaged Property is being, and will continue to be, used for commercial purposes.

Breach of such representations and warranties shall constitute an Event of Default under Section 5.5 hereof.



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4.13 Mechanics' Lien. After the date hereof, in the event that the Mortgaged Property shall become subject to any mechanics' or other lien, Mortgagor will take reasonable steps to have such lien removed or to obtain a bond or other security sufficient to protect the interests of both Mortgagor and Mortgagee from such lien.

4.14 Hazardous Materials. Mortgagor shall not cause or permit the violation of any environmental law relating to the Mortgaged Property, including without limitation, soil and ground water conditions; or use, generate, manufacture, store or dispose of any Hazardous Materials on, under or about the Mortgaged Property, except in accordance with all applicable laws.

(b) Mortgagor shall indemnify and hold Mortgagee harmless from any loss, damage, liability, cost, expense and/or claim (including without limitation the cost of any fines, remedial action, damage to the environment and cleanup, court related costs and the fees of attorneys and other experts) arising from (i) the use, Release or disposal of any Hazardous Materials on, under or about the Mortgaged Property or the transport of any Hazardous Materials to or from the Mortgaged Property; and (ii) the violation of any law relating to industrial hygiene or environmental conditions in connection with the Mortgaged Property, including soil and ground water conditions; and (iii) the breach of any of the representations, warranties and covenants of Mortgagor with respect to Hazardous Materials set forth in this Section.

4.15 Waste. Mortgagor agrees not to abandon the Mortgaged Property or leave the Mortgaged Property unprotected, unguarded or deserted and not to cause or permit waste to the Mortgaged Property.

## Article 5

### EVENTS OF DEFAULT

#### 5. Events of Default

The term "Event(s) of Default", as used herein and in the Note, shall mean the occurrence or happening, from time to time, of any one or more of the following:

5.1 Payment of Indebtedness. If Mortgagor shall default in the due and punctual payment of all or any portion of any installment of the Indebtedness as and when the same shall become due and payable, and such default shall continue for a period of ten (10) days after written notice thereof by Mortgagee to Mortgagor.

5.2 Performance of Obligations. If Mortgagor shall default in the due observance or performance of any of the Obligations other than payment of money and such default shall continue for a period of thirty (30) days after written notice thereof from Mortgagee to Mortgagor, unless such default requires work to be performed, acts to be done or conditions to be remedied which by their nature cannot be performed, done or remedied, as the case may be, within such thirty (30) day period, and Mortgagor shall commence to cure such default within such thirty (30) day period and shall thereafter

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diligently and continuously process the same to completion within a reasonable period of time.

5.3 Bankruptcy, Receivership, Insolvency, Etc. If voluntary or involuntary proceedings under the Federal Bankruptcy Code, as amended, shall be commenced by or against Mortgagor or bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings shall be instituted by or against Mortgagor with respect to all or any part of Mortgagor's property under the Federal Bankruptcy Code, as amended, or other law of the United States or of any state or other competent jurisdiction, and if such proceedings are instituted against Mortgagor, it shall consent thereto or shall fail to cause the same to be dismissed within ninety (90) days.

## Article 6

### DEFAULT AND FORECLOSURE

6.1 Remedies. If an Event of Default shall occur, Mortgagee may, at its option, exercise one or more or all of the following remedies:

6.1.1 Acceleration. Declare the unpaid principal under the Note to be immediately due and payable.

6.1.2 Entry on Mortgaged Property. Enter upon the Mortgaged Property and take possession thereof.

6.1.3 Operation of Mortgaged Property. Hold, lease, operate or otherwise use or permit the use of the Mortgaged Property, or any portion thereof, in such manner, for such time and upon such terms as Mortgagee may deem to be in its best interest (making such repairs, alterations, additions and improvements thereto, from time to time, as Mortgagee shall deem necessary or desirable) and collect and retain all earnings, rents, profits or other amounts payable in connection therewith.

6.1.4 Enforcement of Mortgage. Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may: (a) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein, to the extent permitted by and pursuant to procedures provided by law, at one or more sales, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; (b) institute proceedings for the complete or partial foreclosure of this Mortgage; or (c) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, (without being required to foreclose this Mortgage) or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

6.1.5 Receiver. Mortgagee shall be entitled, after notice required by applicable law, to have a receiver appointed by a court of competent jurisdiction to

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enter upon and take possession of the Mortgaged Property, collect the Rents and profits therefrom and apply the same as the court may direct, such receiver to have all the rights and powers permitted under the laws of the jurisdiction where the Mortgaged Property is located. Mortgagee or the receiver may also take possession of, and for these purposes use, any and all Personalty that is a part of the Mortgaged Property and used by Mortgagor in the rental or leasing thereof or any part thereof. The expense (including the receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured by this Mortgage. Mortgagee shall (after payment of all costs and expenses incurred) apply such Rents, issues and profits received by it on the Indebtedness in the order set forth in Section 6.5 hereof. The right to enter and take possession of the Mortgaged Property, to manage and operate the same, and to collect the Rents, issues and profits thereof, whether by receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such Rents, issues and profits actually received by Mortgagee.

**6.1.6 Additional Rights and Remedies.** After not less than ten (10) days written notice, Mortgagee shall have the right, but not the obligation, to cure any breach or default of Mortgagor and, in connection therewith, to enter upon the Mortgaged Property and to perform such acts as Mortgagee deems necessary or desirable to protect the security hereof including, but without limitation, to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of Mortgagee, is prior or superior hereto, the judgment of Mortgagee being conclusive as between the parties hereto; to obtain insurance to pay any premiums or charges with respect to insurance required to be carried hereunder; and to employ counsel, accountants, contractors and other appropriate persons to assist them.

**6.2 Remedies Cumulative and Concurrent.** The rights and remedies of Mortgagee as provided in the Note and this Mortgage shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof, nor shall the choice of one remedy be deemed an election of remedies to the exclusion of other remedies.

**6.3 No Cure or Waiver.** Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Mortgaged Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Indebtedness and Obligations, nor the exercise of any other right or remedy by Mortgagee or any receiver shall impair the status of the security, or cure or waive any default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien

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of this Mortgage.

**6.4 Payment of Costs, Expenses and Attorneys' Fees.** After not less than ten (10) days written notice and demand, Mortgagor agrees to pay to Mortgagee all costs and expenses incurred by Mortgagee in exercising the remedies under the Note or this Mortgage (including but not limited to, court costs and attorneys' fees, whether incurred in litigation or not) with interest at the Default Interest Rate from the date of expenditure until said sums have been paid. Mortgagee shall be entitled to bid, at the sale of the Mortgaged Property held pursuant to the power of sale granted herein or pursuant to any judicial foreclosure of this instrument.

**6.5 Application of Proceeds.** The proceeds of any sale of all or any portion of the Mortgaged Property and the amounts generated by any holding, leasing, operation or other use of the Mortgaged Property shall be applied by Mortgagee in the following order:

(a) first, to the payment of the costs and expenses of taking possession of the Mortgaged Property (which are expressly secured hereby) and of holding, using, leasing, repairing, improving and selling the same (including, without limitation, payment of any Impositions or other taxes);

(b) second, to the extent allowed by law, to the payment of attorneys' fees and other legal expenses, including expenses and fees incurred on appeals and legal expenses and fees of a receiver;

(c) third, to the payment of accrued and unpaid interest on the Indebtedness; and

(d) fourth, to the payment of the balance of the Indebtedness.

The balance, if any, shall be paid to the parties entitled to receive it.

**6.6 Non-Waiver.** Any failure by Mortgagee to insist upon strict performance by Mortgagor or Guarantor of any of the terms and provisions of the Security Documents or of the Note shall not be deemed to be a waiver of any of the terms or provisions of the Security Documents or the Note and Mortgagee shall have the right the earlier to insist upon strict performance by Mortgagor or Guarantor of any and all of them.

**6.7 Release of Collateral.** Mortgagee may release, regardless of consideration, any part of the security held for the Indebtedness without impairing or affecting the lien hereof. Without affecting the liability of Mortgagor, Guarantor or any other person (except any person expressly released in writing) for payment of any Indebtedness secured hereby or for performance of any Obligations contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after maturity of said Note: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any Obligations; (b) make any agreement extending the time or otherwise altering terms of payment of all or any part of the Indebtedness, or modify or waive any Obligation; (c) exercise or refrain from exercising or waive any right Mortgagee may have; (d) accept additional security of any kind; and (e)

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release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Mortgaged Property.

## Article 7

### CONDEMNATION

7.1 Condemnation. Except for claims to be made with respect to Mortgagor's loss of business or for the value of leasehold improvements, Mortgagor hereby assigns, transfers and sets over to Mortgagee all rights of Mortgagor to any Awards in respect of (a) any taking of all or a portion of the Mortgaged Property as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain; (b) any such taking of any appurtenances to the Mortgaged Property or of vaults, areas or projections outside the boundaries of the Mortgaged Property, or rights in, under or above the alleys, streets or avenues adjoining the Mortgaged Property, or rights and benefits of light, air, view or access to said alleys, streets, or avenues or for the taking of space or rights therein, below the level of, or above the Mortgaged Property; and (c) any damage to the Mortgaged Property or any part thereof due to governmental action, but not resulting in, a taking of any portion of the Mortgaged Property. Mortgagor hereby agrees to file and prosecute its claim or claims for any such Awards in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Mortgagor or otherwise, to collect and receipt for any such Awards and, in the event Mortgagor fails to act, or in the event that an Event of Default has occurred and is continuing, to file and prosecute such claim or claims.

7.2 Application of Proceeds. All Awards received by Mortgagee with respect to a taking of all or any part of the Mortgaged Property or with respect to damage to all or any part of the Mortgaged Property from governmental action not resulting in a taking of the Mortgaged Property, shall be applied as follows, in the order of priority indicated:

- (a) reimburse Mortgagee for all costs and expenses, including reasonable attorneys' fees incurred in connection with collecting the said proceeds;
- (b) payment of accrued and unpaid interest on the Note;
- (c) prepayment of the unpaid principal of the Note, without premium; and
- (d) payment of the balance of the Indebtedness.

The balance, if any, will be paid to Mortgagor.

## Article 8

### MISCELLANEOUS

8.1 Further Assurances. Mortgagor, at no cost to it, and upon the reasonable request of Mortgagee, will execute, acknowledge and deliver such further instruments (including, without limitation, estoppel certificates and declarations of no set-off) and do

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such further acts as may be necessary, desirable or proper to facilitate the assignment or transfer of the Note and/or this Mortgage.

8.2 Recording and Filing. Mortgagee, at its expense, will cause the Mortgage, all supplements thereto to be recorded and filed in the office of the Cook County recorder of Deeds.

8.3 Notice. All notices, demands, requests and other communications required under this Mortgage shall be in writing and shall be sent by either (1) U. S. certified mail, postage prepaid, or (2) nationally recognized overnight courier (FedEx or UPS) which provides receipt for delivery, addressed to the party for whom it is intended at the Mortgagor's Address or the Mortgagee's Address, as the case may be. Notices shall be deemed effective upon actual receipt therefor. Any party may designate a change of address by written notice to the other, giving at least ten (10) business days before such change of address is to become effective.

8.4 Covenants Running with the Land. All covenants contained in this Mortgage shall run with the Mortgaged Property until released.

8.5 Severability. In case any one or more of the provisions hereof shall be determined to be invalid, illegal or unenforceable in any respect, such provision shall be deemed severable and shall be removed so that the remaining provisions of this Mortgage shall be in no way affected, prejudiced or disturbed thereby.

8.6 Modification. No term or provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

8.7 Due on Sale. Upon any sale of the Mortgaged Property, the remaining principal balance under the Note, and all accrued and unpaid interest shall be immediately due and payable.

8.8 Maximum Rate of Interest. Notwithstanding any provision in this Mortgage, or in any instrument now or hereafter relating to or securing the Indebtedness evidenced by the Note, the total liability for payments of interest and payments in the nature of interest, including, without limitation, all charges, fees or other sums which may at any time be deemed to be interest, shall not exceed the limit imposed by applicable usury laws. In such event, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice by, between, or to any party hereto, be applied to the reduction of the Indebtedness immediately upon receipt of such sums by Mortgagee, with the same force and effect as though Mortgagor had specifically designated such excess sums to be so applied to the reduction of the Indebtedness and Mortgagee had agreed to accept such sums as a premium-free payment of the Indebtedness, provided, however, that Mortgagee may, at any time and from time to time, elect, by notice in writing to Mortgagor, to waive, reduce, or limit the collection of any sums (or refund to Mortgagor any sums collected) in excess of those lawfully collectible as interest rather than accept such sums as a prepayment of the Indebtedness.

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8.9 Survival of Warranties and Covenants. The warranties, representations, covenants and agreements set forth shall continue in full force and effect until the Indebtedness shall have been paid in full, except for indemnification obligations, which shall survive.

8.10 Applicable Law. This Mortgage shall be governed by and construed according to the laws of the State of Illinois.

8.11 Tax and Insurance Escrow. Mortgagor shall pay to Mortgagee, on each of the monthly due dates of interest payments, as set forth in the Note, an amount equal to one-twelfth (1/12) of the annual Impositions. Mortgagor shall also pay into such account such additional amounts, to be determined by Mortgagee from time to time, as will provide a sufficient fund, at least thirty (30) days prior to the due dates of the next installment of such Impositions, for payment thereof so as to realize the maximum discounts permitted by law. Amounts held hereunder by Mortgagee shall be non-interest bearing and may be commingled with Mortgagee's other funds. Upon full payment of the Indebtedness, or, at the election of Mortgagee at any prior time, the balance of such amounts shall be paid over to Mortgagor and no other party shall have any right or claim thereto. Amounts held by Mortgagee pursuant to this Section shall (a) be made available to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations with respect to the Impositions.

8.12 Headings. The article headings and the section and subsection captions are inserted for convenience of reference only and shall in no way alter or modify the text of such articles, sections and subsections.

8.13 Jurisdiction and Venue. This Mortgage has been executed and delivered in the City of Chicago, and the Property is situated in the City of Chicago, in Cook County, Illinois. Therefore, the parties agree that all actions or proceedings arising directly or indirectly from the Note, this Mortgage or the Guaranty shall be litigated in the Circuit Court of Cook County, Illinois, First District, in Chicago.

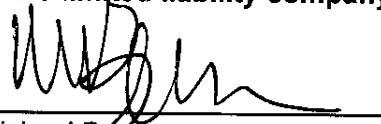
8.14 Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows: Unless the Mortgagor provides the Mortgagee with evidence of the insurance coverage required by this Mortgage, the Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property or any other collateral for the Indebtedness. This insurance may, but need not protect Mortgagor's interests may not pay any claim Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage or the Note. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the indebtedness or obligations, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully 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 the total

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outstanding indebtedness. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage as of the date first written above.

**IRVING PARK LLC**  
an Illinois limited liability company

By   
Michael Berman,  
Its Manager

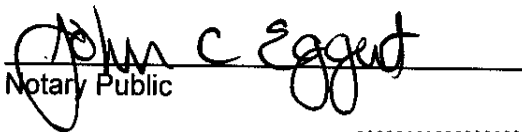
Property of Cook County Clerk's Office

### ACKNOWLEDGMENT

STATE OF ILLINOIS                    )  
  ) ss.  
COUNTY OF COOK                    )

On January 7, 2011, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared Michael Berman, known to me (or proved to me on the basis of satisfactory evidence) to be the Manager of Irving Park LLC, the limited liability company herein named, and acknowledged the execution thereof to be the free and voluntary act and deed of said manager for the uses and purposes therein mentioned and on oath stated that they were authorized to execute the said instrument on behalf of said company.

WITNESS my hand and official seal on the date written above.

  
Notary Public

My commission expires: \_\_\_\_\_





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## SCHEDULE A

Legal Description:

(Legal description from Chicago Title Insurance Owner's Title Policy No. 8831716 to be attached hereto and made a part hereof.)

## SCHEDULE B

### Permitted Encumbrances

1. General real estate taxes for the year 2010 and subsequent years.
2. Schedule B exceptions set forth in Chicago Title Owner's Title Insurance Policy Number 8831716, issued as of the date of this Mortgage.

**UNOFFICIAL COPY****STREET ADDRESS:** 4330 W. IRVING PARK RD**CITY:** CHICAGO**COUNTY:** COOK**TAX NUMBER:** 13-15-320-067-0000**LEGAL DESCRIPTION:**

## PARCEL 1:

LOTS 9 TO 12 BOTH INCLUSIVE, IN BLOCK 28 IN IRVING PARK, BEING A SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 15 AND THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 22, ALL IN TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

LOTS 1 AND 2 (EXCEPT THE NORTH 69 FEET 6 INCHES OF SAID LOTS 1 AND 2) LOT 3 (EXCEPT THE NORTH 69 FEET 6 INCHES OF THE WEST 1 FOOT 6-1/2 INCHES OF SAID LOT 3) AND LOTS 4 AND 5 IN HIELD'S RESUBDIVISION OF LOTS 19 TO 23 IN J. R. WICKERHAM'S SUBDIVISION OF BLOCK 7 IN BAXTER'S SUBDIVISION OF IRVING PARK, IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 3:

LOTS 19 TO 23 BOTH INCLUSIVE, IN BLOCK 6 IN BAXTER'S SUBDIVISION OF IRVING PARK, IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 4:

THE NORTH 69-1/2 FEET OF LOTS 1 AND 2 AND THE NORTH 69-1/2 FEET OF THE WEST 1 FOOT 6-1/2 INCHES OF LOT 3 IN HIELD'S RESUBDIVISION OF LOTS 19 TO 23, BOTH INCLUSIVE, IN J. R. WICKERSHAM'S RESUBDIVISION OF BLOCK 7 IN BAXTERS SUBDIVISION OF IRVING PARK IN THE EAST 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 5:

LOTS 24 AND 25 (EXCEPT THE WEST 2 FEET OF LOT 25) IN J. R. WICKERHAM'S SUBDIVISION OF BLOCK 7, IN BAXTER'S SUBDIVISION OF IRVING PARK, IN THE EAST 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 6:

THE WEST 2 FEET OF LOT 25 AND LOT 26 (EXCEPT THE WEST 3.18 FEET) IN J. R. WICKERSHAM'S SUBDIVISION OF BLOCK 7 IN BAXTER'S SUBDIVISION OF IRVING PARK, IN THE EAST 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 7:

LOT 27 AND THE WEST 3.18 FEET OF LOT 26 IN J. R. WICKERSHAM'S SUBDIVISION OF BLOCK 7 IN BAXTER'S SUBDIVISION OF IRVING PARK IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 8:

LOT 28 IN J. R. WICKERSHAM'S SUBDIVISION OF BLOCK 7 IN BAXTER'S SUBDIVISION OF IRVING

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PARK IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PERMENANT INDEX NUMBERS

13-15-320-067-0000  
13-15-320-068-0000  
13-15-320-069-0000  
13-15-320-070-0000  
13-15-320-071-0000  
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County of Cook County Clerk's Office