

UNOFFICIAL COPY

Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption



Doc#: 1104134072 Fee: \$84.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 02/10/2011 01:48 PM Pg: 1 of 25

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 10-23-210-045-0000

Address:

Street: 8643 TRUMBULL AVE

Street line 2:

City: SKOKIE

State: IL

ZIP Code: 60076

Lender: RIDGESTONE BANK

Borrower: KARIM CHATRIWALA AND MUNIRA CHATRIWALA

Loan / Mortgage Amount: \$1,600,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 7770 et seq. because the application was taken by an exempt entity.

Certificate number: 5C7A05E7-9CC8-4375-ABD2-788B00E457C5

Execution date: 02/08/2011

UNOFFICIAL COPY

**This Real Estate Mortgage
Was Prepared By:**
 Gebhardt & Smith LLP
 One South Street, Suite 200
 Baltimore, Maryland 21202-3281

And Should Be Returned To:
 Ridgestone Bank
 Attn.: Loan Operations
 13925 W. North Avenue
 Brookfield, Wisconsin 53005

202149

Space Above This Line Is For Recorder's Use Only

**REAL ESTATE MORTGAGE,
 SECURITY AGREEMENT, ASSIGNMENT OF
 LEASES AND RENTS, AND FIXTURE FILING**
 (This Mortgage Secures Future Advances)

By

KARIM CHATRIWALA

and

MUNIRA CHATRIWALA,
 a/k/a Munira Chartiwala

For The Benefit Of

RIDGESTONE BANK

Dated As Of February 8, 2011

PIN No.: 10-23-210-045-0000

Address: 8643 Trumbull Avenue, Skokie, Cook County, Illinois 60076

UNOFFICIAL COPY

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

(This Mortgage Secures Future Advances)

THIS REAL ESTATE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING (herein "Instrument") is made as of _____, 2011, by the mortgagors, **KARIM CHATRIWALA** and **MUNIRA CHATRIWALA, a/k/a Munira Chartiwala**, husband and wife, as joint tenants, whose address is 8822 Mason Avenue, Morton Grove, Illinois 60053 (herein, collectively, the "Mortgagor"), in favor of the Mortgagee, **RIDGESTONE BANK**, whose address is 13925 West North Avenue, Brookfield, Wisconsin 53005 (herein, "Mortgagee").

Mortgagor, in consideration of the indebtedness herein recited, irrevocably mortgages to Mortgagee all of Mortgagor's right title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in the real property located in Cook County, State of Illinois, commonly known as 8643 Trumbull Avenue, Skokie, Illinois 60076, and more particularly described on Exhibit A attached hereto and incorporated herein including all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property (collectively "Premises");

TOGETHER with all of Mortgagor's estate, right, title and interest, now owned or hereafter acquired, in:

a. all buildings, structures, improvements, parking areas, landscaping, equipment, fixtures and articles of property now or hereafter erected on, attached to, or used or adapted for use in the operation of the Premises; including but without being limited to, all heating, air conditioning and incinerating apparatus and equipment; all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, water heaters, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, freezers, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, floor coverings, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, draperies, screens, storm sash, awnings, signs, furnishings of public spaces, halls and lobbies, and shrubbery and plants, and including also all interest of any owner of the Premises in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this clause (a) shall be deemed part of the realty covered by this Instrument and not severable wholly or in part without material injury to the freehold of the Premises (all of the foregoing together with replacements and additions thereto are referred to herein as "Improvements"); and

b. all compensation, awards, damages, rights of action and proceeds, including interest thereon and/or the proceeds of any policies of insurance therefor, arising out of or relating to a (i) taking or damaging of the Premises or Improvements thereon by reason of any public or private improvement, condemnation proceeding (including change of grade), sale or transfer in lieu of condemnation, or fire, earthquake or other casualty, or (ii) any injury to or decrease in the value of the Premises or the Improvements for any reason whatsoever;

c. return premiums or other payments upon any insurance any time provided for the benefit of or naming Mortgagee, and refunds or rebates of taxes or assessments on the Premises;

UNOFFICIAL COPY

d. all the right, title and interest of Mortgagor in, to and under all written and oral leases and rental agreements (including extensions, renewals and subleases; all of the foregoing shall be referred to collectively herein as the "Leases") now or hereafter affecting the Premises including, without limitation, all rents, issues, profits and other revenues and income therefrom and from the renting, leasing or bailment of Improvements and equipment, all guaranties of tenants' performance under the Leases, and all rights and claims of any kind that Mortgagor may have against any tenant under the Leases or in connection with the termination or rejection of the Leases in a bankruptcy or insolvency proceeding;

e. plans, specifications, contracts and agreements relating to the design or construction of the Improvements; Mortgagor's rights under any payment, performance, or other bond in connection with the design or construction of the Improvements; all landscaping and construction materials, supplies, and equipment used or to be used or consumed in connection with construction of the Improvements, whether stored on the Premises or at some other location; and contracts, agreements, and purchase orders with contractors, subcontractors, suppliers, and materialmen incidental to the design or construction of the Improvements;

f. all contracts, accounts, rights, claims or causes of action pertaining to or affecting the Premises or the Improvements, including, without limitation, all options or contracts to acquire other property for use in connection with operation or development of the Premises or Improvements, management contracts, service or supply contracts, deposits, bank accounts, general intangibles (including without limitation trademarks, trade names and symbols), permits, licenses, franchises and certificates, and all commitments or agreements, now or hereafter in existence, intended by the obligor thereof to provide Mortgagor with proceeds to satisfy the loan evidenced hereby or improve the Premises or Improvements, and the right to receive all proceeds due under such commitments or agreements including refundable deposits and fees;

g. all books, records, surveys, reports and other documents related to the Premises, the Improvements, the Leases, or other items of collateral described herein; and

h. all additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein.

All of the foregoing described collateral is exclusive of any furniture, furnishings or trade fixtures owned and supplied by tenants of the Premises. The Premises, the Improvements, the Leases and all of the rest of the foregoing property are herein referred to as the "Property."

TO SECURE TO Mortgagee: (a) the repayment of the indebtedness evidenced by the SBA Form 147 Note from KARIM CHATRIWALA and AIJAS ALI and AALA ENTERPRISES, INC., an Illinois corporation (collectively, "Co-Borrowers") dated of even date herewith in the maximum principal sum of **ONE MILLION SIX HUNDRED THOUSAND DOLLARS (\$1,600,000.00)**, with interest thereon as set forth in the Note, and all renewals, extensions and modifications thereof (herein, the "Note"), and with a final maturity date twenty-five (25) years from the date of this Instrument; (b) the payment of all obligations now or hereafter owed by MUNIRA CHATRIWALA ("Guarantor") under her SBA Form 148L Limited Guarantee of even date herewith to and for the benefit of the Mortgagee (herein, the "Guaranty"); (c) the repayment of any future advances, with interest thereon, made by Mortgagee to Mortgagor and/or Co-Borrowers pursuant to Section 29 hereof (herein "Future Advances"); (d) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument or to fulfill any of Mortgagor's and/or any Co-Borrower's obligations hereunder or under the other Loan Documents (as defined below); (e) the performance of the covenants and agreements of Mortgagor or Co-Borrowers contained herein or in the other Loan Documents; and (f) the repayment of all sums now or hereafter owing to Mortgagee by Mortgagor and/or any Co-Borrower pursuant to any instrument which recites that it is secured hereby. The indebtedness

UNOFFICIAL COPY

and obligations described in clauses (a)-(f) above are collectively referred to herein as the "Indebtedness." The Note, the Guaranty, this Instrument, and all other documents evidencing, securing or guarantying the Indebtedness, as the same may be modified or amended from time to time, are referred to herein as the "Loan Documents." The terms of the Note and the Guaranty secured hereby may provide that the interest rate or payment terms or balance due may be indexed, adjusted, renewed, or renegotiated from time to time, and this Instrument shall continue to secure the Note and the Guaranty notwithstanding any such indexing, adjustment, renewal or renegotiation.

THIS INSTRUMENT IS GRANTED TO SECURE FUTURE ADVANCES MADE PURSUANT TO THE NOTE AND OTHER LOAN DOCUMENTS.

Mortgagor represents and warrants that Mortgagor has: (a) good, marketable and insurable title to, and the right to grant, convey and assign an indefeasible fee simple estate in, the Premises, Improvements, rents and leases, and the right to convey the other Property; (b) that the Property is unencumbered except as disclosed in writing to and approved by Mortgagee prior to the date hereof; and (c) that Mortgagor will warrant and forever defend the title to the Property against all claims and demands.

Mortgagor represents, warrants, covenants and agrees for the benefit of Mortgagee as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Mortgagor shall promptly pay when due the principal of and interest on the Indebtedness, any prepayment and other charges provided in the Loan Documents and all other sums secured by this Instrument.

2. FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES. At Mortgagee's sole option, upon the written request of Mortgagee, Mortgagor shall pay in addition to each monthly payment on the Note, one hundred five percent (105%) of the amount which is one-twelfth of the annual real estate taxes, insurance premiums, assessments, water and sewer rates, ground rents and other charges (herein "Impositions") payable with respect to the Property (as estimated by Mortgagee in its sole discretion), to be held by Mortgagee without interest to Mortgagor, for the payment of such obligations.

If the amount of such additional payments held by Mortgagee ("Funds") at the time of the annual accounting thereof shall exceed one hundred five percent (105%) of the amount deemed necessary by Mortgagee to provide for the payment of Impositions as they fall due, such excess shall be at Mortgagor's option, either repaid to Mortgagor or credited to Mortgagor on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Mortgagee shall be less than one hundred five percent (105%) of the amount deemed necessary by Mortgagee to pay Impositions as they fall due, Mortgagor shall pay to Mortgagee any amount necessary to make up the deficiency within thirty (30) days after notice from Mortgagee to Mortgagor requesting payment thereof.

Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Mortgagee may apply, in any amount and in any order as Mortgagee shall determine in Mortgagee's sole discretion, any Funds held by Mortgagee at the time of application (i) to pay Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Mortgagee shall refund to Mortgagor any Funds held by Mortgagee.

3. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, each complete installment payment received by Mortgagee from Mortgagor and/or Co-Borrowers under the Note, the Guaranty, or this Instrument shall be applied by Mortgagee first in payment of amounts payable to Mortgagee by Mortgagor under Section 2 hereof, then to interest payable on the Note, then to principal of the Note, and then to interest and principal on any Future Advances in such order as Mortgagee, at Mortgagee's sole

UNOFFICIAL COPY

discretion, shall determine. Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Mortgagee may apply, in any amount and in any order as Mortgagee shall determine in Mortgagee's sole discretion, any payments received by Mortgagee under the Note, the Guaranty, or this Instrument. Any partial payment received by Mortgagee shall, at Mortgagee's option, be held in a non-interest bearing account until Mortgagee receives funds sufficient to equal a complete installment payment.

4. **CHARGES, LIENS.** Mortgagor shall pay all Impositions attributable to the Property in the manner provided under Section 2 hereof or, if not paid in such manner, by Mortgagor making payment, when due, directly to the payee thereof, or in such other manner as Mortgagee may designate in writing. If requested by Mortgagee, Mortgagor shall promptly furnish to Mortgagee all notices of Impositions which become due, and in the event Mortgagor shall make payment directly, Mortgagor shall promptly furnish to Mortgagee receipts evidencing such payments. Mortgagor shall promptly discharge any lien for Impositions which has, or may have, priority over or equality with, the lien of this Instrument, and Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Mortgagee's prior written permission, Mortgagor shall not allow any lien inferior to this Instrument to be perfected against the Property. If any lien inferior to this Instrument is filed against the Property without Mortgagee's prior written permission and without the consent of Mortgagor, Mortgagor shall, within thirty (30) days after receiving notice of the filing of such lien, cause such lien to be released of record and deliver evidence of such release to Mortgagee.

5. **INSURANCE.** Mortgagor shall obtain and maintain the following types of insurance upon and relating to the Property:

- a. "All Risk" property and fire insurance (with extended coverage endorsement including malicious mischief and vandalism) in an amount not less than the full replacement value of the Property (with a deductible not to exceed \$5,000 and with co-insurance limited to a maximum of 10% of the amount of the policy), naming Mortgagee under a lender's loss payee endorsement (form 438BFU or equivalent) and including agreed amount, inflation guard, replacement cost and waiver of subrogation endorsements;
- b. Comprehensive general liability insurance in an amount not less than \$1,000,000.00 insuring against personal injury, death and property damage and naming Mortgagee as additional insured;
- c. All insurance in the form and amount necessary to satisfy the "Statutory Condition" (as that term is commonly defined in the general or local law of the State of Illinois); and
- d. Such other types of insurance or endorsements to existing insurance as may be required from time to time by Mortgagee.

Upon each reasonable request of Mortgagee, Mortgagor shall increase the coverages under any of the insurance policies required to be maintained hereunder or otherwise modify such policies in accordance with Mortgagee's request. All of the insurance policies required hereunder shall be issued by corporate insurers licensed to do business in the state in which the Property is located and rated A:X or better by A.M. Best Company, and shall be in form acceptable to Mortgagee. If and to the extent that the Property is located within an area that has been or is hereafter designated or identified as an area having special flood hazards by the Department of Housing and Urban Development or such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to any national or state program of flood insurance, Mortgagor shall carry flood insurance with respect to the Property in amounts not less than the

UNOFFICIAL COPY

maximum limit of coverage then available with respect to the Property or the amount of the Indebtedness, whichever is less. Certificates of all insurance required to be maintained hereunder shall be delivered to Mortgagee, along with evidence of payment in full of all premiums required thereunder, contemporaneously with Mortgagor's execution of this Instrument. All such certificates shall be in form acceptable to Mortgagee and shall require the insurance company to give to Mortgagee at least thirty (30) days' prior written notice before canceling the policy for any reason or materially amending it. Certificates evidencing all renewal and substitute policies of insurance shall be delivered to Mortgagee, along with evidence of the payment in full of all premiums required thereunder, at least fifteen (15) days before termination of the policies being renewed or substituted. If any loss shall occur at any time when Mortgagor shall be in default hereunder, Mortgagee shall be entitled to the benefit of all insurance policies held or maintained by Mortgagor, to the same extent as if same had been made payable to Mortgagee, and upon foreclosure hereunder, Mortgagee shall become the owner thereof. Mortgagee shall have the right, but not the obligation, to make premium payments, at Mortgagor's expense, to prevent any cancellation, endorsement, alteration or reissuance of any policy of insurance maintained by Mortgagor, and such payments shall be accepted by the insurer to prevent same. Pursuant to the requirements of the Illinois Collateral Protection Act, 815 ILCS 180/1, et seq., Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Instrument, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Premises or any other collateral for the Indebtedness. This insurance may, but need not protect Mortgagor's interests. The coverage the Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises or any other collateral for the Indebtedness. 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 Instrument. If Mortgagee purchases insurance for the Premises or any other collateral for the Indebtedness, 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 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.

If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or destruction of the Property (such event being called a "Loss"), Mortgagor will give prompt written notice thereof to Mortgagee. All insurance proceeds paid or payable in connection with any Loss shall be paid to Mortgagee. Mortgagee, in its discretion, shall have the right to apply all insurance proceeds received in connection with such Loss either (a) to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such Loss, or (b) to the payment of the Indebtedness in such order as Mortgagee may elect. Mortgagor shall diligently prosecute any restoration, repairs or replacement of the Property undertaken by or on behalf of Mortgagor pursuant to this Section 5. All such work shall be conducted pursuant to written contracts approved by Mortgagee in writing. In the event any insurance proceeds remain following the restoration, repair or replacement of the Property, such proceeds shall be applied to the Indebtedness in such order as Mortgagee may elect.

6. PRESERVATION AND MAINTENANCE OF PROPERTY. Mortgagor (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including all improvements, fixtures, equipment, machinery and appliances thereon, in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all

UNOFFICIAL COPY

laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) if all or part of the Property is for rent or lease, then Mortgagee, at its option after the occurrence of an Event of Default, may require Mortgagor to provide for professional management of the Property by a property manager satisfactory to Mortgagee pursuant to a contract approved by Mortgagee in writing, unless such requirement shall be waived by Mortgagee in writing, (g) shall generally operate and maintain the Property in a manner to ensure maximum rentals, and (h) shall give notice in writing to Mortgagee of and, unless otherwise directed in writing by Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Mortgagee hereunder. Neither Mortgagor nor any tenant or other person, without the written approval of Mortgagee, shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

Mortgagor represents, warrants and covenants that the Property is and shall be in compliance with the Americans with Disabilities Act of 1990 and all of the regulations promulgated thereunder, as the same may be amended from time to time.

7. USE OF PROPERTY. Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Mortgagor shall not, without Mortgagee's prior written consent, (i) initiate or acquiesce in a change in the zoning classification (including any variance under any existing zoning ordinance applicable to the Property), (ii) permit the use of the Property to become a non-conforming use under applicable zoning ordinances, (iii) file any subdivision or parcel map affecting the Property, or (iv) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Property.

8. PROTECTION OF MORTGAGEE'S SECURITY. If Mortgagor fails to perform any of the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Mortgagee therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option may make such appearances, disburse such sums and take such action as Mortgagee deems necessary, in its sole discretion, to protect Mortgagee's interest, including, but not limited to, (i) disbursement of attorneys' fees, (ii) entry upon the Property to make repairs, and (iii) procurement of satisfactory insurance as provided in Section 5 hereof.

Any amounts disbursed by Mortgagee pursuant to this Section 8, with interest thereon, shall become additional Indebtedness of Mortgagor secured by this Instrument. Unless Mortgagor and Mortgagee agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the highest rate which may be collected from Mortgagor under applicable law or, at Mortgagee's option, the rate stated in the Note. Mortgagor hereby covenants and agrees that Mortgagee shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Indebtedness. Nothing contained in this Section 8 shall require Mortgagee to incur any expense or take any action hereunder.

9. INSPECTION. Mortgagee may make or cause to be made reasonable entries upon the Property to inspect the interior and exterior thereof.

10. FINANCIAL DATA. Mortgagor will furnish to Mortgagee, and will cause the Guarantor to furnish to Mortgagee on request, within ninety (90) days after the close of each calendar year, (i) balance sheet and profit and loss statements for the immediately preceding calendar year prepared in accordance with

UNOFFICIAL COPY

generally accepted accounting principles and practices consistently applied and, if Mortgagee so requires, accompanied by the annual audit report of an independent certified public accountant reasonably acceptable to Mortgagee, (ii) an operating statement for the immediately preceding calendar year together with a complete rent roll and other supporting data reflecting all material information with respect to the operation of the Property and Improvements during the period covered thereby, and (iii) all other financial information and reports that Mortgagee may from time to time reasonably request, including, if Mortgagee so requires, income tax returns of Mortgagor and the Guarantor, and financial statements of any tenant of the Property designated by Mortgagee.

11. CONDEMNATION. If the Property, or any part thereof, shall be condemned for any reason, including without limitation fire or earthquake damage, or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking of, or injury to, the Property shall be paid to Mortgagee who shall have the right, in its sole and absolute discretion, to apply the amounts so received against: (a) the costs and expenses of Mortgagee, including reasonable attorneys' fees incurred in connection with collection of such amounts; and (b) the balance against the Indebtedness. All work to be performed in connection therewith shall be pursuant to a written contract therefor, which contract shall be subject to the prior approval of Mortgagee. To the extent that any funds remain after the Property has been so restored and repaired, the same shall be applied against the Indebtedness in such order as Mortgagee may elect. To enforce its rights hereunder, Mortgagee shall be entitled to participate in and control any condemnation proceedings and to be represented therein by counsel of its own choice, and Mortgagor will deliver, or cause to be delivered to Mortgagee such instruments as may be requested by it from time to time to permit such participation. In the event Mortgagee, as a result of any such judgment, decree or award, believes that the payment or performance of any of the Indebtedness is impaired, Mortgagee may declare all of the Indebtedness immediately due and payable.

12. BORROWERS AND MORTGAGOR AND LIEN NOT RELEASED. From time to time, Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns or of any junior lienholder or guarantors (including the Guarantor) without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, extend the time for payment of the Indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of the Indebtedness, accept an extension or modification or renewal note or notes therefor, modify the terms and time of payment of the Indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or decrease the amount of the monthly installments payable thereunder. Any actions taken by Mortgagee pursuant to the terms of this Section 12 shall not affect the obligation of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Mortgagor contained herein, shall not affect the Guaranty, the guaranty of any person, corporation, partnership or other entity for payment of the Indebtedness, the continuing obligations of any Borrower under the Note, and shall not affect the lien or priority of the lien hereof on the Property. Mortgagor shall pay Mortgagee a service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Mortgagee's option, for any such action if taken at Mortgagor's request.

13. FORBEARANCE BY MORTGAGEE NOT A WAIVER. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Mortgagee of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Mortgagee's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by

UNOFFICIAL COPY

Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the Indebtedness secured by this Instrument, nor shall Mortgagee's receipt of any awards, proceeds or damages under Sections 5 and 11 hereof operate to cure or waive Mortgagor's default in payment of sums secured by this Instrument.

14. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants and conveys to Mortgagee a second security interest in all of the Property that constitutes personalty, whether now owned or hereafter acquired. Mortgagor agrees that Mortgagee may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Mortgagor agrees to execute and deliver to Mortgagee, upon Mortgagee's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Mortgagee may require to perfect a security interest with respect to the foregoing items. Mortgagor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements Mortgagee may require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code, and Mortgagee may also invoke the remedies provided in Section 26 of this Instrument as to such items. In exercising any of said remedies Mortgagee may proceed against the items of real property and any items of personal property specified above separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Uniform Commercial Code or of the remedies provided in Section 26 of this Instrument. Within ten (10) days following any request therefor by Mortgagee, Mortgagor shall prepare and deliver to Mortgagee a written inventory specifically listing all of the personal property covered by the security interest herein granted, which inventory shall be certified by Mortgagor as being true, correct, and complete.

15. LEASES OF THE PROPERTY. Mortgagor shall comply with and observe Mortgagor's obligations as landlord under all Leases of the Property or any part thereof. All Leases now or hereafter entered into will be in form and substance subject to the approval of Mortgagee. All Leases of the Property shall specifically provide that such Leases are subordinate to this Instrument; that the tenant attorns to Mortgagee, such attornment to be effective upon Mortgagee's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Mortgagee may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; and that Mortgagee may, at Mortgagee's option, accept or reject such attornments. Mortgagor shall not, without Mortgagee's written consent, request or consent to the subordination of any Lease of all or any part of the Property to any lien subordinate to this Instrument. If Mortgagor becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Mortgagor shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) immediately notify Mortgagee thereof in writing and of the amount of said set-offs, and (iii) within ten (10) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such setoff and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction. Upon Mortgagee's receipt of notice of the occurrence of any default or violation by Mortgagor of any of its obligations under the Leases, Mortgagee shall have the immediate right, but not the duty or obligation, without prior written notice to Mortgagor or to any third party, to enter upon the Property and to take such actions as Mortgagee may deem necessary to cure the default or violation by

UNOFFICIAL COPY

Mortgagor under the Leases. The costs incurred by Mortgagee in taking any such actions pursuant to this Section shall become part of the Indebtedness, shall bear interest at the rate provided in the Note, and shall be payable by Mortgagor to Mortgagee on demand. Mortgagee shall have no liability to Mortgagor or to any third party for any actions taken by Mortgagee or not taken pursuant to this Section.

16. REMEDIES CUMULATIVE. Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

17. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN MORTGAGOR; ASSUMPTION. Mortgagee may, at its option, declare all sums secured by this Instrument to be immediately due and payable, and Mortgagee may invoke any remedies permitted by Section 26 of this Instrument, if title to the Property is changed without the prior written consent of Mortgagee, which consent shall be at Mortgagee's sole discretion. Any transfer of any interest in the Property or in the income therefrom, by sale, lease (except for leases to tenants in the ordinary course of managing income property which are approved by Mortgagee pursuant to Section 15 of this Instrument), contract, mortgage, deed of trust, further encumbrance or otherwise (including any such transfers as security for additional financing of the Property), and any change in or transfer, assignment, hypothecation or pledge of any of the ownership interests in Mortgagor (including any change in or transfer, assignment, hypothecation or pledge of any of the ownership interests of any legal entities which comprise or control Mortgagor), except transfers and changes in ownership by devise or descent, shall be considered a change of title. Consent by Mortgagee to one transfer of the Property shall not constitute consent to subsequent transfers or waiver of the provisions of this Section 17. No transfer by Mortgagor shall relieve Mortgagor of liability for payment of the Indebtedness.

18. NOTICE. Except for any notice required under applicable law to be given in another manner, any and all notices, elections, demands, or requests permitted or required to be made under this Instrument or under the Note shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, by telegram, or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar service requiring a receipt, to the other party at the address stated above, or to such other party and at such other address within the United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) days after the date of mailing by registered or certified mail, (iii) one (1) day after the date of mailing by Express Mail or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal upon presentation for delivery).

19. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, successors and assigns of Mortgagee and Mortgagor, subject to the provisions of Section 17 hereof. If Mortgagor is comprised of more than one person or entity, whether as individuals, partners, partnerships or corporations, each such person or entity shall be jointly and severally liable for Mortgagor's obligations hereunder. In exercising any rights hereunder or taking any actions provided for herein, Mortgagee may act through its employees, agents or independent contractors as authorized by Mortgagee. The captions and headings of the Sections of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

20. WAIVER OF STATUTE OF LIMITATIONS. Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or the Guaranty or any other obligation secured by this Instrument.

UNOFFICIAL COPY

21. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Mortgagee shall have the right to determine the order in which any or all portions of the Indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

22. HAZARDOUS WASTE. Mortgagor has received no notification of any kind suggesting that the Property or any adjacent property is or may be contaminated with any hazardous waste or materials or is or may be required to be cleaned up in accordance with any applicable law or regulation; and Mortgagor further represents and warrants that, except as previously disclosed to Mortgagee in writing, to the best of its knowledge as of the date hereof after due and diligent inquiry, there are no hazardous waste or materials located in, on or under the Property or any adjacent property, or incorporated in any Improvements, nor has the Property or any adjacent property ever been used as a landfill or a waste disposal site, or a manufacturing, handling, storage, distribution or disposal facility for hazardous waste or materials. As used herein, the term "hazardous waste or materials" includes any substance or material defined in or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any federal, state or local statute, regulation or ordinance now or hereafter in effect. Mortgagor shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of hazardous waste or materials in, on or under the Property or any adjacent property, or incorporated in any Improvements, at Mortgagor's expense. In the event that Mortgagee at any time has a reasonable belief that the Property is not free of all hazardous waste or materials or that Mortgagor has violated any applicable environmental law with respect to the Property, then immediately, upon request by Mortgagee, Mortgagor shall obtain and furnish to Mortgagee, at Mortgagor's sole cost and expense, an environmental audit and inspection of the Property from an expert satisfactory to Mortgagee. In the event that Mortgagor fails to immediately obtain such audit or inspection, Mortgagee or its agents may perform or obtain such audit or inspection at Mortgagor's sole cost and expense. Mortgagee may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in the Property; and whether or not Mortgagor has actual knowledge of the existence of hazardous waste or materials on the Property or any adjacent property as of the date hereof, Mortgagor shall reimburse Mortgagee as provided in Section 23 below for the full amount of all costs and expenses incurred by Mortgagee prior to Mortgagee acquiring title to the Property through foreclosure or acceptance of a deed in lieu of foreclosure, in connection with such compliance activities. Neither this provision nor any of the other Loan Documents shall operate to put Mortgagee in the position of an owner of the Property prior to any acquisition of the Property by Mortgagee. The rights granted to Mortgagee herein and in the other Loan Documents are granted solely for the protection of Mortgagee's lien and security interest covering the Property, and do not grant to Mortgagee the right to control Mortgagor's actions, decisions or policies regarding hazardous waste or materials.

23. ADVANCES, COSTS AND EXPENSES. Mortgagor shall pay within ten (10) days after written demand from Mortgagee all sums advanced by Mortgagee and all costs and expenses incurred by Mortgagee in taking any actions pursuant to the Loan Documents including attorneys' fees and disbursements, accountants' fees, appraisal and inspection fees and the costs for title reports and guaranties, together with interest thereon at the rate applicable under the Note after an Event of Default from the date such costs were advanced or incurred. All such costs and expenses incurred by Mortgagee, and advances made, shall constitute advances under this Instrument to protect the Property and shall be secured by and have the same

UNOFFICIAL COPY

priority as the lien of this Instrument. If Mortgagor fails to pay any such advances, costs and expenses and interest thereon, Mortgagee may apply any undisbursed loan proceeds to pay the same, and, without foreclosing the lien of this Instrument, may at its option commence an independent action against Mortgagor for the recovery of the costs, expenses and/or advances, with interest, together with costs of suit, costs of title reports and guaranty of title, disbursements of counsel and reasonable attorneys' fees incurred therein or in any appeal therefrom.

Without limitation on the foregoing, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Instrument or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101, *et seq.* ("Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinafter referred to (collectively, "Protective Advances"):

(a) all advances by Mortgagee in accordance with the terms of this Instrument to: (i) preserve or maintain, repair, restore or rebuild any improvements upon the Property; (ii) preserve the lien of this Instrument or the priority thereof; or (iii) enforce this Instrument, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due installments of principal, interest or other obligations in accordance with the terms of any senior instrument or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (iii) other obligations authorized by this Instrument or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) attorneys' fees and other expenses incurred: (i) in connection with the foreclosure of this Instrument as referred to in Sections 15-1504(d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Instrument or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in subsection (b)(1) of Section 15-1503 of the Act;

(f) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act; and

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Property imposed by subsection (c)(1) of Section 15-1704 of the Act; (ii) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (iii) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with

UNOFFICIAL COPY

any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (iv) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member if any way affecting the Property; (v) costs incurred by Mortgagee for demolition, preparation for and completion of construction; and (vi) pursuant to any lease or other agreement for occupancy of the Property.

This Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Instrument is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (i) determination of the amount of indebtedness secured by this Instrument at any time; (ii) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose; (iii) if right of redemption is deemed not to be waived by this Instrument, computation of amount required to redeem, pursuant to subsections (d)(2) and (e) of Section 15-1603 of the Act; (iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (v) application of income in the hands of any receiver or Mortgagee in possession; and (vi) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of the Act.

24. ASSIGNMENT OF LEASES AND RENTS. Mortgagor, for good and valuable consideration, the receipt of which is hereby acknowledged, to secure the Indebtedness, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto Mortgagee all right, title and interest of Mortgagor in, to and under the Leases of the Property, whether now in existence or hereafter entered into, and all guarantees, amendments, extensions and renewals of said Leases and any of them, and all rents, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Property.

Mortgagor represents, warrants, covenants and agrees with Mortgagee as follows:

- a. The sole ownership of the entire lessor's interest in the Leases is vested in Mortgagor, and Mortgagor has not, and shall not, perform any acts or execute any other instruments which might prevent Mortgagee from fully exercising its rights with respect to the Leases under any of the terms, covenants and conditions of this Instrument.
- b. The Leases are and shall be valid and enforceable in accordance with their terms and have not been and shall not be altered, modified, amended, terminated, canceled, renewed or surrendered except as approved in writing by Mortgagee. The terms and conditions of the Leases have not been and shall not be waived in any manner whatsoever except as approved in writing by Mortgagee.
- c. Mortgagor shall not materially alter the term or the amount of rent payable under any Lease without prior written notice to Mortgagee and Mortgagee's consent, which shall not be unreasonably withheld.
- d. To the best of Mortgagor's knowledge, there are no defaults now existing under any of the Leases and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases.

UNOFFICIAL COPY

- e. Mortgagor shall give prompt written notice to Mortgagee of any notice received by Mortgagor claiming that a default has occurred under any of the Leases on the part of Mortgagor, together with a complete copy of any such notice.
- f. Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of lessor and any lessee under any of the leases.
- g. Mortgagor will not permit any Lease to become subordinate to any lien other than the lien of this Instrument.
- h. Mortgagor shall not permit or consent to the assignment by any tenant of its rights under its Lease without the prior written consent of Mortgagee. Without limitation of the foregoing, Mortgagor shall not permit or consent to the filing of any encumbrance against the tenant's interest under any Lease including, without limitation, any leasehold mortgage.

This assignment is absolute, is effective immediately, and is irrevocable by Mortgagor so long as the Indebtedness remains outstanding. Notwithstanding the foregoing, until a Notice is sent to Mortgagor in writing that an Event of Default has occurred (which notice is hereafter called a "Notice"), Mortgagor may receive, collect and enjoy the rents, income and profits accruing from the Property.

Upon the occurrence of an Event of Default hereunder, Mortgagee may, at its option, after service of a Notice, receive and collect all such rents, income and profits from the Property as they become due. Mortgagee shall thereafter continue to receive and collect all such rents, income and profits, as long as such default or defaults shall exist, and during the pendency of any foreclosure proceedings.

Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney with power of substitution and with full power for Mortgagee in its own name and capacity or in the name and capacity of Mortgagor, from and after service of a Notice, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property, either in its own name or in the name of Mortgagor or otherwise, which Mortgagee may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits of and from the Property. Lessees of the Property are hereby expressly authorized and directed, following receipt of a Notice from Mortgagee, to pay any and all amounts due Mortgagor pursuant to the Leases to Mortgagee or such nominee as Mortgagee may designate in a writing delivered to and received by such lessees, and the lessees of the Property are expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all payments so made.

Upon the occurrence of any Event of Default, from and after service of a Notice, Mortgagee is hereby vested with full power to use all measures, legal and equitable, deemed by it to be necessary or proper to enforce this Section 24 and to collect the rents, income and profits assigned hereunder, including the right of Mortgagee or its designee, to enter upon the Property, or any part thereof, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Mortgagor relating thereto, and Mortgagee may exclude Mortgagor, its agents and servants, wholly therefrom. Mortgagor hereby grants full power and authority to Mortgagee to exercise all rights, privileges and powers herein granted at any and all times after service of a Notice, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Property and of any indebtedness or liability of Mortgagor to Mortgagee, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Property or of making the same rentable, reasonable attorneys' fees incurred in connection with the enforcement of this Instrument, and of principal

UNOFFICIAL COPY

and interest payments due from Mortgagor to Mortgagee on the Note, the Guaranty, and this Instrument, all in such order as Mortgagee may determine. Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the Leases. It is further understood that the assignment set forth in this Section 24 shall not operate to place responsibility for the control, care, management or repair of the Property, or parts thereof, upon Mortgagee, nor shall it operate to make Mortgagee liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Property by any lessee under any of the Leases, or any other person, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger.

Notwithstanding anything contained herein to the contrary, in no event shall this Instrument be deemed to reduce the indebtedness evidenced by the Note or the Guaranty by an amount in excess of the actual amount of cash received by Mortgagee under the Leases, whether before, during or after the occurrence of an Event of Default, and Mortgagor acknowledges that in no event shall the Indebtedness be reduced by the value from time to time of the rents, income and profits of or from the Property. In addition, Mortgagee reserves the right, at any time, whether before or after the occurrence of an Event of Default, to recharacterize the assignment in this Section 24 as merely constituting security for the Indebtedness, which recharacterization shall be made by written notice delivered to Mortgagor.

25. DEFAULT. The following shall each constitute an event of default ("Event of Default"):
- a. Failure of or refusal by Mortgagor to pay any portion of the sums secured by this Instrument when due; or
 - b. Failure of Mortgagor within the time required by this Instrument to make any payment for taxes, insurance or for reserves for such payments, or any other payment necessary to prevent filing of or discharge of any lien; or
 - c. Failure by either Mortgagor or Co-Borrowers to observe or perform any obligations of Mortgagor or Co-Borrowers to Mortgagee on or with respect to any transactions, debts, undertakings or agreements; or
 - d. Failure of Mortgagor to make any payment or perform any obligation under any superior liens or encumbrances on the Property, within the time required thereunder, or commencement of any suit or other action to foreclose any superior liens or encumbrances; or
 - e. Failure by Mortgagor to observe or perform any of their obligations under the Note, the Guaranty, or any other Loan Document, or the occurrence of any Default or Event of Default under any of the other Loan Documents;
 - f. The Property is transferred or any agreement to transfer any part or interest in the Property in any manner whatsoever is made or entered into without the prior written consent of Mortgagee; or
 - g. If any lease agreement covering all or any portion of the Property is executed by Mortgagor without Mortgagee's prior written consent; or

UNOFFICIAL COPY

- h. Filing by either Mortgagor or any Co-Borrower of a voluntary petition in bankruptcy or filing by either Mortgagor or any Co-Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the seeking, consenting to, or acquiescing by either Mortgagor or any Co-Borrower in the appointment of any trustee, receiver, custodian, conservator or liquidator for either Mortgagor or any Co-Borrower, any part of the Property, or any of the income or rents of the Property, or the making by either Mortgagor or any Co-Borrower of any general assignment for the benefit of creditors, or the inability of or failure by either Mortgagor or any Co-Borrower to pay its debts generally as they become due, or the insolvency on a balance sheet basis or business failure of either Mortgagor or any Co-Borrower, or the making or suffering of a preference within the meaning of federal bankruptcy law or the making of a fraudulent transfer under applicable federal or state law, or concealment by either Mortgagor or any Co-Borrower of any of its property in fraud of creditors, or the imposition of a lien upon any of the property of either Mortgagor or any Co-Borrower which is not discharged in the manner permitted by Section 4 of this Instrument, or the giving of notice by either Mortgagor or any Co-Borrower to any governmental body of insolvency or suspension of operations; or
- i. Filing of a petition against either Mortgagor or any Co-Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debts, or the appointment of any trustee, receiver, custodian, conservator or liquidator of either Mortgagor or any Co-Borrower, of any part of the Property or of any of the income or rents of the Property, unless such petition shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition; or
- j. The institution of any proceeding for the dissolution or termination of any Co-Borrower, voluntarily, involuntarily, or by operation of law, or the death of any Co-Borrower or either Mortgagor; or
- k. A material adverse change occurs in the assets, liabilities or net worth of Mortgagor, any Co-Borrower or any of the guarantors of the indebtedness evidenced by the Note or the Guaranty from the assets, liabilities or net worth of Mortgagor, any Co-Borrower or any of the guarantors of the indebtedness evidenced by the Note or the Guaranty previously disclosed to Mortgagee; or
- l. Any warranty, representation or statement furnished to Mortgagee by or on behalf of Mortgagor or any Co-Borrower under the Note, the Guaranty, this Instrument, or any of the other Loan Documents, shall prove to have been false or misleading in any material respect; or
- m. Failure of Mortgagor or any Co-Borrower to observe or perform any other covenant or condition contained in the Note or the Guaranty; or
- n. Failure of Mortgagor or any Co-Borrower to observe or perform any other obligation under this Instrument or any other Loan Document when such observance or performance is due; or
- o. Any of the foregoing events occur with respect to any tenant of the Property, with respect to the Guarantor, with respect to any other guarantor of any of Mortgagor's obligations in connection with the Indebtedness or with respect to any guarantor of any tenant's obligations relating to the Property, or such guarantor dies or becomes incompetent; or

UNOFFICIAL COPY

p. The occurrence of any default under any of the documents evidencing or securing any other indebtedness of either Mortgagor, any Co-Borrower, the Guarantor or any other guarantors of the Indebtedness which is now or hereafter owed to Mortgagee.

26. RIGHTS AND REMEDIES ON DEFAULT.

Upon the occurrence of any Event of Default and at any time thereafter, Mortgagee may exercise any one or more of the following rights and remedies:

(a) Mortgagee may declare the entire Indebtedness, including the then unpaid principal balance on the Note, the accrued but unpaid interest thereon, court costs and attorney's fees hereunder immediately due and payable, without notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable. Additionally, Mortgagee shall not be required to make any further advances on the Note or other Loan Documents upon the occurrence of an Event of Default or an event which, with the giving of notice or passing of time, would constitute an Event of Default.

(b) Mortgagee may enter upon the Property and take exclusive possession thereof and of all books, records and accounts relating thereto without notice and without being guilty of trespass, and hold, lease, manage, operate or otherwise use or permit the use of the Property, either itself or by other persons, firms or entities, in such manner for such time and upon such other terms as Mortgagee may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Mortgagee shall deem necessary or desirable), and apply all rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of subsection (h) of this Section 26. Mortgagor hereby irrevocably appoints Mortgagee as the agent and attorney-in-fact of Mortgagor, with full power of substitution, and in the name of Mortgagor, if Mortgagee elects to do so, to (i) endorse the name of Mortgagor on any checks or drafts representing proceeds of the insurance policies, or other checks or instruments payable to Mortgagor with respect to the Property, (ii) prosecute or defend any action or proceeding incident to the Property, and (iii) take any action with respect to the Property that Mortgagee may at any time and from time to time deem necessary or appropriate. Mortgagee shall have no obligation to undertake any of the foregoing actions, and if Mortgagee should do so, it shall have no liability to Mortgagor for the sufficiency or adequacy of any such actions taken by Mortgagee.

(c) Mortgagee may, institute an action to foreclose on all or any part of the Property in accordance with 735 Ill. Comp. Stat. 5/15-1101, et seq., as amended, or may take such other action as other law may allow, at law or in equity, for the enforcement hereof and the realization of the Property or any other security which is herein or elsewhere provided for, and may proceed thereon to final judgment and execution thereon for all Indebtedness, with interest, at the rates specified in the Note, together with all other sums secured by this Instrument. Upon the commencement of any foreclosure proceeding hereunder, the court in which such complaint is filed may, at any time, either before or after sale, and without notice to Mortgagor, or any party claiming under Mortgagor, and without regard to the then value of the Property, or the solvency of Mortgagor, or whether the Property shall then be occupied by the owner of the equity of redemption as a homestead, appoint a receiver, who may be Mortgagee or its agent, with power to manage and rent and to collect the rents, issues, and profits of the Property during the pendency of such foreclosure suit and the statutory period of redemption, and such rents, issues, and profits, when collected, may be applied to the extent permitted by law, before as well as after the judicial sale, towards the payment of the indebtedness, costs, taxes, insurance or other items necessary for the protection and preservation of the Property, including the expenses of such receivership, or any deficiency decree whether there be a decree therefor in personam or not; and upon foreclosure and sale of the Property to the extent permitted by law there shall be first paid

UNOFFICIAL COPY

out of the proceeds of such sale a reasonable sum for attorneys' fees, and also all expenses of advertising, selling, and conveying the Property, and all monies advanced for insurance, taxes or other liens or assessments, outlays for documentary evidence, stenographers' charges, all court costs, sheriff's fees, and the cost, either actual or estimated, of procuring or completing an abstract of title or guarantee policy showing the whole title to the Property, and including the foreclosure decree and the Certificate of Sale, and there shall then be paid the principal indebtedness, whether due or payable by the terms hereof or not, and the interest due thereon up to the time of such sale and the surplus, if any, shall be paid unto Mortgagor, and it shall not be the duty of Mortgagee to see to the application of the purchase money; and to the extent permitted by law in case of payment of said indebtedness, after the filing of any complaint to foreclose this Instrument, and prior to the entry of a decree of sale, a reasonable sum for legal services rendered to the time of such payment shall be allowed as attorneys' fees, which, together with any sum paid for continuation of abstract, court costs, and stenographer's charges and expenses of such proceeding, shall be additional indebtedness hereby secured. In the event of foreclosure and any sale thereunder, any abstract or title insurance policy of the Property deposited with Mortgagee shall become the property of Mortgagee.

(d) After sale of the Property, or any portion thereof, Mortgagor will be divested of any and all interest and claim thereto, including any interest or claim to all insurance policies, bonds, loan commitments and other intangible property covered hereby. Additionally, Mortgagor will be considered a tenant at sufferance of the purchaser of the Property, and said purchaser shall be entitled to immediate possession thereof, and if Mortgagor shall fail to vacate the Property immediately, the purchaser may and shall have the right, without further notice to Mortgagor, to go into any justice court in any precinct or county in which the Property is located and file an action in forcible entry and detainer, which action shall lie against Mortgagor or its assigns or legal representatives, as a tenant at sufferance. This remedy is cumulative of any and all remedies the purchaser may have hereunder or otherwise.

(e) (i) Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, Mortgagee may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Property for the repayment of the Indebtedness, for appointment of a receiver of the Property, and Mortgagor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of subsection (h) of this Section 26.

(ii) Mortgagee may exercise any and all other rights, remedies and recourses granted under the Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

(f) Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity and the same (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against Mortgagor, any guarantor of the Indebtedness or others obligated under the Note, or against the Property, or against any one or more of them at the sole discretion of Mortgagee; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (iv) are intended to be, and shall be, nonexclusive.

(g) To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (i) all benefits that might accrue to Mortgagor by any present or future laws exempting the Property from attachment, levy or sale on execution or providing for any

UNOFFICIAL COPY

appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (ii) all notices of any Event of Default (except as may be specifically provided for under the terms hereof), presentment, demand, notice of intent to accelerate, notice of acceleration and any other notice of Mortgagee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents; (iii) any right to appraisal or marshalling of assets or a sale in inverse order of alienation; (iv) the exemption of homestead; (v) all rights of reinstatement and redemption in accordance with the laws of the State of Illinois, including 735 Ill. Comp. Stat. 5/15-1601, as amended; and (vi) the administration of estates of decedents, or other matter to defeat, reduce or affect the right of Mortgagee under the terms of this Instrument to sell the Property for the collection of the Indebtedness secured hereby (without any prior or different resort for collection) or the right of Mortgagee, under the terms of this Instrument, to receive the payment of the Indebtedness out of the proceeds of sale of the Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted).

(h) The rents, profits and other income generated by the holding, leasing, operating or other use of the Property, shall be applied by Mortgagee (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following orders of priority: (i) first, to the payment of the costs and expenses of taking possession of the Property and of holding, using, leasing, maintaining, repairing, improving and selling the same, including, without limitation, (A) receiver's fees; (B) costs of advertisement; (C) attorneys' and accountants' fees; and (D) court costs; if any; (ii) second, to the payment of all amounts, other than the principal amount and accrued but unpaid interest on the Note which may be due to Mortgagee under the Loan Documents, including all Indebtedness, together with interest thereon as provided therein, in such order and manner as Mortgagee may determine; (iii) third, to the payment of the principal amount outstanding on the Note in such order and manner as Mortgagee may determine and all other Indebtedness; (iv) fourth, to the payment of all accrued but unpaid interest due on the Note in such order and manner as Mortgagee may determine; and (v) fifth, to Mortgagee. Mortgagee, Mortgagor, Guarantor, any other guarantor of the Indebtedness and any other party liable on the Indebtedness shall be liable for any deficiency remaining in the Indebtedness subsequent to any sale referenced in this subsection (h).

(i) Mortgagee shall have the right to become the purchaser at any sale of the Property hereunder and shall have the right to be credited on the amount of its bid therefor all of the Indebtedness due and owing as of the date of such sale.

(j) If Mortgagee shall accelerate the Indebtedness following the occurrence of an Event of Default, any payments received by Mortgagee following such acceleration, whether as the result of voluntary payments made by Mortgagor or as a result of the sale of the Property by Mortgagee, shall be deemed voluntary prepayments of the Note and accordingly, the prepayment fee required under the Note shall also be payable, subject to the terms of the Note.

(k) The purchaser at any sale hereunder may disaffirm any easement granted, or rental, lease or other contract made in violation of any provisions of this Instrument and may take immediate possession of the Property free from, and despite the terms of, any such grant of easement, rental, lease or other contract.

27. **RECONVEYANCE.** Upon payment of all sums secured by this Instrument, Mortgagee shall reconvey the Property without warranty and shall surrender this Instrument and all notes evidencing Indebtedness secured by this Instrument to the person or persons legally entitled thereto. Such person or persons shall pay Mortgagee's costs incurred in so reconveying the Property.

UNOFFICIAL COPY

28. USE OF PROPERTY. The Property is not currently used for agricultural, farming, timber or grazing purposes. Mortgagor warrants that this Instrument is and will at all times constitute a commercial real estate mortgage, as defined under appropriate state law.

29. FUTURE ADVANCES. Upon request of Mortgagor, Mortgagee, at Mortgagee's option so long as this Instrument secures Indebtedness held by Mortgagee, may make Future Advances to Mortgagor. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured hereby. The maximum amount of principal indebtedness secured by this Instrument shall not exceed One Million Six Hundred Thousand Dollars (\$1,600,000.00) at any one time outstanding, plus interest thereon, plus any disbursements made for the payment of taxes, special assessments or insurance on the Property, with interest on such disbursements.

30. IMPOSITION OF TAX BY STATE.

A. State Taxes Covered. The following constitute state taxes to which this Section applies:

- (i) A specific tax upon mortgages or upon all or any part of the indebtedness secured by a mortgage.
- (ii) A specific tax on a mortgagor which the taxpayer is authorized or required to deduct from payments on the indebtedness secured by a mortgage.
- (iii) A tax on a mortgage chargeable against the Mortgagee, beneficiary or the holder of the note secured.
- (iv) A specific tax on all or any portion of the indebtedness or on payments of principal and interest made by a mortgagor.

B. Remedies. If any state tax to which this Section applies is enacted subsequent to the date of this Instrument, this shall have the same effect as an Event of Default, and Mortgagee may exercise any or all of the remedies available to it unless the following conditions are met:

- (i) Mortgagor may lawfully pay the tax or charge imposed by state tax, and
- (ii) Mortgagor pays the tax or charge within thirty (30) days after notice from Mortgagee that the tax law has been enacted.

31. ATTORNEYS' FEES. In the event suit or action is instituted to enforce or interpret any of the terms of this Instrument (including without limitation efforts to modify or vacate any automatic stay or injunction), the prevailing party shall be entitled to recover all expenses reasonably incurred at, before and after trial and on appeal whether or not taxable as costs, or in any bankruptcy proceeding including, without limitation, attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses. Whether or not any court action is involved, all reasonable expenses, including but not limited to the costs of searching records, obtaining title reports, surveyor reports, title insurance, trustee fees, and other attorney fees, incurred by Mortgagee that are necessary at any time in Mortgagee's opinion for the protection of its interest or 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 interest rate as provided in the Note. The term "attorneys' fees" as used in the Loan Documents shall be deemed to mean such fees as are reasonable and are actually incurred.

UNOFFICIAL COPY

32. GOVERNING LAW; SEVERABILITY. This Instrument shall be governed by the law of the State of Illinois applicable to contracts made and to be performed therein (excluding choice-of-law principles). In the event that any provision or clause of this Instrument, the Note or the Guaranty conflicts with applicable law, such conflict shall not affect other provisions of this Instrument, the Note or the Guaranty which can be given effect without the conflicting provision, and to this end the provisions of this Instrument, the Note or the Guaranty are declared to be severable.

33. TIME OF ESSENCE. Time is of the essence of this Instrument.

34. CHANGES IN WRITING. Mortgagor expressly agrees that for purposes of this Instrument and the other Loan Documents: (i) this Instrument and the other Loan Documents shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1, et seq. (the "**Credit Agreement Act**"); (ii) the Credit Agreement Act applies to this transaction including, but not limited to, the execution of this Instrument and the Note; and (iii) any action on or in any way related to this Instrument and each other Loan Document shall be governed by the Credit Agreement Act. This Instrument and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Mortgagor or Mortgagee relating to this Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.

35. NO OFFSET. Mortgagor's obligation to make payments and perform all obligations, covenants and warranties under this Instrument and under the Note and the Guaranty shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or other right that Mortgagor or any guarantor may have or claim against Mortgagee or any entity participating in making the loan secured hereby. The foregoing provisions of this Section, however, do not constitute a waiver of any claim or demand which Mortgagor or any guarantor may have in damages or otherwise against Mortgagee or any other person, or preclude Mortgagor from maintaining a separate action thereon, provided, however, that Mortgagor waives any right it may have at law or in equity to consolidate such separate action with any action or proceeding brought by Mortgagee.

36. AUTHORIZATION TO INSERT. Mortgagor authorizes Mortgagee or its agent to insert in the spaces provided herein the amount of the Note, the mortgagee's loan policy number, the title company issuing such policy, the total amounts of the obligations secured, and the last payment due dates, if any of the foregoing information is not typed in on this document.

37. SBA LOAN. The loan secured by this Instrument was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this Instrument, then under SBA regulations:

a) When SBA is the holder of the Note, this Instrument, the Loan Documents and all other documents evidencing or securing the Indebtedness will be construed in accordance with federal law.

b) The Mortgagee and the SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. Neither the Mortgagor, any borrower or any guarantor of the Indebtedness may claim or assert against SBA any local or state law to deny any obligation of Borrower or Mortgagor, or defeat any claim of SBA with respect to the loan secured by this Instrument.

UNOFFICIAL COPY

Any clause in this Instrument requiring arbitration is not enforceable when SBA is the holder of the Note secured by this Instrument.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

38. WAIVER OF REDEMPTION. EACH MORTGAGOR WAIVES ANY AND ALL REDEMPTION RIGHTS MORTGAGOR MAY EVER HAVE IN CONNECTION WITH THE PROPERTY AND THIS MORTGAGE.

39. WAIVER OF HOMESTEAD. EACH MORTGAGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT THE PREMISES ARE NOT HOMESTEAD PROPERTY AND MORTGAGOR HAS NO RIGHTS OF HOMESTEAD IN CONNECTION THEREWITH. EACH MORTGAGOR HEREBY WAIVES ANY NOW EXISTING OR HEREAFTER ARISING HOMESTEAD RIGHTS IN CONNECTION WITH THE PREMISES.

UNOFFICIAL COPY

IN WITNESS WHEREOF, each Mortgagor has executed this Instrument or has caused the same to be executed by its representatives thereunto duly authorized.

WITNESS/ATTEST:

MORTGAGOR:

Karim Chatriwala (SEAL)
KARIM CHATRIWALA

Munira Chatriwala (SEAL)
MUNIRA CHATRIWALA
a/k/a Munira Chartiwala

ACKNOWLEDGMENTS

STATE OF ILLINOIS, COUNTY OF COOK:

I, Jennie Condos, hereby certify that KARIM CHATRIWALA, whose name is signed to the foregoing conveyance, and is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the date the same bears date.

OFFICIAL SEAL
JENNIE CONDOS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 05/04/14

Given under my hand this 8 day of February, 2011.

Jennie Condos (SEAL)
NOTARY PUBLIC

My Commission Expires:

5/4/14

Jennie Condos
Print Name of Notary

STATE OF ILLINOIS, COUNTY OF COOK:

I, Zehra Jiwani, hereby certify that MUNIRA CHATRIWALA, whose name is signed to the foregoing conveyance, and is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she executed the same voluntarily on the date the same bears date.

Given under my hand this 08th day of February, 2011.

OFFICIAL SEAL
Zehra Jiwani
Notary Public, State of Illinois
Cook County
My Commission Expires May 12, 2013
(SEAL)

Zehra Jiwani
NOTARY PUBLIC
ZEHRA JIWANI

My Commission Expires:

May 12, 2013

Zehra Jiwani
Print Name of Notary

UNOFFICIAL COPY

EXHIBIT A

LOT 6 AND NORTH ½ OF LOT 7 IN BLOCK 20 IN NORTH SIDE REALTY COMPANY'S DEMPSTER GOLF COURSE SUBDIVISION IN THE NORTHEAST ¼ OF SECTION 23, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

CKA 8643 Trumbull Avenue, Skokie, Illinois 60076

PIN No.: 10-23-210-045-0000