

UNOFFICIAL COPY

**Illinois Anti-Predatory
Lending Database
Program**

Certificate of Exemption



Doc#: 1104750019 **Fee:** \$88.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/16/2011 09:27 AM Pg: 1 of 27

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

The property identified as: **PIN:** 16-21-101-027-0000

Address:

Street: 1507 South Central Avenue

Street line 2:

City: Cicero

State: IL

ZIP Code: 60804

Lender: Urban Partnership Bank

Borrower: Chicago Title Land Trust Company as Trustee Under Trust Agreement Dated January 17, 2007 and known as Trust Number 8002348062

Loan / Mortgage Amount: \$1,888,851.00

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: 9545C2EE-4F5B-4519-8D9B-74A4D04B3211

Execution date: 11/09/2010

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 16-21-101-027-0000

Address:

Street: 1507 South Central Avenue

Street line 2:

City: Cicero

State: IL

ZIP Code: 60804

Lender: Urban Partnership Bank

Borrower: Excel Property Investments, LLC

Loan / Mortgage Amount: \$1,888,851.00

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: 53288C76-2F58-4777-BAC2-4C759D3B7E36

Execution date: 11/09/2010

UNOFFICIAL COPY

This instrument was prepared by, and after recording, return to:

Joel M. Hurwitz
ARNSTEIN & LEHR LLP
120 South Riverside Plaza
Suite 1200
Chicago, Illinois 60606

Address:
1507 South Central Avenue
Cicero, Illinois 60804

PIN:
16-21-101-027-0000

MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS INDENTURE is made as of this 9th day of November, 2010, by and between CHICAGO TITLE LAND TRUST COMPANY as Trustee under Trust Agreement dated January 17, 2007 and known as Trust Number 8002348062, with an address of 20 N. Clark Street, Chicago, Illinois 60620 (the "Trust") and Excel Property Investments, LLC, an Illinois limited liability company ("Excel") (the Trust and Excel are sometimes referred to herein collectively as "Mortgagor"), and URBAN PARTNERSHIP BANK, with an address of 7054 South Jeffrey, Chicago, Illinois 60649 as successor to SHOREBANK ("Mortgagee") and GSR INVESTMENTS, LLC, an Illinois limited liability company, the beneficiary of Mortgagor ("Mortgagee's Beneficiary"):

RECITALS

The Trust and Mortgagor's Beneficiary are justly indebted to Mortgagee in the principal sum of One Million Eight Hundred Eighty Eight Thousand Eight Hundred Fifty One and 00/100 Dollars (\$1,888,851.00) evidenced by a certain Promissory Note described as follows: Promissory Note dated January 30, 2007 as amended in the current principal amount of \$1,888,851, made by GSR INVESTMENTS, LLC, GERALDO ROMAN and the Trust and payable to the order of and delivered to Mortgagee (the "Note"). The unpaid principal amount of the Note, if not sooner paid shall be due on June 1, 2011. Accrued and unpaid interest shall be payable as provided in the Note. The Note is executed pursuant to a Loan and Security Agreement originally dated January 30, 2007 most recently modified July 20, 2010 among Mortgagee, GSR and Geraldo Roman (the "GSR Loan Agreement"). The Note, this Mortgage, the GSR Loan Agreement and all other documents and agreements related thereto are referred to herein as the "Loan Documents". All such payments on account of the indebtedness evidenced by the Note shall be first applied to costs and expenses incurred by Mortgagee, then to interest on the unpaid principal balance and the remainder to principal, and all of said principal and interest shall be payable at the

UNOFFICIAL COPY

address indicated above or at such other address as Mortgagee may from time to time designate in writing.

ACCORDINGLY, Mortgagor, to secure: (i) the payment of said principal sum of money and all interest and other indebtedness evidenced by the Note and by any extensions, renewals or refinancings thereof; (ii) the performance and observance of the covenants, terms, conditions and agreements contained in the Note and this Mortgage (as hereinafter defined); and (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, with interest thereon as provided herein or therein (all of the foregoing referred to herein as the "Indebtedness"); and also in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, ASSIGN, REMISE, RELEASE, WARRANT, AND CONVEY unto Mortgagee, its successors and assigns, the real estate and all of its estate, right, title and interest therein situate, legally described in Exhibit 1 attached hereto and made a part hereof, which together with the property hereinafter described, is referred to herein as the "Premises";

TOGETHER with all buildings and improvements now or hereafter constructed upon or erected upon or located on the real estate legally described in Exhibit 1 attached hereto, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the real estate legally described in Exhibit 1 attached hereto, and all rents, security deposits, issues, royalties, income, proceeds, profits and other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing): all fixtures, apparatus and equipment, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as defined in the Uniform Commercial Code of Illinois (the "Code")), this Mortgage is hereby deemed to also be a Security Agreement under the Code for purposes of granting a security interest in such property, which Mortgagor and Mortgagor's Beneficiary hereby grant to Mortgagee, as Secured Party (as defined in the Code).

UNOFFICIAL COPY

TO HAVE AND TO HOLD the Premises unto the Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Payment of Indebtedness. The Trust and Mortgagor's Beneficiary shall pay promptly the Indebtedness evidenced by the Note at the time and in the manner provided herein and in the Note, and all other sums and charges payable when due by the Trust and Mortgagor's Beneficiary and pursuant to the Note, this Mortgage and any of the other Loan Documents.

2. Title. Mortgagor represents and covenants that (a) Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except this Mortgage and liens for taxes not yet due and payable and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

3. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc. Mortgagor shall (a) keep the Premises in the same condition and repair as of the date of this Mortgage except for rehabilitation work on the Premises, without waste, and free from mechanics' liens or other liens or claims for lien; or (b) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises, superior or inferior to or at parity with the lien hereof and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (c) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use and development thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (d) make no material structural or non-structural alterations to the Premises or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Mortgagee; (e) initiate or acquiesce in no zoning reclassification without the prior written consent of Mortgagee; (f) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note, and (g) duly perform and observe all of the covenants, terms, provisions and agreements herein or in the Note on the part of Mortgagor to be performed and observed. As used in this Paragraph and elsewhere in this Mortgage, the term "Indebtedness" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.

4. Payment of Taxes and Assessments. Mortgagor shall pay before any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due, and shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof.

UNOFFICIAL COPY

5. Construction Loan. The Indebtedness secured by this Mortgage is, in part, debt of the Mortgagor to finance the cost of the construction of certain improvements upon the Premises and this Mortgage is a construction mortgage as such term is defined in Section 9 334(h) of the Code. The terms and conditions recited and set forth in the Loan Documents are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Documents shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the Mortgagee may at its option declare the Indebtedness secured by this Mortgage immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate.

6. Insurance. Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation: (a) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation guard endorsements; (b) broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Premises shall contain a boiler and sprinkler system, respectively; and (c) such other insurance as Mortgagee may from time to time reasonably require. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workmens' compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, companies, amounts and deductibles satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee or shall name Mortgagee as an additional insured, and shall name Mortgagee as loss payee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. Mortgagor shall deliver certificates evidencing all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver certificates evidencing renewal policies not less than fifteen (15) days prior to their respective dates of expiration.

UNLESS MORTGAGOR PROVIDES MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, MORTGAGEE MAY PURCHASE INSURANCE AT MORTGAGOR'S EXPENSE TO PROTECT MORTGAGEE'S INTERESTS IN THE PREMISES. THIS INSURANCE MAY, BUT NEED NOT, PROTECT MORTGAGOR'S INTERESTS. THE COVERAGE THAT MORTGAGEE PURCHASES MAY NOT PAY ANY CLAIM THAT MORTGAGOR

UNOFFICIAL COPY

MAKES OR ANY CLAIM THAT IS MADE AGAINST MORTGAGOR IN CONNECTION WITH THE PREMISES. 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. IF MORTGAGEE PURCHASES INSURANCE FOR THE PREMISES, MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES MORTGAGEE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO MORTGAGOR'S TOTAL OUTSTANDING BALANCE OR OBLIGATION. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE MORTGAGOR MAY BE ABLE TO OBTAIN ON MORTGAGOR'S OWN.

In the event of loss, Mortgagor shall give prompt notice to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly. Any insurance proceeds so received by Mortgagee, or any part thereof, shall be applied by Mortgagee, after the payment of all of Mortgagee's expenses, including costs and reasonable attorneys' fees, to the restoration or repair of the property damaged as provided in Paragraph 22 hereof if jointly elected by Mortgagee and Mortgagor or to reduction of the balance outstanding upon the Note.

7. Condemnation. If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its expenses, including costs and reasonable attorneys' fees, to the restoration or repair of the property damaged as provided in Paragraph 23 hereof, if in the reasonable judgment of Mortgagee and Mortgagor the property can be restored or repaired to the condition existing immediately prior to the taking. If in the judgment of Mortgagee such property cannot be restored or repaired to an economically viable unit, in Mortgagee's reasonable discretion, then such award or monies received after the payment of expenses of Mortgagee as aforesaid shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable.

UNOFFICIAL COPY

8. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage or the issuance of the Note hereby secured, Mortgagor covenants and agrees to pay such tax in the manner required by any such law.

9. Lease Assignment. As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgagor, as lessor, does hereby assign to Mortgagee the entire lessor's right, title and interest in and to all leases and subleases (including all extensions and renewals thereof) which now or hereafter affect all or any portion of the Premises and in and to all rents, issues, income and profits of or from all or any portion of the Premises.

10. Effect of Extensions of Time. If the payment of the Indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the Indebtedness be released, all persons now or at any time hereafter liable therefor, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

11. Anti-Forfeiture. Mortgagor hereby further expressly represents and warrants to Mortgagee that to the best of Mortgagor's knowledge there has not been committed by Mortgagor or any other person involved with the Mortgaged Property or the Mortgagor any act or omission affording the federal government or any state or local government the right and/or remedy of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of its obligations under the Note or under any of the other Loan Documents, and Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right and/or remedy of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or other injury, including without limitation, attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by Mortgagee in preserving its lien, security interest and other rights and interests in the Mortgaged Property and any additional collateral under any of the Loan Documents in any proceeding or other governmental action asserting forfeiture thereof, by reason of, or in any manner resulting from, the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor, Mortgagee, any guarantor, any additional collateral under any of the Loan Documents or all or any part of the Mortgaged Property under any federal or state law in respect of which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result shall, at the election of the Mortgagee in its absolute discretion, constitute an Event of Default hereunder without notice or opportunity to cure

UNOFFICIAL COPY

12. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee. Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable with notice and with interest thereon at an annual rate (the "Default Rate") equal to ten percent (10%), from the date of the occurrence of an Event of Default.

13. Mortgagee's Reliance on Tax Bills and Claims for Liens. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, provided that if no Event of Default then exists hereunder Mortgagee shall give to Mortgagor ten (10) days' prior written notice thereof.

14. Acceleration of Indebtedness in Event of Default. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

- (a) The Trust and Mortgagor's Beneficiary fail to pay within five (5) days after the date when due (i) any installment of principal or interest payable pursuant to the Note, or (ii) any other amount payable pursuant to the Note or this Mortgage;
- (b) Mortgagor and Mortgagor's Beneficiary fail to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under (i) the Note, or (ii) this Mortgage, within thirty (30) days after written notice from Mortgagee;
- (c) The existence of any material inaccuracy or untruth in any representation, covenant or warranty contained in this Mortgage or the Note or of any statement or certification as to facts delivered to Mortgagee by either Mortgagor;
- (d) At any time, either Mortgagor files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or

UNOFFICIAL COPY

answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of either Mortgagor;

- (e) The commencement of any involuntary petition in bankruptcy against either Mortgagor, or the institution against either Mortgagor of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of either Mortgagor;
- (f) Any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Paragraph 28 of this Mortgage.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the Indebtedness hereby secured to be immediately due and payable without notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate. Mortgagee shall then be entitled to apply all insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

15. Foreclosure; Expense of Litigation. When the Indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, and shall not be paid as required herein, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or the Note.

In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or

UNOFFICIAL COPY

in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

16. Single or Multiple Foreclosure Sales. If the Premises consists of more than one lot, parcel or item of property, Mortgagee may:

- (a) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and
- (b) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale, or pursuant to the power of sale contained herein; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interests (any foreclosure sale or disposition as permitted by the terms hereof is sometimes referred to herein as a "Foreclosure Sale," and any two or more such sales, "Foreclosure Sales").

If it chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such difference days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Premises which has not been sold, until all of the indebtedness secured hereby has been irrevocably paid in full.

17. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 15 hereof; second, all other items which may under the terms hereof constitute secured Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided and all principal and interest remaining unpaid on the Note; and third, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

18. Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, with notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as

UNOFFICIAL COPY

well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

19. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall forthwith and upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of the Premises or any part thereof personally, or by its agents or attorneys. Mortgagee's rights and remedies under this Paragraph 19 shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due and payable hereunder, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the Premises, Mortgagee in its discretion may, without force and with process of law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor relating thereto.

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

- (a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions (but not with respect to the renewal of existing leases unless provided for therein) and other compensation and expenses of seeking and procuring tenants and entering into leases, established claims for damages, if any, and premiums on insurance hereinabove authorized;
- (b) to the payment of the taxes and special assessments now due or which may hereafter become due on the Premises; and, if this is a leasehold mortgage, of all rents due or which may become hereafter due under the underlying lease;
- (c) to the payment of all repairs, renewals, replacements, alterations, additions, betterments, and improvements of the Premises,

UNOFFICIAL COPY

including the cost from time to time of installing or replacing mechanical systems and other fixtures therein, and of placing the Premises in such condition as will, in the judgment of Mortgagee, make them readily rentable; and

- (d) to the payment of any Indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

21. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or any other document given to secure the Note or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

22. Mortgagee's Right of Inspection. Mortgagee and/or its representative shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

23. Disbursement of Insurance or Eminent Domain Proceeds.

- (a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, which approval shall not be unreasonably withheld, and if Mortgagee fails to give written disapproval within thirty (30) days after Mortgagor's request for approval, such request shall be deemed to be approved.
- (b) Prior to the payment or application of insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Premises as provided in Paragraphs 6 and 7 above, Mortgagee shall be entitled to evidence of the following:
- (i) That there is not then a default in any of the terms, covenants and conditions of the Note or this Mortgage;
- (ii) That Mortgagee shall first be given reasonably satisfactory proof that either such improvements have been fully restored, or that the expenditure of money as may be received from

UNOFFICIAL COPY

such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage;

(iii) That in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore or rebuild the said improvements, Mortgagor or its lessee(s) shall deposit with Mortgagee funds equaling such deficiency, which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Premises; and

(iv) That prior to the disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 23 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagor's architect, certifying the extent of the repair and restoration completed to the date thereof, and such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Premises as provided in Paragraphs 6 and 7 above there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer who claims that no liability exists as to Mortgagor or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Mortgagee.

(d) In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such excess shall be applied on account of the unpaid principal balance of the Note irrespective of whether such balance is then due and payable.

UNOFFICIAL COPY

- (e) In the event Mortgagor commences the repair or rebuilding of the improvements located on the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 23; or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a reasonable time, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above; then Mortgagee may, at its option, accelerate the Indebtedness evidenced by the Note and apply all or any part of the insurance proceeds or condemnation award against the Indebtedness secured hereby.

24. Release Upon Payment and Discharge of Mortgagor's Obligations. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of reasonable expenses incurred by Mortgagee in connection with the execution of such release.

25. Notices. Any notice or demand required or permitted to be given under this Mortgage shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, return receipt requested, addressed as follows:

To Mortgagee: Urban Partnership Bank
7054 South Jeffrey
Chicago, Illinois 60649

And With a Copy to: Arnstein & Lehr LLP
120 South Riverside Plaza
Suite 1200
Chicago, Illinois 60606
Attention: Konstantinos Armiros and Joel M. Hurwitz

To Mortgagor: c/o Geraldo Roman
2207 Western Avenue
Chicago, Illinois 60647

and
c/o Andrzej Szorc
2207 Western Avenue
Chicago, Illinois 60647

And With a Copy to: Ira Kaufman
661 West Lake Street, Suite 1W
Chicago, Illinois 60661

UNOFFICIAL COPY

Either party may designate a different address for notice purposes by giving notice thereof in accordance with this Paragraph 25; provided, however, that such notice shall not be deemed given until actually received by the addressee. Any notice or demand given by United States mail shall be deemed given on the second business day after the same is deposited in the United States mail as registered or certified mail, addressed as above provided with postage thereon fully prepaid.

26. Waiver of Defenses. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

27. Waiver of Rights. Mortgagor hereby covenants and agrees that to the extent permitted by law, Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

28. Transfer of Premises; Further Encumbrance. Mortgagor agrees that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises, the placement or granting of liens on all or any part of the Premises or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create a lien on the personal property utilized in the operation of the Premises, or the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, or any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises or the beneficial interest in, or power of direction under, any trust agreement with Mortgagor (each a "Transfer"), without Mortgagee's prior written consent shall be deemed to be an "Unpermitted Transfer" and shall be an Event of Default hereunder.

Any request for the consent of the Mortgagee to a proposed Transfer, shall be in writing and the Mortgagor shall furnish Mortgagee with any and all documentation requested by Mortgagee. Mortgagee may give its consent to a proposed Transfer subject to such conditions as the Mortgagee may deem necessary or appropriate, in Mortgagee's sole discretion, including, without limitation, a condition that the present guarantors of the Note, if any, shall not be released, or that the principal amount of the Notes be reduced. Any consent by Mortgagee to a proposed Transfer, or any waiver by Mortgagee of an Event of Default under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent proposed Transfer or Event of Default under this Paragraph 28. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 28 shall be void and of no force or effect.

UNOFFICIAL COPY

29. Advances. (a) This Mortgage shall secure the indebtedness of Mortgagor to Mortgagee that is evidenced, permitted or secured by the Note and this Mortgage, including future advances made by Mortgagee to Mortgagor. All of such indebtedness, including future advances, shall be a lien from the time that this Mortgage is recorded with the Recorder of the County in which the Premises is located as provided in 735 ILCS 5/15-1302(b).

(b) The maximum amount of indebtedness secured by this Mortgage shall not exceed Five Million Six Hundred Sixty Six Thousand Five Hundred Fifty Three and 00/100 Dollars (\$5,666,553.00).

(c) In addition to the loan advances referred to in subparagraph (a) above, Mortgagee shall have the right, but not the obligation, to make protective advances with respect to the Premises for the payment of taxes, assessments, insurance premiums, repairs, maintenance and other costs incurred in the protection of the Premises, and such protective advances, together with interest thereon at the Default Rate from the date of each such advance until it is repaid in full, shall be secured by this Mortgage with priority running from the time of the recording of this Mortgage with the Recorder of the County in which the Premises is located pursuant to 735 ILCS 5/15-1302(b)(5).

30. Further Instruments. Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and the Note.

31. Waiver of Right of Redemption. Mortgagor hereby releases and waives any and all rights to retain possession of the Premises after the occurrence of an Event of Default hereunder and any and all rights of redemption from sale under any order of foreclosure of this Mortgage, or other rights of redemption which may run to Mortgagor or any other Owner of Redemption, as that term is defined in 735 ILCS 5/15-1212. Mortgagor waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by law.

32. Miscellaneous.

(a) Binding Obligation, Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its successors and permitted assigns, any subsequent owner or owners of the Premises who acquire the Premises subject to this Mortgage and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. This Mortgage and all provisions hereof shall inure to the benefit of

UNOFFICIAL COPY

Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note. All obligations of Mortgagor hereunder shall be joint and several.

- (b) Invalidation of Provisions. In the event one or more of the provisions contained in this Mortgage or the Note or in any security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage and the Note it secures are to be construed and governed by the substantive laws of the State of Illinois.
- (c) Relationship of Mortgagee and Mortgagor. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any beneficiary, lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a Mortgagee in possession or exercising any rights pursuant to this Mortgage or otherwise.
- (d) Time of the Essence. Time is of the essence of the payment by Mortgagor and its Beneficiaries of all amounts due and owing to Mortgagee under the Note and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage.
- (e) Anti-Terrorism Laws.
- (i) None of Mortgagor and Mortgagor's Beneficiaries (and, to the knowledge of Mortgagor and each of Mortgagor's Beneficiaries, no joint venture or subsidiary thereof) is in violation in any material respect of any United States Requirements of Law relating to terrorism, sanctions or money laundering (the "Anti-Terrorism Laws"), including the United States Executive Order No. 13224 on Terrorist Financing (the "Anti-Terrorism Order") and the Patriot Act.
- (ii) None of Mortgagor and Mortgagor's Beneficiaries (and, to the knowledge of Mortgagor and each of Mortgagor's Beneficiaries, no joint venture or subsidiary thereof) (i) is listed in the annex to, or is otherwise subject to the provisions of, the Anti-

UNOFFICIAL COPY

Terrorism Order, (ii) is owned or controlled by, or acting for or on behalf of, any person listed in the annex to, or is otherwise subject to the provisions of, the Anti-Terrorism Order, (iii) commits, threatens or conspires to commit or supports "Terrorism" as defined in the Anti-Terrorism Order or (iv) is named as a "specialty designated national and blocked person" in the most current list published by OFAC.

(iii) None of Mortgagor and Mortgagor's Beneficiaries (and, to the knowledge of Mortgagor and each of Mortgagor Beneficiaries, no joint venture or Affiliate thereof) (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in clauses (b)(i) through (b)(iv) above, (ii) deals in, or otherwise engages in any transactions relating to, any property or interests in property blocked pursuant to the Anti-Terrorism Order or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions as set forth in any Anti-Terrorism Law.

33. Security Agreement and Financing Statement. Mortgagor and Mortgagee agree: (a) that this Mortgage shall constitute a Security Agreement within the meaning of Section 9-402(6) of the Code with respect to any property included in the definition herein of the word "Premises" which property may not be deemed to form a part of the real estate described in Exhibit 1 attached hereto or may not constitute a "fixture" (within the meaning of the Code), and all replacements of such property, substitutions for such property, additions to such property, books and records relating to the Premises and operation thereof and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (b) that a security interest in and to the Collateral is hereby granted to the Mortgagee.

Upon the occurrence of any Event of Default hereunder, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and the Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. Mortgagee and Mortgagor agree that if Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days notice of the sale of the Collateral shall be reasonable notice. The expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee.

Mortgagor shall, from time to time, upon written request of Mortgagee and at Mortgagor's sole cost, deliver to Mortgagee such further financing statements and security documents and assurances as Mortgagee may require, to the end that the liens

UNOFFICIAL COPY

and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law.

34. Compliance with Environmental Laws.

(a) Mortgagor represents and warrants to Mortgagee that:

(i) Mortgagor shall not use, store, release or dispose of Hazardous Materials (as hereinafter defined), on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, permits, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials;

(ii) Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials except to the extent that such Hazardous Materials are stored and/or used in compliance with all applicable federal, state and local laws and regulations; and, without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or suffer as a result of any intentional or unintentional act or omission on the part of any tenant, subtenant or occupant, a release, spill, leak or emission of Hazardous Materials onto the Premises or onto any other contiguous property;

(iii) Mortgagor shall conduct and complete all remedial, removal and other actions necessary to clear up and remove all Hazardous Materials on, under or affecting the Premises as required by all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the satisfaction of Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities.

(b) Definitions. For purposes of this Mortgage the term "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, petroleum, hazardous materials, hazardous or solid wastes, hazardous or toxic substances or related materials defined, listed or regulated as such in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.S. Sections

UNOFFICIAL COPY

1801, et. seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et. seq.) and any similar state law, and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule or regulation relating to, regulating or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material.

35. Revolving Credit; Maximum Amount of Lien. This Mortgage secures in part, among other things, "revolving credit" as that term is defined in 815 ILCS 205/4.1, and will secure not only existing Indebtedness, but also future advances, whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of execution of this Mortgage, although there may be no advance made at the time of execution hereof, and although there may be no Indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all such Indebtedness and future advances from the time this Mortgage is recorded

36. Compliance with Illinois Mortgage Foreclosure Law.

- (a) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.
- (b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagor shall be vested with the rights granted in the Act to the full extent permitted by law.
- (c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Act, whether incurred before or after any decree or judgment of foreclosure, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

37. Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Mortgaged Property unless Mortgagee consents to a merger in writing.

38. Indemnification for Costs. Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against all costs, liabilities and

UNOFFICIAL COPY

expenses, including but not limited to attorneys' fees and expenses to the fullest extent not then prohibited by applicable law, and costs of any environmental audit, title search, continuation of abstract and preparation of survey, incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body, including an action to foreclose or to collect any Indebtedness or obligation secured hereby, or incurred in connection with any extra-judicial collection procedure, in and to which Mortgagee may be or become a party by reason hereof, including, without limitation, any taking, bankruptcy, probate and administration proceedings, as well as any other proceeding wherein proof of claims required to be filed by law or in which it becomes necessary to defend or uphold the terms of and the lien created by this Mortgage.

39. Binding on Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of Mortgagee and its successors and assigns.

40. Captions. The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

41. UCC Financing Statement/Fixture Filing. This Mortgage is intended to be a UCC Financing Statement/Fixture Filing within the purview of Section 9-502 of the Uniform Commercial Code with respect to the Collateral and the goods described herein, which goods are and may become fixtures relating to the Premises. The addresses of Mortgagor as Debtor and Mortgagee as Secured Party are set forth herein. This Mortgage is to be filed for record with the Recorder of Deeds of the county or counties where the Premises are located.

42. Subrogation. If the Indebtedness hereby secured or any part thereof, including any amounts advanced by Mortgagee, are used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to such other liens or encumbrances and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same, whether or not any such lien, encumbrance or additional security is canceled of record upon such payment or advancement or otherwise, and in addition to the security afforded by this Mortgage and the other Loan Documents.

43. Applicable Law. This Mortgage shall be governed by and construed under the internal laws of the State of Illinois.

44. **WAIVER OF JURY TRIAL. MORTGAGOR HEREBY, AND MORTGAGEE BY ITS ACCEPTANCE HEREOF, EACH WAIVE THE RIGHT OF A JURY TRIAL IN EACH AND EVERY ACTION ON THIS MORTGAGE, IT BEING ACKNOWLEDGED AND AGREED THAT ANY ISSUES OF FACT IN ANY SUCH ACTION ARE MORE APPROPRIATELY DETERMINED BY THE COURTS; FURTHER, MORTGAGOR HEREBY CONSENTS AND SUBJECTS ITSELF TO THE**

UNOFFICIAL COPY

JURISDICTION OF COURTS OF THE STATE OF ILLINOIS AND, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE VENUE OF SUCH COURTS IN THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS LOCATED.

45. Intentionally Omitted.

46. Trustee Execution. This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the property herein described and has no agents, employees or control over the management of the property and no knowledge of other factual matters except as represented to it by the beneficiary(ies) of the Trust. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument, all such liability being expressly waived by every person now or hereafter claiming any right or security hereunder, and the owner of any indebtedness or cause of action for breach of any warranty, indemnity, representation, covenant, undertaking or agreement accruing hereunder shall look solely to the Trust estate for the payment thereof.

[Signature Page Follows]

UNOFFICIAL COPY

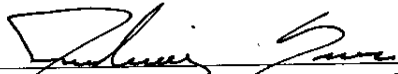
Mortgagor and Mortgagor's Beneficiaries have executed this instrument the day and year first above written.

MORTGAGOR:

CHICAGO TITLE LAND TRUST
COMPANY as Trustee of Trust under
Trust Agreement dated January 17, 2007
and known as Trust Number 8002348062

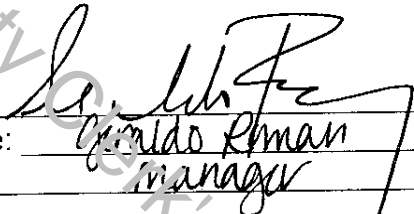
By: 

EXCEL PROPERTY INVESTMENT, LLC

By: 
Name: ANDRZEJ SZORC
Its: MEMBER

BENEFICIARY:

GSR INVESTMENTS, LLC

By: 
Name: Gerardo Roman
Its: manager

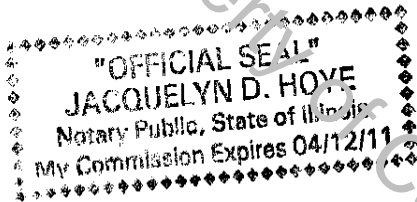
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
COUNTY OF Cook) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that CAROLYN PAMPENELLA, as ASST. VICE PRESIDENT of Chicago Title Land Trust Company as Trustee of Trust under Trust Agreement dated January 17, 2007 and known as Trust Number 8002348062, known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument in her capacity as such officer, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 18th day of November, 2010.



[Signature] [SEAL]
NOTARY PUBLIC
My commission expires: _____

STATE OF ILLINOIS)
COUNTY OF Cook) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Andrew Seave, as an authorized signatory for Excel Property Investments, LLC, known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument in his capacity as such officer, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 10 day of November, 2010.

[Signature] [SEAL]
NOTARY PUBLIC
My commission expires: _____



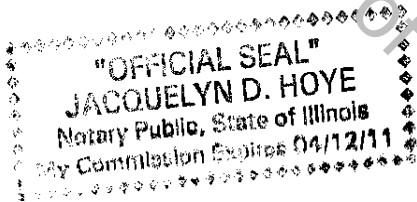
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that QSR Investments, LLC as an officer of one of the Beneficiaries of Chicago Title Land Trust Company under Trust Agreement dated January 17, 2007 and known as Trust Number 8002348062, known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument in 1 capacity as such officer, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 10th day of November, 2010.

** by Gerald Roman, Manager*



[Signature] [SEAL]
NOTARY PUBLIC
My commission expires: _____

UNOFFICIAL COPY

EXHIBIT 1

Legal Description of Premises

LOT 42 IN BLOCK 2 IN THE RESUBDIVISION OF THE WEST PART OF BLOCKS 3 AND 6 IN GRANT LAND ASSOCIATION'S RESUBDIVISION OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 13, 1915, AS DOCUMENT NO 5561124, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1507 South Central Avenue, Cicero, Illinois 60804

PIN: 16-21-101-021-0000