

UNOFFICIAL COPY

Illinois Anti-Predatory
Lending Database
Program



Doc#: 1110341091 Fee: \$76.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/13/2011 12:39 PM Pg: 1 of 21

Certificate of Exemption

**CITYWIDE
TITLE CORPORATION**

850 W. JACKSON BLVD., SUITE 320
CHICAGO, IL 60607

158 785
Report Mortgage Fraud
800-532-8785

The property identified as: **PIN: 16-26-119-015-0000**

Address:

Street: 2547 S Harding Ave

Street line 2:

City: Chicago

State: IL

ZIP Code: 60623

Lender: Second Federal Savings & Loan Association

Borrower: Western National Bank of Cicero, as Trustee Under the provisions of A trust Agreement dated November 17, 1980 and known as Trust No. 8072 as to parcel 1;

Loan / Mortgage Amount: \$265,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 17170 et seq. because it is not owner-occupied.

Certificate number: C7C08BF9-93C2-4F35-927C-C766B07B2125

Execution date: 03/24/2011

S Y
P 21
S N
SC Y
INT AP

UNOFFICIAL COPY

Prepared by and After
Recording Return To:

Maelvi Marin
Second Federal Savings and Loan
Association of Chicago
4811 West Cermak Rd
Cicero, IL 60804

LN# 130006770

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is made this 24th day of March, 2011, by La Salle Bank National association Successor Trustee To Western National Bank/ Dated November 17, 1980, Trust #8072, ("Mortgagor"), in favor of Second Federal Savings and Loan Association of Chicago, 3960 West 26th Street, Chicago, Illinois 60623 ("Mortgagee").

WHEREAS, Mortgagor is the owner of the property commonly known as 2543- 2547 S Harding, Chicago, IL 60623, which is legally described on Exhibit "A" attached hereto and made a part hereof (the "Property");

WHEREAS, Mortgagor has executed and delivered to Mortgagee that certain Revolving Credit Promissory Note in the sum of \$265,000.00 to be paid with interest thereon according to the terms thereof ("Note"), which Note shall be due, if not sooner paid or due, on March 24, 2021;

NOW, THEREFORE, to secure payment of the Note, and any amendments, modifications, renewals or replacements thereof, and all sums which may be due and owing, or required to be paid under the Loan Documents (as defined herein), which sums shall in no event exceed \$265,000.00 and to secure performance by the Mortgagor of all of the covenants and conditions contained in the Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor DOES HEREBY GRANT, REMISE, RELEASE, ALIEN, MORTGAGE, WARRANT AND CONVEY unto Mortgagee, its successors and assigns, the following described Property, rights and interests (all of which are collectively referred to as the "Premises"):

The Property which is described on Exhibit "A" attached hereto and made a part hereof;

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Property, and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Property, and such buildings, structures or other improvements or in connection with any construction being conducted or which may be conducted thereon, and owned by Mortgagor;

TOGETHER WITH all easements, rights of way, strips of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenants whatsoever, in any way belonging, relating or appertaining to the Property, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

TOGETHER WITH all rents, royalties, issues, profits, revenue, income and other benefits from the Premises to be applied against the Note and all other sums which may be due and owing under the Loan

UNOFFICIAL COPY

Documents, provided, however, that permission is hereby given to Mortgagor so long as no Event of Default (as defined herein) has occurred hereunder for which Mortgagee exercises its remedies, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable;

TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases of the Premises, which leases may have been made by Mortgagor, its beneficiary, or their agents now or hereafter on or affecting the Premises whether written or oral and all agreements for use of the Premises ("Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Property or the improvements located thereon or the operation thereof and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Property or the improvements located thereon in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Property or the improvements located thereon shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Note and all other sums which may be due and owing under the Loan Documents; notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party and Mortgagor as Debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in paragraph 30 hereof;

TOGETHER WITH all proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Premises; and Mortgagor hereby authorizes, directs and empowers Mortgagee, at its option, to join Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds, all as hereinafter provided.

TO HAVE AND TO HOLD the Premises, unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Event of Default for which Mortgagee exercises its rights.

And the Mortgagor covenants, represents and warrants with the Mortgagee as follows:

1. Certain Definitions. Whenever used in this Mortgage, the following terms, when capitalized, shall have the following respective meanings unless the context shall clearly indicate otherwise:

(a) "Default Rate" shall mean that rate defined in the Note and shall be charged on any amount payable herein unless promptly paid, and shall constitute additional indebtedness secured by this Mortgage and shall be immediately due and payable.

(b) "Event of Default" shall mean those occurrences described in paragraph 16 hereof.

(c) "Full Insurable Value" shall mean replacement cost, exclusive of costs of excavation, foundations and footings below the lowest basement floor, or the principal balance on the Note, whichever is greater.

(d) "Impositions" shall mean all real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges, charges for any easement, license or agreement maintained for the

UNOFFICIAL COPY

benefit of the Premises, and all other liens with respect to the Premises, of any kind and nature whatsoever which at any time prior to, or after the execution hereof may be assessed, levied or imposed upon the Premises or the rents, issues and profits or the ownership, use, occupancy or enjoyment thereof.

(e) "Loan Documents" shall mean the following documents of even date herewith, together with all amendments, modifications, renewals and replacements: (i) Revolving Credit Promissory Note; (ii) this Mortgage and Security Agreement; (iii) Assignment of Rents and Leases; (iv) Guaranty of Michael Moreno and Rosemary Moreno; and (v) such other documentation as required by Mortgagee.

(f) "Permitted Encumbrances" shall mean this Mortgage and other matters, if any, agreed to in writing by Mortgagee, and the lien and security interests created by the Loan Documents.

(g) "Prohibited Transfer" shall mean a transfer as defined in paragraph 10 herein.

2. Payment of Indebtedness. The Mortgagor shall promptly pay each installment of principal, interest and prepayment premiums, if any, as provided in the Note and shall otherwise duly comply with the terms thereof.

3. Revolving Credit. This Mortgage secures a revolving credit note, and thus this Mortgage shall secure not only the existing indebtedness, but also such future advances, whether they are obligatory or to be made at the option of the Mortgagee or otherwise, as are made within 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 of this Mortgage, and although there may be no indebtedness outstanding at the time any advance is made. The total amount of indebtedness that is secured hereby may increase or decrease from time to time, but the total amount so secured at any one time by this Mortgage shall not exceed the maximum amount described above in this Mortgage.

4. Imposition. The Mortgagor shall, subject to the provisions of this Mortgage, pay all Impositions when due, and in default thereof the Mortgagee may, at its option, pay the same. Any sums paid by Mortgagee on account of Impositions shall bear interest at the Default Rate.

5. Maintenance of Mortgaged Premises; Changes and Alterations.

(a) The Mortgagor shall maintain or cause to be maintained the Premises in good repair, working order, and condition and make or cause to be made, when necessary, all repairs, renewals, and replacements, structural, non-structural, exterior, interior, ordinary and extraordinary. The Mortgagor shall refrain from and shall not permit the commission of waste in or about the Premises and shall not remove, demolish, alter, change or add to the structural character of any improvement at any time erected on the Premises without the prior written consent of the Mortgagee, except as hereinafter otherwise provided.

(b) The Mortgagor shall not, without the prior written consent of the Mortgagee, at any time, make or cause to be made changes, alterations or additions, structural or otherwise, in or to the Premises. As a condition of its approval, Mortgagee may require proof of Mortgagor's ability to pay in full the cost of all changes, alterations or additions, and may request deposit into an escrow held by Mortgagee of an amount equal to the cost of such changes, alterations or additions, as determined by Mortgagee. If an escrow is required, then Mortgagee will disburse funds from such escrow consistent with the terms of paragraph 7(b) hereof governing disbursement of insurance proceeds.

(c) The Mortgagor shall not, without the prior written consent of the Mortgagee, at any time, remove and dispose of any personalty, now or hereafter constituting part of the Premises.

(d) The Mortgagor shall cause the Premises to be operated in compliance with all federal, state, local and municipal laws, statutes, ordinances, rules and regulations, including such laws, statutes, ordinances, rules and regulations concerning environmental matters so that no clean-up, claim or other obligation or

UNOFFICIAL COPY

responsibility arises from a violation of such laws, statutes, ordinances, rules and regulations.

6. Insurance.

(a) The Mortgagor shall maintain the following insurance coverage with respect to the Premises: (i) insurance against loss of or damage to the Premises by fire and such other risks, under special causes of loss coverage in each case with a building ordinance coverage endorsement to include demolition and increased cost of construction, and in amounts at all times sufficient to prevent the Mortgagor from becoming a co-insurer under the terms of applicable policies and, in any event, in amounts not less than the Full Insurable Value, as determined by Mortgagee from time to time; (ii) comprehensive general liability insurance with a broad form coverage endorsement insuring against any and all claims (including all costs and expenses of defending the same) for bodily injury or death and for property damage occurring upon, in or about the Premises and the adjoining streets or passageways in amounts not less than the respective amounts which the Mortgagee shall from time to time reasonably require, having regard to the circumstances and usual practice at the time of prudent owners of comparable properties in the area in which the Premises are located; (iii) rental insurance equal to gross revenues derived from the Premises for a period of one year; and (iv) such other insurance as is customarily purchased in the area for similar types of business, in such amounts and against such insurable risks as from time to time may reasonably be required by the Mortgagee.

(b) Any insurance purchased by Mortgagor relating to the Premises, whether or not required under this Mortgage, shall be for the benefit of the Mortgagee and the Mortgagor, as their interests may appear, and shall be subject to the provisions of this Mortgage. If the Mortgagor fails to keep the Premises insured in accordance with the requirements of the Loan Documents, the Mortgagee shall have the right, at its option, to provide for such insurance and pay the premiums thereof, and any amounts paid thereon by the Mortgagee shall bear interest at the Default Rate.

(c) All policies of insurance required by the Loan Documents shall be in forms and with companies reasonably satisfactory to the Mortgagee, with standard mortgage clauses attached to or incorporated in all policies in favor of the Mortgagee, including a provision requiring that coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee, and shall contain no deductible in excess of \$5,000.00. Such insurance may be provided for under a blanket policy or policies. Mortgagor shall at its own expense furnish insurance appraisals as may be required by Mortgagee from time to time to ascertain the Full Insurable Value of the Premises.

(d) The Mortgagor shall deliver to the Mortgagee the originals of all insurance policies (or certificates of coverage under blanket policies), including renewal or replacement policies, and in the case of insurance about to expire, shall deliver renewal or replacement policies (or certificates in the case of blanket policies) not less than thirty (30) days prior to the expiration date.

(e) Notwithstanding any damage, loss or casualty and in any event, the Mortgagor shall continue to pay the principal and interest due on the Note.

(f) Unless the Mortgagor provides the Mortgagee with evidence of the insurance coverage required by this Section, the Mortgagee may purchase insurance at the expense of the Mortgagor to protect the interests of the Mortgagee in the Premises. This insurance may, but need not, protect the Mortgagee's interests. The coverage that the Mortgagee purchases may not pay any claim that the Mortgagor makes or any claim that is made against the Mortgagor in connection with the Premises. The Mortgagor may later cancel any insurance purchased by the Mortgagee, but only after providing the Mortgagee, in accordance with this Section, with evidence that the Mortgagor has purchased the insurance required by this Section. If the Mortgagee purchases insurance covering the Premises, the Mortgagor will be responsible for the costs of that insurance, including interest at the Default Rate and any other charges imposed by the Mortgagee 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 Indebtedness. The costs of the insurance may be more than the cost of insurance the Mortgagor may be able to obtain on its own.

7. Damage or Destruction.

UNOFFICIAL COPY

(a) In case of any damage to or destruction of the Premises or any part thereof from any cause whatsoever, other than a Taking (as defined herein), the Mortgagor shall promptly give written notice thereof to the Mortgagee. Mortgagee (or after entry of judgment of foreclosure, the purchaser at the foreclosure sale) is hereby authorized to either settle and adjust any claim under the insurance policies without the consent of Mortgagor, or may allow Mortgagor to adjust the claim or claims. In any event, but subject to the provisions of this paragraph 7, Mortgagor shall restore, repair, replace, or rebuild the same or cause the same to be restored, repaired, replaced or rebuilt to substantially the same value, condition and character as existed immediately prior to such damage or destruction. Such restoration, repair, replacement or rebuilding (herein collectively called "Restoration") shall be commenced promptly and completed with diligence by the Mortgagor, subject only to delays beyond the control of the Mortgagor.

(b) All insurance proceeds shall be paid to Mortgagee and held by it in a non-interest bearing escrow account and, subject to the terms of this paragraph 7, shall be made available to the Mortgagor for the Restoration required hereby in the event of damage or destruction on account of which such insurance proceeds are paid. If at any time the insurance proceeds shall be insufficient to pay the entire cost of the Restoration, as determined by Mortgagee, Mortgagor shall pay the deficiency. In such an event, Mortgagor shall make all payments from its own funds to the contractor making such Restoration until the amount of said deficiency has been satisfied; thereafter, Mortgagee shall make subsequent payments from the insurance proceeds to Mortgagor or to the contractor, whichever is appropriate. All payments shall be disbursed from time to time upon the Mortgagee being furnished with: (i) evidence reasonably satisfactory to it of the estimated cost of completion of the Restoration; (ii) funds (or assurance satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance, to complete the proposed Restoration; and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plans of survey and such other evidence of cost, payment and performance as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoration be submitted to and approved by the Mortgagee prior to commencement of the Restoration. No payment made prior to the final completion of the Restoration shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoration, free and clear of all liens or claims for lien.

(c) Provided that no default of Event of Default then exists, upon completion of the Restoration, the excess net insurance proceeds, if any, shall be paid to the Mortgagor.

(d) Mortgagor shall, in the event of damage or destruction to less than all or substantially all of the Premises, and the Premises are not susceptible and suitable to Restoration to an economic unit of substantially the same character and value, as determined by Mortgagee, pay the insurance proceeds to Mortgagee, which proceeds shall be applied to the mortgage indebtedness as provided for in the Note.

(e) Mortgagor shall, in the event of damage or destruction to all or substantially all of the Premises, at the option of Mortgagee, prepay the remaining unpaid principal balance of the Note together with accrued interest thereon with the same prepayment premium, if any, as provided in the Loan Documents. In such an event, any insurance proceeds paid to Mortgagee pursuant to the terms of this Mortgage, shall be applied by Mortgagee as provided for in the Note.

(f) Notwithstanding anything to the contrary contained in this paragraph 7, if an Event of Default shall occur, all insurance shall be paid to Mortgagee and applied, at its option, in payment of the mortgage indebtedness as provided for in the Note.

8. Condemnation.

UNOFFICIAL COPY

(a) The term "Taking" as used herein shall mean a taking of all or part of the Premises under the power of condemnation or eminent domain. Upon the receipt by Mortgagor of notice of the institution of any proceeding for the Taking of the Premises or any part thereof, Mortgagor shall immediately give written notice thereof to Mortgagee and Mortgagee may, at its option, appear in any such proceeding. Mortgagor shall immediately deliver to Mortgagee true and accurate copies of all notices, pleadings, awards, determinations and other papers received by Mortgagor in any such proceeding. Mortgagor shall not adjust or compromise any claim for award or other proceeds of a Taking without having first given at least thirty (30) days' prior written notice to Mortgagee of the proposed basis of adjustment or compromise and without first having received the written consent of Mortgagee. Any award or other proceeds of a Taking, after allowance for reasonable expenses incurred by Mortgagee in connection therewith, are herein referred to as "Condemnation Proceeds".

(b) In the event of a Taking of all or substantially all of the Premises or a Taking of less than all or substantially all of the Premises, and the Premises are not susceptible or suitable to Restoration to an economic unit of substantially the same character and value, as determined by Mortgagee, the Condemnation Proceeds shall be paid to Mortgagee and applied to the mortgage indebtedness as provided for in the Note.

(c) Subject to paragraph 8(d) hereof, in the event of a Taking of less than all or substantially all of the Premises which leaves the Premises susceptible and suitable to Restoration to an economic unit of substantially the same character and value, as determined by Mortgagee, the Condemnation Proceeds shall be paid to Mortgagee and shall be held in a non-interest bearing escrow account, and shall be applied to reimburse the Mortgagor for such Restoration in conformity with and subject to the conditions specified in paragraph 7 hereof relating to Restoration of damage or destruction. In such event, whether or not the Condemnation Proceeds which are applicable thereto shall be sufficient for the purpose, Mortgagor shall promptly repair or restore the Premises as nearly as practicable to substantially the same value, condition and character as existed immediately prior to the Taking.

(d) Notwithstanding anything to the contrary contained in this paragraph 8, if an Event of Default shall occur, all Condemnation Proceeds shall be paid to Mortgagee and applied, at its option, in payment of the mortgage indebtedness as provided for in the Note.

9. **Indemnification.** Mortgagor agrees to indemnify and hold the Mortgagee, its directors, officers, employees, shareholders, members, managers, agents, successors and assigns harmless from any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, decrees, costs and expenses (including attorney's fees), arising directly or indirectly, in whole or in part, out of the acts and omissions whether negligent, willful or otherwise, of Mortgagor, or any of its directors, officers, employees, agents, subcontractors, invitees, successors and assigns, in connection with this Mortgage or the other Loan Documents or as a result of: (a) ownership of the Premises or any interest therein or receipt of any rent or other sum therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways; (c) any use, non-use or condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways; (d) any failure on the part of the Mortgagor to perform or comply with any of the terms of this Mortgage; (e) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises of any Hazardous Substances (as defined herein); or (f) the performance of any labor or services or the furnishing of any materials or other property with respect to the Premises or any part thereof. Any amounts payable to the Mortgagee under this paragraph which are not paid within ten (10) days after written demand therefor by the Mortgagee shall bear interest at the Default Rate. The obligations of the Mortgagor under this paragraph shall survive any termination or satisfaction of this Mortgage.

10. **Prohibited Transfer; Due on Sale.** Mortgagor shall not create, effect, contract for, agree to, consent to, suffer, or permit any conveyance, sale, lease, assignment, transfer, lien, pledge, mortgage, grant a security interest, or other encumbrance or alienation of any interest in the following properties, rights or interests without the prior written consent of Mortgagee ("Prohibited Transfer"): (a) the Premises or any part thereof or interest therein; (b) all or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a Trustee; (c) any shares of capital stock of a corporate Mortgagor, a

UNOFFICIAL COPY

corporation which is a beneficiary of a trustee Mortgagor, a corporation which is a general partner in a partnership Mortgagor, a corporation which is a general partner in a partnership beneficiary of a trustee Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on national securities exchange or on the National Association of Securities Dealer's Automated Quotation System); (d) any general partner's interest, if Mortgagor is a general or limited partnership; (e) any interest of a member of a limited liability company Mortgagor, a limited liability company which is a beneficiary of a trustee Mortgagor, a limited liability company which is a general partner in a partnership Mortgagor, a limited liability company which is a general partner in a partnership beneficiary of a trustee Mortgagor, or a limited liability company which is the owner of substantially all of the capital stock of any corporation described in this subparagraph; and (f) any interest of the managing member or manager interest, as the case maybe, in a limited liability company Mortgagor or a limited liability company which is a general partner of a partnership mortgagor;

in each case whether any such Prohibited Transfer is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this paragraph 10 shall not apply: (i) to this Mortgage; (ii) to the lien of current taxes and assessments not in default; (iii) the Permitted Encumbrances; and (iv) the leasing of space in the Premises from time to time as permitted under the Assignment of Rents and Leases.

11. Priority of Lien, After-Acquired Property.

(a) Subject to paragraph 25, the Mortgagor shall keep and maintain the Premises free from all liens for moneys due and payable to persons or entities supplying labor for and providing materials used in the construction, modification, repair or replacement of the Premises.

(b) In no event shall Mortgagor do or permit to be done, or omit to do or permit the omission of any act or thing the doing or omission of which would impair the lien of this Mortgage. The Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction or agreement changing the uses which may be made of the Premises or any part thereof without the express written consent of the Mortgagee.

(c) All property of every kind acquired by the Mortgagor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien and security of this Mortgage. Nevertheless, Mortgagor will do such further acts and execute, acknowledge and deliver such further conveyances, mortgages, loan documents, financing statements and assurances as Mortgagee shall reasonably require for accomplishing the purpose of this Mortgage.

12. Right to Inspect. Mortgagee, its agents and representatives, may at all reasonable times make such inspections of the Premises as Mortgagee may deem necessary or desirable. Mortgagor shall allow Mortgagee, its agents and representatives, access to the Premises to audit the books and records of Mortgagor and of the Premises. Without limiting the generality of the foregoing, if Mortgagee deems it reasonably necessary, Mortgagee may at all reasonable times contract for the services of persons ("Site Reviewers") to perform environmental assessments ("Site Assessment") on the Premises for the purposes of determining whether there exists on or near the Premises any environmental conditions which could reasonably be expected to result in liability, cost or expense to the owner, occupier or operator of the Premises arising under any state, federal or local law, rule or regulation relating to Hazardous Substances (as defined herein). The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Mortgagor which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Premises for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for the presence of Hazardous Substances on the Premise and such other tests on the Premises as may be appropriate to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Mortgagor shall supply to the Site Reviewers such historical and operation information regarding the Premises as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site

UNOFFICIAL COPY

Reviewers appropriate personnel having knowledge of such matters. On request, Mortgagee shall make the results of such Site Assessments fully available to Mortgagor. The cost of performing such Site Assessments shall be paid by Mortgagor within ten (10) days after written demand of Mortgagee and bear interest thereafter at the Default Rate.

13. Books and Records; Financial Statements.

(a) Mortgagor shall maintain or cause to be maintained books of account and records relating to the operation of the Mortgagor and the Premises, which books of account and records shall, at all reasonable times, be open to the inspection of Mortgagee, its agents and representatives. Mortgagor shall enter in such books of account and records, on a timely and consistent basis full, true and correct entries in accordance with prudent and responsible accounting principles, of all dealings and transactions relative to the Mortgagor and the Premises.

(b) As soon as practicable (but no more than ninety (90) days after the end of its fiscal year) after the end of each fiscal year of Mortgagor, and from time to time as requested by Mortgagee, Mortgagor shall submit and deliver to Mortgagee Financial Information (as defined herein) on Mortgagor and on the Premises. "Financial Information", as used herein, shall mean a balance sheet, statement of income and expenses, certified rent roll and Mortgagor's federal and state income tax returns, signed by the of Mortgagor and attested as true and correct.

14. Representations and Warranties. Mortgagor covenants, represents and warrants to Mortgagee as follows:

(a) Mortgagor it is the owner of the fee simple title to the Premises subject only to the Permitted Encumbrances and this Mortgage creates a valid first lien on the Premises.

(b) The execution and delivery of the Loan Documents and the performance by Mortgagor of its obligations thereunder have been duly authorized by all necessary action and will not violate any provision of law or of Mortgagor's organizational documents. This Mortgage and the other Loan Documents constitute the legal, valid and binding obligations of Mortgagor enforceable in accordance with their terms;

(c) The execution and delivery of the Loan Documents and the performance by the Mortgagor of its obligations thereunder do not require any consent, and will not result in a material breach of or default under any resolution, indenture, note, contract, agreement or other instrument to which the Mortgagor is a party or is otherwise subject or bound;

(d) There are no actions, suits or proceedings pending or to the best of Mortgagor's knowledge threatened, before or by any court, regulatory or governmental agency, or public board or body, against or affecting the Premises, the organization or existence of Mortgagor, or the authority of Mortgagor to execute the Loan Documents or to perform its obligations thereunder;

(e) Mortgagor has not received any notice and does not have knowledge of any actions, suits or proceedings pending or threatened by any regulatory or governmental agency or public board or body to acquire the Premises by eminent domain or condemnation proceedings;

(f) The Premises is served by electric, gas, storm and sanitary sewers, sanitary water supply, telephone and other utilities required for the use thereof at or within the boundary lines of the Premises. All streets, alleys and easements necessary to serve the Premises for the use represented by Mortgagor have been completed and are serviceable and such streets have been dedicated and accepted by applicable governmental entities. The Premises is in good working condition and repair and is free from damage caused by fire or other casualty. Mortgagor is aware of no latent or patent structural or other significant defect or deficiency in the Premises. None of the Premises is within a flood plain. None of the improvements on the Premises create an encroachment over, across or upon any of the Premises boundary lines, rights of way or easements and no buildings or other improvements on adjoining land create such an encroachment;

UNOFFICIAL COPY

(g) There are no leases or other occupancy agreements affecting the Premises except those leases and occupancy agreements, if any, disclosed in writing to the Mortgagee;

(h) Mortgagor shall (i) ensure that no person or entity owns a controlling interest in or otherwise controls the Mortgagor or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (ii) not use or permit the use of any proceeds of the loans to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (iii) comply with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

(i) All representations, covenants and warranties contained herein and in the other Loan Documents are true and correct as of the date hereof and shall remain true and correct and shall not terminate after the Note has been satisfied and paid in full.

15. Environmental Matters:

(a) Mortgagor shall not install, use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the Premises, nor transport to or from the Premises, any Hazardous Substance nor allow any other person or entity to do so except in minor amounts and under conditions permitted by applicable laws, regulations and ordinances. Mortgagor agrees that it has provided to Mortgagee, in writing, any and all information relating to environmental conditions in, on, under or from the Premises that is known to it and that is in its custody or control, including but not limited to any reports relating to Hazardous Substances.

(b) Mortgagor undertook, at the time of acquisition of the Premises, all appropriate inquiry into the previous ownership and uses of the Premises consistent with good commercial or customary practice to determine that the Premises and the uses therefor are in compliance with all Environmental Laws. Mortgagor has taken all steps necessary to determine, and has determined, that no Hazardous Substances have been disposed of or otherwise released on, or to, the Premises. The use which Mortgagor makes and intends to make of the Premises will not result in the disposal or other release of any Hazardous Substance on or to the Premises.

(c) Mortgagor shall give prompt written notice to Mortgagee of: (i) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Premises or the migration thereof to or from adjoining property; (ii) all claims made or threatened by any individual or entity against Mortgagor or the Premises relating to any loss or injury allegedly resulting from any Hazardous Substance; and (iii) the discovery by Mortgagor of any occurrence or condition on any real property adjoining or in the vicinity of the Premises which might cause the Premises or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use of the Premises under any Environmental Law.

(d) Mortgagee shall have the right and privilege to: (i) join in and participate in, as a party if it so elects, any one or more legal proceedings or actions initiated with respect to the Premises under any Environmental Law; and to (ii) have all costs and expenses thereof (including without limitation Mortgagee's attorneys' fees and costs) paid by Mortgagor.

(e) Mortgagor shall protect, defend, indemnify and hold Mortgagee and its directors, officers, employees, agents, successors and assigns harmless from and against any and all claims, demands, losses, liabilities, actions, lawsuits or other proceedings, judgments, awards, decrees, costs and expenses including attorney's fees directly or indirectly arising out of or attributable to the installation, use, generation, manufacture, production, storage, transportation, release, threatened release, discharge, disposal or presence of a Hazardous Substance on, under or about the Premises, including without limitation; (i) all foreseeable damages including consequential damages; (ii) the costs of any required or necessary repair, cleanup or detoxification of the Premises; and (iii) the preparation and implementation of any closure, remedial or other required plans, studies and reports. The obligations of Mortgagor under this paragraph shall survive any termination or satisfaction of the lien of this Mortgage, including without limitation any extinguishment of the lien of this Mortgage.

UNOFFICIAL COPY

(f) If any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature ("Remedial Work") is necessary or desirable under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, ground-water, surface water or soil vapor at, on, about, under or within the Premises or portion thereof, Mortgagor shall within thirty (30) days after written demand by Mortgagee (or within such shorter time as may be required under applicable law, regulation, ordinance, order or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work to the extent required by law. All Remedial Work shall be performed by contractors approved in advance by Mortgagee and under the supervision of a consulting engineer approved in advance by Mortgagee. All costs and expenses of such Remedial Work (including without limitation the fees and expenses of Mortgagee's attorney) incurred in connection with monitoring or review of the Remedial Work shall be paid by Mortgagor. If Mortgagor shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently prosecute to completion, such Remedial Work, Mortgagee may (but shall not be required to) cause such Remedial Work to be performed; and all costs and expenses thereof, or incurred in connection therewith (including fees and expenses of Mortgagee's attorney), shall be paid by Mortgagor to Mortgagee forthwith after demand and shall be a part of the indebtedness secured hereby.

(g) "Environmental Law" shall mean, without limitation, any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Premises, including without limitation each of the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"); the Federal Hazardous Materials Transportation Act, as amended; the Toxic Substance Control Act, as amended; the Illinois Environmental Protection Act, as amended; the Clean Air Act, as amended; the Federal Water Pollution Control Act, as amended; and the laws, rules, regulations and ordinances of the U.S. Environmental Protection Agency, the Illinois Environmental Protection Agency and the County in which the Premises is located and of all other agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Premises or the use or operation thereof.

(h) "Hazardous Substance" shall mean, without limitation: (i) those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances" or "solid waste" in any of the Environmental Laws; (ii) those substances listed in the U.S. Department of Transportation Table or amendments thereto or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances; (iii) those other substances, materials and wastes which are or become regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and (iv) any material, waste or substance which is any of the following: (A) asbestos; (B) polychlorinated biphenyl; (C) designated or listed as a "hazardous substance" pursuant to the Clean Water Act; (D) explosive; (E) any petroleum products, and any natural gas, natural gas liquids or liquefied natural gas; (F) lead based paints; (G) radioactive materials; or (H) fungus, mold, mildew, spores, and other biological or microbiological agents the presence of which may adversely affect health, impair occupancy or materially adversely affect the value of the Premises.

16. Events of Default. If any one or more of the following events ("Events of Default") shall occur, to wit:

- (a) failure to make prompt payment, when due, of any payment of interest, principal and interest under the Note, and such failure continues for five (5) days after Mortgagee gives written notice thereof to Mortgagor;
- (b) subject to paragraph 25 herein, if Mortgagor fails to make prompt payment, when due, of any Impositions, and such failure continues for thirty (30) days after Mortgagee gives written notice thereof to Mortgagor;

UNOFFICIAL COPY

- (c) any representation, warranty or other information made or furnished to Mortgagee shall prove to have been false or incorrect in any material respect;
- (d) if Mortgagor shall make a general assignment for the benefit of creditors, or shall state in writing or by public announcement its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or any material portion of its assets;
- (e) the occurrence of a Prohibited Transfer;
- (f) except as otherwise provided for in any subparagraph of this paragraph 16, failure to promptly perform or observe any other covenant, promise or agreement contained in this Mortgage or in the other Loan Documents, and such failure continues for sixty (60) days after Mortgagee gives written notice unless a shorter time period is stated in the other Loan Documents, in which event the shorter time period shall control;

Then, at any time thereafter, at the sole option of the Mortgagee, without further notice to Mortgagor, the unpaid principal balance and accrued interest in the Note shall become immediately due and payable, and any other sums secured hereby shall become immediately due and payable. All sums coming due and payable hereunder shall bear interest after acceleration at the Default Rate.

17. Rights, Powers and Remedies of Mortgagee.

(a) If an Event of Default shall occur, Mortgagee may, at its election, do any one or more of the following: (i) institute, or cause to be instituted, proceedings for the realization of its rights under this Mortgage or the other Loan Documents, including but not limited to an action to foreclose this Mortgage under applicable law; or (ii) make application for the appointment of a receiver for the Premises whether such receivership be incident to a proposed sale of the Premises or otherwise, and Mortgagor hereby consents to the appointment of such receiver without bond or surety and hereby consents to such appointment. Mortgagee may be appointed as such receiver. Further, Mortgagor agrees that Mortgagee may, at its option, be appointed receiver of the Premises without bond or surety.

(b) If an Event of Default shall occur, Mortgagee may, without order of Court or notice to or demand upon Mortgagor, take possession of the Premises. Should Court proceedings be instituted, Mortgagor hereby consents to the entry of an order by agreement to effect and carry out the provisions of this paragraph. While in possession of the Premises, Mortgagee (or a receiver, if appointed) shall have the following powers: (i) to collect the rents and manage, lease, alter and repair the Premises, cancel or modify existing leases, obtain insurance and in general have all powers and rights customarily incident to absolute ownership; and (ii) to pay out of the rents so collected the management and repair charges, taxes, insurance, commissions, fees and all other expenses and, after creating reasonable reserves, apply the balance (if any) on account of the mortgage indebtedness.

(c) Mortgagee (or a receiver, if appointed) may upon the occurrence of an Event of Default, remain in possession of the Premises, in the event of a foreclosure, until the foreclosure sale and thereafter during the period of redemption (if any). Mortgagee shall incur no liability for, and Mortgagor shall not assert any claim, set-off or recoupment as a result of any action taken while Mortgagee is in possession of the Premises, except only for Mortgagee's own gross negligence or willful misconduct. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession as long as there exists an Event of Default.

UNOFFICIAL COPY

(d) In order to facilitate Mortgagee's exercise of the rights, powers and remedies granted herein upon the occurrence of an Event of Default, Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney to act in its name and stead for the purpose of effectuating any sale, assignment, transfer or delivery authorized above, whether pursuant to power of sale or otherwise, and to execute and deliver all such deeds, bills of sale, leases, assignments and other instruments as Mortgagee may deem necessary and appropriate. Notwithstanding the foregoing, if requested by Mortgagee or any purchaser from Mortgagee, Mortgagor shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to Mortgagee or such purchaser all appropriate deeds, bills of sale, leases, assignments and other instruments as may be designated in such request. Further, Mortgagor agrees that Mortgagee may be a purchaser of the Premises or any part thereof or any interest therein at any sale, whether pursuant to power of sale or otherwise, and may apply upon the purchase price the indebtedness secured hereby.

(e) The proceeds of any sale of the Premises or part thereof or any interest therein, and all amounts received by Mortgagee by reason of any holding, operation or management of the Premises or any part thereof, together with any other monies at the time held by Mortgagee, shall be applied accordance with applicable law.

18. Reserved.

19. Waivers. To the extent permitted under applicable law, Mortgagor hereby waives: (a) all rights of redemption and/or equity of redemption and rights of reinstatement which exist by statute or common law for sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of each and every person, beneficiary or any other entity, except decree or judgment creditors of Mortgagor who may acquire any interest in or title to the Premises or the trust estate subsequent to the date hereof; (b) the benefit of all appraisement, valuation, stay, or extension laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Premises or any part thereof or any interest therein; and (c) the benefit of any rights or benefits provided by the Homestead Exemption laws, if any, now or hereafter in force.

20. Remedies are Cumulative. Each right, power and remedy of Mortgagee now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power and remedy provided for in the Loan Documents, and the exercise of any right, power or remedy shall not preclude the simultaneous or later exercise of any other right, power or remedy.

21. Compromise of Actions. Any action, suit or proceeding brought by or against Mortgagee in conjunction herewith, and any claim made by Mortgagee under the Loan Documents, or otherwise, may be compromised, withdrawn or otherwise settled by Mortgagee without any notice to or approval of Mortgagor.

22. No Waiver. No delay or failure by Mortgagee to insist upon the strict performance of any term herein or in the other Loan Documents or to exercise any right, power or remedy provided for herein or in the other Loan Documents as a consequence of an Event of Default, and no acceptance of any payment of the principal, interest or premium if any, on the Note during the occurrence of any such Event of Default, shall constitute a waiver of any such Event of Default. The exercise by Mortgagee of any right, power or remedy conferred upon it herein or any other Loan Document or by law or equity shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

23. Further Assurances. The Mortgagor, at its expense, will execute, acknowledge and deliver such instruments and take such actions as Mortgagee from time to time may reasonably request to carry out the intent and purpose of this Mortgage and the other Loan Documents.

24. Defeasance. Upon payment in full of all principal, interest, prepayment premiums or penalties, if any, and all other sums due under the Note and other Loan Documents, the Mortgagee will execute and deliver to Mortgagor a release of this Mortgage. Mortgagor shall pay the costs and expenses incurred by Mortgagee to prepare such release.

UNOFFICIAL COPY

25. Permitted Contest. Mortgagor may contest, at its own expense, by appropriate legal actions or proceedings conducted in good faith and with due diligence, the amount, validity or enforceability in whole or in part of any Imposition or lien thereof or the validity of any instrument of record affecting the Premises or any part thereof (the "Contested Liens"), provided that: (a) Mortgagor shall immediately give notice of any Contested Lien to Mortgagee at the time the same shall be asserted; (b) Mortgagor shall deposit with Mortgagee the full amount (the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee; (c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute additional indebtedness secured hereby and shall be due at the Default Rate); (d) Mortgagor shall pay such Contested Lien together with interest and penalties thereon: (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor; or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall constitute additional indebtedness secured by the Mortgage and shall be due at the Default Rate, and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in paragraph 25(b) hereof and may demand payment upon any bond or title indemnity furnished as aforesaid.

26. Amendment. This Mortgage cannot be amended, modified or terminated orally but may only be amended, modified or terminated pursuant to written agreement between Mortgagor and Mortgagee.

27. Tax and Insurance Escrow.

(a) Mortgagor shall pay to Mortgagee on the day that installments are due under the Note: (i) an amount equal to 1/12th of the annual amount estimated by Mortgagee to be sufficient to enable Mortgagee to pay all Impositions; (ii) an amount equal to 1/12th of the annual insurance premiums necessary to maintain the insurance policies required pursuant to the terms hereof; (iii) the amount of all Impositions accrued but not due as of the date that this paragraph becomes operative; and (iv) such sums as may be necessary, from time to time, to make up any deficiency in the amount required to fully pay all annual Impositions and insurance premiums.

(b) If Mortgagee, at any time during the term of the Loan waives the requirement for tax and/or insurance escrows, Mortgagee shall retain the right to require reinstatement of said tax and/or insurance escrow upon ten (10) days written notice to Mortgagor, should Mortgagee elect in its sole discretion.

(c) It is expressly understood that all amounts required to be paid pursuant to this paragraph shall be held by Mortgagee in a non-interest bearing account.

28. Notices. Any notice or demand required pursuant to the terms hereof shall be given pursuant to the terms and conditions contained in the Note.

29. Expense of Enforcement. In any proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's 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, guarantee policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such

UNOFFICIAL COPY

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 shall bear interest at the Default Rate, when paid or incurred by Mortgagee in connection with: (a) any proceeding, including, but not by way of limitation, to foreclosure, probate and bankruptcy proceedings, to which either of them shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

30. Security Agreement.

(a) This Mortgage, in the absence of a separate security agreement entered into by Mortgagor and Mortgagee, constitutes a Security Agreement under the Uniform Commercial Code (herein called the "Code") of the state in which this Mortgage is recorded, with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all for the purposes of this Paragraph called "Collateral"), and Mortgagor hereby grants Mortgagee a first security interest in said Collateral. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises.

(b) This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described at the beginning of this Mortgage which goods are or are to become fixtures relating to the Premises. The addresses of the Mortgagor (Debtor) and Mortgagee (Secured Party) are the same as set forth herein for notices to be given to such parties hereunder. This Mortgage is to be filed for record with the Recorder of Deeds of the County where the Premises are located. The Mortgagee is the record owner of the Premises.

(c) Mortgagor hereby authorizes Mortgagee to file, at Mortgagor's expense, UCC financing statements and amendments to UCC financing statements and other filings or recordings in all jurisdictions where the Mortgagee determines appropriate without Mortgagor's signature, and authorizes the Mortgagee to describe the Collateral in such financing statements in any manner as the Mortgagee determines appropriate.

(d) Mortgagor acknowledges and agrees that any term describing Collateral in this Mortgage or in any UCC financing statement or other filing or recording which is susceptible of different scope or meaning, depending upon which version of the Uniform Commercial Code is used or applied, shall be given the broadest and most inclusive definition so as to encompass the greatest amounts, items, descriptions, or types of Collateral.

(e) Mortgagor agrees that it shall not change its state of incorporation / organization or its corporate form without the prior written consent of the Mortgagee.

(f) Upon the occurrence of any Event of Default hereunder, Mortgagee shall have the rights and remedies of a Secured Party under the Code and, at Mortgagee's option, Mortgagee shall also have the rights and remedies, to the extent permitted by law, provided in this Mortgage as to said Collateral.

31. Mortgagee's Performance of Mortgagor's Obligations. Subject to the terms of this Mortgage, if Mortgagor fails to pay any claim, lien or encumbrance, or to pay, when due any Imposition, or to keep the Premises in good repair and free of waste, or any action or proceeding affecting the Premises shall be commenced, then Mortgagee, at its option, may pay such claim, lien, encumbrance, or Imposition, with full right of subrogation thereunder, may procure such evidence of title as it deems necessary, and make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action or proceeding, and retain counsel therein, and take such action therein as Mortgagee deems advisable, and for any such purposes Mortgagee may advance such sums of money as it deems necessary. Mortgagee shall be the sole judge of the legality, validity and priority of any such claim, lien, encumbrance, or Imposition, and of the amount necessary to be paid and satisfaction thereof. Mortgagor shall pay to Mortgagee, immediately, and without demand, all such sums advanced by Mortgagee pursuant to this paragraph, together with interest thereon at the Default Rate.

UNOFFICIAL COPY32. Miscellaneous.

(a) Nothing contained in this Mortgage shall be deemed to constitute Mortgagee a mortgagee in possession.

(b) This Mortgage shall be binding upon Mortgagor and its successors and assigns, and all persons claiming under or through Mortgagor or any such successor or assign, and shall inure to the benefit of and be enforceable by Mortgagee and its successors and assigns.

(c) The various headings used in this Mortgage as headings for sections or otherwise are for convenience only and shall not be used in interpreting the text of the section in which they appear and shall not limit or otherwise affect the meanings thereof.

(d) If any provision in this Mortgage is held by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such provision of this Mortgage to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable provision was not contained therein, and that the rights, obligations and interest of the Mortgagor and Mortgagee under the remainder of this Mortgage shall continue in full force and effect.

(e) Regardless of their form, all words shall be deemed singular or plural and shall have such gender as required by the text. If there is more than one Mortgagor of this Mortgage, the liability of the undersigned shall be joint and several.

(f) This Mortgage and the other Loan Documents shall not be construed more strictly against one party than against another merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the Mortgagor and Mortgagee have both substantially and materially contributed to the preparation hereof.

33. WAIVERS. MORTGAGOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION TO ENFORCE OR DEFEND ANY MATTER ARISING FROM OR RELATED TO THIS MORTGAGE.

34. Exculpatory Clause. Upon execution of this Mortgage, Mortgagee may attach its standard exculpatory clause to this Mortgage. Nothing contained in such clause shall release or limit the liability of any guarantor of this Mortgage.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed on the day and date first above written.

Mortgagor:

**CHICAGO TITLE LAND TRUST COMPANY
AS SUCCESSOR TRUSTEE TO**

LaSalle Bank, N.A., Successor Trustee to Western National Bank

As Trustee aforesaid and not personally

By: Margaret O' Donnell
Its: Asst Vice President

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 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 are not personally. 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.

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that **MARGARET O'DONNELL** personally known to me to be a **ASST. VICE PRESIDENT** of Chicago Title Land Trust Company, as Trustee aforesaid and personally 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 as such _____ he/she signed and delivered the said instrument as his/her free and voluntary act.

Given under my hand and official seal this 24th day of March, 2011.



Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

1-4 FAMILY RIDER

(Assignment of Rents)

LOAN# 130006770

THIS 1-4 FAMILY RIDER is made this 24th day of March, 2011, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to

SECOND FEDERAL SAVINGS & LOAN ASSOCIATION

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

2543 - 2547 S. HARDING CHICAGO, IL 60623

[Property Address]

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

UNOFFICIAL COPY

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, in Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

UNOFFICIAL COPY

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this 1-4 Family Rider.

(Seal)

LASALLE BANK, N.A., SUCCESSOR TRUSTEE
TO WESTERN NATIONAL BANK -Borrower



(Seal)
Borrower

(Seal)

-Borrower

(Seal)

-Borrower

UNOFFICIAL COPY

SCHEDULE A
ALTA Commitment
File No.: 158785

LEGAL DESCRIPTION

Parcel 1: Lot 11, in the Resubdivision of all that part of Block 11, lying South of Lots 14 and 21 and including vacated alley, in the subdivision of said Block 11, in S.J. Glover's Addition to Chicago, being a subdivision of that part of the West Half of the Northwest Quarter of Section 26, Township 39 North, Range 13, East of the Third Principal Meridian, lying South of Chicago, Burlington and Quincy Railroad, in Cook County, Illinois.

Parcel 2: Lot 21 in Block 11 in the Subdivision of Blocks 6 and 11 in S. Glover's Addition to Chicago, being that part of the Northwest ¼ of Section 26, Township 39 North, Range 13, East of the Third Principal Meridian, lying South of the South line of the right of way of Chicago, Burlington and Quincy Railroad, in Cook County, Illinois.

PIN# 16-26-119-075-0000
16-26-119-014-0000

Issuing Agent
Citywide Title Corporation
850 W. Jackson Boulevard
Suite 320
Chicago, Illinois 60607