

# UNOFFICIAL COPY

BT830 3479/20110097 *pkbed*

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1110541026 Fee: \$86.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 04/15/2011 11:20 AM Pg: 1 of 26

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 15-10-213-042-0000

**Address:**

**Street:** 901 WEST LAKE STREET

**Street line 2:**

**City:** MELROSE PARK

**State:** IL

**ZIP Code:** 60160

**Lender:** FIRST MIDWEST BANK

**Borrower:** 901 WEST LAKE STREET LLC

**Loan / Mortgage Amount:** \$880,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7/70 et seq. because it is commercial property.

**Certificate number:** FB73C3E4-617F-4214-8B63-8201C5AB7428

**Execution date:** 04/08/2011

**BOX 333-CT**

# UNOFFICIAL COPY

Property of Cook County Clerk's Office

(Above space for recording information)

\*\*\*\*\*

THIS INSTRUMENT PREPARED BY: )  
)  
)  
)  
AFTER RECORDING, MAIL TO: )

David H. Hight, Esq.  
Ice Miller LLP  
2300 Cabot Dr., Suite 455  
Lisle, Illinois 60532

\*\*\*\*\*

**MORTGAGE, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS AND LEASES**

**Dated as of April 8, 2011**

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES (this "Mortgage") is made and dated to be effective as of the date set forth above by

901 WEST LAKE STREET LLC, a Delaware limited liability company (herein, together with its successors and assigns, for convenience referred to as the "Mortgagor"),

to

FIRST MIDWEST BANK, an Illinois state banking corporation, with an office located at

# UNOFFICIAL COPY

17500 South Oak Park Avenue, Tinley Park, Illinois 60477 (herein, together with its successors and assigns, for convenience referred to as the "Mortgagee").

## WITNESSETH:

WHEREAS, Mortgagor is the owner and holder of fee simple title in and to all of the following described real estate located in the County of Cook, State of Illinois, which real estate forms a portion of the Premises hereinafter described:

Per the Legal Description set forth in Exhibit A attached hereto and forming a part hereof

Commonly known as: 901 West Lake Street  
Melrose Park, Illinois 60160

Permanent Index Number(s): 15-10-213-042  
15-10-213-037  
15-10-213-038  
15-10-213-040  
15-10-213-044  
15-10-213-043

WHEREAS, Mortgagor requested that the Mortgagee provide a mortgage term loan in the principal amount of \$880,000 (the "Term Loan") pursuant to the Mortgage Term Loan Note dated as of even date herewith (the "Note").

WHEREAS, as security for the obligations of Mortgagor under the Note and the other Loan Documents, as defined in the Note (the "Indebtedness Documents"), Richards Building Supply Co., an Illinois corporation (the "Guarantor") guaranteed the obligations of Mortgagor to Mortgagee pursuant to the Guaranty Agreement given by the Guarantor to Mortgagee and dated as of even date herewith (the "Guaranty Agreement").

WHEREAS, Guarantor is an affiliate of the Mortgagor and shall lease the Premises from Mortgagor pursuant to the terms of a Triple Net Lease Agreement dated as of April 1, 2011 (the "Lease").

WHEREAS, the Mortgagor has entered into this Mortgage to induce the Mortgagee to provide the loan evidenced by the Note and enter into the Loan Documents.

NOW, THEREFORE, to secure the payment of the principal of and interest on the Note according to its tenor and effect, to secure the payment of all sums which may at any time be due and owing or required to be paid by Borrower to Mortgagee under the Note and the Loan Documents, (as defined in the Note) (collectively, the "Indebtedness") which shall not exceed the aggregate sum of Three Million and no/100 Dollars (\$3,000,000), and the performance and observance of all of the covenants, agreements and provisions herein, in the Indebtedness Documents, and in consideration of the premises and of the purchase of the Bonds by the Mortgagee, and for other good and valuable

# UNOFFICIAL COPY

consideration, the receipt and sufficiency whereof are hereby acknowledged by the Mortgagor, the Mortgagor DOES HEREBY GRANT, DEMISE, RELEASE, ALIEN, MORTGAGE and CONVEY unto Mortgagee, its successors and assigns forever, the real estate above described (which, together with the property mentioned in the next succeeding paragraphs hereto, is called the "Premises");

TOGETHER with all right, title and interest of Mortgagor, if any, including any after-acquired title or reversions, in and to the beds of the ways, streets, avenues and alleys adjoining the aforesaid real estate;

TOGETHER with all and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to said real estate, including any other claim at law or in equity as well as any after-acquired title, franchise or license and the reversions and remainder and remainders thereof;

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the aforesaid real estate, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or forming a part of or used in connection with the aforesaid real estate or the operation and convenience of any building or buildings and improvements located thereon, including, but without limitation, all furniture, furnishings, equipment, apparatus, machinery, motors, elevators, fittings, screens, awnings, partitions, carpeting, curtains and drapery hardware used or useful in the operation and/or convenience of the aforesaid real property or improvements thereon and all plumbing, electrical, heating, lighting, ventilating, refrigerating, incineration, air-conditioning and sprinkler equipment, systems, fixtures and conduits (including, but not limited to, all furnaces, boilers, plants, units, condensers, compressors, ducts, apparatus and hot and cold water equipment and system), air conditioners, antennae, appliances, basins, bathtubs, bidets, bookcases, cabinets, coolers, dehumidifiers, disposals, doors, dryers, ducts, dynamos, engines, equipment, escalators, fans, fittings, floor coverings, hardware, heaters, humidifiers, incinerators, lighting, motors, ovens, pipes, pumps, radiators, ranges, recreational facilities, refrigerators, communication or security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, building materials, and all renewals or replacements thereof or articles in substitution therefor, in all cases whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the aforesaid realty shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness. 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 Illinois 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, all in accordance with said Illinois Uniform Commercial Code as more particularly set forth in the Section herein titled "Uniform Commercial Code";

# UNOFFICIAL COPY

TOGETHER with all right, title, estate and interest of Mortgagor in and to the Premises, property, improvements, furniture, furnishing, apparatus and fixtures hereby conveyed, assigned, pledged and hypothecated, or intended so to be, and all right to retain possession of the Premises after default in payment or breach of any covenant herein contained;

TOGETHER with all right, title and interest of Mortgagor in and to any and all contracts now or hereafter relating to the Premises and executed by any architects, engineers, construction manager's owner's representatives, materialmen, suppliers or contractors, including all amendments, supplements, and revisions thereof, together with all Mortgagor's rights and remedies thereunder and benefit of all covenants and warranties thereon, and also together with all right, title and interest of Mortgagor in and to any and all drawings, designs, estimates, layouts, surveys, plats, plans, and specifications prepared by an architect, engineer, or contractor, including any amendments, supplements, and revisions thereof and the right to use and enjoy the same, as well as all other rights, licenses, permits, agreements, and test results relating to construction on the Premises;

TOGETHER with all right, title and interest of Mortgagor in and to any and all contracts, permits and licenses now or hereafter relating to the operation of the Premises or the conduct of business thereon, including without limitation all management and other service contracts, and the right to appropriate and use any and all trade names used or to be used in connection with such business;

TOGETHER with all right, title and interest of Mortgagor in the rents, issues, deposits (including security deposits and utility deposits), and profits in connection with all leases, contracts and other agreements made or agreed to by any person or entity (including without limitation Mortgagor with any person or entity pertaining to all or any part of the Premises, whether such agreements have been heretofore or are hereafter made;

TOGETHER with all right, title and interest of Mortgagor in all performance bonds or other surety, letters of credit, payment intangibles and general intangibles relating to the Premises, and all proceeds thereof;

TOGETHER with all right, title and interest of Mortgagor in and to rights in and proceeds from all fire and hazard, loss-of-income, and other non-liability insurance policies now or hereafter covering improvements now or hereafter located on the Premises or described in this Mortgage, the use or occupancy thereof, or the business conducted thereon; and

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Premises for any taking by eminent domain, either permanent or temporary, of all or any part of the Premises or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, which said awards and compensation are hereby assigned to Mortgagee, and Mortgagor hereby designates Mortgagee as its agent and directs and empowers Mortgagee, at the option of Mortgagee, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust or compromise the claim for any award and to collect and receive the proceeds thereof, to give proper receipts and acquittances therefor, and, after

# UNOFFICIAL COPY

deducting expenses of collection, to apply the net proceeds as provided in the Section herein titled "Condemnation."

TO HAVE AND TO HOLD the Premises, with the appurtenances, and fixtures, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses and purposes herein set forth together with all right to possession of the Premises after any default in the payment of all or any part of the Indebtedness, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined; Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws, if any, of the State in which the Premises are located.

**PROVIDED, NEVERTHELESS**, that if Mortgagor shall pay when due the Indebtedness and duly and timely perform and observe all of the terms, provisions, covenants and agreements herein provided to be performed and observed by Mortgagor, then this Mortgage and the estate, right and interest of Mortgagee in the Premises shall cease and become void and of no effect, otherwise to remain in full force and effect.

## MORTGAGOR COVENANTS AND AGREES AS FOLLOWS:

**Section 1. Payment of Indebtedness.** Mortgagor shall pay or cause to be paid when due (a) the principal of and interest and premium, if any, on all of the Indebtedness; and Mortgagor shall duly and punctually perform and observe all of the terms, provisions, conditions, covenants and agreements on Mortgagor's part to be performed and observed as provided herein and in the Indebtedness Documents, and this Mortgage shall secure such payment, performance and observance.

**Section 2. Maintenance, Repair, Restoration, Liens, etc.** Mortgagor shall (a) promptly repair, restore or rebuild any building or improvement now or hereafter included within the definition of Premises which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for the purpose; (b) keep the Premises in good condition and repair, without waste, and free from mechanic's, materialmen's or like liens or claims or other liens or claims for lien; (c) pay, when due (subject to any applicable grace or cure period, if any), any indebtedness which may be secured by a lien or charge on the Premises junior to the lien hereof and, upon request, exhibit to Mortgagee satisfactory evidence of the discharge of such lien (subject to the Mortgagor's right to contest liens as permitted by the terms of Section 42 hereof); (d) comply in all material respects with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof; (e) make or permit no material alterations in the Premises except as required by applicable law or ordinance without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed; (f) suffer or permit no change in the general nature of the occupancy of the Premises; (g) initiate or acquiesce in no zoning reclassification with respect to the Premises; and (h) suffer or permit no unlawful use of, or nuisance to exist upon, the Premises.

**Section 3. Other Liens.** Except as otherwise expressly provided herein and for Permitted Encumbrances, Mortgagor shall not create or suffer to exist any mortgage, lien, charge or



# UNOFFICIAL COPY

encumbrance to attach to the Premises, whether such lien or encumbrance is inferior or superior to the lien of this Mortgage, excepting only the lien of real estate taxes and assessments not due or delinquent. As used herein, "Permitted Encumbrances" shall mean with respect to the Premises, all private, public and utility easements and roads and highways, if any; existing leases and tenancies; special or general taxes not yet due and payable; covenants, conditions, restrictions and easements of record and exceptions to the title policy of Chicago Title Insurance Company in favor of the Mortgagee covering the Premises dated as of even date herewith.

**Section 4. Taxes.** Mortgagor shall pay before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby; and Mortgagor shall, upon written request, furnish to Mortgagee duplicate receipts therefor. Mortgagor may contest any Taxes as set forth in Section 42 hereof. In the event that any law or court decree has the effect of deducting from the value of the land for the purpose of taxation, any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises, or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such Taxes, or reimburse Mortgagee therefor on demand, unless such payment or reimbursement by Mortgagor is unlawful, in which event the Indebtedness shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this Section shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes pertaining to the Premises, and then only in an amount computed as if Mortgagee derived no income from any source other than its interest hereunder.

**Section 5. Insurance Coverage.** Mortgagor at its own expense will insure and keep insured itself and all of the buildings and improvements now or hereafter included within the Premises, and each and every part and parcel thereof against such perils and hazards and in such amounts as Mortgagee may from time to time reasonably require, and in any event including:

(a) Insurance against loss or damage to the Premises by fire and any of the risks covered by insurance of the type now known as "all risk", in an amount not less than the full replacement cost of the Premises (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) and with deductibles from the loss payable for any casualty satisfactory to Mortgagee. The policies of insurance carried in accordance with this subparagraph shall contain the "Replacement Cost Endorsement";

(b) Commercial general liability against any and all claims (including costs and expenses of defending the same) for bodily injury or death and property damage in any way arising in connection with the Premises and the adjoining streets or passageways with such limits as Mortgagee may require and in any event in such coverage amounts as requested by Mortgagee;

# UNOFFICIAL COPY

(c) During the course of any construction or repair of the Improvements on the Premises, comprehensive public liability insurance (including coverage for elevators and escalators, if any, on the Premises and, if any construction of new Improvements occurs after execution of this Mortgage, completed operations coverage for two years after construction of the Improvements has been completed) carried on an "occurrence basis" against claims for personal injury, including, without limitation, bodily injury, death or property damage occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways; such insurance to afford immediate minimum protection to a limit of not less than reasonably required by Mortgagee with respect to personal injury or death to any one or more persons or damage to property;

(d) Worker's compensation insurance (including employer's liability insurance, if requested by Mortgagee) for all employees of Mortgagor and Guarantor in such amount as is reasonably satisfactory to Mortgagee, or, if such limits are established by law, then in such amounts;

(e) During the course of any construction or major repair of Improvements on the Premises, builder's risk insurance (completed value form) against "all risks of physical loss", including installation floater coverage and collapse and transit coverage, during construction of such Improvements, with deductibles satisfactory to Mortgagee, in nonreporting form, covering the total replacement cost of the Improvements, including without limitation, the value of work performed and equipment, supplies and materials furnished. Said policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement;

(f) If any such equipment is ever located upon the Premises, boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and insurance against loss of occupancy or use arising from any such breakdown, in such amounts as are reasonably satisfactory to Mortgagee;

(g) Flood insurance, if available and required under the National Flood Insurance Act of 1968, as amended; and

(h) Such other insurance, and in such amounts as are customarily carried upon like premises in the community and as may from time to time be reasonably required by Mortgagee against the same or other hazards.

**Section 6. Insurance Policies.** All policies of insurance to be maintained and provided as required herein shall be with companies, and in form and amounts satisfactory to Mortgagee and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to and in form reasonably satisfactory to Mortgagee and shall provide that such insurance may not be cancelled or altered as to Mortgagee without at least thirty (30) days prior written notice to Mortgagee. Mortgagor will deliver all certificates and copies of policies of insurance, including additional and renewal policies to Mortgagee and, in case of insurance policies about to expire, Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.



# UNOFFICIAL COPY

## Section 7. Deposits for Insurance and Taxes.

(a) After and during the continuance of an Event of Default, and upon written request by Mortgagee, in order to assure the payment of annual insurance premiums ("Insurance Premiums") and Taxes payable with respect to the Premises ("Insurance Premiums") as when the same shall become due and payable, the Mortgagor shall deposit with the Mortgagee on the first day of each and every month following Mortgagor's receipt of such written request, an amount equal to one-twelfth (1/12) of the Insurance Premiums and Taxes; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (i), will result in a sufficient reserve to pay the Insurance Premiums and Taxes next to become due on the Premises, due one month prior to the date when such Insurance Premiums and Taxes are, in fact, due and payable, provided that the amount of such deposits (herein generally called "Deposits"); and Taxes shall be based on Mortgagee's reasonable estimate as to the amount of Taxes next to be payable, all Deposits shall be held by the Mortgagee in a non-interest bearing account for the benefit of Mortgagor.

(b) If Deposits are required by Mortgagee pursuant to the preceding subparagraph (a), the Mortgagee will, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, permit Mortgagor to withdraw funds from the Deposits to pay the Insurance Premiums and Taxes, if any, or will, upon the presentation of receipted bills therefor, reimburse the Mortgagor from the Deposits for such payments made by the Mortgagor. If the total Deposits on hand shall not be sufficient to pay all of the Insurance Premiums and Taxes when the same shall become due, then the Mortgagor shall pay to the Mortgagee on demand any amount necessary to make up the deficiency. If the total of such Deposits exceeds the amount required to pay the Insurance Premiums and/or Taxes, such excess shall be credited on subsequent payments to be made for such Deposits or refunded to Mortgagor.

(c) Upon the occurrence and during the continuance of an Event of Default, the Mortgagee may, at its option, without being required so to do, apply any Deposits, plus any accrued interest thereon, on hand to any of the Indebtedness, in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, then any remaining Deposits shall be paid to the Mortgagor. All Deposits are hereby pledged as additional security for the Indebtedness, and shall be held by the Mortgagee to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor.

(d) Notwithstanding anything herein to the contrary, the Mortgagee, and its loan servicing agent, if any, or their successors and assigns, shall not be liable for any failure to apply to the payment of Insurance Premiums and/or Taxes any amounts deposited as Deposits unless the Mortgagor, while no Event of Default exists hereunder, shall have requested the Mortgagee in writing to make application of such Deposits on hand to the payment of the particular Insurance Premiums and/or Taxes for the payment of which such Deposits were made, accompanied by the bills thereof.

**Section 8. Proceeds of Insurance.** Mortgagor will give Mortgagee prompt notice of any damage to or destruction of the Premises, and:

# UNOFFICIAL COPY

(a) In case of loss covered by policies of insurance, Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that Mortgagor may itself adjust losses up to amounts permitted in writing by Mortgagee if such adjustment is carried out in a competent and timely manner, and provided that in any case Mortgagee shall, and is hereby authorized to, collect and give receipt for any such insurance proceeds; and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to Mortgagee upon demand;

(b) Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness, in such order or manner as Mortgagee may elect; provided, however, that such application of proceeds shall not be considered a voluntary prepayment of the Bonds which may require the payment of any prepayment premium or penalty; and

(c) In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the restoring, repairing, replacing or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications to be first submitted to and approved by Mortgagee, which approval shall not be unreasonably withheld or delayed.

**Section 9. Disbursement of Insurance Proceeds.** In the event Mortgagor is entitled to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with (i) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (ii) funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats or survey and such other evidences 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, repair, replacement and rebuilding be submitted to and approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety (90%) percent 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 the purpose or irrevocably committed to the satisfaction of the Mortgagee must be sufficient to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by the Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall, at the option of Mortgagee, be applied on account of the Indebtedness then most remotely to be paid, or be paid to the Mortgagor.

# UNOFFICIAL COPY

**Section 10. Condemnation.** Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation including any payments made in lieu of or in settlement of a claim or threat of condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness, whether due or not, subject to the terms of this Section 10, or, if practicable, require Mortgagor to restore or rebuild the Premises, in which event the proceeds shall be held by Mortgagee and used to reimburse Mortgagor for the cost of such rebuilding or restoring. If, in the reasonable judgment of Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the condemnation and adequately securing the outstanding balance of the Indebtedness, the award shall be used to reimburse Mortgagor for the cost of restoration and rebuilding; provided, always, that Mortgagor is not in default hereunder and that no Event of Default has occurred and is then continuing. If Mortgagor is required or permitted to rebuild or restore the Premises as aforesaid, such rebuilding or restoration shall be effected solely in accordance with plans and specifications previously submitted to and approved by Mortgagee, and proceeds of the award shall be paid out in the same manner as is provided in the Section herein titled "Disbursement of Insurance Proceeds" for the payment of insurance proceeds towards the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagor shall pay such costs in excess of the award before being entitled to reimbursement out of the award. Any surplus which may remain out of the award after payment of such costs of rebuilding or restoration shall be paid to Mortgagor.

**Section 11. Environmental Laws.** Mortgagor shall at all times comply in all material respects with all applicable environmental protection regulations imposed by federal, state, municipal and/or public or quasi-public agencies having jurisdiction over the Premises. Under no circumstances shall Mortgagor permit hazardous materials (as hereinafter defined) to be disposed of on the Premises in violation of applicable law. The term "hazardous materials" shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) or by applicable state law, each as amended from time to time, and regulations promulgated thereunder; and by (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) or by applicable state law, each as amended from time to time, and regulations promulgated thereunder. Mortgagor shall not permit any liens to be filed against the Premises by reason of services or materials furnished in connection with the clean-up of environmental contamination or the removal of any hazardous materials. If requested to do so by any public or quasi-public agency, Mortgagor shall promptly prepare and implement a clean-up plan with respect to the elimination of any hazardous materials or environmental contamination. Mortgagor shall indemnify and hold harmless Mortgagee, its agents, employees and successors, from all costs incurred to clean-up any environmental contamination or the removal of any hazardous materials, as provided in the Environmental Indemnity dated as of the date of this Mortgage. The indemnification provided herein shall survive foreclosure of this Mortgage.

**Section 12. Stamp Tax.** If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagor or the Premises, any tax is used or becomes due in respect of the Note, Mortgagor shall pay such tax in the manner required by such law.

# UNOFFICIAL COPY

**Section 13. Effect of Extensions of Time and Amendments.** If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, 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 and effect; the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of Mortgagee to amend, modify and supplement this Mortgage and the assignments herein referred to, and to extend the maturity of the Indebtedness, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

**Section 14. Mortgagee's Performance of Mortgagor's Obligations.** In case of default herein, Mortgagee, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) with respect to the operation of the Premises, in any form and manner deemed expedient to Mortgagee; and Mortgagee may, but shall not be required to, 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 contest any tax or assessment as set forth in Section 42 hereof, and may, but shall not be required to, complete construction, furnishing and equipping of the improvements upon the Premises and rent, operate and manage the Premises and such improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees and other monies advanced by Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such improvements or to pay any such operating costs and expenses thereof or to keep the Premises and improvements operational and usable for its intended purpose, shall be so much additional Indebtedness, whether or not they exceed the face amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate, as defined in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Mortgagee, in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (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; or (c) in connection with the completion of construction, furnishing or equipping of the improvements or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.



# UNOFFICIAL COPY

**Section 15. Inspection of Premises and Records.** Mortgagee shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times upon reasonable advance notice, and access thereto shall be permitted for that purpose.

**Section 16. Uniform Commercial Code.** This Mortgage constitutes a Security Agreement under the Illinois Uniform Commercial Code (the "Code") 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 Section called "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; and the following provisions of this Section shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances except Permitted Encumbrances;

(b) The Collateral is to be used by Mortgagor solely for business purposes and is being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises;

(c) The Collateral will be kept at the real estate comprised within the Premises, and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code), or any other person and the Collateral may be affixed to such real estate but will not be affixed to any other real estate;

(d) The only persons having any interest in the Premises are Mortgagor, Mortgagee and permitted tenants and users thereof;

(e) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office; and Mortgagor will at its own cost and expenses, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts and things as Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no adverse liens or encumbrances, other than Permitted Encumbrances, and Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable;

(f) Upon any Event of Default (after the expiration of any applicable grace or cure period, if any) hereunder and at any time thereafter, Mortgagee at its option may declare the Indebtedness immediately due and payable, all as more fully set forth in the Section herein titled "Events of Default" hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including, but without limitation, the right to take immediate and exclusive



# UNOFFICIAL COPY

possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations as provided in the Code. Mortgagee, without removal may render the Collateral unusable and dispose of the Collateral on the Premises. Mortgagee will give Mortgagor at least five (5) business days notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by registered or certified mail or equivalent, postage prepaid, to the address of Mortgagor shown in the Section herein titled "Notices" of this Mortgage at least five (5) business days before the time of the sale or disposition. Mortgagee may buy at any public sale, and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Premises, the Collateral and real estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses or retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness. Mortgagee will account to Mortgagor for any surplus realized on such disposition;

(g) The remedies of the Mortgage hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness remains unsatisfied;

(h) The terms and provisions contained in this Section shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code; and

(i) 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. This Mortgage is to be filed for record with the Recorder of Deeds or other proper office of the County or Counties where the Premises are located. Mortgage is the record owner of the Premises.

**Section 17. Restrictions on Transfer.** It shall be an Event of Default hereunder if, without the prior written consent of Mortgagee, any one or more of the following shall occur:

(a) If Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof or interest therein, including the equity of redemption (other than Permitted Encumbrances); and

# UNOFFICIAL COPY

(b) If any member of Mortgagor shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of all or any part of the membership interest of such member.

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this Section shall not apply to (i) liens securing the Indebtedness, (ii) the lien of current taxes and assessments not in default, (iii) any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership, joint venture or membership interests, as the case may be, in Mortgagor or any beneficiary of a trustee mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee, and (iv) any transfers of the Premises for estate planning purposes of a member of the Mortgagor, provided that such transfer is approved in writing in advance by the Mortgagee. The provisions of this Section shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, shares of stock of, or partnership or joint venture interest in, Mortgagor or any beneficiary of a trustee mortgagor.

**Section 18. Events of Default.** If one or more of the following events (herein called "Events of Default") shall occur:

(a) If an Event of Default under the Note or any of the Loan Documents occurs, after the expiration of any applicable grace or cure period, if any;

(b) If a default under any loan by or agreement with Mortgagee shall occur and be continuing beyond any applicable cure period;

(c) If an Event of Default under the Section herein titled "Restrictions on Transfer" shall occur and be continuing without notice or period of grace of any kind;

(d) If any default exists under any other provisions hereof, and such default shall continue for thirty (30) days after written notice to Mortgagor unless the nature of the default is such that it cannot be remedied within such thirty (30) day period, and Mortgagor diligently pursues corrective action with respect to such default, provided in any event such default shall be cured within ninety (90) days and further provided that such delay does not materially adversely affect the rights of the Mortgagee hereunder;

(e) If the Premises shall be abandoned and not occupied for a period of one (1) month; or

(f) There shall occur any default or event of default, or any similar event, or any event which requires the prepayment of borrowed money or the acceleration of the maturity thereof, under the terms of any evidence of indebtedness or other agreement issued, assumed or entered into by the Borrower or any co-maker or guarantor of the Indebtedness or under the terms of any indenture,

# UNOFFICIAL COPY

agreement or instrument under which any such evidence of indebtedness or other agreement is issued, assumed, secured or guaranteed, whether owed to Mortgagee or any other creditor, and such event shall continue beyond any applicable period of grace;

then Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of Mortgagee hereunder to declare, with written notice to the Mortgagor, all Indebtedness to be immediately due and payable, whether or not such default be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage or to exercise any right, power or remedy provided by this Mortgage, the Note or by law or in equity conferred.

**Section 19 Possession by Mortgagee.** When the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee, shall after filing a complaint, if applicable law permits, have the right to enter into and upon the Premises and take possession thereof or to appoint an agent or trustee for the collection of the rents, issues and profits of the Premises. The net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, may be applied to the payment of Taxes, insurance premiums and other charges applicable to the Premises, or in reduction of the Indebtedness, and the rents, issues and profits of and from the Premises are hereby specifically pledged to the payment of the Indebtedness.

**Section 20. Environmental Assessment.** When an Event of Default has occurred, Mortgagor shall, promptly upon written request of Mortgagee, obtain and deliver to Mortgagee, an updated environmental assessment of the Premises by a qualified environmental or engineering firm.

**Section 21. Foreclosure.** When the Indebtedness, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's 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 assurance with respect to title, as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Section, and such other expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, shall be so much additional Indebtedness and shall be immediately due and payable by Mortgagor, with interest thereon at the interest rate then in effect under the Note until paid.

**Section 22. 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

# UNOFFICIAL COPY

appointment may be made either before or after sale, without regard to 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 employee or agent thereof may be appointed as such receiver. Such receiver shall have the 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 deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of 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 may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

- (a) The Indebtedness or the indebtedness secured by a 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 the foreclosure sale; or
- (b) The deficiency in case of a sale and deficiency.

**Section 23. Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Loan Documents.

**Section 24. Insurance Upon Foreclosure.** In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in rebuilding or restoring the buildings or improvements as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that Mortgagee's clause attached to each of the casualty insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in such case made and provided, then in every such case, each and every successive redemtor may cause the preceding loss clause attached to each casualty insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redemtor. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to Mortgagor for prepaid premiums thereon.

**Section 25. Waiver.** Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisalment before sale of any portion of the premises, and (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or creating or extending a period of reinstatement or redemption from any sale made in collecting said debt. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will



# UNOFFICIAL COPY

not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, reinstatement or redemption, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the premises, to the extent permitted by law, hereby waives and releases all rights of reinstatement, redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Indebtedness and marshalling in the event of foreclosure of the liens hereby (and in the supplementary collateral) created. If any law referred to in this Section and now in force, of which Mortgagor, Mortgagor's heirs, devisees, successors and assigns or other person may take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Mortgagor expressly waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State in which the Premises are located pertaining to the rights and remedies of sureties. Without limiting the foregoing, but in addition thereto and in amplification thereof, Mortgagor hereby expressly waives any and all rights of reinstatement or redemption from sale under any order, judgment, or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of Mortgagor acquiring any interest in or title to the premises subsequent to the date thereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois law.

**Section 26. Assignment of Rents and Leases.** Without limiting the generality of any other provisions hereof, as additional security, Mortgagor hereby assigns to Mortgagee the rents, issues and profits of the Premises, and upon the occurrence of any Event of Default, Mortgagee may receive and collect said rents, issues and profits so long as such Event of Default shall exist, including without limitation during the pendency of any foreclosure proceedings. As of the date of this Mortgage, as additional security, Mortgagor also hereby assigns to Mortgagee all of Mortgagor's rights and interests under the Lease, and any and all written and oral leases whether now in existence or which may hereafter come into existence during the term of this Mortgage, or any extension hereof, and the rents thereunder covering the Premises or any portion thereof. The collection of rents by Mortgagee pursuant to this Section shall in no way waive the right of Mortgagee to foreclose this Mortgage in the event of any Event of Default, and Mortgagee shall not be required to commence foreclosure proceedings prior to exercising its rights to collect rents pursuant to this Section. Notwithstanding the foregoing, until a notice in writing is sent to Mortgagor stating that an Event of Default or any event of condition that with notice or passage of time or both might become an Event of Default has occurred under the terms and conditions of this Mortgage (a "Notice"), Mortgagor may receive, collect and enjoy the lease payments, rents, income, and profits accruing from the Premises (the "Rents"). Mortgagee may, after service of a Notice, receive and collect the Rents as they become due. Mortgagee may thereafter continue to receive and collect all such Rents as long as such Event of Default shall exist and during the pendency of any foreclosure proceedings.

Mortgagor hereby appoints Mortgagee its true and lawful attorney, which appointment is irrevocable and coupled with an interest, with full power of substitution and with full power for Mortgagee in its own name and capacity or in the name and capacity of Mortgagor, from and after the service of a Notice (with or without taking possession of the Premises), to demand, collect,



# UNOFFICIAL COPY

receive, and give complete acquittance for any and all Rents and at Mortgagee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Mortgagor or otherwise, that Mortgagor may deem necessary or desirable in order to collect or enforce the payment of the Rents. Lessees and tenants of the Premises are hereby expressly authorized and directed to pay any and all rents due Mortgagor to Mortgagee or such nominee as Mortgagee may designate in writing delivered to and received by such lessees and tenants, who are expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all payments so made.

From and after the service of a Notice, Mortgagee is hereby vested with full power to use all measures, legal and equitable, it may deem necessary or proper to enforce this assignment and to collect the Rents, including without limitation the right of Mortgagee or its designee to enter upon the Premises, or any part thereof, with or without process of law, take possession of all or any part of the Premises and all personal property, fixtures, documents, books, records, papers, and accounts of Mortgagor relating thereto, and exclude Mortgagor and its agents and servants wholly therefrom. Mortgagor hereby grants full power and authority to Mortgagee to exercise all rights, privileges, and powers herein granted to any and all times after service of a Notice, without further notice to Mortgagor, with full power to use and apply all of the Rents to the payment of the costs of managing and operating the Premises and of the indebtedness in such order as Mortgagee shall determine. Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of Mortgagor as landlord or as lessor, and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the leases or otherwise. This assignment shall not place responsibility for the control, care, management, or repair of the Premises or parts thereof, upon Mortgagee, nor shall it make Mortgagee liable for the performance of any of the terms and conditions of any of the leases, for any waste of the Premises by lessee under any of the leases or any other person, for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss, injury, or death to any lessee, licensee, employee, or stranger.

In the exercise of the powers herein granted to Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

The assignment contained in this Section is given as collateral security and the execution and delivery hereof shall not in any way impair or diminish the obligations of Mortgagor, nor shall this assignment impose any obligation on Mortgagee to perform any provision of any contract pertaining to the Premises or any responsibility for the non-performance thereof by Mortgagor or any other person. The assignment under this Section is given as a primary pledge and assignment of the rights described herein and such assignment shall not be deemed secondary to the security interest and mortgage of Mortgagee in the Premises. Mortgagee shall have the right to exercise any rights under this Section before, together with, or after exercising any other rights under this Mortgage. Nothing herein contained shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty, or liability of Mortgagor under this assignment, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all costs (including without limitation reasonable attorneys' fees, legal costs and expenses, and reasonable time charges of attorneys who may be employees of

# UNOFFICIAL COPY

Mortgagee whether in or out of court, in original or appellate proceedings or in bankruptcy), liability, loss, or damage which Mortgagee may or might incur by reason of this assignment; and any and all such costs, liability, loss, or damage incurred by Mortgagee (whether successful or not), shall be the Indebtedness hereby secured, and Mortgagor shall reimburse Mortgagee therefor on demand, together with interest thereon at the interest rate then in effect under the Note until paid.

**Section 27. Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises.

**Section 28. Further Assurances.** Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper, in the sole judgment of Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be; whether now owned by Mortgagor or hereafter acquired.

**Section 29. 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, 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 to 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.

**Section 30. Waiver of Defense.** No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid to the party interposing the same in an action at law upon the Note.

**Section 31. Time of the Essence.** Time is of the essence of the Note, this Mortgage and each of the other Loan Documents.

**Section 32. Option to Subordinate.** At the option of Mortgagee, this Mortgage shall become subject and subordinate in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds or other proper office, in and for the county or counties wherein the Premises are situated, of a unilateral declaration to that effect.

**Section 33. Business Purpose Statement.** The undersigned Mortgagor represents and agrees that the loan evidenced by this Mortgage is a business loan within the purview of the laws and regulations of the State of Illinois and of the United States and is transacted solely for the business purpose of Mortgagor (or, if Mortgagor is a trust, then the beneficiaries of Mortgagor) and for its or their investment or profit, as contemplated by such laws and regulations.

# UNOFFICIAL COPY

**Section 34. Amendments.** The parties may not amend or alter this Mortgage except by an agreement in writing signed by Mortgagor and Mortgagee. In the event of any inconsistency between the provisions of this Mortgage and the Note, the provisions of the Note prevail. There are no promises, representations or understandings made in connection with this Mortgage, except as set forth in this Mortgage and in the Indebtedness Documents.

**Section 35. Assignments.** Mortgagee may assign, negotiate, pledge or otherwise hypothecate all or any portion of this Mortgage or grant participations herein, or in any of its rights and security hereunder without relieving Mortgagor from any obligation to Mortgagee with respect to any unassigned debt, obligation or liability. Mortgagor will accord full recognition to any such assignment. The assignee, will be able to enforce all of Mortgagee's rights and remedies in connection with the interest so assigned against Mortgagor with the same force and effect and to the same extent as Mortgagee could have had for the assignment, except that the assignee's rights will be subordinate to Mortgagee's rights as to any unassigned debt, obligation or liability.

**Section 36. Severability.** If a court of competent jurisdiction declares or finds all or any portion of any provision of this Mortgage to be unenforceable or null and void, such provision or portion thereof shall be deemed stricken and severed from this Mortgage and the remaining provisions and portions hereof will continue in full force and effect.

**Section 37. Successors and Assigns.** This Mortgage and all of its provisions, conditions, promises and covenants inure to the benefit of Mortgagee, its successors and assigns, and shall be binding upon Mortgagor and its successors, assigns, executors, heirs, and personal representatives (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein). Mortgagor may not assign its rights or delegate its duties under this Mortgage without Mortgagee's prior written consent.

In the event that the ownership of the Premises becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Indebtedness in the same manner as with Mortgagor. Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Section shall vary or negate the provisions of the Section herein entitled "Notices".

**Section 38. Notices.** Mortgagor and Mortgagee must give all notices, requests, demands, directions and other communications (collectively "notices") required by this Mortgage in accordance with the Note.

**Section 39. Applicable Law.** The internal laws of the State in which the Premises are located and not the law of conflicts will govern and control the form and essential validity of this Mortgage. Mortgagor consents and submits to the jurisdiction of any local, state or federal court with jurisdiction over Cook County, in the State of Illinois. Mortgagor waives any right it may have to transfer or change the venue of any litigation Mortgagee brings against Mortgagor in accordance with this paragraph. In addition to any methods of service of process provided for under applicable

# UNOFFICIAL COPY

law, Mortgagee may make all services of process in any such suit, action or proceeding in any local, state or federal court, with jurisdiction over Cook County, in the State of Illinois, by certified or registered mail, return receipt requested, directed to Mortgagor at its address stated in the Note, and service so made will be deemed complete five (5) business days after being mailed. Nothing in this Mortgage affects Mortgagee's right to serve process in any manner permitted by law or limits Mortgagee's right to bring proceedings against Mortgagor in any other court or jurisdiction.

**Section 40. WAIVER OF TRIAL BY JURY.** THE PARTIES IRREVOCABLY, KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, COUNTERCLAIM OR PROCEEDING (1) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith, OR (2) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS MORTGAGE OR ANY SUCH AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT. ANY SUCH ACTION, SUIT, COUNTERCLAIM OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. NO INDIVIDUAL HAS MADE ANY REPRESENTATIONS OF FACT OR OPINION TO INDUCE MORTGAGOR'S WAIVER OF HIS, HER OR ITS RIGHT TO TRIAL BY JURY. MORTGAGOR HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL WHICH HE, SHE OR IT SELECTED, AND HE, SHE OR IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

**Section 41. Compliance With State Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Compiled Statutes, as amended, or the comparable statute governing the State in which the Premises are located (herein called the "Statute"), the provisions of the Statute shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with the Statute. Furthermore, if any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Statute in the absence of said provisions, Mortgagee shall be vested with the rights granted in the Statute to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Statute, whether incurred before or after a decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

**Section 42. Contests.** Notwithstanding anything to the contrary herein contained, the Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (each, a "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

(a) The Mortgagor shall forthwith give notice of any Contested Lien to the Mortgagee at the time the same shall be asserted;



# UNOFFICIAL COPY

(b) The Mortgagor shall either pay under protest or deposit with the Mortgagee the full amount (the "Lien Amount") of such Contested Lien, together with such amount as the Mortgagee may reasonable estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment the Mortgagor may furnish to the 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 the Mortgagee;

(c) The 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 the Mortgagee to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of the Mortgagee's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand),

The Mortgagor shall pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to the Mortgagor, or (ii) forthwith upon demand by the Mortgagee if, in the opinion of the Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if the Mortgagor shall fail so to do, the Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts 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 the Mortgagee in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that the Mortgagee may in such case use and apply monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

SIGNATURE PAGE TO FOLLOW



# UNOFFICIAL COPY

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

**MORTGAGOR:**

901 WEST LAKE STREET LLC

By: 7 Horseshoe Management, Inc.  
Its: Manager

By: *John F. DeRoche* as VP  
John F. DeRoche  
Vice President

Property of Cook County Clerk's Office

Signature Page

Mortgage, Security Agreement and Assignment of Rents and Leases  
First Midwest Bank/RBS (901 West Lake Street LLC)

# UNOFFICIAL COPY

## ACKNOWLEDGEMENT

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF Cook        )

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that JOHN F. DEROCHE, as Vice President of 7 Horseshoe Management, Inc., as Manager of 901 West Lake Street LLC, 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 he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

Given under my hand and notary seal this 8<sup>th</sup> day of April, 2011.

Deborah M. Mandel  
Notary Public

My Commission Expires:

1/20/13



# UNOFFICIAL COPY

## EXHIBIT A LEGAL DESCRIPTION

THAT PART OF BLOCK 4 IN A. J. STONE'S ADDITION TO MAYWOOD, A SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 15 ACRES THEREOF) IN THE PARTITION OF PARTS OF SECTIONS 3 AND 10, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED JULY 26, 1890 AS DOCUMENT NUMBER 1310023, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF LAKE STREET AND THE WEST LINE OF THE EAST 17 FEET OF LOT 22 (AS MEASURED AT RIGHT ANGLES TO THE WEST LINE OF SAID LOT 22); THENCE NORTH ALONG THE WEST LINE OF THE EAST 17 FEET OF LOT 22, EXTENDED NORTHERLY THROUGH A 14 FOOT ALLEY; THENCE CONTINUING NORTH ALONG THE WEST LINE OF THE EAST 10 FEET OF LOTS 27, 28, 29, 30 AND 31, A DISTANCE OF 114.40 FEET TO A POINT THAT IS 3 FEET NORTH OF THE SOUTH LINE OF SAID LOT 31; THENCE EAST ALONG THE NORTH LINE OF THE SOUTH 3 FEET OF SAID LOT 31, EXTENDED EASTERLY THROUGH A 14 FOOT ALLEY; THENCE CONTINUING EAST ALONG THE NORTH LINE OF THE SOUTH 3 FEET OF LOT 11 A DISTANCE OF 126.64 FEET TO A POINT ON THE WEST LINE OF 9TH AVENUE; THENCE SOUTH 00 DEGREES 00 MINUTES 41 SECONDS WEST ALONG THE WEST LINE OF 9TH AVENUE 257.44 FEET TO THE NORTH CORNER OF PROPERTY TAKEN FOR ROADWAY PURPOSES; THENCE SOUTH 53 DEGREES 58 MINUTES 14 SECONDS WEST 52.95 FEET TO THE NORTH LINE OF LAKE STREET; THENCE NORTH 72 DEGREES 04 MINUTES 12 SECONDS WEST ALONG THE NORTH LINE OF LAKE STREET 113.74 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 901 WEST LAKE STREET  
MELROSE PARK, ILLINOIS 60160

PERMANENT INDEX NOS.: 15-10-213-042  
15-10-213-037  
15-10-213-038  
15-10-213-040  
15-10-213-044  
15-10-213-043