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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1128404119 Fee: \$80.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/11/2011 11:38 AM Pg: 1 of 23

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 10-23-100-028-0000

Address:

Street: 3939 to 3951 DEMPSTER STREET

Street line 2:

City: SKOKIE

State: IL

ZIP Code: 60076

Lender: REGIONS BANK

Borrower: KF DEMPSTER, LLC.

Loan / Mortgage Amount: \$6,260,000.00

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.

S Y
P 123
S N
SC Y
INT [Signature]

Certificate number: 623CCC5B-BBFF-4774-8800-4CC40EBD4987

Execution date: 08/31/2011

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ST 511685
20110574
0815574
cm
761

**THIS INSTRUMENT PREPARED BY
AND RETURN TO:**

*Thomas M. Little, Esquire
Foley & Lardner LLP
100 N. Tampa Street
Suite 2700
Tampa, FL 33602*

Street Addresses of Properties: 3939 to 3951 Dempster, Skokie, IL
8742 Harding Avenue, Skokie, IL
PIN #: 10-23-100-065-0000
10-23-100-066-0000
10-23-100-028-0000
10-23-100-050-0000

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, is made effective as of the 31st day of August, 2011, by **KF DEMPSTER, LLC**, an Illinois limited liability company, whose address is c/o Fog Capital, Inc., 6040 Winterthur Drive, Atlanta, Georgia 30328, Attn: Mark O. Hackner, Manager (hereinafter called the "Mortgagor"), as party of the first part, and **REGIONS BANK**, an Alabama state chartered bank, whose address is 100 North Tampa Street Suite 3400, Tampa, Florida 33602 (hereinafter called the "Mortgagee") (which term as used in every instance shall include the Mortgagee's successors and assigns), as party of the second part;

WITNESSETH:

That for valuable consideration, and also in consideration of the aggregate sum of money described in that certain Construction Note dated of even date herewith in the principal amount of Six Million Two Hundred Sixty Thousand and 00/100 Dollars (\$6,260,000.00) of even date herewith (the "Note"), the Mortgagor does grant, bargain, sell, convey, alien, remise, release, and confirm unto the Mortgagee, all of Mortgagor's estate, right, title and interest in that certain real property located in Cook County, Illinois, as more particularly described on Exhibit "A" attached hereto and made a part hereof, which the Mortgagor is now seized and possessed and in actual possession. Hereinafter said real estate described on Exhibit "A" and all improvements located

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thereon, including improvements to be made hereafter, and the fixtures described below on the real estate described on Exhibit "A" are sometimes collectively referred to as the "Premises".

TOGETHER with all of Mortgagor's gas and electrical fixtures, heaters, space heaters, engines and machinery, boilers, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other air conditioning, plumbing and heating fixtures, drapes, mirrors, mantles, refrigerating plants, dishwashers and appurtenances, and all building material and equipment now or hereafter delivered to the Premises and intended to be installed therein; such other goods, furnishings, equipment now or hereafter delivered to the Premises and intended to be installed therein; such other furniture, fixtures, goods, equipment, chattels and personal property as are usually furnished by landlords in the letting of all or any portion of the Premises of the character currently owned by Mortgagor (or as hereafter improved) and all renewals or replacements thereof or articles in substitution thereof and all of the estate, right, title and interest of the Mortgagor in and to all property of any nature whatsoever, now or hereafter situated on the Premises or intended to be used in connection with the operation thereof, all of which shall be deemed to be fixtures and an accession to the freehold and a part of the realty as between the parties hereto and all persons claiming by, through or under them and shall be deemed to be a portion of the security for the indebtedness herein mentioned and secured by this Mortgage.

TOGETHER with all and singular the rights, interests and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Premises hereinabove mentioned or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor, including but not limited to all of Mortgagor's sewer capacity rights, all other capacity rights, and Mortgagor's rights under contracts, all building permits, D.O.T. driveway permits, and other permits, agreements, approvals, utility commitments, licenses and all other documents, payments, fees, impact fees, prepaid tap fees, commitment fees, deposits and sums paid affecting the Premises, condemnation proceeds and insurance proceeds paid with respect to the Premises, and all rents, accounts and accounts receivable, profits, issues and revenues of the Premises from time to time accruing, whether under leases or tenancies or other agreements now existing or hereafter created, including the Collateral Assignment of Leases, Rents and Contract Rights of even date herewith between Mortgagor and Mortgagee (hereinafter the "Assignment"), reserving only the right to the Mortgagor to collect the same so long as the Mortgagor is not in default hereunder (subject to the qualification set forth in that certain Assignment) and so long as the same are not subjected to garnishment levy, attachment or lien. In addition, the Mortgagor hereby assigns, transfers and conveys to Mortgagee, its successors and assigns, all of the Mortgagor's right, title and interest in, to and under all leases now or hereafter leasing or affecting the Premises or any part hereof.

TOGETHER with all electronic chattel paper, investment property, deposit accounts, and letter of credit rights relating to the Property now owned or hereafter acquired by Mortgagor.

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behalf of the Mortgagee, its successors and assigns in fee simple forever, and the Mortgagor covenants that the Mortgagor is lawfully seized and possessed of the Premises in fee simple and has good right to convey the same, that the same are unencumbered excepting those certain exceptions appearing on the Mortgagee's Title Insurance Commitment given in connection herewith and specifically approved by Mortgagee, and that the

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Mortgagor will warrant and defend the title thereto against the claims of all persons whomsoever, except as hereinafter provided.

This Mortgage is given to secure all sums required under the Note, together with all interest accrued thereon, and together with any and all modifications, renewals and/or extensions thereof.

PROVIDED ALWAYS that if the Mortgagor shall pay unto the Mortgagee all sums required under the terms of the Note and shall comply with and abide by each and every one of the stipulations, agreements, conditions and covenants of the Loan Documents (as such term is defined in subparagraph 2.2(b) hereof), and shall have paid in full the Note, then in such event this Mortgage and the estate created hereby shall cease and be null and void.

The Mortgagor covenants with the Mortgagee as follows:

ARTICLE I

1.1 Payment of Indebtedness. The Mortgagor will pay the Note according to the tenor thereof and all other sums secured hereby promptly as the same shall become due.

1.2 Monthly Escrows. To further secure the payment of the taxes and assessments hereinafter referred to and the premiums on the insurance hereinafter referred to, the Mortgagor will, only upon the request of Mortgagee, deposit with the Mortgagee on the first day of each and every month a sum which, in the estimation of the Mortgagee, shall be equal to one-twelfth of the annual taxes, assessments and insurance premiums; provided, so long as no default beyond any applicable cure or grace period occurs hereunder or under any other Loan Documents (as defined below) Mortgagee agrees not to request any escrow deposits. The deposits shall be held by the Mortgagee free of interest, and free of any liens or claims on the part of creditors of the Mortgagor and as part of the security of the Mortgagee, and shall be used by the Mortgagee to pay current taxes and assessments and insurance premiums on the Premises as the same accrue and are payable. The deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of the Mortgagee. If the deposits are insufficient to pay the taxes and assessments and insurance premiums in full as the same become payable, the Mortgagor will deposit with the Mortgagee such additional sum or sums as may be required in order for the Mortgagee to pay such taxes and assessments and insurance premiums in full. At the time that Mortgagee has been paid all required taxes and assessments, Mortgagee agrees that it shall pay the taxes and assessments mentioned above in such a manner as to benefit from any discount that may be available if said items are paid early. Upon any default hereunder or under the Note beyond any applicable cure or grace period, the Mortgagee may, at its option, apply any money in the fund resulting from the deposits to the payment of the indebtedness secured hereby in such manner as it may elect.

1.3 Taxes, Liens and Other Charges.

(a) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Mortgagee, the

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Mortgagor will promptly pay any such tax; if the Mortgagor fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits the Mortgagor from making such payment or would penalize the Mortgagee from making such payment or would penalize the Mortgagee if the Mortgagor makes such payment, then the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall, without notice, immediately become due and payable at the option of the Mortgagee.

(b) The Mortgagor will pay, before the same become delinquent, all taxes, liens, assessments and charges of every character already levied or assessed or that may hereafter be levied or assessed upon or against the Premises and all utility charges, whether public or private; and upon demand will furnish the Mortgagee receipted bills evidencing such payment.

(c) The Mortgagor will not suffer any mechanic's, materialmen's, laborer's, statutory or other lien which might or could be prior to or equal to the security interest and mortgage liens of this Mortgage to be created or to remain outstanding upon any part of the Premises, which have not been bonded or released within thirty (30) days after the filing of same.

(d) Mortgagor, at its expense, may contest, after prior written notice to Mortgagee, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any taxes, liens, assessments or charges levied or assessed upon the Premises or any mechanic's, materialman's, laborer's, statutory or other lien filed against the Premises, so long as such proceedings operate to prevent the collection or other realization thereon and the sale or forfeiture of the Premises or any part thereof to satisfy the same or the impairment of Mortgagee's lien; provided that (i) during such contest Mortgagor shall, at the option of Mortgagee, provide Mortgagee with security reasonably satisfactory to Mortgagee, assuring the payment of the Indebtedness and of any additional interest, charge, penalty or expense arising from or incurred as a result of such contest, and (ii) if at any time Mortgagee reasonably determines that the payment of any obligation imposed upon Mortgagor under this Paragraph 1.3 shall become necessary to prevent either the sale or forfeiture of the Premises or any part thereof to satisfy the same or the imposition of any liability on Mortgagee, then Mortgagor shall immediately pay the same.

1.4 Insurance.

Mortgagor shall maintain, or cause to be maintained, the following insurances as set forth in the Construction Loan Agreement.

1.5 Care of Premises.

(a) The Mortgagor will keep the improvements now or hereafter erected on the Premises in good condition and repair, subject to ordinary wear and tear, will not commit or suffer any material waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof.

(b) The Mortgagor will not remove or demolish (except for any improvements existing at date of closing) nor alter the design or structural character of any building (now or hereafter erected), fixture or chattel which are part of the security or other part of the Premises

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(except such alterations as may be required by applicable laws, ordinances, regulations or the leases) without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed, or except as otherwise specifically provided in the Loan Documents.

(c) If the Premises or any part thereof is damaged by fire or any other cause, the Mortgagor will give immediate written notice of the same to the Mortgagee.

(d) The Mortgagee or its representative is hereby authorized to enter upon and inspect the Premises at any time during normal business hours, subject to the rights of any tenant of the Premises.

(e) The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof.

(f) If all or any part of the Premises shall be damaged by fire or other casualty, the Mortgagor will, upon request of the Mortgagee, promptly restore the Premises to the equivalent of its condition immediately prior to such damage, and if a part of the Premises shall be damaged through condemnation, the Mortgagor will, upon request of Mortgagee, promptly restore, repair or alter the remaining part of the Premises in a manner reasonably satisfactory to the Mortgagee; provided, however, in each instance, Mortgagee shall make any insurance or condemnation proceeds available to Mortgagor.

1.6 Further Assurances: Modifications. At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Mortgagee, any and all other further instruments, certificates and other documents as may, in the reasonable opinion of the Mortgagee be necessary in order to effectuate, complete, or perfect or to continue and preserve (i) the obligations of the Mortgagor under the Note and the Loan Documents, (ii) the security interest of this Mortgage, and (iii) the mortgage lien hereunder. Upon any failure by the Mortgagor so to do, the Mortgagee may make, execute and record any and all such instruments, certificates and documents in and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and the attorney in fact of the Mortgagor so to do.

1.7 Leases Affecting the Premises. Without the prior written approval of Mortgagee, Mortgagor shall not make any lease covering all or any part of the Premises, except as set forth in the Collateral Assignment of Leases, Rents and Contract Rights of even date herewith. The Mortgagor shall perform all covenants to be performed by it under any and all leases now or hereafter on the Premises or any part thereof in all material respects, and shall not, without the prior written consent of the Mortgagee in Mortgagee's reasonable business judgment, cancel, surrender or modify in any adverse respect any such lease. If Mortgagor requests any of the foregoing from Mortgagee and Mortgagee fails to respond to Mortgagor's request in ten (10) business days, Mortgagor's request shall be deemed approved as submitted. Upon request of the Mortgagee, the Mortgagor shall, by written instrument in form and substance satisfactory to the Mortgagee, assign to the Mortgagee its interest in each and every lease hereafter entered into by

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the Mortgagor leasing all or any part of the Premises. The terms "lease" and "leases" as used in this paragraph 1.7 shall include all tenancies.

1.8 Expenses. In addition to the expenses described in subparagraph 2.6(b) hereof, the Mortgagor will pay or reimburse the Mortgagee for all reasonable and actual attorneys' fees (without benefit of any statutory presumption), costs and expenses, including those in connection with appellate proceedings, actually incurred by the Mortgagee in any proceedings involving the estate of a decedent or an insolvent, or in any action, legal proceeding or dispute of any kind in which the Mortgagee is a plaintiff or defendant, affecting the indebtedness secured hereby, this Mortgage or the interest created herein, or the Premises, including but not limited to the exercise of the power of sale of this Mortgage, any condemnation action involving the Premises or any action to protect the security hereof; and any such amounts paid by the Mortgagee shall be secured by this Mortgage.

1.9 Estoppel Affidavits. The Mortgagor, upon ten days' prior written notice, shall furnish the Mortgagee a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any off-sets or defenses exist against such principal and interest. The Mortgagee, upon ten days' prior written notice, shall furnish the Mortgagor a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby.

1.10 Subrogation. The Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.11 Performance by Mortgagee of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Premises; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the performance of any covenant, term or condition of any leases affecting all or any part of the Premises, including the Walgreens Lease, in any material respect; or in the performance or observance of any covenant, condition or term of this Mortgage in any material respect; then after the expiration of any applicable grace or cure period provided for in this Mortgage and the other Loan Documents, the Mortgagee, at its option, may perform or observe the same, and all payments made or reasonable costs incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the maximum rate provided by law. The Mortgagee shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim, premium and obligation, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any other person in possession holding under the Mortgagor.

1.12 Collateral Protection Insurance. If at any time the Mortgagor fails to provide the Mortgagee with evidence of the insurance coverage required by this Mortgage, the Mortgagee may purchase insurance at the Mortgagor's expense to protect the Mortgagee's interest in the

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Premises. This insurance may, but need not, protect the Mortgagor's interests. The coverage that the Mortgagee purchases may not pay any claim that the Mortgagor may make 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 with evidence that the Mortgagor has obtained or caused to be obtained insurance as required by this Mortgage. If the Mortgagee purchases insurance for the Premises, the Mortgagor will be responsible for the costs of that insurance, including interest and any other charges that the Mortgagee imposes 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 Mortgagor's total outstanding balance or obligation secured hereby. The costs of the insurance may be more than the costs of insurance that the Mortgagor may be able to obtain through the Mortgagor's own efforts.

1.13 Condemnation. Subject to Section 1.16 herein, if all or any substantial part of the Premises shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, which taking in Mortgagee's reasonable discretion will result in a material impairment to the security granted to Mortgagee, then the entire indebtedness secured hereby shall, at the option of the Mortgagee, become immediately due and payable without any prepayment fee or penalty. In the event any condemnation proceeds are applied toward repayment of the Note, there shall be no acceleration of repayment of the Note provided Mortgagor continues to make all scheduled payments of principal and interest under the Note and there is currently no default beyond any applicable notice and cure under the Loan Documents. The Mortgagee shall be entitled to all compensation, awards, and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith; provided, however, that prior to the occurrences and continuance of an event of default under the Loan Documents, Mortgagor shall have the right to participate in any negotiations or settlement of any condemnation proceeding. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Mortgagee, who after deducting therefrom all its reasonable and actual expenses, including reasonable attorneys' fees actually incurred, may release any monies so received by it without affecting this Mortgage and may, subject to Section 1.16 herein, apply the same in such manner as the Mortgagee shall determine, to the reduction of the sum secured hereby without any prepayment penalty or premium, and any balance of such monies then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as the Mortgagee may require. Notwithstanding the foregoing, however, if the Walgreens Lease remains in full force and effect despite such condemnation, Mortgagee agrees to allow Mortgagor to use any monies received as a result of such taking for construction and repair of the Premises resulting from such taking. In the event the funds are to be disbursed for construction purposes, such funds shall be disbursed in accordance with the usual and customary construction disbursement procedures of Mortgagee, which procedures may include, but shall not be limited to, draw requests, retainage requirements, sufficient evidence of necessary equity to complete the project, lien waivers, title insurance endorsements and inspections, which title insurance

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endorsements and inspections shall be paid for by Mortgagor, which shall be first paid from proceeds of the condemnation proceeds to the extent available and then from Mortgagor.

1.14 Financial Statements. Once rent commences, Mortgagor shall, within ninety (90) days after the end of each calendar year, supply Mortgagee with (i) its financial statements for the prior year, and (ii) such supporting documentation as Mortgagee reasonably requests. Guarantor shall supply Lender annually with (i) their respective financial statements for the prior year, and (ii) such supporting documentation as Mortgagee reasonably requests, including but not limited to all bank account statements and brokerage statements. Once rent commences, and on or before October 15 of each year, Mortgagor shall supply Mortgagee with a copy of its income tax return. On or before October 15 of each year, Mortgagor shall supply, and shall cause Guarantors to supply, Mortgagee with a copy of their respective tax returns. Notwithstanding the foregoing, if extensions are filed for the tax returns, then in that event a copy of Mortgagor's and Guarantors' income tax return shall be delivered to Mortgagee within thirty (30) days after any permitted extension date. The form and content of the financial statements must be acceptable to Mortgagee in its reasonable discretion. All financial statements must be certified by the Mortgagor or Guarantors, as applicable, to be correct and complete in all material respects and prepared in a form acceptable to Mortgagee and shall include a complete description of all contingent liabilities, including, without limitation all indebtedness guaranteed. Failure to provide any of the information required in this paragraph shall be a default under this Mortgage; provided, however, Mortgagee shall give Mortgagor or Guarantors notice of default, which shall be cured on or before fifteen (15) days after notice. Mortgagor and Guarantors shall further covenant and agree that Mortgagee shall have the absolute right to inspect Mortgagor's books and records concerning the Premises on reasonable prior notice and during reasonable business hours. Mortgagor shall promptly, from time to time, furnish to Mortgagee such other information regarding the operations, business, affairs and financial condition of Mortgagor as Mortgagee may reasonably request. Failure to furnish the financial statements, tax returns and other information required hereunder or to permit inspection of books shall constitute a default by the Mortgagor hereunder and under the Loan Documents.

1.15 Environmental Condition of Property. Except as otherwise disclosed to Mortgagee in writing or in the Phase I Environmental Site Assessment dated October 6, 2010 and the Phase II Environmental Site Assessment dated October 25, 2010, both prepared by Environmental Consulting Group, Inc. (collectively, the "Reports"), and to the best of Mortgagor's knowledge after due inquiry and investigation and belief based on the Reports that:

(a) The Premises is now and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Federal Water Pollution and Control Act, the Federal Clean Water Act, the National Environmental Policy Act, the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous Material Transportation Act, and the Federal Clean Air Act, Chapters 376 ("Pollutant Discharge Prevention and Removal"), 377 ("Energy Resources") (hereinafter together with any amendments thereto "Environmental Laws");

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(b) As of the date hereof, there are no hazardous materials, substances, wastes or other environmentally regulated substances (including without limitation, asbestos, polychlorinated biphenyls ("PCB's"), petroleum products, waste oils, toxic or radioactive materials, ammonia, chlorine, pesticides, bulk chemicals, substances listed in the United States Department of Transportation Table or by the Environmental Protection Agency (or any successor agency) as hazardous substances, or which are classified as hazardous or toxic under local, state or federal laws, rules or regulations) ("Hazardous Substances") located on, in or under the Premises or used in connection therewith in violation of any applicable Environmental Laws;

(c) The Premises is not on any Hazardous Substance cleanup list of any governmental authority;

(d) Mortgagor has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental authority including, but not limited to any agency or department of Cook County, Illinois, or the United States government nor has any action ever been commenced or threatened by any governmental authority concerning any intentional or unintentional action or omission on Mortgagor's part which resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into or onto the Premises;

(e) To the best of Mortgagor's knowledge, the Premises has never been used by previous owners or operators, or by Mortgagor, to generate, manufacture, refine, transport, treat, store, handle or dispose of Hazardous Substances, and Mortgagor does not intend to use any part of the Premises for such purposes;

(f) No part of the Premises or any building, structure or facility located thereon or improvement thereto contain or contained asbestos or have or have had asbestos-containing materials installed thereon or therein at any time during or prior to Mortgagor's ownership or operation thereof;

(g) No part of the Premises or any building, structure or facility located thereon or improvement thereto contain or contained PCB's or have or have had electrical transformers, fluorescent light fixtures, ballasts or other equipment containing PCB's installed thereon or therein at any time during or prior to Mortgagor's ownership or operation thereof;

(h) No part of the Premises or any building, structure or facility located thereon or improvement thereto are or have been used as a sanitary landfill, and no Hazardous Substances have been buried, spilled or disposed of on or within the boundaries of the Premises, at any time during or prior to Mortgagor's ownership or operation thereof; and

(i) To the best of Mortgagor's knowledge, there is no occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Premises under any Environmental Laws.

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1.16 Insurance and Condemnation Proceeds.

(a) Notwithstanding anything to the contrary in this Mortgage, in the event that any portion or portions of the Premises are damaged or destroyed by fire or by any other casualty or are taken through any condemnation proceeding, and such damage, destruction or taking results in the need for repair, rebuilding, or restoration work to be performed on the Premises (such repair, rebuilding, or restoration is referred to herein as the "Work"), Mortgagee shall allow Mortgagor to use the amount by which the proceeds of all insurance policies or condemnation awards collected with respect to such damage or destruction (except such amounts as are attributable to a loss of rents) exceed the cost, if any, to Mortgagee for the recovery of such proceeds (said net amount is defined herein as the "Reconstruction Funds"), to perform the Work, so long as the following conditions have been met:

(i) No event of default or default exists hereunder, under the Note, or under the Construction Loan Agreement of even date herewith between Mortgagor and Mortgagee (the "Loan Agreement");

(ii) Mortgagor shall have delivered evidence reasonably satisfactory to Mortgagee that the improvements may be reconstructed in accordance with all applicable zoning and building codes, and all rules, regulations, and ordinances of all applicable governmental authorities and that, upon completion of the Work, the condition of the improvements will be at least equal in value and general utility to that which existed immediately prior to such casualty or condemnation;

(iii) Mortgagor shall have delivered evidence satisfactory to Mortgagee that sufficient funds, including the Reconstruction Funds, are available to perform the Work and that the Work is capable of completion prior to the then effective maturity date of the Note;

(iv) Mortgagor shall have delivered evidence satisfactory to Mortgagee that business interruption or income insurance proceeds payable to Mortgagor as a result of the damage or destruction or income from the Premises, or that sources other than the Reconstruction Funds are sufficient to cover payments of debt service, costs, and expenses on the Note during the period the Work is to be performed; and

(v) The lease agreements with tenants of the Premises shall remain in full force and effect and shall not have been terminated as a result of any such casualty or condemnation.

(b) In the event that the conditions set forth in subparagraph (a) are satisfied, Mortgagee shall make the Reconstruction Funds available to Mortgagor for the Work only under the following procedures, terms, and conditions:

(i) Mortgagor shall execute and deliver to Mortgagee a copy of a contract with a licensed contractor reasonably acceptable to Mortgagee setting forth a fixed price for the Work and a completion date acceptable to Mortgagee;

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(ii) Mortgagor shall demonstrate to Mortgagee that the Reconstruction Funds are at least equal to the fixed price of the Work as set forth in said contract or shall deposit with Mortgagee funds in the amount by which such fixed price exceeds the Reconstruction Funds;

(iii) The Work shall be supervised by an architect or engineer and performed in accordance with plans and specifications prepared by such architect or engineer in all material respects and reasonably approved by Mortgagee;

(iv) The Reconstruction Funds, plus any additional funds deposited by Mortgagor, shall be received and held by Mortgagee and disbursed in accordance with the terms and conditions of the Loan Agreement, and Mortgagor shall reimburse Mortgagee for reasonable and actual costs and expenses incurred in connection with such disbursements;

(v) Upon completion of and final payment for the Work, any remaining Reconstruction Funds shall, at the option of Mortgagee, be applied to the Note without any prepayment fee or penalty in such order as Mortgagee shall elect or paid over to Mortgagor; and

(vi) Mortgagor shall otherwise comply with the terms and conditions of this Mortgage and the other Loan Documents during the performance of the Work in all material respects.

(c) In the event any one or more of the conditions set forth in subparagraphs (a) and (b) are not satisfied in any material respect, Mortgagee may elect, in its sole discretion, to apply the Reconstruction Funds against the balance of the Note, whether or not due, in such manner as Mortgagee shall elect. In the event any condemnation proceeds are applied toward repayment of the Note, there shall be no acceleration of repayment of the Note, provided Mortgagor continues to make all scheduled payments of principal and interest under the Note and there is currently no default not cured within any applicable notice and cure period under the Loan Documents.

(d) If a default shall occur hereunder which is not cured within any applicable grace or cure period, or if Mortgagor shall fail diligently to pursue and complete the Work, Mortgagee may, in its sole discretion, apply any undisbursed Reconstruction Funds against the balance of the Note, whether or not due, in such manner as Mortgagee shall elect.

ARTICLE II

2.1 Due on Sale or Further Encumbrance Clause. In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor, found it acceptable and relied and continues to rely upon same as the means of repayment of the loan evidenced by the Note. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is

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Mortgagee's security for the loan evidenced by the Note. Mortgagor is a business person or entity well-experienced in borrowing money and owning and operating property such as the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should any such junior Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security both of repayment by Mortgagor and the value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; and (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntarily or by operation of law) without the Mortgagee's prior written consent, which may be withheld for any reason, shall be an event of default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default hereunder:

- (a) any sale, conveyance, assignment, or other transfer of or the grant of a security interest in, all or any part of the title to the Premises;
- (b) any sale, conveyance, assignment, or other transfer of or the grant of a security interest in, any membership interest of Mortgagor, except for any transfers by the members existing as of the date hereof to trusts for estate planning purposes or immediate family members or to other existing members;
- (c) any change in the assets of Mortgagor so that it is no longer a single purpose entity;
- (d) any change in the ownership interest of Mortgagor other than permitted in (b) above; and
- (e) any new or additional liabilities by Mortgagor without the prior written consent of Mortgagee.

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Any consent by Mortgagee, or any waiver of an Event of Default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent Event of Default under this Paragraph.

2.2 Default. An Event of Default shall have occurred hereunder if:

(a) The Mortgagor shall fail to pay in full as and when due and payable any installment of principal, interest, late charges or escrow deposits as required by the Construction Note, this Mortgage and otherwise and such failure shall continue for fifteen (15) days; or

(b) The Mortgagor shall fail duly to observe on time any other covenant, condition or agreement of this Mortgage or of any other instrument evidencing, securing or executed in connection with the indebtedness secured hereby, including but not limited to, leases as specifically required in accordance with Paragraph 1.7 hereof (herein this Mortgage and said other instruments are sometimes collectively called the "Loan Documents"); provided, however, that with respect to non-monetary defaults, Mortgagee shall give written notice to Mortgagor, who shall have thirty (30) days to cure, or if the default is of such a nature that it cannot be cured with thirty (30) days, Mortgagor shall have ninety (90) days to cure, provided such extension to ninety (90) days shall not result in a default under the Walgreens Lease and provided further that Mortgagor immediately commences its efforts to cure the default and prosecutes such efforts diligently; or

(c) Any warranties or representations made or agreed to be made in any of the Loan Documents shall be breached in any material respect by the Mortgagor or shall prove to be false or misleading in any material respect; or

(d) Any lien for labor or material or otherwise shall be filed against the Premises, which has not been released or bonded off within thirty (30) days of the filing; or

(e) Any uninsured judgment is entered against the Mortgagor which could substantially impair the ability of the Mortgagor to perform each and every one of its obligations under and by virtue of the Loan Documents; or

(f) A levy shall be made under any process on, or a receiver be appointed for, the Premises or any other property of the Mortgagor; or

(g) The Mortgagor shall file a voluntary petition in bankruptcy, or any other petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation or similar relief for the Mortgagor under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtor; or

(h) The Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any part of the Premises or of any or all of the rents, revenues, issues, earnings, profits or income thereof; or

(i) The Mortgagor shall make any general assignment for the benefit of creditors; or

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- (j) In any legal proceeding the Mortgagor shall be alleged to be insolvent or unable to pay the Mortgagor's debts as they become due; or
- (k) The occurrence of any default, not cured within any applicable cure period under any loan from Mortgagee to Mortgagor; or
- (l) The Mortgagor shall commit an Event of Default under the terms of any of the leases affecting all or any part of the Premises, including the Walgreens Lease, not cured within any applicable cure period; or
- (m) Mortgagor, without the prior written consent of the Mortgagee, or otherwise except as permitted herein, voluntarily or by operation of law, shall sell, transfer, convey or assign all or any part of the legal or equitable title to the Premises, or any part of, or interest in, the Premises; or
- (n) Mortgagor, without the prior written consent of the Mortgagee, voluntarily or by operation of law, shall transfer, convey or assign the Premises, or any part of, or interest in, the Premises as security for an indebtedness other than for the indebtedness secured hereby; or
- (o) Any individual Mortgagor, Guarantor or any other person primarily or secondarily obligated for the payment of the indebtedness evidenced by the Construction Note shall die, become insolvent or file a voluntary or involuntary petition of bankruptcy, provided, however, if any of the events described in this subparagraph occur and within sixty (60) days of such event a new guarantor is provided or collateral is provided, which new guarantor or new collateral is acceptable to Mortgagee, in Mortgagee's sole and absolute discretion, then this shall not be an event of default; or
- (p) Mortgagor, without the prior written consent of Mortgagee (or any consent deemed given), shall in any adverse manner, modify, amend, terminate, or cancel any lease, including the Walgreens Lease; or
- (q) A breach by Mortgagor of any covenant, representation or warranty set forth in any of the Loan Documents pertaining to the Construction Note and Mortgage beyond any applicable cure or grace period; or
- (r) Mortgagor or any Guarantor shall fail to furnish any annual financial statements, operating statements or income tax returns, as set forth in paragraph 1.13 herein, in the Guaranties and any of the Loan Documents beyond any applicable cure or grace period; or
- (s) Any Guarantor shall transfer any of its material assets during the term of the Loan, other than sales or conveyances in the ordinary course of Guarantor's business, that have (i) a material and adverse impact on such Guarantor's obligation to Mortgagee as a Guarantor or (ii) a material and adverse impact on Guarantor's financial condition; as determined by Mortgagee in Mortgagee's sole discretion; or
- (t) During the Mini-Permanent Period (as defined in the Construction Note), Mortgagor shall fail to maintain a minimum Debt Service Coverage Ratio of 1.10 as calculated pursuant to, and defined by, the Construction Loan Agreement of even date herewith; provided,

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however, Mortgagor shall have thirty (30) days to restore the Debt Service Coverage Ratio by either a paydown of the Loan or a pledge of liquid collateral or otherwise acceptable to Mortgagee in its discretion; or

(u) Mortgagee shall reasonably suspect the occurrence of any one or more of the above said defaults and Mortgagor, upon the request of Mortgagee, shall fail to provide evidence reasonably satisfactory to Mortgagee that such default has not in fact occurred.

For the purposes of this paragraph 2.2, the term "Mortgagor" shall be construed as any one or more of the parties comprising Mortgagor.

2.3 Acceleration of Maturity. If an Event of Default shall have occurred and continues hereunder beyond any applicable grace period, then the whole unpaid principal sum of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence of this Mortgage and of the Note secured hereby; and no omission on the part of the Mortgagee to exercise such option when entitled so to do shall be considered as a waiver of such right.

2.4 Right of Mortgagee to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Premises and if, and to the extent, permitted by law, the Mortgagee may enter and take possession of the Premises and may exclude the Mortgagor and the Mortgagor's agents and employees wholly therefrom. In the event Mortgagee exercises its right pursuant to this subparagraph (a), Mortgagee shall be deemed to be acting as agent of Mortgagor and not as owner of the Premises.

(b) For the purpose of carrying out the provisions of this paragraph 2.4, the Mortgagor hereby constitutes and appoints the Mortgagee the true and lawful attorney in fact of the Mortgagor to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney in fact in the Premises provided, however, Mortgagee shall not exercise its rights as an attorney in fact unless an Event of Default then exists hereunder.

(c) Whenever all such Events of Default have been cured and satisfied, the Mortgagee shall surrender possession of the Premises to the Mortgagor, provided that the right of the Mortgagee to take possession, from time to time, pursuant to subparagraph 2.4(a) shall exist if any subsequent Event of Default shall occur and be continuing.

2.5 Leases. Mortgagee may, at its sole option, foreclose this Mortgage subject to any leases, and the failure to make any tenant a defendant or to foreclose its rights shall not be a defense to any proceedings by Mortgagee to collect the sums secured hereby or for any deficiency unpaid after the foreclosure of the Premises.

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2.6 Appointment of a Receiver and Foreclosure.

(a) If an Event of Default shall have occurred hereunder, and be continuing, then the whole debt secured by this Mortgage, with all interest thereon, and all other amounts hereby secured shall, at the option of Mortgagee, become immediately due and payable, and may forthwith or at any time thereafter be collected by suit at law, foreclosure or other proceeding upon this Mortgage or by any other proper, legal or equitable procedure without declaration of such option and without notice.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to 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 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 become so much additional debt secured hereby and shall be immediately due and payable with interest thereon at the default interest rate provided in the Note, when paid or incurred by Mortgagee in connection with (i) any proceeding, including foreclosure, probate and bankruptcy proceedings, to which it shall be a party, either as plaintiff, claimant, or defendant, by reason of this Mortgage, or any indebtedness hereby secured, (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced, or (iii) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

(c) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period.

(d) Mortgagor shall deliver to Mortgagee at any time on its request, all agreements for deed, contracts, leases, abstracts, title insurance policies, muniments of title, surveys and other papers relating to the Premises, and in case of foreclosure thereof and failure to redeem, the same shall be delivered to and become the property of the person obtaining a deed to the Premises by reason of such foreclosure.

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(e) Notwithstanding anything in this Mortgage to the contrary, pursuant to Section 5/15-1601(b) of the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes, 735 ILCS 5/15-1101 et seq. (the "Act"), the Mortgagor hereby waives any and all right of redemption.

2.7 Remedies Cumulative. No right, power or remedy conferred upon or reserved by the Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.8 Stamp and Excise Tax. It is contemplated that the Mortgagor will pay documentary stamp taxes applicable to the full face amount of the Note. If any additional stamp or excise tax shall become applicable with respect to this Mortgage, the Note, any loan or credit extended hereunder, or any security agreement, guaranty, the loan agreement or other document, the Mortgagor shall promptly pay such tax in full (including interest and penalties, if any) and shall hold the Mortgagee harmless with respect thereto. The Mortgagor's liability under this Paragraph 2.8 will survive the repayment of indebtedness under the Note.

2.9 Enforcement. It is the intention of the Mortgagor and the Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Act, and with respect to such Act, the Mortgagor agrees and covenants that the Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, the Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

ARTICLE III

3.1 Successors and Assigns Included in Parties. Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this indenture by or on behalf of the Mortgagor and by or on behalf of the Mortgagee shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not. Provided, however, that the Mortgagor shall have no right to assign its obligations hereunder without the prior written consent of the Mortgagee.

3.2 Headings. The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

3.3 Invalid Provisions to Affect No Others. If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Mortgage in whole or in

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part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect. Notwithstanding any provision contained herein, the total liability of Mortgagor for payment of interest, including service charges, penalties or any other fees pursuant to Paragraph 1.8, subparagraph 2.6(b) or otherwise shall not exceed the maximum amount of such interest permitted by applicable law to be charged, and if any payments by Mortgagor include interest in excess of such maximum amount, Mortgagee shall apply such excess to the reduction of the unpaid principal amount due and pursuant hereto.

3.4 Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

ARTICLE IV

4.1 Notice. Any notice or other communication required or permitted to be given hereunder shall be sufficient if in writing and delivered in person or sent by United States Certified Mail, postage prepaid, to the parties being given such notice at the following addresses:

TO MORTGAGOR: KF Dempster, LLC
c/o Fog Capital, Inc.
6040 Winterthur Drive
Atlanta, Georgia 30328
Attn: Mark O. Hackner, Manager

Edwin M. Vdovets
Keeler Real Estate, LLC
122 South Michigan Avenue, Suite 1000
Chicago, IL 60603

WITH COPY TO: Greg W. Dworzanowski, Esq.
1001 S. MacDill Ave., Suite 1
Tampa, Florida 33629

TO MORTGAGEE: Regions Bank, an Alabama state chartered bank
100 N. Tampa Street, Suite 3400
Tampa, Florida 33602
Attn: David J. Kern, Senior Vice President
Commercial Real Estate

WITH COPY TO: Foley & Lardner LLP
100 N. Tampa Street, Suite 2700
Tampa, Florida 33602
Attn: Thomas M. Little, Esq.

Any party may change said address by giving the other parties hereto notice of such change of address. Notice given as herein above provided shall be deemed given on the date of its deposit in the United States Mail and, unless sooner received, shall be deemed received by the party to

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whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail, or if a courier system is used, on the date of delivery of the notice.

ARTICLE V

5.1 Future Advances. It is agreed that this Mortgage shall also secure such future or additional advances as may be made by the Mortgagee at its option to the Mortgagor, or its successor in title, for any purpose, provided that all those advances are to be made within twenty years from the date of this Mortgage, or within such lesser period of time as may be provided hereafter by law as a prerequisite for the sufficiency of actual notice or record notice of the optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed the maximum principal amount of \$12,520,000.00 plus interest, and any disbursements made for the payment of taxes, levies or insurance on the Premises with interest on those disbursements. If, pursuant to Florida Statutes Section 697.04, Mortgagor files a notice specifying the dollar limit beyond which future advances made pursuant to this Mortgage will not be secured by this Mortgage, then Mortgagor shall, within one day of filing such notice, notify Mortgagee and its counsel by certified mail pursuant to Section 4 of this Mortgage. In addition, such a filing shall constitute a default hereunder.

5.2 Lien Priority. The lien priority of this Mortgage shall not be affected by any changes in the Note including, but not limited to, an increase in the interest rate charged pursuant to the Note. Any parties acquiring an interest in the Premises subsequent to the date this Mortgage is recorded shall acquire such interest in the Premises with notice that Mortgagee may increase the interest rate charged pursuant to the Note or otherwise modify the Note, and the Note, as modified, and the Mortgage shall remain superior to the interest of any party in the Premises acquired subsequent to the date this Mortgage is recorded.

5.3 Business Loan. The proceeds of the Note shall be used solely for business purposes and in furtherance of the regular business affairs of the Mortgagor, and the entire principal obligation secured hereby constitutes (a) a "business loan" as that term is defined in 815 ILCS 205/4 (1) (c); and, (b) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4 (1) (1).

5.4 Security Agreement. This instrument also creates a security interest in favor of the Mortgagee under the Illinois Uniform Commercial Code, and Mortgagee shall also have all the rights and remedies of a secured party under the Illinois Uniform Commercial Code, and without limitation upon or in derogation of the rights and remedies created and accorded to the Mortgagee by this Mortgage pursuant to the common law or any other laws of the State of Illinois or any other jurisdiction, it being understood that the rights and remedies of Mortgagee under the Illinois Uniform Commercial Code shall be cumulative and in addition to all other rights and remedies of Mortgagee arising under the common law or any other laws of the State of Illinois or any other jurisdiction.

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5.5 Choice of Law. This Mortgage is to be construed in all respects and enforced according to the laws of the State of Florida; provided, however, that with respect to the creation, perfection, priority and enforcement of the lien of this Mortgage, and the determination of deficiency judgments, the laws of the State of Illinois shall apply.

5.6 Binding Effect. This Mortgage shall be binding upon and inure to the benefit of the Mortgagor and Mortgagee hereto, and their respective heirs, successors and assigns.

5.7 Master Agreement.

(a) If Mortgagor and Mortgagee hereafter enter into any ISDA Master Agreement, the schedule attached thereto and one or more confirmations issued in connection therewith (collectively, the "Master Agreement"), under the terms of which Mortgagor and Mortgagee hereafter enter into one or more of the following types of transactions: interest rate swap, cap, floor, collar or option.

(b) Mortgagor hereby agrees that all of its obligations under the Master Agreement shall be part of the "Debt"

(c) Mortgagor agrees that the Premises shall be security for the payment and performance of all of the Mortgagor's obligations under the Master Agreement, and that the grant of the lien contained in this Mortgage is intended to be the grant of a lien against the Premises to secure all of the Debt, which shall include the obligations of Mortgagor under the Master Agreement.

(d) Mortgagor hereby agrees that (i) a default under this Mortgage shall constitute an Event of Default (as that term is defined in the Master Agreement) under the Master Agreement, and (ii) the occurrence of an Event of Default under the Master Agreement shall constitute a default under this Mortgage, and Mortgagee shall thereafter have all rights and remedies following a default under this Mortgage and the occurrence of an Event of Default under the Master Agreement.


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IN WITNESS WHEREOF, the Mortgagor has executed and sealed this Mortgage to be effective as of the date first stated above.

“MORTGAGOR”

KF DEMPSTER, LLC, an Illinois limited liability company

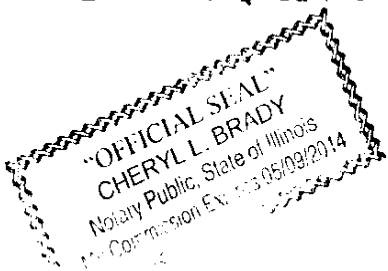
By: 
Name: Edwin Vdovets
Title: Manager

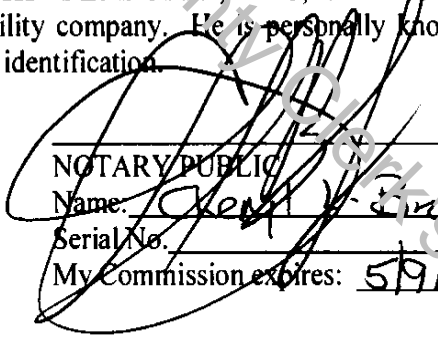
Property of Cook County

STATE OF ILLINOIS

COUNTY OF COOK

The foregoing instrument was acknowledged before me this 31st day of August, 2011, by **Edwin Vdovets**, as Manager of **KF DEMPSTER, LLC**, an Illinois limited liability company, on behalf of the limited liability company. He is personally known to me or have produced Driver license as identification.





NOTARY PUBLIC
Name: Cheryl L. Brady
Serial No. _____
My Commission expires: 5/9/2014

Notary Office

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EXHIBIT "A"

LEGAL DESCRIPTION

Parcel 1:

LOTS 1 TO 12, INCLUSIVE, IN BLOCK 6 IN DEMPSTER CRAWFORD MANOR, A SUBDIVISION OF THAT PART OF THE NORTHWEST 1/4 OF SECTION 23, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF EAST PRAIRIE ROAD (EXCEPT THE SOUTH 17 1/2 CHAINS THEREOF) ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 4, 1925 AS DOCUMENT 9025818, IN COOK COUNTY, ILLINOIS.

Parcel 2:

LOT 41 AND THE NORTH 10 FEET OF LOT 40, IN BLOCK 6 IN DEMPSTER-CRAWLORA MANOR, A SUBDIVISION OF THAT PART OF THE NORTHWEST 1/4 OF SECTION 23, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF THE EAST PRAIRIE ROAD (EXCEPT THE SOUTH 17-1/2 CHAINS THEREOF), IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office