

# UNOFFICIAL COPY



PGB LOAN NUMBER 20685-08

Doc#: 1210334037 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 04/12/2012 10:07 AM Pg: 1 of 10

After recording mail to:

Pacific Global Bank  
2323 S. Wentworth  
Chicago, IL 60616

## CROSS-COLLATERALIZATION AGREEMENT AND AMENDMENT TO SECURITY INSTRUMENT

**THIS CROSS-COLLATERALIZATION AGREEMENT AND AMENDMENT TO SECURITY INSTRUMENT** (this "Agreement") is made as of the 1st day of February 2012 by Pacific Global Bank ("Lender"), and Tony Bahary ("Borrower").

### RECITALS

- A. Lender has made a commercial mortgage loan to Borrower in the original principal amount of \$125,000.00 (the "Loan"). The Loan is secured by a Mortgage and Assignment of Rents (hereinafter, "Mortgage") recorded among the Land Records of Cook County, Illinois, upon real property identified on Exhibit A hereto and other property included within the definition of "Property" in the same instruments and constituting or related to property commonly known as 1626 N. Central Park Ave., Chicago, Illinois 60647 (hereinafter, the "Mortgaged Property").
- B. Lender has made or will make other mortgage loans (collectively, the "Related Loans") to Borrower, and/or parties related to Borrower, secured by Mortgages and Assignments of Rent (collectively, the "Related Instruments") upon other properties (collectively, the "Related Properties"), all as more fully set forth in the following table:

Loan No(s).	Original Loan Amount	Property Address
20718-08	\$128,000.00	3853 W. Grand Ave., Chicago, Illinois 60651
<b>Total Indebtedness</b>	<b>\$253,244.00</b>	

- C. Borrower acknowledges that a condition of Lender making, modifying, extending, or renewing the Loan and the Related Loans is that the Mortgaged Property serve as collateral for each of the Related Loans and that each of the Related Properties serve as collateral for the Loan. Borrower is executing this Agreement to satisfy such condition. Borrower further acknowledges that the benefits derived by Borrower from this Agreement and from those certain Cross-Collateralization Agreements entered into or to be entered into in connection with the Related

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Loans are equivalent to the burdens imposed upon Borrower and the Mortgaged Property by this Agreement, notwithstanding that the Loan and the Related Loans may be of differing amounts.

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings indicated:

“**Event of Default**” shall have the meaning set forth in Section 4.

“**Foreclosure**” means a judicial or non-judicial foreclosure of or trustee’s sale under the Mortgage or a Related Instrument, a deed in lieu of such foreclosure or sale, a sale of any of the Total Property pursuant to lawful order of a court of competent jurisdiction in a bankruptcy case filed under Title 11 of the United States Code, or any other similar disposition of any of the Total Property.

“**Fraudulent Transfer Laws**” means Section 548 of Title 11 of the United States Code or any applicable provisions of comparable state law, including any provisions of the Uniform Fraudulent Conveyance Act or Uniform Fraudulent Transfer Act, as adopted under state law.

“**Indebtedness**” means the “Indebtedness” as defined in the Mortgage, exclusive of any sums payable by Borrower solely by reason of this Agreement.

“**Loans**” means the Loan and the Related Loans

“**Related Borrowers**” means the original borrower or borrowers under each of the Related Loans (which original borrower or borrowers may be the Borrower named in this Agreement), and any successor to the interest of each such borrower(s) in any of the Related Properties who acquires such Related Property subject to, or who assumes the obligations under, a Related Instrument.

“**Related Indebtedness**” means the aggregate of the “Indebtedness” as defined in each of the Related Instruments.

“**Related Loan Documents**” means the “Related Documents” as defined in each of the Related Instruments.

“**Total Indebtedness**” means the aggregate of the Indebtedness plus the Related Indebtedness.

“**Total Loan Documents**” means the “Related Documents” as defined in the Mortgage and the Related Loan Documents. This Agreement is among the Related Documents as defined in the Mortgage, and the Cross-Collateralization Agreements entered into in connection with the Related Loans are among the Related Loan Documents.

“**Total Property**” means the aggregate of the Mortgaged Property and the “Property” described in each of the Related Instruments.

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Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Mortgage.

## 2. Assumption and Integration of Related Indebtedness; Obligations Absolute.

Borrower hereby acknowledges that:

(a) Borrower shall pay not only the Indebtedness, but all of the Related Indebtedness in accordance with the Related Loan Documents. Borrower and the Related Borrowers are jointly and severally liable for the payment of the Total Indebtedness. Lender at its option may treat the Loan and each of the Related Loans as separate and independent obligations of Borrower, or may treat some or all of the Loan, and all or any part of the Total Indebtedness, as a single, integrated indebtedness of Borrower.

(b) No invalidity, irregularity or unenforceability of all or any part of the Related Indebtedness shall affect, impair or be a defense to the recovery by Lender of the Indebtedness.

(c) It is the intention of Lender and Borrower that Borrower's obligations to pay the Related Indebtedness shall be independent, primary, and absolute, and shall be performed without demand by Lender and shall be unconditional irrespective of the genuineness, validity, regularity or enforceability of any of the Related Loan Documents, and without regard to any circumstance, other than payment in full of the Related Indebtedness, which might otherwise constitute a legal or equitable discharge of a borrower, a mortgagor, a surety, or a guarantor. Borrower waives, to the fullest extent permitted by law, all rights to require Lender to proceed against any Related Borrower(s) or against any guarantor of any of the Total Indebtedness or to pursue any other right or remedy Lender may now or hereafter have against any Related Borrower(s) or any collateral for any of the Total Indebtedness.

3. **Amendment of Mortgage to Grant Additional Security.** The Mortgage is hereby amended to provide that the Mortgage secures the obligation of Borrower and the Related Borrowers to pay the Related Indebtedness as well as the obligation of Borrower and the Related Borrowers to pay the Indebtedness. Borrower hereby irrevocably mortgages, grants, conveys and assigns to Lender the Mortgaged Property, to secure to Lender payment of the Related Indebtedness and performance of the covenants and agreements contained in the Related Loan Documents, as well as to secure to Lender payment of the Indebtedness and performance of the covenants and agreements contained in the Related Documents.

4. **Events of Default.** Each of the following events shall constitute an "Event of Default" under this Agreement:

- (a) a default or breach by Borrower of any provision of this Agreement; and
- (b) any event or condition constituting an "Event of Default" under any of the Total Loan Documents.

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**5. Amendment of Mortgage to Provide for Cross-Default.** The Mortgage is hereby amended to provide that any Event of Default under this Agreement or under any of the Related Loan Documents shall constitute an Event of Default under the Mortgage.

**6. Remedies.**

(a) Upon the occurrence of an Event of Default, Lender, in its sole and absolute discretion, may exercise any or some or all of the following remedies, in such order and at such time or times as Lender shall elect:

(i) declare immediately due and payable the entire Total Indebtedness or any portion thereof; and

(ii) exercise any or some or all of Lender's rights and remedies under this Agreement, any of the Total Loan Documents, or applicable law.

(b) Lender may exercise such remedies in one or more proceedings, whether contemporaneous or consecutive or a combination of both, to be determined by Lender in Lender's sole discretion. Lender may enforce its rights against the Mortgaged Property or the Total Property, or any portions of the Mortgaged Property or the Total Property, in such order and manner as Lender may elect in Lender's sole discretion. The enforcement of the Mortgage or any Related Instrument or any other of the Total Loan Documents shall not constitute an election of remedies, and shall not limit or preclude the enforcement of the Mortgage or any other Related Instrument or any other of the Total Loan Documents, through one or more additional proceedings. Lender may bring any action or proceeding, including but not limited to foreclosure proceedings, without regard to the fact that one or more other proceedings may have been commenced elsewhere with respect to other of the Total Property or any portion thereof. Borrower, for himself and for any and all persons or entities now or in the future holding or claiming any lien on, security interest in, or other interest or right of any nature in or to any of the Mortgaged Property, hereby unconditionally and irrevocably waives any rights Borrower may have, now or in the future, whether at law or in equity, to require Lender to enforce or exercise any of Lender's rights or remedies under this Agreement, under the Mortgage, or under any other of the Total Loan Documents in any particular manner or order or in any particular state or county, or to apply the proceeds of any foreclosure in any particular manner or order.

(c) No judgment obtained by Lender in any proceeding enforcing any of the Total Loan Documents shall merge any of the Total Indebtedness into that judgment, and all Total Indebtedness that remains unpaid shall remain a continuing obligation of Borrower. Notwithstanding any foreclosure of the Mortgage or any of the Related Instruments, Borrower shall remain bound under this Agreement.

**7. Application of Proceeds.** Proceeds of the enforcement or foreclosure of the Mortgage or any Related Instrument shall be applied to the payment of the Total Indebtedness (including prepayment premiums) in such order as Lender may determine in Lender's sole discretion.

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**8. Adjustment of Obligations.** If Borrower's incurring of the obligation to pay the Related Indebtedness provided for in Section 2 above, or the amendment of the Mortgage provided for in Section 3 above, becomes subject to avoidance under any Fraudulent Transfer Law, then automatically, the Related Indebtedness for which Borrower will be liable and the amount of the Related Indebtedness for which the Mortgaged Property shall constitute security, shall be limited to the largest amount that would not be subject to avoidance under such Fraudulent Transfer Law. At any time at Lender's sole option, Lender may record among the Land Records a complete or partial termination of this Agreement evidencing Lender's election to treat this Agreement as null and void with respect to one or more or all of the Mortgaged Property and the Related Properties (the "Terminated Properties"). Borrower, at Lender's request, will join in any such termination or partial termination, and Borrower hereby irrevocably appoints Lender as Borrower's agent and attorney-in-fact to execute, deliver and record such termination or partial termination in Borrower's name. Following any such termination or partial termination of this Agreement, Lender may enforce the Mortgage and other Related Documents in accordance with their respective terms as if this Agreement had never been executed and delivered as to the Terminated Properties.

**9. Borrower's Rights of Subrogation, Etc.** Until the Total Indebtedness has been paid in full and there has expired the maximum possible period thereafter during which any payment to Lender with respect to the Total Indebtedness could be deemed a preference under the United States Bankruptcy Code, Borrower shall have no right of, and hereby waives any claim for, subrogation, contribution, reimbursement or indemnity (whether contractual, statutory, equitable, under common law or otherwise) which Borrower has now or may have in the future against any of the Related Borrowers or any of the Related Properties or against any guarantor or security for any of the Total Indebtedness. Borrower understands that the exercise by Lender of certain rights and remedies contained in the Mortgage or any one or more of the Related Instruments may affect or eliminate Borrower's right of subrogation against a Related Borrower and that Borrower may therefore incur a partially or totally non-reimbursable liability under this Agreement. Nevertheless, Borrower hereby authorizes and empowers Lender, in Lender's sole and absolute discretion, to exercise any right or remedy, or any combination thereof, which may then be available.

**10. Subordination of Obligations to Borrower.** Any indebtedness or other obligation of a Related Borrower held by Borrower shall be subordinate to the rights of Lender against that Related Borrower. If Lender so requests at a time when an Event of Default has occurred, Borrower shall enforce and collect any such indebtedness or other obligation as trustee for Lender and shall pay over to Lender any amount collected, on account of the Total Indebtedness.

**11. Lender's Rights.** At any time and from time to time and without the consent of, or notice to, Borrower, without incurring liability to Borrower, and without impairing or releasing Borrower's liability for the Related Indebtedness, Lender may:

(a) change the manner, place or terms of payment, or change or extend the time of payment of, or renew, increase, accelerate or alter, the Loan or any of the Related Indebtedness, any security for the Loan or the Related Indebtedness, or any liability incurred directly or indirectly with respect to the Loan or the Related Indebtedness;

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(b) take and hold security for the payment of the Loan and any of the Related Indebtedness, and sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property pledged or mortgaged to secure the Loan or any of the Related Indebtedness;

(c) exercise or refrain from exercising any rights against Borrower, any Related Borrower, the Mortgaged Property, or any Related Properties;

(d) release or substitute any one or more endorsers, guarantors, or other obligors with respect to the Loan or any of the Related Indebtedness;

(e) settle or compromise the Loan or any of the Related Indebtedness, or subordinate the payment of all or any part of the Loans or the Related Indebtedness to the payment of any liability (whether due or not) of any Related Borrower to its creditors other than Lender; and

(f) consent to or waive any breach by Borrower or any Related Borrower of, or any act, omission or default by Borrower or any Related Borrower under, this Agreement or any of the Total Loan Documents.

## 12. **Waivers of Presentment, Marshaling, Certain Suretyship Defenses, etc.**

(a) With respect to its obligations under this Agreement and the Total Loan Documents, Borrower waives presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting such obligations.

(b) Lender shall have the right to determine in Lender's discretion whether and the order in which any or all of the Total Property or portions thereof shall be subjected to the remedies provided in the Total Loan Documents or applicable law. Lender shall have the right to determine in Lender's discretion the order in which any or all portions of the Total Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a lien on or security interest or other interest in any of the Mortgaged Property hereby unconditionally and irrevocably waive any and all right to require the marshaling of assets or to require that any of the Total Property or portions thereof be sold in the inverse order of alienation or in parcels or as an entirety in connection with the exercise of any such remedies.

**13. Notices.** All notices to Borrower under this Agreement shall be in writing and shall be given in the manner provided in the Mortgage for notices to Borrower. All notices to Lender by Borrower under this Agreement shall be in writing and shall be given in the manner in the Mortgage for notices to Lender.

**14. Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State in which the Mortgaged Property is located.

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Borrower irrevocably submits to the jurisdiction of any federal or state court sitting in (i) any state or jurisdiction in which the Mortgaged Property or any of the Related Properties is located, and (ii) the State of Illinois, over any suit, action or proceeding arising out of or relating to this Agreement. Borrower hereby submits to the *in personam* jurisdiction of each such court in any matter involving this Agreement. Borrower irrevocably waives, to the fullest extent permitted under applicable law, any objections they may now or hereafter have to the venue of any suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Borrower acknowledges that he has received material and substantial consideration for the cross-collateralization of the Mortgaged Property and the Related Properties and that the foregoing venue provision is integral to the Lender's realization of its rights hereunder.

- 15. Captions, Cross References and Exhibits.** The captions assigned to provisions of this Agreement are for convenience only and shall be disregarded in construing this Agreement. Any reference in this Agreement to a "Section", a "Subsection" or an "Exhibit" shall, unless otherwise explicitly provided, be construed as referring to a section of this Agreement, to a subsection of the section of this Agreement in which the reference appears or to an Exhibit attached to this Agreement. All Exhibits referred to in this Agreement are hereby incorporated by reference.
- 16. Number and Gender.** Use of the singular in this Agreement includes the plural, use of the plural includes the singular, and use of one gender includes all other genders, as the context may require.
- 17. Statutes and Regulations.** Any reference in this Agreement to a statute or regulation shall include all amendments to and successors to such statute or regulation, whether adopted before or after the date of this Agreement.
- 18. No Partnership.** This Agreement is not intended to, and shall not, create a partnership or joint venture among the parties, and no party to this Agreement shall have the power or authority to bind any other party except as explicitly provided in this Agreement.
- 19. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, and assigns.
- 20. Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.
- 21. Waiver; No Remedy Exclusive.** Any forbearance by a party to this Agreement in exercising any right or remedy given under this Agreement or existing at law or in equity shall not constitute a waiver of or preclude the exercise of that or any other right or remedy. Unless otherwise explicitly provided, no remedy under this Agreement is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity.

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22. **Third Party Beneficiaries.** Neither any creditor of any party to this Agreement, nor any other person, is intended to be a third party beneficiary of this Agreement.

23. **Course of Dealing.** No course of dealing among the parties to this Agreement shall operate as a waiver of any rights of any party under this Agreement.

24. **Further Assurances and Corrective Instruments; Fees and Costs.** To the extent permitted by law, the parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to this Agreement and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement. Borrower agrees to pay on demand all costs and expenses of or incurred by the Lender in connection with the negotiation, preparation, execution and delivery of this Agreement, including the fees and expenses of counsel for the Lender.

25. **No Party Deemed Drafter.** No party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against either party as the drafter of the Agreement.

26. **WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

The parties hereto have caused this agreement to be executed by authorized representatives as of the date first set forth above.

**BORROWER**

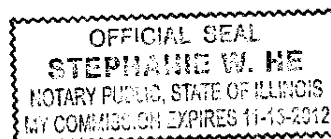
\_\_\_\_\_  
Tony Bahary

County of Cook  
State of Illinois

I, Stephanie He, a Notary Public in and for said county and state do hereby certify that Tony Bahary, personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, personally appeared before me this 22 day of February, 2012 and acknowledged that he/she/they signed and delivered the said instrument as his/her/their free and voluntary act, for the uses and purposes therein set forth.

\_\_\_\_\_  
Notary Public

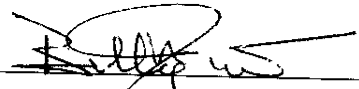
My commission expires: 11/15/2012





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PACIFIC GLOBAL BANK

By: 

Name: Betty P. Chow

Title: CEO/ President

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## EXHIBIT A

**LOT 13 IN CURRIER'S NORTH AVENUE AND CENTRAL PARK AVENUE  
SUBDIVISION IN THE SOUTH WEST QUARTER OF SECTION 35, TOWNSHIP 40  
NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK  
COUNTY, ILLINOIS.**

**PIN(s): 13-35-328-027-0000**

**Commonly known as: 1626 N. Central Park Ave., Chicago, IL 60647**

Property of Cook County Clerk's Office