

UNOFFICIAL COPY

Che 08167576 1 of 39

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1212212010 Fee: \$114.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/01/2012 10:45 AM Pg: 1 of 39

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 24-20-300-024-0000

Address:

Street: 6155 W 115TH STREET

Street line 2:

City: ALSIP

State: IL

ZIP Code: 60803

Lender: STANDARD BANK AND TRUST CO A/T/U/A/T/A DATED 5/8/2001 A/K/A TRUST NO 17031 AND AJC DISTRIBUTION LLC

Borrower: STANDARD BANK AND TRUST CO

Loan / Mortgage Amount: \$4,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7770 et seq. because it is commercial property.

S Y
P 39
S N
SC Y
INT Y

Certificate number: 6CBA444C-7294-4E13-BE4A-D0739C7FB42E

Execution date: 04/18/2012

BOX 334 CTT

UNOFFICIAL COPY

When Recorded Return To:

Standard Bank and Trust Company
Attn: PDC Com'l
7725 W. 98th St.
Hickory Hills , IL 60457

Document Prepared By:

Valerie J. Freireich
Chubak & Tecson, P.C.
30 S. Wacker Drive, Suite 2600
Chicago, IL 60606

ILLINOIS REAL ESTATE

6155 W. 115th Street
Alsip, Illinois
PIN(s): 24-20-300-024, 24-20-301-009

SPACE ABOVE THIS LINE FOR RECORDER'S USE.

RESTATEMENT OF MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS

Dated as of April 18, 2012

FROM

STANDARD BANK AND TRUST COMPANY, not personally but as Trustee under a
Trust Agreement dated August 8, 2001, and known as Trust No. 17031
and
AJC DISTRIBUTION, LLC, an Illinois limited liability company

TO

STANDARD BANK AND TRUST COMPANY

ATTENTION COUNTY RECORDER: This Mortgage covers goods that are, or are to become, affixed to or fixtures on the land described in Exhibit A hereto and is to be filed for record in the records where mortgages on real estate are recorded. Additionally, this instrument should be appropriately indexed, not only as a mortgage, but also as a fixture filing covering goods that are, or are to become, fixtures on the real property described herein. The mailing addresses of the Mortgagor ("Mortgagor") and Lender ("Mortgagee") are set forth in the Preamble of this Mortgage.

UNOFFICIAL COPY

RESTATEMENT OF MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS

THIS RESTATEMENT OF MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS ("**Mortgage**") is made as of this 18th of April, 2012, by STANDARD BANK AND TRUST COMPANY, 7800 W. 95th Street, Hickory Hills, Illinois 60457, not personally but as Trustee ("**Trustee**") under a Trust Agreement dated August 8, 2001, and known as Trust No. 17031 ("**Trust**"), AJC DISTRIBUTION, LLC, an Illinois limited liability company having its principal place of business at 6155 W. 115th Street, Alsip, Illinois 60803 ("**Distribution**" and together with the Trust, "**Mortgagor**"), in favor of STANDARD BANK AND TRUST COMPANY, having its principal place of business at 7800 West 95th Street, Hickory Hills, Illinois 60457 ("**Lender**" or alternatively "**Mortgagee**").

RECITALS

A. The Trustee is the owner of the real estate commonly known as 6155 W. 115th Street, Alsip, Illinois and legally described on Exhibit A attached hereto and incorporated herein by reference.

B. Lender has previously provided Distribution with a commercial real loan facility ("**Facility C**" or alternatively, the "**Mortgage Loan**") in the original principal amount of One Million Four Hundred Sixty Two Thousand Five Hundred and 00/100 Dollars (\$1,462,500.00) evidenced by that certain Business Loan Agreement dated July 9, 2004, as amended from time to time, and by that certain Promissory Note dated July 9, 2004 as amended from time to time.

B. The Mortgage Loan is secured by, among other things, that certain Mortgage dated as of July 9, 2004 ("**Original Mortgage**") and recorded on July 12, 2004 with the Office of the Cook County Recorder as Document #0419426233 as thereafter amended from time to time, pursuant to which Mortgagor has mortgaged to Mortgagee the Mortgaged Property (as defined below). Distribution is the holder of the beneficial interest of the Trust.

C. At Distribution's request, Lender has agreed to increase the principal amount of the Mortgage Loan to a new principal amount of FOUR MILLION AND 00/100 DOLLARS (\$4,000,000.00) pursuant to the terms of this restatement of the Original Mortgage and a replacement note in the principal amount of FOUR MILLION AND 00/100 DOLLARS (\$4,000,000.00) ("**Mortgage Note**"), provided, however that Distribution enter into that certain Amended and Restated Loan and Security Agreement of even date herewith (as hereinafter modified, amended, restated, substituted, renewed, extended or otherwise modified, the "**Loan Agreement**"), which Loan Agreement is incorporated herein by reference and further provided that the Original Mortgage be and hereby is modified, replaced and restated by this Mortgage and that it hereafter also secure the Other Indebtedness (as that term is defined in the Loan Agreement) of certain Affiliates of Distribution, including all Obligations (as that term is defined in the Loan Agreement) which include, without limitation, a revolving line of credit loan to Accord Carton, Co., an Illinois corporation ("**Carton**") in the maximum principal amount of

UNOFFICIAL COPY

FOUR MILLION AND 00/100 DOLLARS (\$4,000,000.00) and a term loan to Accord Packaging, LLC, a Delaware limited liability company ("**Packaging**") in the principal amount of TWO MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$2,500,000.00). Distribution, Carton and Packaging are sometimes hereinafter collectively referred to collectively or individually, as required by context, as the "**Borrower**".

D. Reference is made to the Loan Agreement for a complete statement of the terms and conditions of the Mortgage Loan, the Other Indebtedness and payment thereof. Capitalized words and phrases not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement. This Mortgage, the Mortgage Note, the Loan Agreement and all other documents and instruments heretofore, now or hereafter given as security for, to guarantee the payment of, or to perfect or continue the lien or security interest thereby created to secure the Obligations of Borrower to Lender, and any other documents, instruments and agreements executed in connection therewith and all amendments, modifications, restatements, replacements, consolidations, substitutions, renewals, extensions, and increases to any of the foregoing, whether heretofore or hereafter existing, and whether primary or secondary, direct or indirect, absolute or contingent are herein collectively referred to as the "**Loan Documents**". This Mortgage is given as equal security to all other collateral security for all of the Obligations (defined below), without preference or priority by reason of priority of time or of the negotiation hereof or otherwise. The Mortgage Loan is payable, with interest, at a Maturity Date which is set forth in the Loan Agreement.

E. Pursuant to the Mortgagor's request, the Lender is willing to extend and increase the Mortgage Loan and provide other financial accommodations to the Borrower, provided however that a condition precedent is the execution and delivery by the Mortgagor of this Mortgage.

AGREEMENTS

ARTICLE 1. TERMS OF THE INDEBTEDNESS.

1.1. Certain Terms of Indebtedness. The following is a summary of certain terms of the Indebtedness (defined below) secured by this Mortgage:

(a) Interest Rate and Payments. Interest shall accrue, and the Mortgage Loan and Indebtedness evidenced by the Mortgage Note and the Loan Agreement shall be repaid, as provided in the Loan Agreement, to which reference is made for more specific terms of the Mortgage Loan.

(b) Maturity. All of the unpaid principal balance outstanding under the Mortgage Note and/or Loan Agreement and all unpaid interest thereon shall become due and payable, unless extended or if not sooner paid or if not sooner due by acceleration, or otherwise, on the date set forth in the Mortgage Note ("**Facility C Maturity Date**").

1.2. Definition of the Indebtedness. The term "**Indebtedness**" shall mean the Obligations of Borrower (as such term is defined in the Loan Agreement), the principal amount and interest payable pursuant to the Mortgage Note and all other Obligations of each Borrower, and all the fees, amounts, payments, and monetary liabilities and obligations due or required to

UNOFFICIAL COPY

be paid by Mortgagor under the Mortgage Note and by each Borrower pursuant to the Loan Agreement and other Loan Documents. Additionally, the term "Indebtedness" shall include: (a) the payment of Protective Advances (defined below) and all other amounts now and from time to time hereafter advanced by Lender to or for the account of Mortgagor under the Loan Agreement, together with all interest on all such advances and the payment of all premiums, fees, costs and expenses from time to time payable under the terms of or otherwise relating to the Loan Agreement or the Mortgage Note and (b) the payment of all indebtedness, obligations and liabilities from time to time owing by Borrower under any Environmental Indemnity Agreements in favor of Lender entered into from time to time pursuant to the Loan Agreement and all agreements entered into in substitution or replacement therefor, in each case as the same may be amended, modified or restated from time to time ("**Environmental Indemnity Agreements**").

1.3. Recitals. The foregoing Recitals and all Exhibits hereto are hereby made a part of this Mortgage by reference.

ARTICLE 2. DEFINITIONS.

All capitalized terms set forth in this Mortgage but not otherwise defined herein shall have the meanings set forth in the Loan Agreement. The following terms shall have the following meanings:

2.1. Act. The Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as such law may be amended from time to time.

2.2. Awards. Either or both of: (i) Mortgagor's right, title and interest in all judgments, awards of damages, settlements and other compensation heretofore or hereafter made resulting from condemnation or eminent domain proceedings (or settlement in lieu thereof) or the taking of the Mortgaged Property or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said Mortgaged Property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets, and (ii) all right, title, and interest in all insurance policies maintained in connection with the Mortgaged Property or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto or for any damage to said Mortgaged Property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto.

2.3. Buildings. Any and all structures and on-site improvements, and any and all additions, alterations, betterments and appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land.

2.4. Contracts. Mortgagor's right, title and interest in any and all contracts, documents or agreements pertaining to the ownership, use, occupancy, development, design, construction,

UNOFFICIAL COPY

financing, operation, management, alteration, repair, marketing, sale, lease or enjoyment of the Mortgaged Property, and all rights, privileges, authority and benefits thereunder (but under no circumstances any liabilities, obligations or responsibilities thereunder).

2.5. Default Rate. As set forth in the Loan Agreement.

2.6. Event of Default or Default. The occurrences defined in ARTICLE 8 below and in all other Loan Documents.

2.7. Fixtures. All fixtures, as defined in and subject to the Uniform Commercial Code ("UCC"), located on the Land or in the Buildings, including, without limitation, all systems, fittings, structures, equipment, apparatus, fixtures and other improvements and items now or hereafter temporarily or permanently attached to, installed in or used in connection with any of the Buildings or the Land, including, but not limited to, any and all partitions, hardware, motors, engines, boilers, furnaces, pipes, plumbing, conduit, sprinkler systems, fire extinguishing equipment, elevator equipment, telephone and other communications equipment, security equipment, master antennas and cable television equipment, water tanks, heating, ventilating, air conditioning and refrigeration equipment, laundry facilities, and incinerating, gas and electric machinery and equipment, except that Fixtures shall not include any trade fixtures of tenants (unless such tenants are Obligors of the Mortgage Loan or Affiliates of the Mortgagor), which fixtures belong to such tenants and are removable at the expiration of any lease.

2.8. Governmental Authority. Any and all courts, boards, agencies, commissions, offices or other authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

2.9. Impositions. All (i) general and special real estate and personal property taxes and other land taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect to the Mortgaged Property; (ii) charges for any easement, declaration of covenants or conditions or any other agreement maintained for the benefit of the Mortgaged Property (in whole or in part) which at any time prior to or after the execution of the Loan Documents may be assessed, levied or imposed upon the Mortgaged Property or the rent or income received therefrom or any use or occupancy thereof; (iii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against Mortgagor in connection with the Mortgaged Property; and (iv) annual premiums for insurance policies required to be maintained under this Mortgage or the Loan Agreement.

2.10. Land. The real property legally described in Exhibit A attached hereto.

2.11. Leases. Mortgagor's and/or Borrower's right, title and interest in any and all leases, subleases, licenses, concessions or grants of other possessory interests (written or oral) now or hereafter in force, covering or affecting the Mortgaged Property, or any part thereof or interest therein, together with all rights, powers, privileges, options and other benefits of Mortgagor thereunder (but under no circumstances any liabilities, obligations or responsibilities thereunder).

UNOFFICIAL COPY

2.12. Legal Requirements. The terms, covenants, conditions and restrictions now or hereafter existing to which Mortgagor may be bound or to which the Mortgaged Property is subject under (i) any and all present and future statutes, laws, rulings, opinions, rules, regulations, codes, permits, certificates, approvals, ordinances, judicial decisions or orders of any Governmental Authority in any way applicable to Mortgagor or the Mortgaged Property, and the ownership, use, occupancy, possession, development, design, construction, financing, operation, maintenance, alteration, repair, marketing, sale, lease or enjoyment thereof, including without limitation, any related to zoning, building, utility service, sewer service, fire safety, land and water use, environmental protection, occupational health and safety or flood hazard; (ii) any and all Leases; (iii) any and all Contracts; (iv) any lease, sublease, option, articles of agreement for deed, installment contract or other contract or agreement pursuant to which Mortgagor is granted any possessory, legal, equitable, beneficial or other interest in the Mortgaged Property; and (v) any and all other easements, covenants, conditions, restrictions, leases or other contracts and agreements (written or oral) of any nature to which Mortgagor may be bound or to which the Mortgaged Property may be subject.

2.13. Mortgaged Property. The Land, Buildings, Fixtures, Leases, Contracts, Rents, Awards and Personalty, whether now owned or hereafter acquired, together with:

(a) any and all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of the Land belonging or in anyway appertaining thereto, and all right, title and interest of Mortgagor in and to any streets, ways, strips or gores of land adjoining the Land or any part thereof; and

(b) any and all betterments, additions, appurtenances, substitutions, replacements and after acquired title or interests thereon owned by Mortgagor and all reversions and remainders of such betterments, additions, appurtenances, substitutions, replacements, and after acquired title or interest; and

(c) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations; and

(d) any and all proceeds of all of the foregoing.

2.14. Lender. The above named Lender and any and all successors or assigns.

2.15. Mortgagor. The above named Mortgagor and any and all successors, transferees, assignees and subsequent owners of the Mortgaged Property.

2.16. Obligations. Any and all of the covenants, conditions, warranties, representations and other obligations (including to repay the Indebtedness) of Mortgagor to Lender, under or as set forth in the Mortgage Note, the Loan Agreement, this Mortgage or the other Loan Documents, whether heretofore or hereafter existing, and whether primary or secondary, direct or indirect, absolute or contingent, and including the enforcement by Lender of its rights and remedies under any or all of the foregoing (including all costs, expenses and attorneys' and paralegals' fees and expenses incurred by Lender).

UNOFFICIAL COPY

2.17. Permitted Exceptions. The encumbrances and title exceptions specifically approved from time to time by Lender including without limitation in Section 6.1 and Exhibit B hereof.

2.18. Personalty. All right, title and interest of Mortgagor or its Affiliates in and to all furniture, furnishings, equipment, machinery, of any kind or character as defined in the provisions of the UCC now or hereafter located upon, within or about the Land and the Buildings, or used or useful in connection therewith, together with all existing or future accessories, replacements and substitutions thereto or therefor and the proceeds therefrom including, but not limited to: (i) all appliances, furniture, furnishings and equipment; (ii) all building materials and equipment intended to be incorporated in the improvements now or hereafter to be constructed on the Land, whether or not yet incorporated in such improvements; (iii) all machinery, apparatus, systems, equipment or articles used in supplying heating, gas, electricity, ventilation, air conditioning, water, light, power, refrigeration, fire protection, elevator service, telephone and other communication service, waste removal and all fire sprinklers, smoke detectors, alarm systems, security systems, electronic monitoring equipment and devices; (iv) all maintenance equipment; (v) all office furniture, equipment and supplies; (vi) all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of interior and exterior portions of the Land or the Buildings; and (vii) all other maintenance supplies and inventories; provided, that the enumeration of any specific articles of personalty set forth above shall in no way exclude or be held to exclude any items of property not specifically enumerated, and that any of the foregoing items that do not constitute personal property but constitute fixtures under applicable law shall be included in the definition of the term "**Fixtures**" as used herein. Notwithstanding the foregoing, Personal Property shall not include any personalty which is owned by tenants, unless such tenants are also Obligor of the Mortgage Loan or Affiliates of the Borrower.

2.19. Rents. All of the rents, revenues, income, profits, deposits, earnings and other benefits payable under the Leases and/or otherwise arising from or out of the Mortgaged Property or out of the ownership, use or enjoyment of all or any portion of the Mortgaged Property or part thereof or interest therein.

2.20. Transfer. Any of the following occurrences, regardless of the form thereof:

(a) any direct or indirect transfer, sale, conveyance or lease (other than in the ordinary course of business) by operation of law or otherwise (except by reason of condemnation or eminent domain), of all or any portion of the Mortgaged Property or interest therein, including without limitation any interest in all or any portion of the beneficial interest in the Trust;

(b) any agreement, contract or commitment to do any of the matters described in Section 2.20(a) above, including, without limitation, any option, right of first refusal or right of first offer granted by Mortgagor; or

(c) any Change in Control of Distribution without Lender's prior written consent.

UNOFFICIAL COPY

ARTICLE 3. GRANT.

3.1. Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor by these presents hereby GRANTS, ASSIGNS, PLEDGES, MORTGAGES and WARRANTS unto Lender the Mortgaged Property subject only to the Permitted Exceptions, free and clear of and from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (Mortgagor warrants that this is NOT HOMESTEAD PROPERTY). Mortgagor does hereby bind itself, its successors and assigns to warrant and forever defend fee simple absolute title to the Mortgaged Property unto Lender, and the quiet and peaceful enjoyment and possession thereof, against every person whomsoever claiming the same or any part thereof or interest therein, except for the Permitted Exceptions. Mortgagor additionally grants the following unto Lender:

(a) All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil, and water rights belonging or in any way appertaining to the Mortgaged Property.

(b) All plans, specifications, working drawings and like materials prepared in connection with Buildings constituting part of the Mortgaged Property, all rights of Mortgagor against vendors or manufacturers in connection with equipment located upon the Mortgaged Property, whether arising by virtue of warranty or otherwise, all rights against contractors, sub-contractors and materialmen arising in connection with work performed at or on the Mortgaged Property or with materials furnished for the construction of improvements at or on the Mortgaged Property, and all rights of Mortgagor under Contracts to provide any of the foregoing, in each case whether now owned or existing or hereafter arising or acquired.

3.2. Condition of Grant. The condition of these presents is such that if Mortgagor shall pay or cause to be paid the Indebtedness and Liabilities as and when the same shall become due and payable and shall observe, perform and discharge the Obligations in accordance with this Mortgage and the other Loan Documents and all commitments contained in the Loan Documents to extend credit thereunder shall have terminated, then this Mortgage and the estate and rights hereby granted shall cease and this Mortgage shall be released by Lender upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

ARTICLE 4. ASSIGNMENT OF LEASES AND RENTS.

To further secure the full and timely payment of Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor hereby sells, assigns and transfers unto Lender all of the Leases, together with the Rents now due and which may hereafter become due under or by virtue of any of the Leases, and all rights and remedies conferred by applicable State law, as such may be amended from time to time, it being the intention hereby to establish an absolute and present transfer and assignment of all such Leases and Rents, and all avails thereunder, to Lender; provided, however, the acceptance by Lender of the foregoing assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking possession of the Mortgaged Property by Lender, be deemed or construed

UNOFFICIAL COPY

to constitute Lender a "Mortgagee in Possession", nor thereafter or at any time or in any event obligate Lender to appear in or defend any actions thereunder, to expend any money, incur any expenses, or perform or discharge any obligation, duty or liability thereunder. So long as no Event of Default shall exist, Lender shall not demand from any tenants under the Leases any Rents or monies hereby assigned arising from or out of the Leases or from or out of the Mortgaged Property or any part thereof, but shall permit Mortgagor to collect, but not more than thirty (30) days in advance, all such Rents and enjoy the same; provided that notwithstanding the foregoing, all tenants under the Leases shall comply with any demand for Rents or monies made by Lender without inquiring or investigating as to whether such demand is made in compliance herewith. A demand by Lender to any tenant or purchaser for payment of monies by reason of any Event of Default shall be sufficient direction to such tenant to make future payments of monies to Lender without the necessity for further consent by, or notice to, Mortgagor.

ARTICLE 5. SECURITY AGREEMENT; FINANCING STATEMENT.

5.1. Security Interest

(a) This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the UCC, and any other applicable law. To the extent any of the Mortgaged Property consists of personal property under the UCC, whether tangible or intangible in nature, Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Lender, as security for the Indebtedness and Obligations, a security interest in the Mortgaged Property. Such portion of the Mortgaged Property subject to the UCC shall be referred to in this Section 5.1 as "**Collateral**".

(b) If any Event of Default shall occur, Lender, in addition to any other rights and remedies which it might have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC including, without limiting the generality of the foregoing, the right to take possession of the Collateral of any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral.

(c) If any Event of Default then exists, without notice, except as required by applicable Law, Lender may take possession of any or all of the Collateral, wherever it might be found and for that purpose, Lender shall have the right, without breaching the peace, to enter upon the premises of Mortgagor where the Collateral is located (or is believed to be located) without any obligation to pay rent to Mortgagor, or any other place or places under the control of Mortgagor where the Collateral is believed to be located and kept, and remove the Collateral therefrom to the premises of Lender or any agent of Lender, for such time as Lender may desire, in order to effectively collect or liquidate the Collateral, and/or Lender may require Mortgagor to assemble the Collateral and make it available to Lender at a place or places to be designated by Lender. If an Event of Default then exists, Lender shall have the right to obtain access to Mortgagor's data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Lender deems appropriate which is related to the preservation or disposition of the Collateral or to the collection of the Indebtedness or Obligations.

UNOFFICIAL COPY

(d) Any notice required to be given by Lender of a sale, lease or other disposition or other intended action by Lender with respect to any of the Collateral which is deposited in the United States mails, postage prepaid and duly addressed to Mortgagor at the address specified in ARTICLE 10 below, at least ten (10) days prior to such proposed action, shall constitute fair and reasonable notice to Mortgagor of any such action. The net proceeds realized by Lender upon any such sale or other disposition, after deduction for the reasonable expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Lender in connection therewith, shall be applied as provided herein toward satisfaction of the Indebtedness and the Obligations. Lender shall account to Mortgagor for any surplus realized upon any such sale or other disposition, and Mortgagor shall remain liable for any deficiency. The commencement of any action, legal or equitable, or the rendering of any judgment or decree for any deficiency shall not affect Lender's Lien on the Collateral until the Indebtedness and Obligations are fully paid. Mortgagor agrees that Lender has no obligation to preserve rights to the Collateral against any other parties.

(e) In addition to all such rights and remedies, the sale, lease or other disposition of the Collateral, or any part thereof, by Lender after an Event of Default may be for cash, credit or any combination thereof, and Lender may purchase all or any part of the Collateral at public or, if permitted by Law, private sale, and in lieu of actual payment of such purchase price, may set-off the amount of such purchase price against the Indebtedness and Obligations then owing. Any sale of the Collateral may be adjourned from time to time with or without notice. Lender may, in its sole discretion, cause any Collateral to remain on Mortgagor's Mortgaged Property, at Mortgagor's expense, pending sale or other disposition of such Collateral. Lender shall have the right to conduct such sales on Mortgagor's Mortgaged Property, at Mortgagor's expense, or elsewhere on such occasion or occasions as Lender may see fit.

(f) Mortgagor shall pay to Lender on demand all reasonable expenses, including legal expenses, attorneys' fees, and out of pocket costs, reasonably incurred or paid by Lender in protecting its interest in the Collateral.

5.2. Characterization as Personalty. The grant of a security interest to Lender in this Mortgage shall not be construed to derogate from or impair the lien or provisions of or the rights of Lender hereunder with respect to any property described herein which is real property or which the parties have agreed to treat as real property. The stated intention of Mortgagor and Lender is that everything used in connection with the production of income from the Land or adapted for use thereon is, and at all times and for all purposes and in all proceedings, both legal and equitable, at Lender's election, regarded as real property, irrespective of whether or not the same is physically attached to the Land, Building and/or other improvements.

5.3. Financing Statement. This Mortgage is intended to be a financing statement under the UCC with respect to all personal property of Mortgagor pledged herein and all fixtures. The addresses of Lender and Mortgagor are as set forth therein. This Mortgage may be filed for record in the real estate records of the county where the Land is located. Mortgagor is the record owner of the Land. In addition and not by way of limitation of the foregoing, Mortgagor hereby irrevocably authorizes Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and/or amendments or continuations thereto that (i) indicate the

UNOFFICIAL COPY

Collateral as "all assets" of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the UCC of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Lender promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Lender in any jurisdiction prior to the Mortgage Loan Closing Date.

5.4. Further Assurances and Deliveries. If requested by Lender, Mortgagor shall execute and deliver to Lender, in form reasonably satisfactory to Lender, additional security agreements, financing statements and/or other instruments covering all personal property or fixtures of Mortgagor pledged hereunder, whether now existing or hereafter acquired, placed on, or annexed or made appurtenant to the Land, including delivery of any and all instruments (together with endorsements in blank) delivered to Lender, which instruments constitute or constituted proceeds of any personal property pledged herein.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES.

Mortgagor hereby represents and warrants to Lender as of the Mortgage Loan Closing Date and as of all dates hereafter that:

6.1. Warranty of Title/Possession. The Mortgagor warrants that it has sole and exclusive title to and possession of the Mortgaged Property, excepting only the following "**Permitted Exceptions**": zoning ordinances (the terms of which are and will be complied with, and in the case of easements, are and will be kept free of encroachments), taxes and assessments not yet due and payable and those Permitted Exceptions set forth on Exhibit B attached hereto (except that if no Exhibit B is attached, there will be no additional Permitted Exceptions). The lien of this Mortgage, subject only to Permitted Exceptions, is and will continue to be a valid lien upon all of the Mortgaged Property.

6.2. Maintenance; Waste; Alteration. The Mortgagor will maintain the Mortgaged Property in good and tenantable condition and will restore or replace damaged or destroyed improvements with items of at least equal utility and value. The Mortgagor will not commit or permit waste to be committed on the Mortgaged Property. The Mortgagor will not remove, demolish or materially alter any part of the Mortgaged Property without the Lender's prior written consent, except the Mortgagor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility. The replacement fixture will be subject to the lien and security of this Mortgage.

6.3. Transfer and Liens. The Mortgagor will not, without the prior written consent of the Lender, with may be withheld in Lender's sole discretion, either voluntarily or involuntarily

UNOFFICIAL COPY

Transfer all or any part of the Mortgaged Property, or any interest therein, nor shall Mortgagor pledge or otherwise encumber, create or permit to exist any mortgage, pledge, lien or claim for lien or encumbrance upon any part of the Mortgaged Property or interest therein except for the Permitted Exceptions. Any violation of this Section 6.3 shall constitute a Default at Lender's sole discretion and Lender may, with or without declaration of a Default, declare the entire Obligations of Borrower, and each of them, accelerated and immediately due and payable.

6.4. Escrow. After the occurrence of an Event of Default or Unmatured Event of Default, upon written request from the Lender, the Mortgagor will pay to the Lender sufficient funds at such time as the Lender designates, to pay (a) the estimated annual real estate taxes and assessments on the Mortgaged Property; and (b) all property or hazard insurance premiums when due. Interest will not be paid by the Lender on any escrowed funds. Escrowed funds may be commingled with other funds of the Lender. All escrowed funds are hereby pledged as additional security for the Obligations.

6.5. Organization, Authority. Distribution: (i) is a duly organized and validly existing limited liability company and in good standing under the laws of Illinois; and (ii) is qualified to do business in every jurisdiction in which the nature of its business or properties make such qualification necessary and the failure to so qualify would have a Material Adverse Effect on the business or financial affairs of Mortgagor or the Mortgaged Property.

6.6. Permits and Approval. All permits, certificates, approvals and licenses required for or in connection with the ownership, use, occupancy or enjoyment of the Mortgaged Property have been duly and validly issued and are and shall at all times hereafter be in full force and effect, or, prior to commencement of any construction for which such permits, certificates, approvals or licenses are required, will be in full force and effect.

6.7. Access. All streets and highways necessary for access to and full use, occupancy and operation of the Mortgaged Property have been completed and are open and available to the Mortgaged Property without further condition or cost to Mortgagor.

6.8. No Violation of Legal Requirements. Except as previously disclosed to Lender in writing, neither the contemplated use, occupancy nor operation of the Mortgaged Property violates or will hereinafter violate any Legal Requirements to which Mortgagor may be bound or to which the Mortgaged Property may be subject. Mortgagor shall promptly notify Lender, in writing, of its receipt of any notice of a violation of any Legal Requirements. Mortgagor hereby agrees to indemnify and hold Lender harmless from all loss, cost, damage, claim and expense incurred by Lender on account of Mortgagor's failure to perform the obligations of this Section 6.8.

6.9. Environmental Matters. The following warranties and covenants are subject to those exceptions set forth on Exhibit C attached hereto (except that if no Exhibit C is attached, there will be no exceptions). There exists no uncorrected violation by the Mortgagor of any federal, state or local laws (including statutes, regulations, ordinances or other governmental restrictions and requirements) relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or Hazardous Substances as hereinafter defined, whether such laws currently exist or are enacted in the future (collectively

UNOFFICIAL COPY

"Environmental Laws") with respect to the Mortgaged Property. The term "**Hazardous Substances**" will mean any hazardous or toxic wastes, chemicals or other substances, the generation, possession or existence of which is prohibited or governed by any Environmental Laws. The Mortgagor is not subject to any judgment, decree, order or citation, or a party to (or threatened with) any litigation or administrative proceeding with respect to the Land, which asserts that the Mortgagor (a) has violated any Environmental Laws; (b) is required to clean up, remove or take remedial or other action with respect to any Hazardous Substances (collectively "**Remedial Action**"); or (c) is required to pay all or a portion of the cost of any Remedial Action, as a potentially responsible party. There are not now, nor to the Mortgagor's knowledge have there ever been, any Hazardous Substances (or tanks or other facilities for the storage of Hazardous Substances) stored, deposited, recycled or disposed of on, under or at the Land by the Mortgagor during the periods that the Mortgagor owned or occupied such real estate, which if present on the real estate or in soils or ground water, could require Remedial Action. To the Mortgagor's knowledge, there are no proposed or pending changes in Environmental Laws which would adversely affect the Mortgagor or its business, and there are no conditions existing currently or likely to exist while the Loan Documents are in effect which would subject the Mortgagor to Remedial Action or other liability. The Mortgagor currently complies with and will continue to timely comply with all applicable Environmental Laws with respect to the Land; and will provide the Lender, immediately upon receipt, copies of any correspondence, notice, complaint, order or other document from any source asserting or alleging any circumstance or condition which requires or may require a financial contribution by the Mortgagor or Remedial Action or other response by or on the part of the Mortgagor under Environmental Laws, or which seeks damages or civil, criminal or punitive penalties from the Mortgagor for an alleged violation of Environmental Laws with respect to the Land. In the event of any such circumstances or condition, the Mortgagor agrees, at its expense and at the request of the Lender, to permit an environmental audit solely for the benefit of the Lender, to be conducted by the Lender or an independent agent selected by the Lender and which may not be relied on by the Mortgagor for any purpose. These provisions shall not relieve the Mortgagor from conducting its own environmental audits or taking any other steps necessary to comply with Environmental Laws.

6.10. Leases. All Leases, copies of which have been or may hereafter be provided to Lender, are in full force and effect, that all tenants thereunder are in compliance with the terms thereof, and there are no pending forcible detainer actions with regard to any of the Leases, nor is any such action contemplated by Mortgagor as of the execution of this Mortgage. No lease to a Borrower shall be terminated or materially modified by Mortgagor without prior written notice to Lender.

6.11. Underground Tanks. There are no underground storage tanks located on the Mortgaged Property and the Mortgaged Property does not contain any facilities which are subject to reporting under Section 312 of the Federal Emergency Planning and Community Right to Know Act of 1986, and the federal regulations promulgated thereunder.

6.12. Business Purpose. Mortgagor covenants and agrees that all of the proceeds of the Mortgage Note secured by this Mortgage will 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: (i) a "business loan" as that term is defined in, and for all purposes

UNOFFICIAL COPY

of, 815 ILCS 205/4, Subsection (1)(c); and (ii) "a loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4, Subsection 1(1).

6.13. Incorporation of Representations and Warranties. Mortgagor hereby makes each and every representation and warranty contained in the Environmental Indemnity Agreement which are incorporated herein by this reference as if set forth herein in full.

ARTICLE 7. COVENANTS.

Until the entire Indebtedness shall have been paid and the Obligations performed in full, Mortgagor hereby unconditionally covenants and agrees as follows:

7.1. Payment and Performance. Mortgagor and Borrower shall pay the Indebtedness or cause the Indebtedness to be paid, as and when all or any payment thereunder is due and shall perform or cause to be performed all of the Obligations in full on or before the dates the Obligations or any part thereof are required to be performed, and shall commit or suffer no act or event which (upon notice or the passage of time, or both) would constitute an Event of Default under the Loan Documents.

7.2. Compliance with Laws. Mortgagor will promptly and faithfully comply in all material respects with all present and future laws, ordinances, rules, regulations and requirements, and all other Legal Requirements, including, without limitation, applicable zoning, building, land use, occupational health and safety, hazardous waste and substances, and environmental requirements, of every Governmental Authority and of every Board of Fire Underwriters having jurisdiction, or similar body exercising similar functions, which may be applicable to it or to the Mortgaged Property, or any part thereof, or to the use, occupancy, possession, operation, maintenance, alteration or repair of the Mortgaged Property, or any part thereof or interest therein. Mortgagor shall immediately notify Lender, orally and in writing, of its receipt of any notice of a violation in any material respect of any Legal Requirements. Mortgagor shall pay to Lender, upon demand, all losses, costs, damages, claims and expenses incurred by Lender on account of Mortgagor's failure to perform the obligations of this Section 7.2.

7.3. Payment of Impositions.

(a) Mortgagor shall pay before any penalty attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Property or any part thereof and which, if unpaid, might by Law become a lien or charge upon the Mortgaged Property or any part thereof, and shall, upon written request, exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until an Event of Default or Unmatured Event of Default shall have occurred, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by Law), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same, conducted in good faith and with due diligence and if

UNOFFICIAL COPY

Mortgagor shall have furnished such security, if any, as may be required in the proceedings or requested by Mortgagee.

(b) Should Mortgagor fail to pay any Impositions levied or assessed on or against the Land which may have priority over this Mortgage, then at the discretion of the Lender, the Lender may, before such Impositions become delinquent, pay the full amount of any such Imposition bill, including any applicable interest or penalties, and all such monies so advanced shall be additional Indebtedness of Mortgagor to Lender secured by the lien of this Mortgage and shall bear interest at the Default Rate and be payable on demand.

7.4. Maintenance and Repair. Mortgagor shall (i) constantly maintain the Mortgaged Property in good condition and make all repairs and replacements thereof and additions and improvements thereto as are necessary or appropriate under sound management practices; and (ii) prevent any act or thing which might impair or diminish the value or usefulness of the Mortgaged Property, or the Building with respect thereto.

7.5. Insurance. Mortgagor shall procure for, deliver to and maintain for the benefit of Lender during the term of this Mortgage, all such insurance as required by Lender including, but not limited to, casualty insurance against loss or damage by fire, lightning and other hazards and casualties as are now included in so-called "extended coverage" policies in amounts not less than the full insurable replacement value of all Buildings and other Fixtures and equipment from time to time on the Mortgaged Property, and comprehensive public liability insurance in an amount satisfactory to Lender. All insurance policies shall be in form, companies and amounts satisfactory to Lender. All insurance policies shall (i) include, when available, non-contributing Lender endorsements in favor of and with loss payable to Lender; (ii) name Lender as additional insured with respect to liability insurance; (iii) include standard waiver of subrogation endorsements; and (iv) provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Lender. Mortgagor will deliver all insurance policies premium prepaid, of certified photocopies thereof, to Lender and, will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in form or contributing in the event of loss with the insurance policies. If Mortgagor fails to provide such insurance, Evidence of Insurance or if any policy is canceled, reduced, or not renewed, Lender may, but shall not be obligated, to obtain such insurance, and the cost thereof shall be additional Indebtedness of Mortgagor to Lender secured hereby bearing interest at the Default Rate. Mortgagor will promptly upon demand pay directly to or reimburse Lender for all premiums and other costs incurred in procuring such insurance. This insurance may, but need not, protect Mortgagor's interests in the Mortgaged Property. The coverage purchased by Lender may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance, as required by this Mortgage and the Loan Agreement. If Lender purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The costs of the

UNOFFICIAL COPY

insurance may be more than the cost of insurance which Mortgagor may be able to obtain on its own.

7.6. Adjustment of Losses with Insurer. Mortgagor hereby assigns to Lender all proceeds from any insurance policies pertaining to the Mortgaged Property, and Lender is hereby authorized and empowered, at its option but subject to any applicable limitations set forth in the Loan Agreement, to make or file proofs of loss or damage and to adjust or compromise any loss, and to collect and receive the proceeds from any such policies; provided, however, if no Event of Default shall have occurred and be continuing at the time of the adjustment, Mortgagor (without the consent or approval of Lender) may adjust insurance losses of One Hundred Thousand and 00/100 Dollars (\$100,000.00) or less; provided further, however, Lender shall not be held responsible for any failure to collect any insurance proceeds regardless of the cause of failure.

7.7. Application of Insurance Proceeds. In the event of any insured loss, Mortgagor shall give prompt written and oral notice thereof to Lender and to the insurer. Lender may require that the payment for such loss be paid directly to Lender only and not jointly to Mortgagor and Lender.

(a) If Mortgagor requests and in Lender's reasonable discretion, Lender may release the proceeds to be applied to the restoration or repair of the Mortgaged Property in accordance with reasonable construction disbursement procedures determined by Lender. If the proceeds are released to be applied to the restoration or repair of the Mortgaged Property, such Proceeds shall be deposited into a construction escrow account or disbursed pursuant to other reasonable construction disbursement procedures determined by Lender and shall be applied to rebuild and/or restore the damaged improvements on the Real Estate, and Mortgagor shall expeditiously proceed to repair or restore the Mortgaged Property. Alternatively, Lender shall have the right and option to apply the whole or any part of such insurance proceeds toward the payment of any of the Indebtedness, in such order and manner as Lender may elect. Wherever provision is made herein for insurance policies to bear mortgage clauses or other loss payable clauses in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise contest use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Lender shall continue in Lender as judgment creditor.

(b) Notwithstanding anything to the contrary contained in this Mortgage or the Loan Agreement, no restoration or repair shall be permitted if, following such restoration or repair, in Lender's reasonable judgment the Mortgage Loan would not comply with the then current underwriting standards of Lender for commercial real estate loans or if there would be a Material Adverse Change in Lender's Collateral security for the Loans or in Borrower's ability to repay the Obligations. In any such situation, Lender may apply the Proceeds or Awards to payment of the Indebtedness and if insufficient to pay it in full, Lender may declare the balance remaining unpaid on the Notes, the Loans and all Obligations due from Borrower to be accelerated, due and payable forthwith and avail itself of any of the remedies as in the case of Default.

7.8. Condemnation Proceeds. All Awards shall be paid to Lender and, after deducting from such Awards all of its expenses in the collection and administration of such sums, Lender

UNOFFICIAL COPY

shall have the right, at its sole discretion, to apply the net proceeds in payment of the Indebtedness (whether then matured or to mature in the future), either in whole or in part (in such order as Lender shall deem proper), or to require the Mortgaged Property so affected by such condemnation to be repaired or restored by the use of such proceeds. Mortgagor agrees that if the Award proceeds are released to be applied toward restoration, Mortgagor shall expeditiously proceed to so repair or restore the Mortgaged Property. Lender shall be entitled to all Awards, and is hereby authorized, at its sole discretion, to commence, appear in and prosecute, in its own name or in Mortgagor's name, any such proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. Mortgagor hereby assigns and transfers to Lender all Awards up to the amount of the Indebtedness and the claims, rights and proceedings in connection therewith. Mortgagor agrees to execute such further assignments of all Awards and claims, rights and proceedings in connection therewith as Lender may request. Lender shall not be held responsible for any failure to collect any amount in connection with any such proceeding regardless of the cause of failure.

7.9. Performance of Agreements. Mortgagor will duly and punctually perform all covenants and agreements under any agreements to which it is respectively a party with respect to the Mortgaged Property or any part thereof including, but not limited to the Mortgage Note, the Loan Agreement, this Mortgage and the Environmental Indemnity Agreement and the other Loan Documents.

7.10. Inspection. Upon Lender's request, Mortgagor shall permit Lender and any of its officers, employees or agents, to visit, during normal business hours, for inspection and review, the Mortgaged Property and will make available and furnish to Lender Mortgagor's books and records and such financial information concerning the Mortgaged Property as reasonably requested by Lender.

7.11. Hold Harmless. In addition to the agreements of Mortgagor under the Loan Agreement and the Environmental Indemnity Agreement, Mortgagor hereby indemnifies and will defend and hold Lender harmless from and against any and all proceedings, claims, actions, causes of action, suits, proceedings, investigations, losses, costs, liabilities, damages, punitive damages, penalties and expenses, including reasonable attorneys' and paralegals' fees and disbursements arising out of, affecting or relating to the Mortgaged Property or the Loan Documents whatsoever.

7.12. Lien Status. Mortgagor shall protect the lien and security interest of this Mortgage and the Loan Documents and shall not place, or permit to be placed, or otherwise mortgage, pledge, hypothecate or encumber the Mortgaged Property with any other lien, attachment, levy, or security interest of any nature whatsoever (whether mechanics, judgment, delinquent tax, statutory, contractual or other) regardless of whether the same is allegedly or expressly subordinate and inferior to the liens and security interest created by this Mortgage and the Loan Documents, except for the Permitted Exceptions, and if any such lien or security interest is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its own cost and expense, pay the underlying claim in full, or appear in and defend any action or claim, or take such other action so as to cause the same to be released within thirty (30) days of when asserted, made or filed.

UNOFFICIAL COPY

7.13. Due on Sale. If the Mortgagor shall Transfer all or any portion of the Mortgaged Property without the prior written consent of Lender which may be withheld in the absolute discretion of Lender, then and in every such case the whole of the Indebtedness shall, at once, at the option of Lender, become accelerated and immediately due and payable, together with accrued interest, without notice to Mortgagor.

7.14. Existence. Mortgagor shall maintain and preserve all licenses, permits, franchises, patents, trademarks, trade names, service marks, copyrights, Leases and all other contracts and rights necessary or desirable to continue its operations and business on a profitable basis and will generally continue the same line of business as that being presently conducted.

7.15. Use Restrictions. Mortgagor shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which would: (i) be dangerous unless safeguarded as required by Law; or (ii) make void, voidable or cancelable, or increase the premium of, any insurance then in force with respect thereto.

7.16. Leases. Mortgagor shall not modify, extend or otherwise amend the terms and conditions of any Lease without the prior written consent of Lender of such modification. Mortgagor shall promptly notify Lender in writing in the event that, at any time during the term of this Mortgage: (i) the vacancy rate with respect to all leased spaces within the Mortgaged Property exceeds ten percent (10%); (ii) any forcible detainer proceeding is commenced by or on behalf of Mortgagor against any tenant; (iii) any tenant is more than two (2) months in arrears in the payment of Rent or (iv) Mortgagor receives any notice of any pending bankruptcy or similar action involving any tenant of the Mortgaged Property or if any Lease is deemed an asset or a liability of any debtor in any pending bankruptcy action. Mortgagor will provide complete and accurate copies of each and every Lease affecting the Mortgaged Property (i) whenever a new Lease or modification of an existing Lease is entered into and (ii) upon request of Lender.

7.17. Replacement of Fixtures and Personalty. Except for replacements of items due to ordinary wear and tear or obsolescence, Mortgagor shall not, without the prior written consent of Lender, permit any of the Fixtures or Personalty to be removed at any time from the Land. Any material improvement or replacement of Fixtures or Personalty shall require the prior consent of Lender which consent shall not be unreasonably withheld or delayed.

ARTICLE 8. EVENTS OF DEFAULT.

The term "Default" or "Event of Default" shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following, without notice to Mortgagor and without any grace period unless otherwise expressly set forth herein or in the Loan Documents.

8.1. Payment of Indebtedness and Other Amounts. If Mortgagor shall fail to timely make any payment of (i) principal or interest on the Indebtedness when due, by acceleration or otherwise; (ii) any Imposition; (iii) any fee or other payment due under any applicable Loan Document, in all cases taking into account any applicable grace period(s) set forth in the Loan Agreement.

UNOFFICIAL COPY

8.2. Default of this Mortgage. If Mortgagor shall default in the due observance or performance of any of the covenants or obligations under this Mortgage (other than a breach which would constitute an Event of Default under Section 8.1 above or for which another cure period is expressly provided) and such default is not cured within thirty (30) days after notice from Lender thereof, or if such default is of a nature that cannot be cured within such thirty (30) day period, if Mortgagor shall have failed to initiate a cure of such default within such thirty (30) day period and thereafter failed to prosecute such cure to completion, provided however that no such cure period shall extend beyond ninety (90) days after notice from Lender without Lender's prior written consent.

8.3. Default under Other Loan Documents. If there is an Event of Default or Default under the Loan Agreement or under any other Loan Documents.

8.4. Laws Affecting Obligations and Indebtedness. If subsequent to the Mortgage Loan Closing Date, any law is passed (i) which renders payment of the Indebtedness and/or performance of the Obligations by Mortgagor unlawful; or (ii) which prohibits Lender from exercising any of its rights and remedies under the Loan Documents, and if no other Event of Default exists, Mortgagor has not obtained replacement financing of the Indebtedness within sixty (60) days after the date such law becomes effective.

8.5. Foreclosure of Other Liens. If the holder of a junior or senior mortgage or other Lien on the Mortgaged Property (without hereby implying Lender's consent to any such junior or senior mortgage or other lien) declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder and such foreclosure or other proceedings is not dismissed within sixty (60) days of the date of the earlier of such events.

8.6. Damage or Destruction. If the Mortgaged Property or any material part thereof is demolished, destroyed or damaged by any cause whatsoever and the loss is not adequately covered by insurance and Mortgagor fails to deposit with Lender the deficiency upon written request.

8.7. Levy or Attachment. If any writ, attachment, levy, citation, lien or distress warrant shall be issued against the Mortgaged Property or any part thereof or interest therein, and Mortgagor does not cause the release thereof within 90 days of notice from Lender to Mortgagor.

8.8. Failure to Obtain or Maintain Permits and Licenses. The failure of Mortgagor to obtain or maintain any permits or licenses which are necessary and required for the ownership, use and operation of the Mortgaged Property, or the cancellation or any attempted assignment thereof, without the prior written consent of Lender.

8.9. False Statements. A statement, representation, warranty or covenant made by Mortgagor in this Mortgage or by any Borrower or Guarantor in any other Loan Document is false, misleading or materially incomplete.

8.10. Bankruptcy. (a) Any Borrower files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces

UNOFFICIAL COPY

in the appointment of any trustee, receiver or similar officer of Mortgagor or of all or any substantial part of the property of Mortgagor or any guarantor of the Note or any of the Mortgaged Property or all or a substantial part of the assets of Mortgagor or any guarantor of the Note are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within sixty (60) days.

(b) The commencement of any involuntary petition in bankruptcy against Borrower or the institution against Borrower of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the Mortgaged Property which shall remain undismissed or undischarged for a period of sixty (60) days.

8.11. Dissolution. The dissolution, termination or merger of any Borrower or the occurrence of the death or declaration of legal incompetency of any individual guarantor of the Obligations.

ARTICLE 9. DEFAULT AND FORECLOSURE.

9.1. Remedies. If an Event of Default shall occur, Lender may, at its option, exercise one or more or all of the following remedies, either successively or concurrently.

(a) Acceleration. Declare the unpaid portion of the Indebtedness to be immediately due and payable, with interest thereon accruing at the Default Rate, without further notice or demand (each of which is hereby expressly waived by Mortgagor and Borrower), whereupon the same shall become immediately due and payable.

(b) Receiver. Apply at any time to a court having jurisdiction for the appointment of a receiver of the Mortgaged Property, and of the Rents and Leases; and such appointment shall be made by the court as a matter of strict right to Lender and without reference to the adequacy or inadequacy of the security or value of the Mortgaged Property, or to the solvency or insolvency of Mortgagor, and Mortgagor does hereby irrevocably consent to such appointment. The Rents shall be applied by the receiver to the payment of the Indebtedness, as herein provided, or as otherwise ordered by the court.

(c) Entry on Mortgaged Property. Enter upon the Mortgaged Property as is permitted by Law, without force or with such force as is permitted by Law, and without notice or process or with such notice or process as is required by Law, unless such notice or process is waivable, in which case Mortgagor hereby waives such notice and process, and take exclusive possession thereof and of all books, records and accounts relating thereto.

(d) Full or Partial Judicial Foreclosure. Pursuant to the procedures provided by applicable Law, institute and prosecute foreclosure proceedings with respect to the Mortgaged Property; or, if Lender so elects, institute foreclosure procedures only with respect to a portion of the Indebtedness or to a portion of the Mortgaged Property (such partial proceedings being hereinafter referred to as a partial foreclosure). Mortgagor agrees that a sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the remainder of the secured Indebtedness, but as to such remainder this Mortgage and the lien thereof shall remain in full force and effect

UNOFFICIAL COPY

just as though no foreclosure sale had been made under the provisions of this Section 9.1. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Lender may elect, at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the entire secured Indebtedness by reason of any Event of Default upon which such partial foreclosure was predicated or by reason of any other Event of Default, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any remainder of the secured Indebtedness, it being the purpose hereof to provide for a partial foreclosure sale of the secured Indebtedness without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any such partial foreclosure for any other part of the secured Indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

(e) UCC Remedies. To the fullest extent available under applicable Law, and without limitation on those remedies set forth in Section 5.1 of this Mortgage, all remedies available to the secured creditor pursuant to the UCC.

(f) Other. Exercise any other remedy specifically granted under the Loan Documents, or now or hereafter existing at law or in equity, by virtue of statute or otherwise. Mortgagor shall not 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 Mortgage Loan Closing Date. In the event any provision of the Act specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated by reference.

9.2. Right and Authority of Receiver or Lender in the Event of Defaults, Power of Attorney. Upon the occurrence of an Event of Default hereunder and entry upon the Mortgaged Property pursuant to Section 9.1(c) above, or appointment of a receiver pursuant to Section 9.1(b) above, and under such terms and conditions as may be deemed prudent and reasonable, in Lender's or the receiver's opinion under the circumstances, all at Mortgagor's expense, Lender or such receiver, as the case may be, may do or permit any one or more of the following, successively or concurrently in accordance with applicable Law: (i) enter upon and take possession and control of the Mortgaged Property; (ii) take and maintain possession of all documents, books, records, papers and accounts related to the Mortgaged Property; (iii) exclude Mortgagor, its agents and employees wholly from the Mortgaged Property; (iv) manage and operate the Mortgaged Property, including the exercise by Lender of all rights of Mortgagor under Leases and other Contracts; (v) preserve and maintain the Mortgaged Property; (vi) make repairs and alterations to the Mortgaged Property; (vii) complete any construction or repair of the improvements on the Mortgaged Property with such changes, additions or modifications to the plans and specifications or intended disposition and use of the improvements under construction on the Mortgaged Property as Lender may deem appropriate or desirable to place the Mortgaged Property in such condition as will, in Lender's sole judgment, make it or any part thereof readily marketable or rentable; (viii) conduct a marketing or leasing program with respect to the Mortgaged Property, or employ a marketing or leasing agent or agents to do so, directed to the lease or sale of the Mortgaged Property, under such other terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (ix) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents or other

UNOFFICIAL COPY

employees, agents, independent contractors or professionals, as Lender may in its sole discretion deem appropriate or desirable, to implement and effectuate the rights and powers herein granted; (x) execute and deliver, in the name of Mortgagor as attorney-in-fact and agent of Mortgagor, or in its own name as Lender or receiver, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (xi) enter such Leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Lender or receiver may in its sole discretion deem appropriate or desirable; (xii) collect and receive the Rents from the Mortgaged Property; (xiii) eject tenants or repossess personal property, as provided by Law, for breaches of the conditions of their leases or other agreements; (xiv) sue for unpaid rents, payments, income or proceeds in the name of Mortgagor or Lender; (xv) maintain actions in forcible entry and detainer and actions in distress for rent; (xvi) compromise or give acquittance for rents, payments, income or proceeds that may become due; (xvii) delegate or assign any and all rights and powers given to Lender by this Mortgage; and/or (xviii) do any acts which Lender or the receiver in its discretion deems appropriate or desirable to protect the security hereof and/or use such measures, legal or equitable, as it may in its discretion deem appropriate or desirable, to implement and effectuate the provisions of this Mortgage. This Mortgage shall constitute a direction to and full authority to any lessee or other third-party who has heretofore dealt or may hereafter deal with Mortgagor or Lender, at the request of Lender, to pay all amounts owing under any lease or other agreement to Lender without proof of the default relied upon. Any such lessee or third-party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Mortgagor in so doing) any request, notice or demand by Lender for the payment to Lender of any Rents or other sums which may be or thereafter become due under its Lease or other agreement, or for the performance of any undertakings under any such lease or other agreement, and shall have no right or duty to inquire as to whether any Event of Default under this Mortgage or any of the other Loan Documents has actually occurred or is then existing, and Mortgagor hereby constitutes and appoints Lender, its assignees, successors, transferees and nominees, as Mortgagor's true and lawful attorney-in-fact and agent, with full power of substitution in the Mortgaged Property, in Mortgagor's name and stead, to do or permit any or more of the foregoing described rights, remedies, powers and authorities, successively and concurrently, and such power of attorney shall be deemed a power coupled with an interest and irrevocable.

9.3. **Mortgagee-In-Possession.** Upon the commencement or during the pendency of any action to foreclose this Mortgage, the Lender also will be entitled, as a matter of right, without notice or demand and without giving bond or other security, and without regard to the solvency or insolvency of the Mortgagor or to the value of the Mortgaged Property, to be placed in possession of the Mortgaged Property during foreclosure, whether the Mortgaged Property is residential or not, and, for so long as the Lender shall remain in possession of the Mortgaged Property, the Lender shall have the power and authority to operate, manage and control the Mortgaged Property to no less extent as the power and authority of a receiver, including, without limitation, the right to receive the rents, issues and profits of the Mortgaged Property, perform all maintenance and make all repairs and replacements, enter into leases, and amend, cancel, renew, modify and terminate the same.

9.4. **Remedies Cumulative and Concurrent.** The rights and remedies of Lender as provided herein and in the Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or against other obligors or

UNOFFICIAL COPY

against the Mortgaged Property, or any one or more of them, at the sole discretion of Lender, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

9.5. Waiver of Redemption, Reinstatement, Notice, Marshaling, etc. Pursuant to Section 15-1601(b) of the Act, Mortgagor and Borrower acknowledge that the Mortgaged Property does not constitute either: (i) "agricultural real estate" as such term is defined in Section 15-1201 of the Act; or (ii) "residential real estate" as such term is defined in Section 15-1219 of the Act. **MORTGAGOR HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS OF REINSTATEMENT AND REDEMPTION, IF ANY, UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING AN INTEREST IN THE MORTGAGED PROPERTY, IT BEING THE INTENT HEREOF THAT ANY AND ALL SUCH RIGHTS OF REINSTATEMENT AND REDEMPTION OF MORTGAGOR AND OF ALL OTHER PERSONS ARE AND SHALL BE DEEMED TO BE HEREBY WAIVED TO THE FULL EXTENT PERMITTED BY THE PROVISIONS OF ILLINOIS COMPILED STATUTES 735 ILCS 5/15-1601 OR OTHER APPLICABLE LAW OR REPLACEMENT STATUTES.** Mortgagor further agrees, to the extent permitted by Law, that if a Default occurs hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any homestead exemption, appraisal, valuation, stay, extension, moratorium or other laws now or hereafter in force in order to prevent or hinder enforcement or foreclosure of this Mortgage, or absolute sale of the Mortgaged Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives and releases to the full extent that it may lawfully so do the benefit of such Laws and any and all rights to have the assets comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereon.

9.6. Application of Proceeds. The proceeds of any foreclosure sale shall be distributed and applied in accordance with the provisions of subsection (c) of Section 15-1512 of the Act. The judgment of foreclosure or order confirming the sale shall provide (after application pursuant to subsections (a) and (b) of Section 15-1512 of the Act) for application of sale proceeds in the following order of priority: first, all items not covered by the provisions of subsections (a) and (b), which under the terms hereof constitute Obligations of Indebtedness hereby secured additional to the principal and interest evidenced by the Mortgage Note and Loan Agreement in such order as Lender shall elect, with interest thereon as herein provided; and second, all principal and interest remaining unpaid under the Mortgage Note and Loan Agreement in such order as Lender shall elect.

9.7. No Conditions Precedent to Exercise of Remedies. Mortgagor shall not be relieved of any Obligation by reason of: (i) the failure of Lender to comply with any request of Mortgagor to foreclose the lien of this Mortgage or to enforce any provision of the other Loan Documents; (ii) the release, regardless of consideration, of the Mortgaged Property or any portion thereof, or the addition of any other property to the Mortgaged Property; (iii) any agreement or stipulation extending, renewing, rearranging or in any other way modifying the terms of the Loan Documents without first having obtained the consent of, given notice to or paid any consideration to Mortgagor and in such event Mortgagor shall continue to be obligated

UNOFFICIAL COPY

to make payment according to the terms of any such extension or modification agreement unless expressly released and discharged in writing by Lender; or (iv) by any other act or occurrence save and except the complete payment of the Indebtedness and the complete fulfillment of all of the Obligations.

9.8. Indemnity. Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor, and Mortgagor and Borrower shall and do hereby agree to protect, indemnify, defend and hold Lender harmless of and from any and all liability, loss, cost, expense or damage which it may or might incur in the exercise of its rights, remedies, powers and authority hereunder, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations, undertakings or liabilities. Should Lender incur any such liability, loss, cost or damage of or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Lender therefor immediately upon demand, with interest accruing at the Default Rate.

9.9. Discontinuance of Proceedings. In case Lender shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Lender shall have the unqualified right so to do and, in such an event, Mortgagor and Lender shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if the same had never been invoked, provided, however that notwithstanding such discontinuance, Mortgagor and Borrower shall remain responsible for payment of all of Lender's legal costs and expenses and attorney's fees to prosecute or defend any such proceeding.

9.10. Reinstatement Of Lien Following Payment Refund. If any payment is made by Borrower, whether voluntarily or otherwise, or by Guarantor or by any third party, on the Indebtedness and thereafter Lender is required to remit the amount of that payment in whole or in part (i) to Borrower's (or any other Person's) trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, (ii) by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Lender or any of Lender's property; or (iii) by reason of any settlement or compromise of any claim made by Lender with any claimant (including without limitation the Mortgagor), the Indebtedness shall be considered unpaid for the purpose of enforcement of this Mortgage and this Mortgage and all Liens of Lender upon the Mortgaged Property shall continue to be effective or shall be reinstated, as applicable, notwithstanding any cancellation or release of this Mortgage or the Mortgage Note or other instrument or agreement evidencing the Indebtedness and the Mortgaged Property will continue to secure the amount repaid by Lender or recovered from Lender to the same extent as if that amount never had been originally received by Lender, and the Mortgagor and any other grantor shall be bound to the fullest extent of the Law by any judgment, decree, order, settlement or compromise relating to the Indebtedness or to this Mortgage.

ARTICLE 10. MISCELLANEOUS.

10.1. Protective Advances. All advances, disbursements and expenditures made or incurred by Lender before and during a foreclosure, and before and after judgment of

UNOFFICIAL COPY

foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(a) all advances by Lender in accordance with the terms of this Mortgage to (i) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in subsection (b)(5) of Section 15-1302 of the Act;

(b) payments by Lender of: (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) real estate taxes and assessments, general and special and all other taxes and Impositions of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(c) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) attorneys' fees and other costs or expenses incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Mortgage or arising from the interest of Lender hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Mortgaged Property;

(e) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the Act;

(f) expenses deductible from proceeds of sale as referred to in Sections 15-1512(a) and (b) of the Act;

(g) expenses incurred and expenditures made by Lender for any one or more of the following: (i) any premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation (regarding maintenance of any existing insurance in effect at the time a receiver or Lender takes possession of the Mortgaged Property) as imposed by Section 15-1704(c)(1) of the Act; (ii) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (iii) payments deemed by Lender to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement and common ownership association declarations or agreements, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit

UNOFFICIAL COPY

of or affecting the Mortgaged Property; (iv) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (v) payments required to be paid by Mortgagor or Lender pursuant to any Lease or other agreement for occupancy of the Mortgaged Property; and (vi) if this Mortgage is insured, payments of FHA or private mortgage insurance required to keep such insurance in force.

(h) All Protective Advances shall be so much additional Indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Mortgage Note.

(i) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b) (5) of Section 15-1302 of the Act.

(j) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(a) any determination of the amount of Indebtedness secured by this Mortgage at any time;

(b) the indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(c) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem, pursuant to Sections 15-1603(d)(2) and 1603(e) of the Act;

(d) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(e) application of income in the hands of any receiver or Lender in possession; and

(f) computation of any deficiency judgment pursuant to Sections 15-1508(b)(2), 15-1508(e) and 15-1511 of the Act.

10.2. Further Assurances. Mortgagor, upon the reasonable request of Lender, will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary to carry out more effectively the purpose of the Loan Documents.

10.3. Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness secured by this Mortgage exceed an amount equal to

UNOFFICIAL COPY

Fifteen Million and 00/100 Dollars (\$15,000,000.00); provided, however, in no event shall Lender be obligated to advance funds in excess of its commitments set forth in the Loan Agreement.

10.4. Recording and Filings. Mortgagor will cause the appropriate Loan Documents and all supplements thereto at all times to be recorded and filed in such manner and in such places as Lender shall request, and will pay any recording and filing taxes, fees and other charges.

10.5. Time. Time is of the essence of this Mortgage.

10.6. Notice. Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered, or on the third business day after being deposited in United States certified mail, return receipt requested, postage prepaid, or by Federal Express or other similar nationally recognized overnight courier and addressed as follows:

If to the Lender: Standard Bank and Trust Company
7800 W. 95th Street
Hickory Hills, Illinois 60457
Attention: Michael Kahne
Telephone: (708) 449-2062 ext 2041
Facsimile: (708) 476-6789
Email: michael.kahne@standardbanks.com

With a copy to: Chuhak & Tecson, P.C.
30 S. Wacker Drive
Suite 2600
Chicago, Illinois 60606
Attention: Valerie J. Freireich
Telephone: (312) 444-9300
Facsimile: (312) 444-9027
Email: vfreireich@chuhak.com

If to the Mortgagor: AJC Distribution, LLC
6155 W. 115th Street
Alsip, Illinois 60803
Attention: Robert S. Codo
Telephone: (708) 272-3250
Facsimile: (708) 272-3045
Email: rcodo@accordcarton.com

With a copy to: Goldstine, Skrodzki, Russian, Nemecek and Hoff, Ltd.
835 McClintock Drive, Second Floor
Burr Ridge, Illinois 60527
Attention: Alison J. Wetzel

UNOFFICIAL COPY

Telephone: (630) 655-6000
 Facsimile: (630) 655-9808
 Email: ajw@gsrnh.com

or to such other address as the party to receive such notice may have theretofore furnished to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to Lender herein is required to be given. Notice may also be provided by facsimile or by electronic mail, on the following terms:

(i) The facsimile numbers and email addresses to be utilized shall be those numbers listed above or such other numbers as are provided by any such parties;

(ii) Any facsimile or email which is initiated after 5:00 p.m. Central time shall be deemed given on the immediately following Business Day;

(iii) The sender or transmitter of the communication shall also send a copy of the notice in accordance with the terms of the first sentence of this Section 10.5; and

(iv) Any facsimile or email transmission made on a day other than a Business Day shall be deemed given on the first Business Day following the date the facsimile transmission is made.

10.7. Lender's Right to Perform the Obligations. If Mortgagor fails to make any payment or perform any act required by the Loan Documents or the Legal Requirements, Lender, without any obligation so to do and without waiving any other right, remedy or recourse, may make such payment or perform such act at the expense of Mortgagor. All sums so paid by Lender and all costs incurred in connection therewith, together with interest thereon at the Default Rate from the date of payment, shall constitute part of the Indebtedness secured by this Mortgage and the Loan Documents and shall be paid by Mortgagor to Lender on demand or shall be included in any judgment of foreclosure.

10.8. Modification. The Loan Documents and the terms of each of them may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the parties to the Loan Document being so modified, including Lender, even if Lender has not executed such Loan Document. If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all Persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property, 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 Lender, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Mortgaged Property or any part thereof or any interest therein (without hereby implying Lender's consent to any such junior or senior mortgage or other lien), shall take such lien subject to the

UNOFFICIAL COPY

rights of Lender to amend (including, without limitation, changing the amount of the Indebtedness, the rate of interest or manner of computation thereof), modify, extend or release the Mortgage Note, the Loan Agreement, this Mortgage, or any other document or instrument evidencing, securing or guarantying 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.

10.9. No Waiver. All options and rights of election herein provided for the benefit of Lender are continuing, and the failure to exercise any such option or right of election upon a particular default or breach or upon any subsequent default or breach shall not be construed as waiving the right to exercise such option or election at any later date. No exercise of the rights and powers herein granted and no delay or omissions in the exercise of such rights and powers shall be held to exhaust the same or be construed as a waiver thereof, and every such right and power may be exercised at any time and from time to time.

10.10. Lender's Cost and Expenses. Mortgagor further expressly covenants and agrees to pay Lender all costs and expenses of every kind paid or incurred by Lender in any way in connection with enforcing its rights hereunder and pursuant to the Mortgage Note, the Loan Agreement or the other Loan Documents or any modifications, restatements or amendments thereof, and the protection of the Mortgaged Property or the maintenance of the lien of this Mortgage and the security interests under the other Loan Documents or otherwise in connection with the determination and exercise by Lender of any of its rights or remedies under the Loan Documents or any modifications, restatements or amendments thereof, including any and all expenditures for documentary evidence, title examination or title insurance, minutes of foreclosure, or any abstract or opinion of title to the Mortgaged Property, or for any appraisal, environmental audit, accounting or engineering, and all similar fees, costs, charges and expenses, and including all reasonable attorneys' fees and stenographer's fees, paid or incurred by Lender in any suit or legal proceeding, or in preparation or in anticipation of declaring a Default or Event of Default, or in preparation or in anticipation of such suit or proceeding, regardless of whether such suit or proceeding is actually instituted, including, without limitation, any bankruptcy or insolvency proceeding, probate proceeding, or other proceeding in which Lender may, in its discretion, intervene in order to protect its security or repayment of the Indebtedness, or appeal from any of the foregoing, or otherwise paid or incurred by Lender in obtaining legal advice regarding its rights and remedies under the Loan Documents or any modifications, restatements or amendments thereof, or in determining whether to declare a default or Event of Default hereunder. All such fees, costs, charges and expenses shall constitute so much additional Indebtedness evidenced by the Mortgage Note or the Loan Agreement and secured by this Mortgage, and shall be immediately due and payable when incurred, with interest accruing thereon at the Default Rate, and shall be allowed in any decree of foreclosure hereof. No proceeding to foreclose this Mortgage, whether a decree of foreclosure shall have been entered therein or not, shall be dismissed, nor shall a release of this Mortgage be given until all such expenses, charges and costs of Lender shall have been paid in full.

10.11. Usury. It is expressly stipulated and agreed to be the intent of Mortgagor and Lender to at all times comply with applicable Law now or hereafter governing the interest payable on the Indebtedness and Obligations secured hereby. If the applicable Law is ever revised, repealed, or judicially interpreted so as to render usurious any amount called for under

UNOFFICIAL COPY

the Mortgage Note or the Loan Agreement (or under any other instrument evidencing or relating to any of the Indebtedness), or contracted for, charged, taken, reserved or received with respect to the loans secured hereby, or if Lender's acceleration of the Indebtedness or any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by Law, then it is Mortgagor's and Lender's express intent that all excess amounts theretofore collected by Lender be credited on the principal balance of the Indebtedness (or, if the Indebtedness has been paid in full, refunded to Mortgagor), and the provisions of the Mortgage Note, the Loan Agreement and this Mortgage and other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the then applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder.

10.12. Successors and Assigns; Covenants Running with the Land. The terms, provisions, covenants and conditions hereof and of the Loan Documents shall be binding upon Mortgagor, its successors and assigns, and shall inure to the benefit of Lender and its successors, substitutes and assigns, and shall constitute covenants running with the land. Wherever the term "Mortgagor" is used herein, such reference shall be deemed to mean each Mortgagor whose name appears below and their respective heirs, legatees, devisees, executors, trustees, successor trustees, successors and assigns, specifically including any and all Persons whatsoever who shall receive the distribution or disbursement of property held by any trustee as a result of the termination, revocation, trustee succession or any extinguishment of any trust.

10.13. Conflict of Terms. The terms, provisions, covenants and conditions of this Mortgage shall be construed in such a manner as to be consistent with the terms of the Loan Agreement and any other instruments executed in connection with or as security for the Indebtedness and Obligations secured hereby; provided, however, in the event of a conflict between the terms of this Mortgage and the terms of the Loan Agreement, the terms of the Loan Agreement shall control.

10.14. Applicable Law; Jury Waiver. This Mortgage was negotiated in the State of Illinois and made by Mortgagor in the State of Illinois, the proceeds of the Mortgage Loan secured hereby were disbursed in the State of Illinois and the Mortgaged Property is located in the State of Illinois. In all respects, including, without limitation, matters of construction and performance of this Mortgage and the obligations arising hereunder, this Mortgage shall be governed by, and construed in accordance with, the internal laws of the State of Illinois applicable to contracts made and to be performed in such State (without regard to principles of conflicts of laws) and any applicable laws of the United States of America **BORROWER AND MORTGAGOR CONSENT TO JURISDICTION IN THE STATE OF ILLINOIS AND VENUE IN ANY FEDERAL OR STATE COURT IN THE COUNTY IN WHICH THE LAND IS LOCATED FOR SUCH PURPOSES AND WAIVE ANY AND ALL RIGHTS TO CONTEST SAID JURISDICTION AND VENUE AND ANY OBJECTION THAT SAID COUNTY IS NOT CONVENIENT. BORROWER AND MORTGAGOR WAIVE ANY RIGHTS TO COMMENCE ANY ACTION AGAINST LENDER IN ANY JURISDICTION EXCEPT THE AFORESAID COUNTY AND STATE. MORTGAGOR, LENDER AND BORROWER HEREBY EACH EXPRESSLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER**

UNOFFICIAL COPY

PARTY WITH RESPECT TO ANY MATTER WHATSOEVER RELATING TO, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE MORTGAGE, THE MORTGAGE LOAN, OR THE LOAN DOCUMENTS.

10.15. No Joint Venture; No Third Party Beneficiary. Mortgagor acknowledges and agrees that in no event shall Lender be deemed to be a partner or joint venturer with it. Without limitation of the foregoing, Lender shall not be deemed to be such a partner or joint venturer on account of its becoming a Lender in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document securing any portion of the Indebtedness or otherwise. No other person shall be deemed to have any right or priority under this Mortgage to any extent or for any purpose whatsoever, nor shall any other person have any claim or right of action with respect to the Mortgaged Property or proceeds of the Indebtedness or be deemed a third-party beneficiary under this Mortgage or under the Loan Documents.

10.16. Severability. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable neither the remainder of the instrument in which such provision is contained, nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by Law.

10.17. Consent of Lender. Any consent by Lender in any single instance shall not be deemed or construed to be Lender's consent in any like matter arising at a subsequent date, and the failure of Lender to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same, nor shall Lender be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Lender pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval (and no third party shall claim any benefit by reason thereof), and shall not be deemed to constitute Lender a venturer or partner with Mortgagor whatsoever, nor shall privity of contract be presumed to have been established with any such third party.

10.18. Construction. **MORTGAGOR AND LENDER ACKNOWLEDGE THEY HAVE BEEN ADVISED BY COUNSEL OF THEIR CHOICE WITH RESPECT TO THIS MORTGAGE, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, AND SUCH COUNSEL HAS REVIEWED ALL OF THE FOREGOING AND PARTICIPATED IN THE NEGOTIATION THEREOF. EACH PARTY FURTHER ACKNOWLEDGES AND AGREES THAT (i) EACH OF THE WAIVERS SET FORTH HEREIN WERE KNOWINGLY AND VOLUNTARILY MADE; (ii) NO REPRESENTATIVE OF LENDER OR MORTGAGOR HAS WAIVED OR MODIFIED ANY OF THE PROVISIONS OF THIS MORTGAGE AS OF THE MORTGAGE LOAN CLOSING DATE AND NO SUCH WAIVER OR MODIFICATION FOLLOWING THE DATE HEREOF SHALL BE EFFECTIVE UNLESS MADE IN ACCORDANCE WITH THE PROVISIONS HEREOF; AND (iii) ANY RULE OF CONSTRUCTION UNDER ANY APPLICABLE LAW TO THE EFFECT THAT AMBIGUITIES ARE TO BE RESOLVED**

UNOFFICIAL COPY

AGAINST THE DRAFTING PARTY SHALL NOT BE EMPLOYED IN THE INTERPRETATION OF THIS MORTGAGE OR ANY OTHER LOAN DOCUMENTS.

10.19. Homestead. To the extent, if any, that the Mortgaged Property shall be deemed the homestead of Mortgagor, its successors or assigns, or of the holder of the beneficial interest in Mortgagor, the Mortgagor, directly and on behalf of the holder of the power of direction, hereby releases and waives all rights under and by virtue of the homestead exemption laws of the State of Illinois.

10.20. Term of Mortgage. The Lien of this Mortgage shall continue in full force and effect until this Mortgage is released.

10.21. Trustee Exculpation. This Mortgage is executed by the undersigned Trustee Mortgagor not personally but solely as trustee in the exercise of the power and authority conferred upon and vested in it as such trustee. It is expressly understood and agreed that nothing herein contained or contained in the Loan Documents shall be construed as creating any liability on trustee personally to pay any Liabilities or Obligations (as described in the Loan Agreement and other Loan Documents) or the Indebtedness or any interest that may accrue thereon, or any amounts whatsoever accruing under the Note or Loan Agreement, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder. So far as Land Trustee Mortgagor personally is concerned (but for no other purpose), the legal holder or holders of the Note, Loan Agreement and any Indebtedness and the owner or owners of any indebtedness accruing hereunder shall look solely to the Borrower and to the Mortgaged Property hereby conveyed for payment, and the enforcement of the Lien hereby created shall be in the manner herein and in the Note and Loan Agreement provided. Notwithstanding anything to the contrary contained herein, Lender or other legal holder or holders of the Note, Loan Agreement and any Indebtedness, and the owner or owners of any indebtedness accruing hereunder, may proceed by action against any other security at any time given to secure payment, or by action to enforce the personal liability of the Borrower or any Guarantor and pursuant to all of the terms of applicable law and the Loan Documents.

[Remainder of Page Intentionally Left Blank, Signature Page Follows]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Trustee has caused this Restatement of Mortgage and Security Agreement with Assignment of Rents to be signed and attested and its corporate seal to be hereunder affixed by its duly authorized Officers as of April 18th, 2012, pursuant to proper authority granted.

STANDARD BANK AND TRUST COMPANY, not personally but as trustee under trust agreement dated August 8, 2001 and known as Trust Number 17031

This instrument is signed, sealed and delivered by STANDARD BANK AND TRUST COMPANY, solely in its capacity as Trustee as aforesaid. Any and all duties, obligations and liabilities of the Trustee hereunder are to be performed by said STANDARD BANK AND TRUST COMPANY only as such Trustee. Any claims, demands and liabilities which may at any time be asserted against the Trustee hereunder shall be paid, collected or satisfied against only this property or assets in the possession of said STANDARD BANK AND TRUST COMPANY as Trustee as aforesaid, and the said STANDARD BANK AND TRUST COMPANY does not undertake, nor shall it have any personal or individual liability or obligation of any nature whatsoever by virtue of the execution and deliver hereof, nor shall STANDARD BANK AND TRUST COMPANY, either individually or as Trustee, be under any duty or obligation to sequester the rents, issues and profits arising from the property described or any other property which it may hold under the terms and conditions of said Trust Agreement.

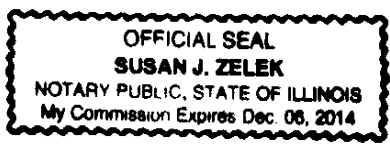
By: *Patricia Ralphson*
Name: Patricia Ralphson, AVP
Title: _____

By: *Donna Diviero*
Name: Donna Diviero, ATO
Title: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a notary public in and for said County and State, DOES HEREBY CERTIFY that Patricia Ralphson AVP and Donna Diviero, ATO, personally known to me to be Officers of Standard Bank and Trust Company and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Officers of said Corporation, they signed and delivered the said instrument and caused the corporate seal of said Corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said Corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Corporation AS TRUSTEE, for the uses and purposes therein set forth.

Given under my hand and official seal as of April 18th 2012.



Susan J. Zelek
NOTARY PUBLIC

[Signature Page to Restatement of Mortgage and Security Agreement With Assignment of Rents]

UNOFFICIAL COPY

IN WITNESS WHEREOF, AJC DISTRIBUTION, LLC has caused this Restatement of Mortgage and Security Agreement with Assignment of Rents to be signed by its duly authorized Manager as of April 18th, 2012, pursuant to proper authority granted.

MORTGAGOR:

AJC DISTRIBUTION, LLC, an Illinois limited liability company

By: William M. Codo
Name: William M. Codo
Title: Member and Sole Manager

By: Robert S. Codo
Name: Robert S. Codo
Title: Member

By: David M. Peters
Name: David M. Peters
Title: Member

By: Christopher C. Codo
Name: Christopher C. Codo
Title: Member

Property of Cook County Clerk's Office

[Signature Page to Restatement of Mortgage and Security Agreement With Assignment of Rents]

UNOFFICIAL COPY

EXHIBIT A

Legal Description

Property: 6155 West 115th Street, Alsip, Illinois 60803 County: Cook

LEGAL DESCRIPTION: PARCEL: LOT 1 (EXCEPT THE NORTH 17.00 FEET THEREOF) IN KEEBLER SUBDIVISION, BEING A SUBDIVISION OF THE NORTH 678.33 FEET OF THE WEST 539.97 FEET OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SUBDIVISION OF KEEBLER SUBDIVISION RECORDED AUGUST 17, 1977 AS DOCUMENT 24062706, IN COOK COUNTY, ILLINOIS.

PARCEL 2: THE EAST 75.00 FEET OF THE SOUTH 628.33 FEET OF THE NORTH 678.33 FEET OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number(s): 24-20-300-024, 24-20-301-009

UNOFFICIAL COPY

EXHIBIT B

Permitted Exceptions

1. TERMS, POWERS, PROVISIONS AND LIMITATIONS OF THE TRUST UNDER WHICH TITLE TO THE LAND IS HELD.
2. REAL ESTATE TAXES NOT DUE AND PAYABLE.
3. LIENS IN FAVOR OF LENDER.
4. Exceptions shown in the loan policy issued to the Lender.

MK 4/18/12
 Relationship Manager
 Standard Bank & Trust

Wim Corp
 Manager
 4/19/12