



Doc#: 1218131076 Fee: \$68.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 06/29/2012 04:32 PM Pg: 1 of 16

Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 14-31-313-004-0000

Address:

Street: 1842-44 N. Milwaukee Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60647

Lender: U.S. Bank N.A.

Borrower: FISH ON! LLC

Loan / Mortgage Amount: \$1,240,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 7770 et seq. because the application was taken by an exempt entity.

Certificate number: 1FED1E8C-00A7-4F9C-A3D4-9E4427E30584

Execution date: 04/11/2012

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This document was prepared by
and after recording mail to:

Chuhak & Tecson, P.C.
Phyllis K. Franklin
30 South Wacker Drive
Suite 2600
Chicago, Illinois 60606-7413

Commonly known street address:
1842-44 N. Milwaukee Avenue
Chicago, IL 60647

PIN: 14-31-313-003;
14-31-313-004

Property of Cook County Clerk's Office

SECOND MORTGAGE

THIS SECOND MORTGAGE is executed by Ebb Tide LLC, an Illinois limited liability company ("Mortgagor"), to and in favor of U.S. Bank National Association, a national banking association ("Mortgagee"), its successors and assigns, as of this 11 day of ~~March~~ ^{April}, 2012.

RECITALS:

WHEREAS, Mortgagor is the owner of certain real estate located in Cook County, Illinois and which is legally described as "Exhibit A" attached hereto and made a part hereof together with all improvements thereon (collectively referred to herein as "Property"); and

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WHEREAS, on September 14, 2007, Forest Park National Bank & Trust Co., a national banking association ("Forest Park Bank") provided FISH ON! LLC, an Illinois limited liability company ("Borrower") with a certain loan facility (the "Forest Park Bank Loan") in the original principal amount of One Million, Two Hundred Forty Thousand and 00/100 Dollars (\$1,240,000.00), as amended from time to time. The Loan is evidenced by a Promissory Note dated on or about September 4, 2007, as modified by that certain Change In Terms Agreement dated September 19, 2008 which, together with other amendments, changed the Maturity Date to September 15, 2011 (collectively, "Forest Park Bank Note"). The Forest Park Bank Note is secured by a Mortgage and Assignment of Rents (collectively, the "Forest Park Bank Mortgage and Assignment") encumbering the property commonly known as 7300 West Madison, Forest Park, Illinois 60130 (the "Forest Park Bank Collateral"), executed by Borrower in favor of Lender; and

WHEREAS, Forest Park Bank entered into a Loan Participation Certificate and Agreement dated as of September 25, 2008 (the "Participation Agreement") whereby Park National Bank purchased a fractional undivided interest in the Forest Park Bank Note in the amount of \$1,040,000.00, equal to a prorata share of 83.8387096% in the Forest Park Bank Note thereby leaving Forest Park Bank owning a fractional undivided interest of \$200,000.00, equal to a prorata share of 16.1290323% in the Forest Park Bank Note; and

WHEREAS, Park National Bank was closed on October 30, 2009 and taken over by the Federal Deposit Insurance Corporation, as Receiver. On the same date, the Federal Deposit Insurance Corporation, as Receiver of Park National Bank, sold Park National Bank's participation interest and other rights in the Forest Park Bank Loan, the Forest Park Bank Loan Documents (as hereinafter defined) and the Participation Agreement to Mortgagee, pursuant to its authority under 12 U.S.C. § 1821(d)(2) and other federal laws and regulations; and

WHEREAS, no principal payments have been made on the Forest Park Bank Note and therefore Mortgagee's and Forest Park Bank's ownership interests in the Forest Park Bank Note remain at 83.8387096% and 16.1290323%, respectively; and

WHEREAS, concurrently with the execution of this Mortgage, Forest Park Bank and Mortgagee are entering into an Amendment to Loan Participation Certificate and Agreement ("Amendment to Participation Agreement") wherein, among other things, Forest Park Bank relinquishes its status as the "Lender" and the rights and obligations of the "Lender" under the Participation Agreement, and instead accepts and assumes the rights and obligations of a "Participant" under the Participation Agreement effective as of the Effective Date. Under the Amendment to Participation Agreement, Forest Park Bank and Mortgagee agree that Forest Park Bank and Mortgagee will enter into a Settlement and Deed in Lieu of Foreclosure Agreement with Borrower (the "Settlement Agreement") in a form mutually acceptable to Forest Park Bank and Mortgagee wherein a subsidiary of Mortgagee shall accept a deed-in-lieu of foreclosure of the Forest Park Bank

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Collateral, in its role as the lead bank under the Amendment to Participation Agreement;
and

WHEREAS, as a condition to the Settlement Agreement, Borrower and Arthur P. Sundry, Jr., the guarantor under the Forest Park Bank Loan, shall execute a deficiency note in favor of Mortgagee in an amount equal to \$100,000.00 (the "Deficiency Note"). Forest Park Bank shall own 16.1290323% of the Deficiency Note as provided in the Amendment to Participation Agreement; and the Deficiency Note shall be secured by this Mortgage encumbering the Property and the property commonly known as 1842-44 North Milwaukee Avenue, Chicago, Illinois; and

WHEREAS, Forest Park Bank is a third party beneficiary under this Second Mortgage pursuant to the terms of that certain Participation Agreement.

NOW, THEREFORE, in consideration of the Loan made to the Borrower and in consideration of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby states and agrees as follows:

AGREEMENTS

1. Grant. To secure the "Liabilities" (as defined below) the Mortgagor does hereby mortgage, transfer, grant, assign and convey unto Mortgagee, its successors and assigns, a continuing security interest and lien in and to:

(a) the Premises, and

(b) all improvements, tenements, easements, fixtures, and appurtenances now or hereafter located on or belonging to the Premises, together with all building or construction materials, equipment, appliances, machinery, plant equipment, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter affixed to or attached to the Premises and owned by the Mortgagor, and all rents, issues and profits of the Premises for so long and during all such times as Mortgagor may be entitled to them (which are pledged primarily and on a parity with said real estate and not secondarily), including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, awnings, stoves and water heaters and all furniture, furnishings, equipment (including, without limitation, telephone and other communications equipment, window cleaning, building cleaning, monitoring, garbage, air conditioning, pest control and other equipment) and all other tangible property of any kind or character now or hereafter owned by the Mortgagor and used in connection with the Premises and all intangible property owned by the Mortgagor and related to the Premises including, without limitation, all rights of the Mortgagor under contracts or leases relating to the Premises (such property and rights referenced in this (b), individually and collectively, the "Collateral").

All Collateral is declared to be a part of the Premises whether physically attached to it or not, and it is agreed that all similar apparatus or fixtures placed in or on the Premises by Mortgagor or its successors or assigns after this date shall be considered as constituting

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part of the real estate (for purposes of the remainder of this Mortgage, the term "Premises" shall be deemed to include the Collateral unless the context requires otherwise)

TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successors and assigns, forever for the purposes and uses set forth in this Mortgage.

2. Maintenance, Repair and Restoration; Payment of Prior Liens. Mortgagor shall: i. keep the Premises in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien of this Mortgage except for the "First Mortgage" (as defined below); and, ii. comply with all requirements of law or municipal ordinances with respect to the Premises and the use of the Premises.

3. Title. Mortgagor hereby covenants with and warrants to the Mortgagee that, at the execution and delivery hereof, it is well seized of the Premises, and fee simple title is vested in the Mortgagor and is subject to no other mortgages or trust deeds other than that certain Mortgage ("First Mortgage") recorded on the 7th day of November, 2008, as document #0831247039 wherein the mortgagee is identified as U.S. Bank National Association, as national banking association, as successor-in-interest to the Federal Deposit Insurance Corporation, Receiver for Park National Bank, together with its successors and assigns ("First Mortgage"). All of the rights and interests of the Mortgagee created pursuant to the terms of this Second Mortgage are subject to and subordinate to all rights and interests of the First Mortgagee.

4. Insurance. Mortgagor shall keep all buildings and improvements now or after this date situated on the Premises insured against loss or damage by fire, lightning or windstorm (and flood damage, where the Mortgagee is required by law to have its Loan so insured) under policies providing for payment by the insurance companies of moneys sufficient either to pay the cost of replacing or repairing the same. If Mortgagor does not provide Mortgagee with evidence of insurance coverage, then Mortgagee may purchase insurance at Mortgagor's expense. This insurance may, but need not, protect Mortgagor's interests in the Premises. The coverage purchased by Mortgagee may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance, as required by this Mortgage. If Mortgagee purchases insurance for the Premises, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges Mortgagee 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 Mortgagor's liabilities owed to Mortgagee. The costs of the insurance may be more than the cost of insurance which Mortgagor may be able to obtain on its own. The insurance shall also satisfy the following conditions:

- i. Mortgagee shall be identified as an additional loss payee, subject to First Mortgagee, and name Mortgagee as an additional insured; and

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- ii. It shall contain provision for thirty (30) days notices to Mortgagee prior to any cancellation or non-renewal except for ten (10) days notice for non-payment of premium.

5. Adjustment of Losses with Insurer and Application of Proceeds of Insurance. In case of loss or damage by fire or other casualty, Mortgagee is authorized to: i. settle and adjust any claim under insurance policies which insure against such risks; or, ii. allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, the Mortgagee is authorized to collect and issue a receipt for any such insurance money. At the option of the Mortgagee, such insurance proceeds may be applied in the reduction of the Loan, whether due or not, or may be held by the Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of the Premises. In any case, where the insurance proceeds are made available for rebuilding and restoration, such proceeds shall be disbursed in the manner and under the conditions that the Mortgagee may reasonably require and upon Mortgagee being furnished with satisfactory evidence of the estimated cost of completion thereof and with architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics' lien claims.

6. Mortgagee's Interest in and Use of Deposits. In case of default under this Mortgage, Mortgagee may, but need not, make any payment or perform any act required of Mortgagor in any form and manner deemed expedient, and may, but need not, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment. All moneys paid for any of the purposes authorized in this Mortgage and all expenses paid or incurred in connection with such actions, including attorneys' fees, and any other moneys advanced by Mortgagee to protect the Premises and the lien of this Mortgage shall be so much additional indebtedness secured by this Mortgage and shall become immediately due and payable without notice. Inaction of Mortgagee shall never be considered a waiver of any right accruing to it on account of any default under this Mortgage on the part of Mortgagor.

7. Reliance on Statements. Mortgagee, in making any payment authorized by this Mortgage and relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim of title.

8. Notice of Sale. The Mortgagor shall provide prior written notice to the Mortgagee of any sale or conveyance of the Premises. The Mortgagor shall not grant a mortgage lien in and to any portion of the Premises without the prior written consent of the Mortgagee and which consent may be withheld or delayed for any reason or no reason. Any sale of the Premises without the Mortgagor first having obtained the prior written consent of the Mortgagee shall constitute an immediate default by the Mortgagor

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for which there will be no opportunity to cure. In the event of the sale of the Premises, the net proceeds of such sale shall be immediately paid to Mortgagee.

9. Eminent Domain and Condemnation. Mortgagor assigns, transfers and sets over unto Mortgagee the entire proceeds of any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured by this Mortgage, whether due or not, or make those proceeds available for repair, restoration or rebuilding of the Premises. Any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the disbursing party shall, at the option of Mortgagee, be applied on account of the indebtedness secured by this Mortgage or paid to any part entitled thereto as the same appear on the records of Mortgagee.

10. Hazardous Materials.

A. The Premises and its present use comply to the best of Mortgagor's knowledge, and at all times shall comply, with all Federal, state and local statutes, laws, ordinances, codes, rules, regulations, orders or decrees regulating, relating to or imposing liability or standards of conduct concerning, any Hazardous Material (hereinafter defined) now, or at any time hereafter, in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act and any so-called "Superfund" or "Superlien" law, all as amended or hereafter amended (all of the foregoing are hereinafter called the "Environmental Laws"). To the best of Mortgagor's knowledge, information and belief, the Premises has not been used as a dump site or permanent storage site for any Hazardous Material or as a temporary storage site for Hazardous Material except in the ordinary business practices and in compliance with applicable Environmental Laws. Mortgagor hereby covenants that it will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Premises or transport to or from the Premises any Hazardous Materials or allow any other person or entity to do so, other than those materials and in substantially the same amounts now used by Mortgagor in the ordinary course of its business.

B. In the event that any investigation, site monitoring, containment, clean-up, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is required by any of the Environmental Laws in connection with, the current or future presence, suspected presence, release or suspected release of any Hazardous Materials in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within the Premises (or any portion thereof), Mortgagor shall within one hundred twenty (120) days after written demand for performance thereof by Mortgagee (or such shorter period of time as may be required under any of the Environmental Laws), commence and thereafter diligently prosecute to completion, all such Remedial Work. All Remedial Work shall be performed by contractors approved in advance by Mortgagee, and under the supervision of a consulting engineer approved by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, Mortgagee's reasonable attorneys' fees, paralegal fees and

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costs incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely prosecute to completion such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall become part of the Liabilities.

C. The Mortgagor hereby indemnifies the Mortgagee and agrees to hold the Mortgagee its employees, officers, agents, servants, contractors and directors harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Mortgagee or its employees, officers, agents, servants, contractors and directors for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising as a result of Hazardous Materials otherwise permitted hereunder and those asserted or arising under any of the Environmental Laws, regardless of whether or not caused by, or within the control of, the Mortgagor). This indemnity shall survive the reconveyance or release of the lien of this Mortgage, the extinguishment of the lien by foreclosure or action and reconveyance or extinguishment, or the delivery of a deed in lieu of foreclosure. Mortgagor shall not, by this Mortgage, be deemed to have indemnified Mortgagee for any acts or omissions of Mortgagee or its agents.

D. For purposes of this Mortgage, "Hazardous Materials" means and includes (i) any petroleum or crude oil products, asbestos, PCBs or dioxins, or insulation or other material composed of or containing asbestos, PCBs or dioxins, or (ii) any hazardous, toxic, radioactive or dangerous waste, substance or material defined as such in (or for purposes of) any of the Environmental Laws.

11. Default and Foreclosure.

(a) Each of the following shall constitute a "default" or "Event of Default" hereunder:

(i) failure to pay, when and as due, any principal, interest or other amounts payable on the Note or other Liabilities and the continuation of such failure for five (5) days following the giving of written notice by Mortgagee disclosing such failure; or

(ii) failure to comply with or perform any agreement or covenant of Mortgagor contained herein, in the Note, or in any related document, which failure does not otherwise constitute an Event of Default; or

(iii) any event described as a "default" or "event of default", whether or not such terms are capitalized, under other provisions hereof, of the Note or of any related document; or

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(iv) any representation, warranty, certificate, financial statement, report, notice, or other writing furnished by or on behalf of Mortgagor to Mortgagee is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified; or

(v) **DUE ON SALE CLAUSE:** Mortgagor shall sell, transfer, convey or assign the title to all or any portion of the Premises, or shall contract to do so; or

(vi) any bankruptcy, insolvency, reorganization, arrangement, readjustment, liquidation, dissolution, or similar proceeding, domestic or foreign, is instituted by or against Mortgagor, and if instituted against Mortgagor shall not be dismissed or vacated within sixty (60) days after the filing or other institution thereof; or

(vii) Mortgagor shall become insolvent, generally shall fail or be unable to pay its debts as they mature, shall admit in writing its inability to pay its debts as they mature, shall make a general assignment for the benefit of its creditors, shall enter into any composition or similar agreement, or shall suspend the transaction of all or a substantial portion of its usual business.

(b) Notwithstanding any provision of any document or instrument evidencing or relating to any Liabilities to the contrary: (i) upon the occurrence and during the continuance of any Event of Default specified in (i)-(v) of subsection (a) of this Section, Mortgagee at its option may declare the Liabilities immediately due and payable without notice or demand of any kind; and (ii) upon the occurrence of an Event of Default specified in (vi)-(vii) of subsection (a) of this Section, the Liabilities shall be immediately and automatically due and payable without action of any kind on the part of Mortgagee. If any Event of Default has occurred and is continuing, Mortgagee shall have the right to foreclose the lien of this Mortgage, in addition to exercising any rights at law or in equity and under the Note and other related documents. In any suit to foreclose such lien, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature described in this paragraph shall become additional indebtedness secured by this Mortgage and shall become immediately due and payable, when paid or incurred by Mortgagee in connection with (x) any proceeding, including probate and bankruptcy proceedings, to which either of them shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness secured by it; or (y) preparations for the commencement of any suit for the foreclosure of

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this Mortgage after accrual of such right to foreclose, whether or not actually commenced; or (z) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security of this Mortgage, whether or not actually commenced.

12. Proceeds of Foreclosure. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, to all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph of this Mortgage; second, to all other items which under the terms of this Mortgage constitute secured indebtedness additional to that evidenced by the Promissory Note, with interest on such indebtedness as provided in this Mortgage; third, to all monetary obligations required to be satisfied by the Mortgagor under the Promissory Note or any other obligation of the Mortgagor as identified in the Promissory Note; and, fourth, any overplus to Mortgagor, its heirs, successors, legal representatives or assigns, as their rights may appear.

13. Binding on Successors and Assigns. This Second Mortgage and all provisions of it shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word "Mortgagor" shall include all such persons and all persons liable for the payment of the indebtedness or any part of it, whether or not such persons shall have executed the Note or this Mortgage.

14. Appointment of Receiver. Upon or at any time after the filing of a bill to foreclose this Mortgage, the court in which such bill is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor, at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and Mortgagee may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver shall also have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured by this Mortgage, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien of this Mortgage or of such decree, provided such application is made prior to any foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

15. Defenses. No action for the enforcement of the lien or of any provision of this Mortgage shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note.

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16. Release of Mortgage. Mortgagee shall release this Second Mortgage and the lien of it by proper instrument when all indebtedness secured by this Mortgage has been fully paid.

17. No Liability of Mortgagee. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any lessee, licensee, employee, stranger or other party. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers granted to it under this Mortgage, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any liability, loss or damage under any of the loan documents or under or by reason of the matters as to which Mortgagor does hereby indemnify Mortgagee, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and reasonable attorneys' fees.

18. Binding on Successors and Assigns; Joint and Several. This Mortgage and all provisions of it shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word "Mortgagor" shall include all such persons and all persons liable for the payment of the indebtedness or any part of it, whether or not such persons shall have executed the Note or this Mortgage. However, the terms of the immediately preceding sentence shall not be deemed to be a consent of a sale. The parties constituting Mortgagor are jointly and severally liable for all Liabilities.

19. Governing Law; Severability. This Mortgage shall be governed by the laws of the state in which the Premises are located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. To this end the provisions of this Mortgage and the Note are declared to be severable.

20. Giving of Notice. Unless otherwise provided in this Mortgage, all notices or demands shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail) shall be made in accordance with the terms of the Note.

21. Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws to the extent now or hereinafter permitted by law. Mortgagor, for itself, and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from any order, judgment or decree of foreclosure of this Mortgage on behalf of Mortgagor and each and every person acquiring any interest in or title to the Premises subsequent to

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the date of this Mortgage. Mortgagor does hereby further expressly waive, to the extent now or hereafter permitted by law, all rights of reinstatement of this Mortgage.

22. Security Agreement; Fixture Filing . In the event of a default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Uniform Commercial Code of Illinois, as amended from time to time (the "UCC"), shall have the option of proceeding as to both real property and personal property in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the UCC shall not apply. Notwithstanding any other provision hereof, any amendment to the UCC after the date hereof shall not limit any rights of Mortgagee hereunder. The parties agree that, in the event the Mortgagee shall elect to proceed with respect to the personal property Collateral securing the Liabilities separately from the real property, fifteen (15) days notice of the sale of the personal property Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the personal property or fixtures securing the Liabilities except that so long as no default has occurred and is continuing, Mortgagor shall be permitted to sell or otherwise dispose of such property when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other property at least equal in value to the initial value to that disposed of and in such a manner so that said other property shall be subject to the security interest created hereby and so that the security interest of the Mortgagee shall always be perfected and first in priority except as otherwise provided herein, it being expressly understood and agreed that all replacements, substitutions and additions to the property securing the Liabilities shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee in reasonable detail an inventory of the personal property securing the Liabilities. The Mortgagor covenants and represents that the all personal property securing the Liabilities now are, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, which consent shall not be unreasonably withheld or delayed, will be free and clear of liens, encumbrances or security interest of others. Nothing in this Paragraph 22 shall be deemed to prohibit Mortgagor from acquiring equipment or fixtures (but in no event inventory) which may be subject to a purchase money security interest so long as the incurrence of such debt is otherwise permitted hereunder.

23. Rights Cumulative. No right, power or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right, power or remedy, and each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of

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the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

24. Total Liability. The Premises shall secure the payment and performance of all obligations and liabilities of Mortgagor to Mortgagee:

- (a) under the Note and this Mortgage, including interest accruing after filing of a petition in bankruptcy; and
- (b) under or in connection with documents executed by Mortgagor in connection herewith;
- (c) any amounts described as "Liabilities" in other parts of this Mortgage, or referred to as indebtedness secured by this Mortgage;
- (d) any expenses (including attorneys' fees and legal costs and expenses, in each case whether in or out of court, in original or appellate proceedings or in bankruptcy) incurred or paid by Mortgagee in connection with the enforcement or preservation of its rights hereunder or under any related document; and
- (e) for any and all sums advanced or paid by Mortgagee to enforce, preserve its rights under, or perform any of the terms, covenants and provisions of this Mortgage or any related documents, including without limitation any amounts referenced in (b) of the Section entitled "DEFAULT AND FORECLOSURE", and any sums otherwise advanced by Mortgagee pursuant to the provisions hereof or of any related documents or as permitted by law.

(Any or all obligations and liabilities described in the foregoing portion of this Paragraph, shall be referred to herein as "Liabilities".)

25. Assignment of Rents and Leases. The Mortgagor assigns and transfers to the Mortgagee, as additional security for the obligations of the Mortgagor, all right, title and interest of the Mortgagor in and all leases which now exist or hereafter may be executed by or on behalf of the Mortgagor covering the Premises and any extensions or renewals thereof, together with all rents generated from or by the Premises ("Rents"), it being intended that this is an absolute and present assignment of the Rents. Notwithstanding that this assignment constitutes a present assignment of leases and rents, the Mortgagee may collect the Rents and manage the Premises, but only if and so long as a default has not occurred. If a default occurs, the right of the Mortgagor to collect the Rents and to manage the Premises shall thereupon automatically terminate and such right, together with other rights, powers and authorizations contained herein, shall belong exclusively to the Mortgagee. This assignment confers upon the Mortgagee a power coupled with an interest and cannot be revoked by the Mortgagor. Upon the occurrence of a default, the Mortgagee, as its option without notice and without seeking or obtaining

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the appointment of a receiver or taking actual possession of the Premises may (a) give notice to any tenant(s) that the tenant(s) should begin making payments under their lease agreement(s) directly to the Mortgagee or its designee; (b) commence a foreclosure action and file a motion for appointment of a receiver; or (c) give notice to the Mortgagor that the Mortgagor should collect all Rents arising from the Premises and remit them to the Mortgagee upon collection and that the Mortgagor should enforce the terms of the lease(s) to ensure prompt payment by tenant(s) under the lease(s). All Rents received by the Mortgagor shall be held in trust by the Mortgagor for the Mortgagee. All such payments received by the Mortgagee may be applied in any manner as the Mortgagee determines to payments required under this Mortgage or the Note. The Mortgagor agrees to hold each harmless from actions relating to tenant's payment of Rents to the Mortgagee.

[Signature Page To Follow]

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EXHIBIT A

Legal Description

LOTS 22 AND 23, BOTH INCLUSIVE, IN BLOCK 15 IN PIERCE'S ADDITION TO HOLSTEIN, BEING A SUBDIVISION OF THE NORTH ½ OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 1842-44 N. Milwaukee Avenue, Chicago, IL 60647

PINS: 14-31-313-003; 14-31-313-004