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Illinois Anti-Predatory Lending Database Program



Doc#: 1227612102 Fee: \$76.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/02/2012 01:24 PM Pg: 1 of 20

Certificate of Exemption

201247250 / 8879625174
1062 tag

Report Mortgage Fraud
800-532-8785

The property identified as: File: 02-23-103-036-0000

Address:

Street: 26-64 S. NORTHWEST HIGHWAY

Street line 2:

City: PALATINE

State: IL

ZIP Code: 60074

Lender: RIDGESTONE BANK

Borrower: 36 SOUTH LLC

Loan / Mortgage Amount: \$2,740,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77170 et seq. because the application was taken by an exempt entity.

S Y
P 20
S N
SC Y
INT Y

Certificate number: 26BB8649-47A7-4932-82F8-888697D043C1

Execution date: 09/26/2012

BOX 333-CT

UNOFFICIAL COPY**RECORDATION REQUESTED BY:**

McKenna Storer
 666 Russel Ct. #303
 Woodstock, IL 60098
 Attn: Sara E. Cook

WHEN RECORDED MAIL TO:

Ridgestone Bank
 13925 W. North Ave.,
 Brookfield, WI 53005-4976

THIS INSTRUMENT PREPARED BY:

McKenna Storer
 666 Russel Ct. #303
 Woodstock, IL 60098
 Attn: Sara E. Cook

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

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING is dated as of SEPTEMBER 26, 2012, between **36 South LLC**, an Illinois limited liability company ("Grantor") and **Ridgestone Bank**, a Wisconsin Banking Corporation ("Lender").

SECTION 1: GRANT OF MORTGAGE

1.01 Grant of Mortgage. For valuable consideration, Grantor mortgages, warrants, and conveys to Lender all of Grantor's right, title, and interest in and to the real property commonly known as 26-64 S. Northwest Highway, Palatine, IL 60074 and legally described on the attached Exhibit A, together with all improvements; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters (collectively, the "Real Property"). The Real Property tax identification number is shown on the attached Exhibit A.

TO SECURE TO Lender: (a) the repayment of the indebtedness evidenced by the SBA Form 147 Note from Borrower dated of even date herewith in the maximum principal sum of Two Million Seven Hundred Forty Thousand and 00/100 DOLLARS (\$2,740,000.00), with interest thereon as set forth in the Note, and all renewals, extensions and modifications thereof (herein the "Note"), and with a final maturity date twenty five (25) years from the date of this Instrument; (b) the repayment of any Loan, with interest thereon, made by Lender to Borrower, including existing Loans and Loans not now in existence and made in the future; (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument or to fulfill any of Borrower's obligations hereunder or under the other Loan Documents (as defined

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obligations hereunder or under the other Loan Documents (as defined herein); (d) the performance of the covenants and agreements of Borrower contained herein or in the other Loan Documents; and (e) the repayment of all sums now or hereafter owing to Lender by Borrower pursuant to any instrument which recites that it is secured hereby.

- 1.02 Leases and Rents.** Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all Leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.
- 1.03 SCOPE. THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE PERSONAL PROPERTY AND RENTS, IS GIVEN TO SECURE (a) PAYMENT OF THE INDEBTEDNESS AND (b) PERFORMANCE OF ALL OBLIGATIONS UNDER THIS MORTGAGE, THE BUSINESS LOAN AGREEMENT AND THE LOAN DOCUMENTS. THIS MORTGAGE IS INTENDED TO AND SHALL BE VALID AND HAVE PRIORITY OVER ALL SUBSEQUENT LIENS AND ENCUMBRANCES, INCLUDING STATUTORY LIENS TO THE EXTENT OF THE MAXIMUM AMOUNT SECURED HEREBY. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE TERMS SET FORTH HEREIN**

SECTION 2: GRANTOR'S AGREEMENTS AND COVENANTS

- 2.01 Payment and Performance.** Except as otherwise provided in this Mortgage, Borrower shall pay to Lender all amounts secured by this Mortgage as they become due, and Grantor shall strictly perform all of Grantor's obligations under this Mortgage.
- 2.02 Possession and Maintenance of the Property.** Grantor agrees that the following provisions shall govern Grantor's possession and use of the Property:
- (a) **Possession and Use.** Until the occurrence of an Event of Default, Grantor may: (1) remain in possession and control of the Property; and (2) use, operate or manage the Property. To the extent that Grantor has executed an Assignment of Rents in favor of Lender, Grantor's rights to collect any Rents from the Property shall be governed by said Assignment of Rents. The Property is not currently used for agricultural, farming, timber or grazing purposes. Grantor warrants that this Mortgage is and will at all times constitute a commercial real estate mortgage as defined under Illinois law.
 - (b) **Duty to Maintain.** Grantor shall maintain, and cause its lessees to maintain, the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.
 - (c) **Hazardous Substances.** The terms "hazardous waste," "hazardous," "disposal," "release," and "threatened release," as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as

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amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Grantor represents and warrants to Lender that: (1) during the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any Person on, under, or about the Property; (2) there has not been (A) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any Person on or under the Property or (B) any actual or threatened litigation or claims of any kind by any Person relating to such matters; and (3) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Property except in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person.

- (d) **Environmental Indemnity.** The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for hazardous waste and hazardous substance. Grantor hereby (1) releases and waives any present and future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and re-conveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.
- (e) **Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to

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the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

- (f) **Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without the prior written consent of Lender. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.
- (g) **Lender's Right to Enter.** Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.
- (h) **Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.
- (i) **Duty to Protect.** Grantor agrees neither to abandon nor leave the Property unattended. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are necessary to protect and preserve the Property.

2.03 Taxes and Liens. Grantor agrees to comply with the following provisions regarding taxes and liens:

- (a) **Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay, and cause any lessee to pay (as appropriate), when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens, except for the lien of taxes and assessments not due, and except as otherwise provided in the following subsection (b).
- (b) **Right To Contest.** Grantor will not be required to pay and discharge any such assessment, tax, charge, levy, lien or claim (collectively the "Charges") so long as: (1) the legality of the same shall be promptly contested in good faith by appropriate proceedings; (2) Grantor shall have deposited with Lender cash, a sufficient corporate surety bond or other

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security satisfactory in form and substance to Lender in an amount adequate to provide for the release of such Charge plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Property; (3) such contest operates to suspend collection of the Charge; and (4) none of the Property is subject to forfeiture or loss of any security interest (or the priority thereof) by reason of the institution or prosecution of such contest as determined by Lender in its reasonable discretion. Grantor, upon demand of Lender, will furnish to Lender evidence of payment of the indebtedness and obligations, including any assessments, taxes, charges, levies, liens and claims and will authorize the appropriate obligor or governmental official to deliver to Lender at any time a written statement of any indebtedness and obligations including any Charges. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

- (C) **Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.
- (d) **Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanics lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such work, services, or materials.

2.04 Property Damage Insurance and Proceeds. Grantor agrees to comply with the provisions of the Business Loan Agreement relating to insurance and casualty proceeds; and at its own cost to:

- (a) **Casualty and Liability Insurance.** The Grantor shall obtain and maintain insurance as set forth in Exhibit 10.05 of the Business Loan Agreement insuring against (1) loss, destruction or damage to its properties and business of the kinds and in the amounts customarily insured against by corporations with established reputations engaged in the same or similar business as Grantor and, in any event, sufficient to fully protect Lender's interest in the Collateral, and (2) insurance against public liability and third party property damage of the kinds and in the amounts customarily insured against by Persons with established reputations engaged in the same or similar business as Grantor.
- (b) **Certificates of Insurance.** The foregoing policies shall (1) be issued by financially sound and reputable insurers, (2) name Lender as an additional insured and, where applicable, as loss payee under a Lender

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loss payable endorsement satisfactory to Lender, and (3) shall provide for thirty (30) days written notice to Lender before such policy is altered or canceled. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. All of the insurance policies required hereby shall be evidenced by one or more Certificates of Insurance delivered to Lender by Grantor on or before the date that the initial Loan hereunder closes and at such other times as Lender may request from time to time. Upon each reasonable request of Mortgagee, Mortgagor shall increase the coverages under any of the insurance policies required to be maintained hereunder or otherwise modify such policies in accordance with Mortgagee's request.

- (c) Illinois Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, 815 ILCS 180/1, et seq., Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Instrument, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Premises or any other collateral for the Indebtedness. This insurance may, but need not protect Mortgagor's interests. The coverage the Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises or any other collateral for the Indebtedness. 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 instrument. If Mortgagee purchases insurance for the Premises or any other collateral for the Indebtedness, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully 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 total outstanding Indebtedness. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

- 2.05 Tax and Insurance Reserves.** Grantor agrees to establish reserve accounts as provided for in the Business Loan Agreement.
- 2.06 Expenditures by Lender.** If Grantor fails to comply with any provision of this Mortgage, or if any action or proceeding is commenced that would materially affect Lender's interests in the Property, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate. Any amount that Lender expends in so doing will bear interest at the then current rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses, at Lender's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Mortgage also will secure payment of these amounts. The rights provided for in this section shall be in addition to

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any other rights or any remedies to which Lender may be entitled on account of an Event of Default. Any such action by Lender shall not be construed as curing the Event of Default so as to bar Lender from any remedy that it otherwise would have had.

2.07 Warranty; Defense of Title; Compliance. Grantor makes the following warranties and agreements regarding title to the Property and compliance with applicable laws:

(a) Title. Grantor warrants that: (1) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens, security interests and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of and accepted by Lender in connection with this Mortgage, and (2) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

(b) Defense of Title. Subject to the exception in subsection 2.07 (a) above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all Persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice (and at Grantor's expense), and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

(c) Compliance With Laws. Grantor represents and warrants that the Property and Grantor's use of the Property comply with all existing applicable laws, ordinances, and regulations of governmental authorities.

2.08 Condemnation. Grantor agrees to comply with the provisions of the Business Loan Agreement regarding condemnation of the Property.

2.09 Imposition of Taxes, Fees and Charges by Governmental Authorities. Grantor agrees to comply with the following provisions regarding governmental taxes, fees and charges:

(a) Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

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(b) **Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

(c) **Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided in Section 2.03(b) and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECTION 3: SECURITY AGREEMENT

3.01 Security Agreement. This Mortgage shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

3.02 Security Interest. Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon an Event of Default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Lender and make it available to Lender within three (3) days after notice from Lender.

SECTION 4: FURTHER ASSURANCES; ATTORNEY-IN-FACT

4.01 Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, re-filed, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, control agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor under the Note, this Mortgage, and the Loan Documents, and (b) the liens and security interests

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created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this Section.

- 4.02 Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the above sub-section, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's opinion, to accomplish the matters referred to in the above sub-section.

SECTION 5: DUE ON SALE; FULL PERFORMANCE

- 5.01 Due on Sale. Consent by Lender.** Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Grantor. However, Lender shall not exercise this option if such exercise is prohibited by federal law or by Illinois law.
- 5.02 Full Performance.** If Borrower pays all the Indebtedness, including without limitation all future advances, when due, and Grantor performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

SECTION 6: EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default.

- (a) A default in the performance of any obligation hereunder or any Event of Default under the Note, Business Loan Agreement or any Loan Document shall constitute an Event of Default hereunder.
- (b) **Right to Cure.** If any default, other than a payment default is curable and if Grantor has not been given a notice of a breach of the same provision of the Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of

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such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

6.02 Rights and Remedies. Upon the occurrence of any Event of Default and at any time thereafter, Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law or equity:

- (a) **Accelerate Indebtedness.** Lender shall have the right without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment premium which Grantor would be required to pay.
- (b) **UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.
- (c) **Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If Lender collects the Rents, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subsection either in person, by agent, or through a receiver.
- (d) **Lender in Possession or Receiver.** Lender shall have the right to be placed as Lender in possession or to have a receiver appointed without the requirement of the posting of any bond, to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The Lender in possession or receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

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- (e) **Sale of Property and Judicial Foreclosure.** Lender shall be permitted to: (1) immediately judicially foreclose this Mortgage; or (2) if allowed under Illinois law at the time of such Event of Default, immediately sell the any part of the Property either in whole or in separate parcels, as prescribed by Illinois law, under power of sale, which power is hereby granted to Lender to the full extent permitted by Illinois law, and thereupon, to make and execute to any purchaser(s) thereof deeds of conveyance pursuant to applicable law.
- (f) **Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Mortgage.
- (g) **Other Rights and Remedies.** Lender shall have all other rights and remedies provided in this Mortgage, the Business Loan Agreement, the Note, the Loan Documents, or available at law or in equity.
- 6.03 Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.
- 6.04 Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.
- 6.05 Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor under this Mortgage after failure of Grantor to perform shall not affect Lender's right to declare an Event of Default and exercise its remedies under this Mortgage.
- 6.06 Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all expenses incurred by Lender that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the current rate under the Note. Expenses covered by this Section include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports),

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surveyors' reports, and appraisal fees, and title insurance. Grantor also will pay any court costs, in addition to all other sums provided by law.

SECTION 7: DEFINITIONS; MISCELLANEOUS PROVISIONS.

7.01 Definitions. The following words shall have the following meanings when used in this Mortgage. Terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Illinois Uniform Commercial Code (810 ILCS 1/1 et seq as amended from time to time, the "Uniform Commercial Code"). All references to dollar amounts shall mean amounts in lawful money of the United States of America.

Borrower. The word "Borrower" means Breanne, Inc., 36 South LLC and 36 South Training Center, LLC and includes all co-signers and co-makers signing the Note.

Business Loan Agreement. The words "Business Loan Agreement" mean that certain Business Loan Agreement dated as of even date herewith between Borrower and Lender, as it may be amended from time to time, together with all exhibits and schedules attached to this Business Loan Agreement from time to time.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Grantor. The word "Grantor" means the Grantor under this Mortgage.

Improvements. The word "Improvements" means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note, Loan, or Loan Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under the Business Loan Agreement or under any of the Loan Documents.

Lender. The word "Lender" means RIDGESTONE BANK a Wisconsin banking corporation, its successors and assigns. The Lender is the Lender under the Note and this Mortgage.

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Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

Loan Documents. The words "Loan Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender, and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents.

Note. The word "Note" means that certain Promissory Note executed by Borrower to Lender dated as of even date herewith in the principal amount of Two Million Seven Hundred Forty Thousand and 00/100 DOLLARS (\$2,740,000.00), together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory note.

Person. The word "Person" means an individual or a corporation, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, limited liability company, government (or any instrumentality, division, agency, body or political subdivision thereof) or other entity of any kind.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" have the meaning set forth in Section 1.

Rents. The word "Rents" means all rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property, whether due now or later.

7.02 Miscellaneous Provisions.

- (a) **Entire Agreement; Amendments.** This Mortgage, together with any Loan Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of, or amendment to, this Mortgage shall be effective unless given in writing

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and signed by the party or parties sought to be charged or bound by the alteration or amendment. Any agreement subsequently made by Grantor or Lender relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

- (b) **Applicable Law.** Subject to paragraph 7.02(q), this Mortgage and all acts, agreements, certificates, assignments, transfers and transactions hereunder, and all rights of the parties hereto, shall be governed as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws and decisions of the State of Illinois, including, but not limited to, laws regulating interest, loan charges, commitment fees and brokerage commissions (without regard to conflicts of law principles). It is acknowledged and agreed by Grantor and Lender that the loan transaction evidenced hereby, bears a reasonable relationship to the State of Illinois.
- (c) **Consent to Jurisdiction.** To induce Lender to accept this Mortgage, Grantor irrevocably agrees that, subject to Lender's sole and absolute election, and subject to section 7.02(q), **ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LITIGATED IN COURTS HAVING SUITS IN COOK COUNTY, ILLINOIS. GRANTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS.**
- (d) **Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.
- (e) **Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.
- (f) **Multiple Parties; Corporate Authority.** All obligations of Grantor under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Mortgage. To the extent that Grantor is a corporation, partnership or limited liability company, it hereby represents and warrants to Lender that the execution of this Mortgage has been authorized by all necessary corporate, partnership or limited liability company action, as the case may be.
- (g) **Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be invalid or unenforceable as to any Person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other Persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision

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cannot be so modified, it shall be stricken and all other provisions of this Mortgage in all other respects shall remain valid and enforceable.

- (h) **Successors and Assigns.** Subject to the limitations stated in this Mortgage on transfer of Grantor's interest in the Real Property or a change in ownership of Grantor, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the Indebtedness by way of forbearance, extension or any other modification without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.
- (i) **Survival.** All warranties, representations, and covenants made by Grantor in this Mortgage or in any certificate or other instrument delivered by Grantor to Lender under this Mortgage shall be considered to have been relied upon by Lender and will survive the making of the loan secured hereby and delivery to Lender of the Loan Documents, regardless of any investigation made by Lender or on Lender's behalf.
- (j) **Time Is of the Essence.** Time is of the essence in the performance of this Mortgage.
- (k) **Agency.** Nothing in this Mortgage shall be construed to constitute the creation of a partnership or joint venture between Lender and Grantor or any contractor. Lender is not an agent or representative of Grantor. This Mortgage does not create a contractual relationship with and shall not be construed to benefit or bind Lender in any way with or create any contractual duties by Lender to any contractor, subcontractor, materialman, laborer, or any other Person.
- (l) **Notices.** Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by another, or whenever any of the parties desires to give or serve upon another any communication with respect to this Mortgage, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be delivered in person (by personal delivery, delivery service or reputable overnight courier service), or telecopied and confirmed immediately in writing by a copy mailed by United States mail, postage prepaid, addressed as hereafter set forth, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(1) If to Lender, at:

Ridgestone Bank
13925 W. North Ave.,
Brookfield, WI 53005-4976

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with a copy to:

McKenna Storer
 666 Russel Ct., Ste. 303
 Woodstock, IL 60098
 Attn: Sara E. Cook
 (815) 334-9692
 Fax (815) 334-9697
scook@mckenna-law.com

(2) If to Grantor,
 36 South LLC
 34 S. Northwest Hwy.
 Palatine, IL 60074

with a copy to:

or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Every notice, demand, request, consent, approval, declaration or other communication hereunder shall be deemed to have been duly given or served on the date on which (a) personally delivered (whether in person, by delivery service, or by reputable overnight courier service), (b) the date of the telecopy transmission (provided the confirmation mailing was sent as provided herein), or (c) on the date of receipt if sent by the United States mail. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the Persons designed above to receive copies, if any, shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

- (m) **Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Illinois as to all indebtedness secured by this Mortgage.
- (n) **Waiver of Right of Redemption.** NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS MORTGAGE, GRANTOR HEREBY WAIVES, TO THE EXTENT PERMITTED UNDER 735 ILCS 5/15-1601(B) OR ANY SIMILAR LAW EXISTING AFTER THE DATE OF THIS MORTGAGE, ANY AND ALL RIGHTS OF REDEMPTION AND REINSTATEMENT ON BEHALF OF GRANTOR AND ON BEHALF OF ANY OTHER PERSONS PERMITTED TO REDEEM THE PROPERTY.

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- (o) **Waivers and Consents.** Lender shall not be deemed to have waived any rights under this Mortgage (or under the Loan Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or any of Grantor's obligations as to any future transactions.
- (p) **Lender's Discretion.** Whenever this Mortgage requires either Lender's consent, election, approval or similar action or otherwise vests in Lender the authority to make decisions and/or determinations, such actions shall be made or withheld in Lender's sole and absolute discretion, unless specifically provided otherwise and the granting of any consent, election, approval or similar action by Lender in any instance shall not constitute continuing consent, election, approval or similar action in subsequent instances where such is required.
- (q) **SBA LOAN.** The loan secured by this Instrument was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this Instrument, then under SBA regulations: a) When SBA is the holder of the Note, this Instrument, the Loan Documents and all other documents evidencing or securing the Indebtedness will be construed in accordance with federal law; b) The Lender and the SBA may use local or State procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or State control, penalty, tax or liability. Neither the Grantor, any borrower or any guarantor of the Indebtedness may claim or assert against SBA any local or State law to deny any obligation of a borrower or Grantor, or defeat any claim of SBA with respect to the loan secured by this Instrument. Any clause in this Instrument requiring arbitration is not enforceable when SBA is the holder of the Note secured by this Instrument.
- (r) **JURY WAIVER.** THE GRANTOR AND THE LENDER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE INDEBTEDNESS.

(Remainder of page intentionally left blank.)

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GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING AND THE BUSINESS LOAN AGREEMENT, AND GRANTOR AGREES TO BE BOUND BY THEIR TERMS.

GRANTOR:

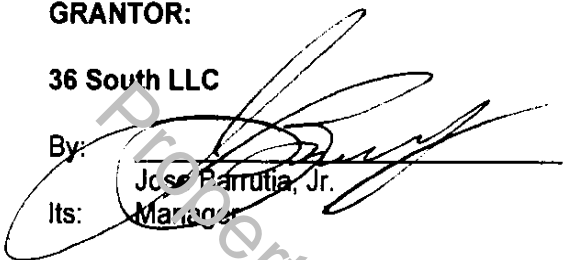
36 South LLC

By:

Jose Barrutia, Jr.

Its:

Manager



ACKNOWLEDGMENT

STATE OF ILLINOIS,

COUNTY OF Cook

TO WIT:

I HEREBY CERTIFY that on this 26 day of September, 2012, before me, the undersigned Notary Public of the aforesaid State, personally appeared Jose Barrutia, Jr., and acknowledged he to be the stated Manager of 36 South LLC [GRANTOR] and being authorized so to do, executed the foregoing instrument for the purposes contained therein.

WITNESS MY Hand and Notarial Seal.

T. Greiner (Seal)
Notary Public

My Commission Expires:
2/24/16

OFFICIAL SEAL
TIFFANY J. GREINER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 2-24-16

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(Attached to and becoming a part of Mortgage document dated: SEPTEMBER 26, 2012)

EXHIBIT A- Legal Description

LOT 1 IN PLAT OF CONSOLIDATION OF LOTS 14 TO 26 IN BLOCK 1 IN PRAIRIE VIEW ADDITION TO PALATINE, BEING A SUBDIVISION OF THAT PART OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE CHICAGO AND NORTH WESTERN RAILROAD, EXCEPT THE WEST 7 ACRES THEREOF, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 18, 2007, AS DOCUMENT NUMBER 0722815168.

PIN: 02-23-103-036-0000