

UNOFFICIAL COPY



1303029052

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Doc#: 1303029052 Fee: \$122.00
Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/30/2013 12:34 PM Pg: 1 of 43

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 17-03-221-003-0000

Address:

Street: 223 EAST DELAWARE PLACE

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60611

Lender: FIRST EAGLE BANK

Borrower: TWO TWENTY-THREE EAST DELAWARE CORPORATION

Loan / Mortgage Amount: \$250,000.00

This property is located within the program area and is exempt from the requirements of 765 LCS 77/70 et seq. because it is commercial property.

Box 400-CTCC

Certificate number: B29A2245-4700-4AB2-B641-FA4CAD1A45AA

Execution date: 11/16/2012

8894682 Home SI 4076

Property of Cook County Clerk's Office

UNOFFICIAL COPY

**This document was prepared by
and after recording should be
returned to:**

Jay R. Goldberg
Field and Goldberg, LLC
10 South LaSalle Street
Suite 2910
Chicago, IL 60603

Address of Property:
223 East Delaware Place
Chicago, IL 60611

Permanent Index No.:
17-03-221-003-0000

SECOND MORTGAGE

THIS SECOND MORTGAGE made as of November 20, 2012, by **TWO TWENTY-THREE EAST DELAWARE CORPORATION**, an Illinois corporation (herein called "Mortgagor"), whose address is 223 East Delaware Place, Chicago, IL 60611, to **FIRST EAGLE BANK** (herein, together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee"), whose address is 1201 West Madison Street, Chicago, IL 60607.

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee, that certain Revolving Line of Credit Note (herein called the "Note") dated the date hereof, in the principal sum of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00), bearing interest at the rate specified therein, payable to the order of the Mortgagee, and otherwise in the form of Note attached hereto as Exhibit A and incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in the Note provided, are herein called the "Indebtedness Hereby Secured".

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for such payment, performance and observance) and in consideration of the premises and Ten Dollars (\$10.00) in hand paid by the Mortgagee to the Mortgagor, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby GRANT, RELEASE, REMISE, ALIEN, MORTGAGE,

Second Mortgage

UNOFFICIAL COPY

WARRANT and CONVEY unto the Mortgagee all and sundry rights, interests and property hereinafter described (all herein together called the "Premises"):

A. A second priority mortgage lien in and to the real estate (herein called the "Real Estate") described in Exhibit B attached hereto and made a part hereof;

B. All buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings or improvements (all herein generally called the "Improvements");

C. All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;

D. All leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (all herein generally called "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;

E. All rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (all herein generally called "Rents"), subject to the right, power and authority given to the Mortgagor in the Assignment hereinafter referred to, to collect and apply the Rents;

F. All right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or Improvements, or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by Mortgagor;

G. Any interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;

H. All right, title and interest of Mortgagor now owned or hereafter acquired in and to (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate; (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connection with the Real Estate and Improvements; (iii) any and all rights and interest of every name or nature forming part of or used in connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto, and (v) all water rights and shares of stock evidencing the same;

I. All right, title and interest of Mortgagor in and to all tangible personal property (herein called "Personal Property") owned by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or Improvements or used or useful in connection therewith (whether or not affixed thereto), including, but not limited to:

UNOFFICIAL COPY

- a. all furniture, furnishings and equipment furnished by Mortgagor to tenants of the Real Estate or Improvements;
- b. all building materials and equipment located upon the Real Estate and intended to be incorporated in the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements;
- c. all machines, machinery, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all fire sprinklers, alarm systems, electronic monitoring equipment and devices;
- d. all window or structural cleaning rigs, maintenance equipment and equipment relating to exclusion of vermin or insects and removal of dust, dirt, debris, refuse or garbage;
- e. all lobby and other indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, wall beds, wall safes and other furnishings;
- f. all rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds and curtains;
- g. all lamps, chandeliers and other lighting fixtures;
- h. all recreational equipment and materials;
- i. all office furniture, equipment and supplies;
- j. all kitchen equipment, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units;
- k. all laundry equipment, including washers and dryers;
- l. all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of exterior portions of the Real Estate and Improvements; and
- m. all maintenance supplies and inventories;

provided that the enumeration of any specific articles of Personal Property set forth above shall in no way exclude or be held to exclude any items of property not specifically enumerated; but provided that there shall be excluded from and not included within the term "Personal Property" as used herein and hereby mortgaged and conveyed, any equipment, trade fixtures, furniture, furnishings or other property of tenants of the Premises;

J. All the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises, and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or

UNOFFICIAL COPY

purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (all herein generally called "Awards").

TO HAVE AND TO HOLD all and sundry the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

FOR THE PURPOSE OF SECURING:

A. Payment of the indebtedness with interest thereon evidenced by the Note and any and all modifications, extensions and renewals thereof, and all other Indebtedness Hereby Secured;

B. Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the Assignment referred to in Section 26 hereof;

C. Performance by any guarantor of its obligations under any Guaranty or other instrument given to further secure the payment of the Indebtedness Hereby Secured or the performance of any obligation secured hereby;

provided that the aggregate of the Indebtedness Hereby Secured shall at no time exceed Fifty Million Dollars and No Cents (\$50,000,000.00).

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness Hereby Secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

AND IT IS FURTHER AGREED THAT:

1. Payment of Indebtedness. The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Note, and all other Indebtedness Hereby Secured, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein or in the Note provided on the part of the Mortgagor to be performed and observed.

2. Maintenance, Repair, Restoration, Prior Liens, Parking. The Mortgagor will:

A. Promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed, whether or not proceeds of insurance are available or sufficient for the purpose;

UNOFFICIAL COPY

- B. Keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof;
- C. Pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;
- D. Complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;
- E. Comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
- F. Make no material alterations in the Premises, except as required by law or municipal ordinance;
- G. Suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Mortgagee's prior written consent;
- H. Pay when due all operating costs of the Premises;
- I. Initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent;
- J. Provide, improve, grade, surface and thereafter maintain, clean, repair, mark, stripe, police and adequately light parking areas within the Premises of sufficient size to accommodate not less than all standard size American-made automobiles, or as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;
- K. Reserve and use all such parking areas solely and exclusively for the purpose of providing ingress, egress and parking facilities for automobiles and other passenger vehicles of Mortgagor and tenants of the Premises and their invitees and licensees;
- L. Not reduce, build upon, obstruct, redesignate or relocate any such parking areas, sidewalks, aisles, streets, driveways, sidewalk cuts or paved areas or rights-of-way, or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the Premises, without the prior written consent of the Mortgagee;
- M. Cause the Premises at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations (herein called "Environmental Regulations"), so that no cleanup, claim or other obligation or responsibility

UNOFFICIAL COPY

arises from a violation of any such laws, statutes, or ordinances, rules and regulations;

N. From time to time at the direction of Mortgagee, obtain and furnish to Mortgagee at Mortgagor's expense, an environmental audit or survey from an expert satisfactory to Mortgagee with respect to the Premises; and

O. Comply and cause the Premises to comply with all requirements and recommendations relating to compliance with Environmental Regulations and comply and cause the Premises to comply with the recommendations set forth in any environmental audit or survey with respect to the Premises, whether made or obtained by or at the request or direction of Mortgagee, Mortgagor or any federal, state or local governmental authority or agency, or otherwise.

3. Taxes. The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor; provided that in the event that any law or court decree has the effect of deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment in whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgagor or the Indebtedness Hereby Secured or the Holder thereof, then, and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor; and nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

4. Insurance Coverage. The Mortgagor will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

A. Insurance against loss to the Improvements and Personal Property caused by fire, lightning and risks covered by the so-called "Extended Coverage" endorsement together with "vandalism and malicious mischief" and "sprinkler leakage" endorsements, or by the so-called "all perils" endorsement and such other risks as the Mortgagee may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Improvements and Personal Property, plus the cost of debris removal, with full replacement cost endorsement, "agreed amount" endorsement, and "contingent liability from operations of building laws" endorsement;

B. Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises

UNOFFICIAL COPY

with such limits as the Mortgagee may reasonably require and in any event not less than \$3,000,000 single limit coverage;

C. Rent and rental value insurance (or, at the discretion of Mortgagee, business interruption insurance) in amounts sufficient to pay during any period of up to one (1) year in which the Improvements may be damaged or destroyed all projected annual rents derived from the Premises, and all amounts (including, but not limited to, all taxes, assessments, utility charges, operating expenses and insurance premiums) required herein to be paid by the Mortgagor or by tenants of the Premises;

D. Broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance (if any thereof are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the type and in amounts as the Mortgagee may reasonably require, but in any event not less than that customarily carried by persons owning or operating like properties;

E. During the making of any alterations or improvements to the Premises insurance covering claims based on the owner's contingent liability not covered by the insurance provided in subsection B above, and Workmen's Compensation insurance covering all persons engaged in making such alterations or improvements;

F. Federal Flood Insurance in the maximum obtainable amount up to the amount of the Indebtedness Hereby Secured evidenced by the Note, if the Premises is in a "flood plain area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended;

G. If any part of the Premises is now or hereafter used for the sale or dispensing of beer, wine, spirits or any other alcoholic beverages, so-called "dram shop" or "innkeepers liability" insurance against claims or liability arising directly or indirectly to persons or property on account of such sale or dispensing of beer, wine, spirits or other alcoholic beverages, including in such coverage loss of means of support, all in amounts as may be required by law or as the Mortgagee may specify, but in no event less than \$3,000,000 single limit coverage;

H. Earthquake insurance, in an amount equal to the full replacement cost of the Premises plus the cost of debris removal, with full replacement cost endorsement, "agreed amount" endorsement, and "contingent liability from operations of building laws" endorsement but only if obtainable at reasonable cost;

I. Such other insurance of the types and in amounts as the Mortgagee may require, but in any event not less than the types and coverages of insurance customarily carried by persons owning and operating like properties;

and Mortgagor shall at its own expense furnish such insurance appraisals as may be required by Mortgagee from time to time (and in any event not less often than once every 5 years) to ascertain the full replacement cost of the Improvements for the purposes of Subsection A above.

UNOFFICIAL COPY

5. Insurance Policies. All policies of insurance to be maintained and provided as required by Section 4 hereof shall:

A. Be in forms, companies and amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee;

B. Contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee;

C. Be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer;

D. Provide for thirty (30) days' prior written notice of cancellation to Mortgagee;

E. Contain no deductible amount in excess of \$5,000;

F. Provide that any waiver of the insured's subrogation rights shall not void coverage;

and Mortgagor will deliver all policies, including additional and renewal policies, to Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

6. Deposits for Taxes and Insurance Premiums. In order to assure the payment of Taxes and insurance premiums payable with respect to the Premises as and when the same shall become due and payable:

A. The Mortgagor shall deposit with the Mortgagee on the first (1st) day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Indebtedness Hereby Secured, an amount equal to:

a. One-twelfth (1/12) of the Taxes next to become due upon the Premises; provided that, in the case of the first such deposit, there shall be deposited in addition, an amount as estimated by Mortgagee which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to Mortgagee's satisfaction that there will be sufficient funds on deposit to pay Taxes as they come due; plus

b. One-twelfth (1/12) of the annual premiums on each policy of insurance upon the Premises; provided that, with the first such deposit there shall be deposited in addition, an amount equal to one-twelfth (1/12) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and including the date of deposit;

UNOFFICIAL COPY

provided that the amount of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Mortgagee's reasonable estimate as to the amount of Taxes and premiums of insurance next to be payable;

B. The aggregate of the monthly Tax and Insurance Deposits, together with monthly payments of interest and/or principal and interest payable on the Note, shall be paid in a single payment each month, to be applied to the following items in the order stated:

- a. Taxes and insurance premiums;
- b. Indebtedness Hereby Secured other than principal and interest on the Note;
- c. Interest on the Note;
- d. Amortization of the principal balance of the Note.

C. The Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the insurance premiums and Taxes or will, upon presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor; provided that if the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and insurance premiums when the same shall become due, then the Mortgagor shall pay to the Mortgagee on demand any amount necessary to make up the deficiency; and if the total of such Deposits exceed the amount required to pay the Taxes and insurance premiums, such excess shall be credited on subsequent payments to be made for such items;

D. In the event of a default in any of the provisions contained in this Mortgage, in the Note or in other Loan Documents, the Mortgagee, at its option, without being required so to do, may apply any Tax and Insurance Deposits on hand on any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect, and in such case the Mortgagor will replenish any Tax and Insurance Deposits so applied within 5 days after Mortgagee's demand; provided that when the Indebtedness Hereby Secured has been fully paid, then any remaining Tax and Insurance Deposits shall be paid to the Mortgagor;

E. All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held in trust to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor;

F. Notwithstanding anything to the contrary herein contained, the Mortgagee shall not be liable for any failure to apply to the payment of Taxes and insurance premiums any amounts deposited as Tax and Insurance Deposits unless the Mortgagor, while no default exists hereunder, and within a reasonable time prior to the due date, shall have requested the Mortgagee in writing to make application of such Deposits on hand to the payment of the particular Taxes or insurance premiums for the payment of which such Deposits were made, accompanied by the bills therefor; and

UNOFFICIAL COPY

G. All Tax and Insurance Deposits in the hands of Mortgagee shall be held without allowance of interest and need not be kept separate and apart but may be commingled with any funds of the Mortgagee until applied in accordance with the provisions hereof.

Notwithstanding anything to the contrary herein set forth, so long as (i) real estate taxes are timely paid, (ii) insurance premiums are timely paid, and (iii) an Event of Default has not occurred and is continuing under this Mortgage, Tax and Insurance Deposits shall not be required; provided, however, at such time as either of the foregoing conditions shall fail to be true and correct then, thereafter, Tax and Insurance Deposits shall be required notwithstanding the said default shall be cured.

7. Proceeds of Insurance. The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and:

A. In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either to settle and adjust any claim under such policies without the consent of the Mortgagor, or allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagor may itself adjust losses aggregating not in excess of Twenty-Five Thousand Dollars (\$25,000); provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand;

B. In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty") and if, in the reasonable judgment of the Mortgagee, the Premises can be restored prior to Loan maturity, to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness Hereby Secured, and the insurers do not deny liability to the insureds, then, if none of the Leases are subject to termination on account of such casualty, and if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, and if there was no Event of Default, whether continuing or not, at the time of occurrence of damage or destruction, which resulted in said loss, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoration") the Premises or any part thereof subject to Insured Casualty, as provided for in Section 9 hereof;

C. Notwithstanding the foregoing, proceeds of rent and rental value insurance or business interruption insurance provided as set forth in Section 4.C hereof collected by the Mortgagee, shall be held and applied as follows:

a. So long as no Event of Default shall have occurred, such proceeds shall be applied in payment of periodic installments of principal and interest provided for in the Note and to payment of any Tax and Insurance Deposits required by Section 6 hereof, and any surplus shall be remitted to Mortgagor; and

UNOFFICIAL COPY

b. Upon the occurrence of an Event of Default, such proceeds shall be applied as set forth in Subsection E below.

D. If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection B above, then at any time from and after the Insured Casualty, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;

E. Except as provided for in this Section 7, Mortgagee shall apply the proceeds of insurance (including amounts not required for Restoring effected in accordance with Subsection B above) consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of insurance proceeds as aforesaid;

F. In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the Restoring of the Premises, Mortgagor hereby covenants to Restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;

G. Any portion of insurance proceeds remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;

H. No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagee; and

I. Nothing contained in this Mortgage shall create any responsibility or liability upon the Mortgagee to collect any proceeds of any policies of insurance, or Restore any portion of the Premises damaged or destroyed through any cause.

8. Condemnation. The Mortgagor will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises, including damages to grade, and:

A. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any Award consequent upon any Taking;

B. If, in the reasonable judgment of the Mortgagee, the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the Premises prior to such Taking and adequately securing the outstanding balance of the Indebtedness Hereby Secured then, if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, the Award shall be applied to reimburse Mortgagor for the cost of Restoring the

UNOFFICIAL COPY

portion of the Premises remaining after such Taking, as provided for in Section 9 hereof;

C. If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection B above, then at any time from and after the Taking, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;

D. Except as provided for in Subsection B of this Section 8, Mortgagee shall apply any Award (including the amount not required for Restoration effected in accordance with Subsection B above) upon the Indebtedness Hereby Secured in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of any Award as aforesaid;

E. In the event that any Award shall be made available to the Mortgagor for Restoring the portion of the Premises remaining after a Taking, Mortgagor hereby covenants to Restore the remaining portion of the Premises to be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;

F. Any portion of any Award remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction; and

G. No interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagee.

9. Disbursement of Insurance Proceeds and Condemnation Awards. In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidence of costs and payments as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work; and in each case:

A. No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time;

B. Funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds or Award; and

UNOFFICIAL COPY

C. At all times the undisbursed balance of such proceeds or Award remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien.

10. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor shall pay such tax in the manner required by such law.

11. Prepayment Privilege. At such time as the Mortgagor is not in default under the terms of the Note, or under the terms of this Mortgage, the Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise.

12. Effect of Extensions of Time, Amendments on Junior Liens and Others. Mortgagor covenants and agrees that:

A. If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, 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 the Mortgagee, notwithstanding any such extension, variation or release;

B. Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take such lien subject to the rights of the Mortgagee to amend, modify and supplement this Mortgage, the Note and the Assignment, and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without giving notice to, or 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; and

C. Nothing in this Section contained shall be construed as waiving any provision of Section 17 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered.

13. Effect of Changes in Tax Laws. In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purpose of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee,

UNOFFICIAL COPY

shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided that if in the opinion of counsel for the Mortgagee the payment by Mortgagor of any such taxes or assessments shall be unlawful, then the Mortgagee may, by giving notice to the Mortgagor, declare the entire principal balance of the Indebtedness Hereby Secured and all accrued interest to be due and payable on a date specified in such notice, not less than 180 days after the date of such notice, and the Indebtedness Hereby Secured and all accrued interest shall then be due and payable without premium or penalty on the date so specified in such notice.

14. Mortgagee's Performance of Mortgagor's Obligations. In case of default therein, the Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof, and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein or in any other Loan Documents required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and in connection therewith:

A. The Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien, title, or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax, assessment, lien or claim;

B. Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises, Improvements and Personal Property shall be operational and usable for their intended purpose;

C. All monies paid for any of the purposes herein authorized or authorized by any other instrument evidencing or securing the Indebtedness Hereby Secured, and all expenses paid and incurred in connection therewith, including attorney's fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping, or to rent, operate and manage the Premises and such Improvements, or to pay any such operating costs and expenses thereof, or to keep the Premises, Improvements and Personal Property operational and usable for their intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate");

D. Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor; and

E. The Mortgagee, in making any payment hereby authorized relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof, for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, or in connection with the

UNOFFICIAL COPY

completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate, and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

15. Inspection of Premises. The Mortgagee shall have the right to inspect the Premises at all reasonable times upon prior written notice by email to Mortgagee's management company, except in the case of emergency, and access thereto shall be permitted for that purpose.

16. Financial Statements. The Mortgagor will, no later than September 15th of each calendar year during the term of the Loan, furnish to the Mortgagee at the place where interest thereon is then payable, the business financial statement and business tax return of Mortgagor, all in reasonable detail and in any event including such itemized statement of receipts and disbursements as shall enable Mortgagee to determine whether any default exists hereunder or under the Note; and in connection therewith:

A. Such financial and operating statements shall be prepared and certified at the expense of Mortgagor in such manner as may be acceptable to the Mortgagee; and

B. Intentionally Deleted.

17. Restrictions on Transfer. Subject to the provisions of Section 18 hereof, it shall be an immediate Event of Default hereunder if, without the prior written consent of the Mortgagee, any of the following shall occur, and in any event Mortgagee may condition its consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require:

A. If the Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, excepting only sales or other dispositions of Collateral as defined in Section 19 (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises; provided that prior to the sale or other disposition thereof, such Obsolete Collateral shall have been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility;

B. If the Mortgagor is a trustee (a "Trustee Mortgagor"), then if any beneficiary of the Mortgagor shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagor;

C. If the Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage security interest or other

UNOFFICIAL COPY

encumbrance or alienation of any such shareholder's shares in such corporation (except in the ordinary course of business or for estate planning purposes); provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over the Counter" market, then this Section 17.C shall be inapplicable;

D. If the Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee Mortgagor is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer; or

E. If the Mortgagor is a limited liability company, or if any beneficiary of a trustee Mortgagor is a limited liability company, then if any member in such limited liability company shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the membership interest of such limited liability company; or

F. If there shall be any change in control (by way of transfers of stock ownership, partnership interests, membership interests or otherwise) in any general partner or member which directly or indirectly controls or is a general partner or member of a partnership, joint venture or limited liability company beneficiary as described in Subsection 17.D and 17.E above;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that provisions of this Section 17 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, share of stock of or partnership, joint venture or membership interest in the Mortgagor or any beneficiary of a Trustee Mortgagor; and provided further that no consent by Mortgagee to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section 17, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Mortgagee consequent thereon.

18. Permitted Transfers. The provisions of paragraph 17 shall not be applicable to transfers of the Premises, or part thereof, or interest therein or any beneficial interests, shares of stock, or partnership, joint venture or membership interests, as the case may be, in the Mortgagor, or any beneficiary of a Trustee Mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee.

19. Uniform Commercial Code. This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State in which the Premises is located (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all herein called "Collateral"); all of the terms, provisions,

UNOFFICIAL COPY

conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 19 shall not limit the generality or applicability of any other provision of this Mortgage, but shall be in addition thereto:

A. The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof;

B. The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises;

C. The Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to the Real Estate but will not be affixed to any other real estate;

D. The only persons having any interest in the Premises are the Mortgagor, Mortgagee and persons occupying the Premises as tenants only;

E. No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statement and other documents in form satisfactory to the Mortgagee, and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances; and the Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices whenever filing or recording is deemed by the Mortgagee to be necessary or desirable;

F. Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Event of Default not having previously been cured), the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Section 20 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);

G. The Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the

UNOFFICIAL COPY

Collateral, subject to the Mortgagor's right of redemption, if any, in satisfaction of the Mortgagor's obligations as provided in the Code; provided that the Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Premises, and the Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties;

H. The Mortgagee will give Mortgagor at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of the Mortgagor determined as provided in Section 40 hereof, at least five (5) days before the time of the sale or disposition;

I. The Mortgagee may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale, and any such sale may be held as part of and in conjunction with any foreclosure sale of the Real Estate comprised within the Premises, the Collateral and Real Estate to be sold as one lot if Mortgagee so elects;

J. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness Hereby Secured; and the Mortgagee will account to the Mortgagor for any surplus realized on such disposition;

K. The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any or the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof, so long as any part of the Indebtedness Hereby Secured remains unsatisfied; and

L. The terms and provisions contained in this Section 19 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

20. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur:

A. If default is made in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default is made in the making of any payment of any other monies required to be made hereunder or under the Note, and any applicable period of grace specified in the Note shall have elapsed; or

B. If an Event of Default pursuant to Section 17 hereof shall occur and be continuing without notice or grace of any kind; or

UNOFFICIAL COPY

C. If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered hereunder, without notice or grace of any kind; or

D. If (and for the purpose of this Section only, the term Mortgagor shall mean and include not only Mortgagor but any beneficiary of a Trustee Mortgagor and each person who, as guarantor, co-maker or otherwise shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein),

a. The Mortgagor shall file a petition in voluntary bankruptcy under the Bankruptcy Code of the United States or any similar law, state or federal, now or hereafter in effect, or

b. The Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or

c. Within sixty (60) days after the filing against Mortgagor of any involuntary proceedings under such Bankruptcy Code or similar law, such proceedings shall not have been vacated or stayed, or

d. The Mortgagor shall be adjudicated as bankrupt, or a trustee or receiver shall be appointed for the Mortgagor or for all or the major part of the Mortgagor's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgagor's property or the Premises in any involuntary proceeding for the protection, reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days, or

e. The Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises; or

E. If any default shall exist under the provisions of Section 26 hereof, or under the Assignment referred to therein; or

F. If any representation made by or on behalf of Mortgagor in connection with the Indebtedness Hereby Secured shall prove untrue in any material respect; or

G. If default shall continue for 15 days after notice thereof by Mortgagee to Mortgagor in the due and punctual performance or observance of any other agreement or condition herein or in the Note contained; provided that if such default is not susceptible of cure within such 15-day period, such 15-day period shall be extended to the extent necessary to permit such cure if, but only if, Mortgagor shall commence such cure within such 15-day period and shall thereafter prosecute such cure to completion, diligently and without delay, and no other Event of Default shall occur; or

UNOFFICIAL COPY

H. If the Premises shall be abandoned; or

I. If the Mortgagor shall be in default beyond any applicable grace period in any term, provision or condition of any document which evidences, secures or governs any loan secured by a lien against the Premises;

J. If Mortgagor fails to provide to Mortgagee, no later than September 15th of each calendar year during the term of the Loan, the business financial statement of Mortgagor; or

K. If Mortgagor fails to provide to Mortgagee, no later than September 15th of each calendar year during the term of the Loan, the business tax return of Mortgagor; or

L. The death, dissolution or legal incompetency of any Mortgagor;

then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice, all Indebtedness Hereby Secured to be immediately due and payable, whether or not such default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Note, the Assignment or any of the other Loan Documents or by law or in equity conferred.

21. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and:

A. In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises; and

B. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees and expenses of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises or the rights of Mortgagee hereunder or as to which Mortgagee may be made a party by virtue of its interest in the Premises pursuant to this Mortgage or otherwise, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall constitute so much additional Indebtedness Hereby Secured, and shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate.

UNOFFICIAL COPY

22. Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 21 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and lastly, any surplus to the Mortgagor, and its successors or assigns, as their rights may appear.

23. Receiver. Mortgagor consents and agrees that:

A. Upon an Event of Default, Mortgagee shall be entitled to have appointed a receiver of the Premises and the Mortgagor for itself and for any subsequent owner and/or mortgagor of the Premises hereby waives any and all defenses and objections to the application for a receiver as above provided and hereby specifically consents to such appointment;

B. Such appointment may be made either before or after sale, without notice and without requiring bond, without regard to solvency or insolvency of the 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 the Mortgagee hereunder, or any holder of the Note, may be appointed as such receiver;

C. Such receiver shall have the power to collect the Rents during the pendency of such foreclosure suit and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such Rents and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period; and

D. The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

a. The Indebtedness Hereby Secured or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to the foreclosure sale; or

b. The deficiency in case of a sale and deficiency.

24. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct; and:

A. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty

UNOFFICIAL COPY

insurance policies may be canceled and that the purchaser at foreclosure sale may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said purchaser and any such foreclosure decree may further provide that in case of a redemption under said decree as provided by statute, such redeemer may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer; and

B. In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

25. Waiver. The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

A. The Mortgagor hereby expressly waives any and all rights of redemption from foreclosure or sale, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of 735 ILCS 5/15-1101, et seq., or other applicable law or replacement statutes;

B. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

C. If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the Trust Estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

26. Assignment. As further security for the Indebtedness Hereby Secured, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee a separate instrument (herein called the "Assignment") dated as of the date hereof, wherein and whereby, among other things, the Mortgagor has assigned to the Mortgagee all of the rents, issues and profits, and/or any and all Leases and/or the

UNOFFICIAL COPY

rights of management of the Premises, all as therein more specifically set forth, which said Assignment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length; and in connection with the foregoing:

A. The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment;

B. The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on lessor's part to be performed and observed under any and all Leases to the end that no default on the part of lessor shall exist thereunder; and

C. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of lessor under any Lease, and the Mortgagor shall and does hereby indemnify and agree to defend and hold the Mortgagee harmless of and from any and all liability, loss or damage which the Mortgagee may or might incur under any Lease or by reason of the Assignment; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not), shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

27. Priorities with Respect to Leases. If the Mortgagee shall execute and record (or register) in the public office wherein this Mortgage was recorded (or registered) a unilateral declaration that this Mortgage shall be subject and subordinate, in whole or in part, to any Lease, then upon such recordation (or registration), this Mortgage shall become subject and subordinate to such Lease to the extent set forth in such instrument; provided that such subordination shall not extend to or affect the priority of entitlement to insurance proceeds or any Award unless such instrument shall specifically so provide.

28. Mortgagee in Possession. Upon an Event of Default, Mortgagee is entitled to become a mortgagee in possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee.

29. Business Loan. Mortgagor represents and agrees that the loan evidenced by the Note and secured hereby is a business loan within the purview of 815 ILCS 205/4, et seq. (or any substitute, amended or replacement statutes) and is transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor, or if the Mortgagor is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of the Mortgagor as contemplated by said Section.

30. Contests. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

UNOFFICIAL COPY

A. Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;

B. Mortgagor shall deposit with Mortgagee the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;

C. Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand); and

D. Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection 30.B above and may demand payment upon any bond or title indemnity furnished as aforesaid.

31. Indemnification. Mortgagor does hereby covenant and agree that:

A. Mortgagee shall have no responsibility for the control, care, management or repair of the Premises and shall not 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 tenant, licensee, immediate stranger or other person;

B. No liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers hereby granted to the Mortgagee; and Mortgagor hereby expressly waives and releases any such liability; and

C. Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of exercise by Mortgagee of any right hereunder, and any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any violation of, or liability under any Environmental Regulation (other

UNOFFICIAL COPY

than due solely to an act or omission of Mortgagee after obtaining possession or control of the Premises) or of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the Indebtedness Hereby Secured or in any contracts, agreements or other instruments relating to or affecting the Premises; any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

32. Mortgagor Not a Joint Venturer or Partner. Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor; and without limiting the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Hereby Secured, or otherwise.

33. Subrogation. To the extent that Mortgagee, on or after the date hereof, pays any sum due under or secured by any Senior Lien as hereinafter defined, or Mortgagor or any other person pays any such sum with the proceeds of the Indebtedness Hereby Secured:

A. Mortgagee shall have and be entitled to a lien on the Premises equal in priority to the Senior Lien discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such Senior Lien, which shall remain in existence and benefit Mortgagee in securing the Indebtedness Hereby Secured; and

B. Notwithstanding the release of record of Senior Liens (as hereinafter defined) Mortgagee shall be subrogated to the rights and liens of all mortgages, trust deeds, superior titles, vendors' liens, mechanics' liens, or liens, charges, encumbrances, rights and equities on the Premises having priority to the lien of this Mortgage (herein generally called "Senior Liens"), to the extent that any obligation secured thereby is directly or indirectly paid or discharged with proceeds of disbursements or advances of the Indebtedness Hereby Secured, whether made pursuant to the provisions hereof or of the Note or any document or instrument executed in connection with the Indebtedness Hereby Secured.

34. Title in Mortgagor's Successors. In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagor the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor; and the Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises; but nothing in this Section 34 contained shall vary or negate the provisions of Section 17 hereof.

UNOFFICIAL COPY

35. Rights Cumulative. 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 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.

36. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein) and shall inure to the benefit of the Mortgagee and its successors and assigns and wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such from time to time holder of the Note shall have and enjoy all of the rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagee.

37. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

38. Waiver of Defense. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

39. Captions and Pronouns. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof; and whenever the context requires or permits, the singular number shall include the plural, the plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.

40. Addresses and Notices. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof or electronic facsimile transmission thereof, or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, or upon the next business day after timely and proper deposit, charges paid, with any overnight carrier with respect to next day service, to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder.

A copy of all notices shall be directed as follows:

UNOFFICIAL COPY

If to Mortgagee: Jay Fahn
 First Eagle Bank
 1201 West Madison Street
 Chicago, IL 60607
 Fax: (312) 850-1416

and a copy to:

Jay R. Goldberg
 Field and Goldberg, LLC
 10 South LaSalle Street
 Suite 2910
 Chicago, IL 60603
 Fax: (312) 408-7201

41. Mortgagor Will Not Discriminate. Mortgagor covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, but not limited to, the requirements of Title VIII of the 1968 Civil Rights Act, or any substitute, amended or replacement Acts.

42. Interest at the Default Rate. Without limiting the generality of any provision herein or in the Note contained, from and after the occurrence of any Event of Default hereunder, all of the Indebtedness Hereby Secured shall bear interest at the Default Rate.

43. Time. Time is of the essence hereof and of the Note, Assignment and all other instruments or Loan Documents delivered in connection with the Indebtedness Hereby Secured.

44. Applicable Law. This Document shall be construed in accordance with the laws of the State in which the Premises are located.

45. Assignment. Mortgagee may at any time assign its rights in the Note and the Loan Documents, or any part thereof and transfer its rights in any or all of the collateral, and Mortgagee thereafter shall be relieved from all liability with respect to such collateral. In addition, Mortgagee may at any time sell one or more participations in the Note. Mortgagor may not assign its interest in the Note, or any other agreement with Mortgagee or any portion thereof, either voluntarily or by operation of law, without the prior written consent of Mortgagee.

46. Additional Representations. Anything contained in this Mortgage to the contrary notwithstanding, this Mortgage also secures all loans, advances, debts, liabilities, obligations, covenants and duties owing to the Mortgagee by the Mortgagor and/or any Related Party (as hereinafter defined), whether now existing, or hereafter created or arising, including, without limitation: (i) the Note, (ii) the Indebtedness Hereby Secured, and (iii) any and all other loans, advances, overdrafts, indebtedness, liabilities

UNOFFICIAL COPY

and obligations now or hereafter owed by Mortgagor or any Related Party to Mortgagee, of every kind and nature, howsoever created, arising or evidenced, and howsoever owned, held or acquired, whether now due or to become due, whether direct or indirect, or absolute or contingent, whether several, joint or joint and several, whether liquidated or unliquidated, whether legal or equitable, whether disputed or undisputed, whether secured or unsecured, or whether arising under this Mortgage or any other document or instrument. For purposes of this Section 46, "Related Party" shall mean (i) Mortgagor, (ii) each beneficiary of Mortgagor, if Mortgagor is a land trust, (iii) the maker of the Note, if other than Mortgagor, and if more than one maker, each co-borrower of the Note other than Mortgagor, and (iii) each guarantor of the Note.

47. Waiver of Jury Trial. Mortgagor irrevocably waives any right that may exist with respect to a jury or jury trial and right to transfer or change the venue.

48. Cross Collateralization and Cross Default. The Note is cross-collateralized with that certain Note made by Mortgagor to Mortgagee in the stated principal sum of Seven Hundred Fifty Thousand Dollars and No Cents (\$750,000.00) dated the date hereof, as amended from time to time (the "\$750,000 Note"). A default under the \$750,000 Note or under any document which secures the \$750,000 Note shall, without notice or period of grace, constitute an immediate default under the Note, entitling Mortgagee under the Loan Documents to exercise all rights and remedies as may be available to Mortgagee in the case of a default or Event of Default under the Loan Documents.

49. Superior Interests. Notwithstanding anything to the contrary contained herein, his Mortgage shall be subordinate to Mortgagee's superior interest with respect to the Real Estate. Mortgagee is hereby expressly authorized to advance at its option all sums necessary to keep said superior interest in good standing, and all sums so advanced, together with interest thereon at the Default Rate (as defined in the Note), shall be repayable on demand to Mortgagee and shall be secured by the lien of this Mortgage, as in the case of other advances made by Mortgagee hereunder.

[Remainder of page intentionally left blank; signature page follows.]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Mortgagor hereto has executed this Mortgage all on and as of the day, month and year first above written.

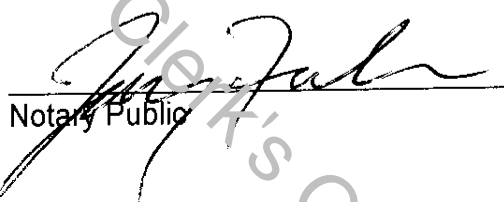
**TWO TWENTY-THREE EAST
DELAWARE CORPORATION, an
Illinois corporation**

By: 
Gary Quateman, President

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that **GARY QUATEMAN**, the President of **TWO TWENTY-THREE EAST DELAWARE CORPORATION, an Illinois corporation**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of **TWO TWENTY-THREE EAST DELAWARE CORPORATION**, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of November, 2012.


Notary Public

UNOFFICIAL COPY

EXHIBIT A

REVOLVING LINE OF CREDIT NOTE

[See Attached]

Property of Cook County Clerk's Office



UNOFFICIAL COPY

REVOLVING LINE OF CREDIT NOTE

\$250,000.00

November 20, 2012

1. **Agreement to Pay.** FOR VALUE RECEIVED, the undersigned, **TWO TWENTY-THREE EAST DELAWARE CORPORATION**, an Illinois corporation (herein called "Borrower"), promises to pay to the order of **FIRST EAGLE BANK** (herein, together with each successive owner and holder of this Note, called "Lender") in the manner provided for herein and in the Mortgage hereinafter referred to, the principal sum of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00), or so much as may from time to time be disbursed and remain unpaid hereunder, together with interest in arrears on the balance of principal remaining from time to time unpaid at the rates provided for in Sections 1.E and 4 hereof from and after the date of disbursement ("Disbursement Date") that all or any portion of the proceeds of the loan evidenced hereby shall have been initially disbursed. THIS NOTE IS A REVOLVING LINE OF CREDIT AND OBLIGATES LENDER TO MAKE ADVANCES TO BORROWER SO LONG AS BORROWER COMPLIES WITH ALL THE TERMS OF THIS NOTE AND ALL OF THE OTHER LOAN DOCUMENTS.

1. **Definitions.** For the purposes hereof, the following terms shall have the meanings set forth below:

A. "Default Rate" shall mean interest payable at the rate set forth in Section 4 hereof.

B. "Loan" shall mean the aggregate indebtedness evidenced by this Note.

C. "Maturity Date" shall mean and refer to the date on which the unpaid principal balance hereunder is due, whether by acceleration or otherwise. Subject to acceleration as herein provided, the Maturity Date shall be November 20, 2013.

D. "Obligations" shall mean all liabilities, indebtedness and obligations of Borrower to Lender, howsoever created, arising or evidenced, and howsoever owned, held or acquired, whether now or hereafter existing, now due or to become due, direct or indirect, absolute or contingent, primary or secondary or joint or several, including without limitation all principal, accrued interest (including without limitation interest accruing after the filing of any petition in bankruptcy), present and future advances made by or on behalf of Lender, under the Loan Documents to or for the benefit of Borrower, obligations of performance, charges, expenses, attorneys' fees and other sums chargeable to Borrower by Lender, collection and other costs and expenses incurred by or on behalf of Lender, whether incurred before or after judgment, and all other present and

Revolving Line of Credit Note

UNOFFICIAL COPY

future liabilities, indebtedness and obligations of Borrower under the Loan Documents.

E. "Premises" shall mean the real estate commonly known as 223 East Delaware Place, which is located in the City of Chicago, County of Cook, State of Illinois and legally described on Exhibit B to the Mortgage (hereinafter referred to), together with all site improvements and structures constructed and personal property situated thereupon.

F. "Prime Rate" shall mean the prime rate of interest as published on a daily basis in the *Wall Street Journal*. In the event that the *Wall Street Journal* publishes a range of prime rates of interest, the Prime Rate shall be the highest of the range of prime rates of interest. In the event that the Prime Rate is no longer published by the *Wall Street Journal*, Lender will choose a new source that publishes the Prime Rate and Borrower will be notified of Lender's choice.

G. "Regular Rate" shall mean interest payable at the rate equal to the **greater of:** (i) the Prime Rate plus One Percent (1.0%), or (ii) Five and One-Half Percent (5.50%) per annum.

2. **Interest Rate Prior to Default.** Borrower shall pay interest to Lender on the principal balance hereof outstanding from time to time prior to default at the Regular Rate. Interest on the Loan is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of three hundred sixty (360) days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable hereunder is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated herein. (Initial here _____)

3. **Default Rate.** In the event that there shall occur:

A. Any monetary default hereunder that shall continue after such payment is due hereunder; or

B. Any Event of Default under the Mortgage; or

C. Maturity of the indebtedness evidenced hereby, whether by passage of time, acceleration, declaration or otherwise; or

D. Borrower fails to perform and comply, in a timely manner, with all terms, conditions and provisions set forth in this Note, in the Loan Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement; or

UNOFFICIAL COPY

E. Borrower fails to (i) maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, or (ii) provide written notice to Lender of any change in executive and management personnel, or (iii) conduct Borrower's business affairs in a reasonable and prudent manner; or

F. Unless waived in writing by Lender, Borrower fails to provide Lender at least annually with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender in Lender's sole discretion, certifying that the representations and warranties set forth in this Note are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no default or Event of Default exists under this Note or under any of the other Loan Documents; or

G. Borrower fails to (i) comply in all respects with any and all environmental laws, or (ii) cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities, or (iii) furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environmental and/or other natural resources; or

H. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws or by or against Borrower; or

I. This Note or any of the other Loan Documents ceases to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason; or

J. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired; or

K. Lender in good faith deems itself insecure in Lender's sole discretion; or

UNOFFICIAL COPY

L. If Borrower fails to provide to Lender, no later than September 15th of each calendar year during the term of the Loan, the business financial statement of Borrower; or

M. If Borrower fails to provide to Lender, no later than September 15th of each calendar year during the term of the Loan, the business tax return of Borrower,

then and in any such event, the entire principal balance hereof and all indebtedness secured by the Mortgage shall thereafter bear interest at a rate equal to Five Percent (5%) per annum in excess of the Regular Rate for each day all or any part of the principal balance hereof shall remain outstanding or until the default referred to above shall be cured, whichever shall first occur. As a condition to curing any such default, however, Borrower shall pay all amounts in default together with interest charged at the Default Rate.

4. **Late Charge.** Without limiting the provisions of Section 3 hereof, in the event any installment of interest and/or principal and interest is not paid within ten (10) days of the due date thereof the undersigned promises to pay a late charge of Five Percent (5%) of the amount due to defray the expense incident to handling any such delayed payment or payments.

5. **Payments.** Borrower shall make monthly payments of interest only on the first (1st) day of each month, with the first such payment due on December 1, 2012. Each successive payment of interest shall be made on the first (1st) day of each month thereafter.

BORROWER SHALL PAY ALL ACCRUED INTEREST, THE UNPAID PRINCIPAL BALANCE OF THIS NOTE AND ANY OTHER SUMS DUE WITH RESPECT TO THE LOAN ON THE MATURITY DATE.

6. **Prepayment Privilege.** Borrower may prepay on any installment payment date the unpaid principal balance of this Note, in whole or in part, provided that (i) Borrower gives Lender not less than ten (10) business days prior written notice of its intention to do so; (ii) Borrower pays, at the time of such prepayment and in addition thereto, all accrued interest to the date of such prepayment.

7. **Application of Payments.** All payments on account of the indebtedness evidenced by this Note shall be applied as follows:

A. First to indebtedness secured by the Mortgage, Security Agreement and the Assignment, as hereinafter defined, other than the principal hereof and interest hereon charged at the Regular Rate, and specifically including but without limitation, late charges and interest, if any, charged at the difference between the Regular Rate and the Default Rate;

UNOFFICIAL COPY

B. Current interest on the unpaid principal balance hereof at the applicable Regular Rate; and then

C. The unpaid balance of the Loan.

8. **Method and Place of Payment.** Payments upon this Note shall be made in lawful money of the United States of America which shall be legal tender for public and private debts at the time of payment, and shall be made at such place as Lender may from time to time in writing appoint, provided that in the absence of such appointment, all payments hereon shall be made at the offices of Lender, 1201 West Madison Street, Chicago, IL 60133.

9. **Loan Documents.** This Note is a full recourse obligation of Borrower, is given to evidence an actual loan in the above amount, and is the Note referred to in and secured by the following and such other instruments evidencing, securing, or pertaining to the Loan as shall, from time to time, be executed and delivered by Borrower or any other party to Lender (collectively, the "Loan Documents"):

A. A Second Mortgage (herein called the "Mortgage") made by Borrower, as mortgagor, to Lender, as mortgagee, bearing even date herewith, encumbering the Premises;

B. A Second Assignment of Rents and Leases (herein called the "Assignment") bearing even date herewith, made by Borrower, as assignor, assigning to Lender all of the leases, occupancy agreements, rents, issues and profits of and from the Premises; and

C. A Security Agreement (herein called the "Security Agreement") bearing even date herewith, made by Borrower, as debtor, in favor of Lender, as secured party.

Reference is hereby made to the Loan Documents, which are incorporated herein by this reference as fully and with the same effect as if set forth herein at length, for a description of the Premises, a statement of the covenants and agreements of the Borrower, a statement of the rights, remedies and security afforded thereby, and all other matters therein contained.

10. **Default and Acceleration.** At the election of Lender and without notice, the principal sum remaining unpaid hereon, together with accrued interest thereon, shall be and become at once due and payable at the place herein provided for payment upon the occurrence of a default hereunder, any Event of Default under the Mortgage, or a default under any of the other Loan Documents.

UNOFFICIAL COPY

11. **Usury.** Borrower represents that the loan evidenced by this Note is exempt from any limitations on the rate of interest that may be charged hereunder. In no event shall any interest or payment in the nature of interest be charged or collected by Lender or paid by Borrower which shall exceed the maximum contract interest rate now allowed for a loan of this type by the laws of the State of Illinois (the "Maximum Interest Rate"). It is the intention of Lender and Borrower not to contract for a greater rate of interest than the Maximum Interest Rate. Interest, or any payment determined to be in the nature of interest, charged or collected by Lender or paid by Borrower exceeding the Maximum Interest Rate shall be deemed to result from mutual mistake, and any sums so charged, collected, or paid shall be refunded to Borrower.

12. **Costs of Enforcement.** In the event that this Note is placed in the hands of an attorney at-law for collection after maturity, or in the event that proceedings at law, in equity, or bankruptcy, receivership or other legal proceedings are instituted or threatened in connection herewith, or if Lender or its participant, if any, is made a party to any such proceeding, or in the event that this Note is placed in the hands of an attorney-at-law following a default hereunder or under the Mortgage to enforce or interpret any of the rights or requirements contained herein or in the Mortgage, Assignment, Loan Agreement or Security Agreement or other instruments given as security for, or related to, the indebtedness evidenced hereby, the Borrower hereby agrees to pay all reasonable costs of collecting or attempting to collect this Note, or protecting, interpreting or enforcing such rights, including, without limitation, reasonable attorneys' fees, costs and expenses (whether or not suit is brought), in addition to all principal, interest and other amounts payable hereunder; all of which shall be secured by the Mortgage, Assignment and Security Agreement.

13. **Notices.** All notices required or permitted to be given hereunder shall be given in the manner and to the place as provided in the Mortgage, Loan Agreement and Security Agreement for notices to the party to whom such notice is given.

14. **Time.** Time is of the essence of this Note and each of the provisions hereof.

15. **Captions.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

16. **Disbursement to Escrow.** Funds representing the proceeds of the indebtedness evidenced hereby which are disbursed by Lender by mail, wire transfer or other delivery to the Borrower or at Borrower's direction, to escrows or otherwise for the benefit of the Borrower, for all purposes, shall be deemed outstanding hereunder and to have been received by Borrower as of the date of such mailing, wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such wire transfer, mailing or delivery and until repaid, notwithstanding the fact

UNOFFICIAL COPY

that such funds may not at any time have been remitted by such escrows to Borrower or for its benefit.

17. **Governing Law.** This Note shall be governed by the laws of the State of Illinois.

18. **Waivers.** Borrower hereby:

A. Waives demand, presentment for payment, notice of nonpayment and protest;

B. Waives notice of and consents to any and all extensions of this Note, or any part thereof, the release of all or any part of the security for this Note, or the release of any party liable hereon, and agrees that such extension or release may be made at any time and from time to time without notice to the Borrower and without discharging its liability, if any, and without affecting any lien or security given for this Note;

C. Waives any and all notice of whatsoever kind or nature, except where notice is specifically required by applicable law, hereunder or under the Mortgage, or under any other document which evidences, secures or governs the disbursement of the loan evidenced hereby and the exhaustion of legal remedies hereon; and

D. Waives any and all rights to a trial by jury.

19. **Representations and Warranties.** Borrower represents and warrants to Lender, as of the date of this Note, as of the date of each disbursement of Loan proceeds, as of the date of any renewal, extension or modification of the Loan, and at all times any indebtedness exists:

A. Borrower is a corporation for profit which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Illinois. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 223 East Delaware Place, Chicago, IL 60611. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning all collateral securing the Loan. Borrower will notify Lender prior to

UNOFFICIAL COPY

any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

B. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

20. **Forbearance.** Any forbearance by Lender in exercising any right or remedy under this Note, the Mortgage, or any of the other Loan Documents or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any of its rights or remedies under any of the Loan Documents with respect to Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

21. **Confession of Judgment.** Borrower hereby irrevocably authorizes and empowers any attorney-at-law to appear in any court of record and to confess a judgment against Borrower for the unpaid amount of this Note as evidenced by an affidavit signed by an officer of Lender setting forth the amount then due, attorneys' fees plus costs of suit, and to release all errors, and waive all rights of appeal. If a copy of this Note, verified by an affidavit, shall have been filed in the proceeding, it will not be necessary to file the original as a warrant of attorney. Borrower waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of the foregoing warrant and power to confess judgment will be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable, or void; but the power will continue undiminished and may be exercised from time to time as Lender may elect until all amounts owing on this Note have been paid in full. Borrower hereby waives and releases any and all claims or causes of action which Borrower might have against any attorney acting under the terms of authority which Borrower has granted herein arising out of or connected with the confession of judgment hereunder.

22. **Right of Setoff.** Upon a default or Event of Default under this Note and any of the other Loan Documents, to the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, merchant card or some other account). This includes all accounts Borrower

UNOFFICIAL COPY

holds jointly and with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and at Lender's option, to administratively freeze all accounts to allow Lender to protect Lender's charge and setoff rights provided in this section.

23. **Patriot Act.** Lender hereby notifies Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56) (the "Patriot Act"), Lender is required to obtain, verify and record information that identifies Borrower and the other credit parties. Borrower agrees to provide to Lender promptly upon Lender's request, such information as Lender shall require for purposes of complying with the requirements of the Patriot Act, the federal regulations issued pursuant to the Patriot Act and any customer identification program established by Lender in accordance therewith.

24. **Indemnity.** Borrower shall indemnify and hold Lender harmless from and against all claims, costs, expenses, actions, suits, proceedings, losses, damages and liabilities of any kind whatsoever, including but not limited to attorneys' fees and expenses, arising out of any matter relating, directly or indirectly, to the Loan, to the ownership, development, construction, or sale of any property securing the Loan, whether resulting from internal disputes of Borrower, disputes between Borrower and any guarantor, or whether involving other third persons or entities, or out of any other matter whatsoever related to any of the Loan Documents, or any property encumbered thereby, but excluding any claim or liability which arises as the direct result of the gross negligence or willful misconduct of Lender. This indemnity provision shall continue in full force and effect and shall survive not only the making of the Loan and the advances but shall also survive the repayment of the Loan and the performance of all of Borrower's other obligations hereunder.

25. **Assignment.** Lender may at any time assign its rights in this Note and the Loan Documents, or any part thereof and transfer its rights in any or all of the collateral, and Lender thereafter shall be relieved from all liability with respect to such collateral. In addition, Lender may at any time sell one or more participations in this Note. Borrower may not assign its interest in this Note, or any other agreement with Lender or any portion thereof, either voluntarily or by operation of law, without the prior written consent of Lender.

26. **Maintenance of Accounts at Lender.** As additional consideration for Lender to provide the Loan, Borrower covenants and agrees to maintain deposit accounts at Lender (herein individually and collectively called the "Accounts") at all times during the term of the Loan with an average monthly collected balance in an amount not less than One Hundred Thousand Dollars and No Cents (\$100,000.00). If Borrower fails to comply with this requirement a service charge will be charged to Borrower's DDA Account No. 130583201 (herein called the "DDA Account") at Lender in

UNOFFICIAL COPY

addition to the monthly service charge, for each month the minimum average balance is not met. The service charge will be calculated by taking the deficient amount multiplied by the Prime Rate divided by three hundred sixty five (365) multiplied by the number of days in the month. "Prime Rate" shall mean the prime rate of interest as published on a daily basis in the *Wall Street Journal*. In the event that the *Wall Street Journal* publishes a range of prime rates of interest, the Prime Rate shall be the highest of the range of prime rates of interest. In the event that the Prime Rate is no longer published by the *Wall Street Journal*, Lender will choose a new source that publishes the Prime Rate and Borrower will be notified of Lender's choice. If at any time during the life of the Loan the DDA Account is closed or inactive, the Regular Rate of the Loan will be increased by One Percent (1.00%) per annum.

27. **Cross Collateralization and Cross Default.** This Note is cross-collateralized with that certain Note made by Borrower to Lender in the stated principal sum of Seven Hundred Fifty Thousand Dollars and No Cents (\$750,000.00) dated the date hereof, as amended from time to time (the "\$750,000 Note"). A default under the \$750,000 Note or under any document which secures the \$750,000 Note shall, without notice or period of grace, constitute an immediate default hereunder, entitling Lender under the Loan Documents to exercise all rights and remedies as may be available to Lender in the case of a default or Event of Default under the Loan Documents.

[Remainder of page intentionally left blank; signature page follows.]

UNOFFICIAL COPY

Dated as of the day and year above written.

**TWO TWENTY-THREE EAST
DELAWARE CORPORATION, an
Illinois corporation**

By: _____
Gary Quateman, President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

LEGAL DESCRIPTION

Lots 10 and 11 in Lake Shore Drive Addition to Chicago, a subdivision of part of Blocks 14 and 20 in Canal Trustees' Subdivision of the South fractional quarter of Section 3, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Address of Property:
223 East Delaware Place
Chicago, IL 60611

Permanent Index No.:
17-03-221-003-0000

Property of Cook County Clerk's Office