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Doc#: 1324710061 Fee: \$118.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/04/2013 11:38 AM Pg: 1 of 41

## Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 17-10-113-003-0000

**Address:**

**Street:** 646 NORTH MICHIGAN AVENUE

**Street line 2:**

**City:** CHICAGO

**State:** IL

**ZIP Code:** 60611

**Lender:** THE NORTHERN TRUST COMPANY

**Borrower:** BRICK & MORTAR LIMITED PARTNERSHIP

**Loan / Mortgage Amount:** \$26,000,000.00

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

**Certificate number:** 0DFCCAC4-85B9-42AF-9997-5BB8A350680E

**Execution date:** 09/03/2013

2-13  
LP  
PK  
8915833  
C17

Property of Cook County Clerk's Office

304 337

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This Document Prepared By:

Mr. Cary K. Kabumoto, Esq.  
5204 North Christiana Ave.  
Chicago, Illinois 60625

**RETURN THIS DOCUMENT TO:**

**MS. MARGARET GUNN**  
**SENIOR VICE PRESIDENT**  
The Northern Trust Company  
62 Green Bay Road  
Winnetka, Illinois 60093

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## COMMERCIAL MORTGAGE

(including Security Agreement, Assignment of Rents and Leases, and Fixture Filing)  
Dated as of September 3, 2013

This Mortgage (as modified from time to time, the "Mortgage") has been executed by **BRICK & MORTAR LIMITED PARTNERSHIP**, an Illinois limited partnership ("Mortgagor"), as mortgagor, in favor of **THE NORTHERN TRUST COMPANY**, an Illinois banking corporation, as mortgagee (together with any successor, assign or subsequent holder, "Mortgagee"), with its main banking office at 50 South LaSalle Street, Chicago, Illinois 60603.

In consideration of Mortgagee's making loans and extensions of credit and/or considering making loans or extensions of credit, to Mortgagor (Mortgagor and any such individual or entity being collectively referred to as the "Borrower(s)"), and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Mortgagor agrees as follows:

1. **DEFINITIONS.** As used in this Mortgage:

- (a) Unless otherwise defined herein, all terms that are defined in the Uniform Commercial Code of the State in which the main banking office of Mortgagee is located shall have the same meanings herein as in such Code.
- (b) "Guarantor" means any person or entity, or any persons or entities severally, now or hereafter guarantying payment or collection of all or any part of the "Liabilities" (as hereinafter defined).
- (c) "Loan Document(s)" means this Mortgage, the Note, any guaranty executed by any Guarantor, Related Documents and any other document or instrument previously, now or hereafter executed or delivered in connection herewith or therewith.
- (d) "Permitted Encumbrances" means (i) this Mortgage; (ii) any other lien in favor of Mortgagee; (iii) liens for ad valorem taxes and special assessments not delinquent; and (iv) Chicago Title Insurance Company title commitment number 8915833 dated July 15, 2013 Schedule B Exceptions J16, W17, X19, and S20.
- (e) "Personal Property" means all equipment, fixtures, and other articles of personal property now or hereafter owned by Mortgagor, and now or hereafter attached or affixed to the Real

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Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property. The term "Personal Property" includes without limitation any and all rights of Mortgagor under any and all swap agreements as defined in Title 11, United States Code, Section 101, and any successor statute, executed and delivered in connection with any transaction between Mortgagor and any party related to or affiliated with Borrower.

(f) "Prime Rate" means that floating rate of interest per year announced from time to time by Mortgagee called its prime rate, which at any time may not be the lowest rate charged by Mortgagee, computed for the actual number of days elapsed on the basis of a year of 360 days.

(g) "Property" means collectively the Real Property and the Personal Property.

(h) "Real Property" means the real property, interests and rights, as further described in this Mortgage.

(i) "Related Documents" means all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, Loan Documents and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Liabilities.

(j) "Subsidiary" means any corporation, partnership, joint venture, trust, or other legal entity of which Mortgagor owns directly or indirectly 50% or more of the outstanding voting stock or interest, or of which Mortgagor has effective control, by contract or otherwise.

(k) "Swap Agreement(s)" means: (a) any International Swaps and Derivatives Association, Inc. (ISDA) Master Agreement and Schedule hereto between: (i) Mortgagor; and (ii) The Northern Trust Company, an Illinois state banking corporation ("TNTC" or "Mortgagee") and/or Beneficiary; (b) any "Confirmations" executed pursuant to any such Master Agreement or in which any such Master Agreement or any form thereof is incorporated by reference; (c) any additional Confirmations entered into pursuant thereto; and (d) any documents or instruments executed by Mortgagor pursuant to the foregoing. Any and all Swap Agreements shall be deemed "Related Documents," and any default, event of default or like event under any Swap Agreement shall also constitute an Event of Default under this Mortgage.

(l) "Swap Obligation(s)" means any and all obligations of any nature, whether for payment, performance, or otherwise, of Borrower under any Swap Agreement, whether direct or indirect, absolute or contingent, now due or hereafter due, now existing or hereafter arising.

## 2. GRANT OF LIEN.

Mortgagor hereby grants, warrants, bargains, sells, conveys and mortgages to Mortgagee and its successors and assigns forever, under and subject to the terms and conditions hereinafter set forth, all of Mortgagor's right, title and interest in and to the real property located in the City of Chicago, Cook County, State of Illinois described in Exhibit A and attached hereto and by this reference incorporated herein, all or part of which is commonly known as 646 North Michigan Avenue, Chicago, Illinois including without limitation all improvements now and hereafter located thereon,

TOGETHER WITH THE FOLLOWING:

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- (a) all rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to Mortgagor to collect and apply same; and
- (b) all right, title and interest of Mortgagor in and to all leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, including, but not limited to, the Leases (as defined below) and all right, title and interest of Mortgagor thereunder, including without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature; and
- (c) all privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the said real estate and improvements; and
- (d) all easements, rights-of-way and rights used in connection with the said real estate and improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; and
- (e) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements; and
- (f) any and all buildings and improvements now or hereafter erected on the said real estate, including, but not limited to, all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements; and
- (g) all materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately up in the delivery thereof to the said real estate; and
- (h) all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the said real estate and improvements, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property owned by Mortgagor and used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property owned by Mortgagor and placed by it on and in the said real estate and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code of Illinois), this Mortgage is deemed to be a security agreement under the Uniform Commercial Code of Illinois for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as secured party; and
- (i) all the estate, interest, right, title, other claim or demand, including claims or demands with respect to any proceeds of insurance related thereto, which Mortgagor now has or may hereafter

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acquire in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages; the said real estate and improvements and the property and interests described in (a) through (i) above being collectively referred to herein as the "Premises".

TO HAVE AND TO HOLD the same unto Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth. Without limiting any other provision hereof, Mortgagor covenants that it is lawfully seized of the Premises, that the same are unencumbered except for Permitted Encumbrances, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

### 3. LIABILITIES.

The Premises shall secure the payment and performance of all obligations and liabilities of Mortgagor and/or Borrower to Mortgagee howsoever created, evidenced or arising, whether direct or indirect, absolute or contingent, now due or to become due, or now existing or hereafter arising, including without limitation all obligations hereunder and under any other Loan Documents, future advances, letters of credit issued for the account of or at the request of Mortgagor and/or Borrower, and any guaranty by Mortgagor of any obligations of Borrower to Mortgagee, as well as all agreements relating to any of the foregoing, and including without limitation:

- (a) payment of the indebtedness evidenced by the Note executed by **BRICK & MORTAR LIMITED PARTNERSHIP**, an Illinois limited partnership, Mortgagor, as amended, restated, renewed or replaced from time to time (the "Note"), in the face principal amount of **\$26,000,000.00**, a copy of such Note being attached as Exhibit B, including without limitation principal and interest, future advances thereunder, and performance of all obligations thereunder; and
- (b) payment of all sums advanced by Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the other Loan Documents, or otherwise advanced by Mortgagee pursuant to the provisions hereof or thereof to protect the property hereby mortgaged and pledged; and
- (c) performance of any other instrument given to evidence or further secure the payment and performance of any of the Liabilities; and
- (d) payment of all Swap Obligations, including without limitation those under Swap Agreements entered into on or about the date of the Loan Documents.
- (e) payment of any future or further advances (not exceeding **\$26,000,000.00**) which may be made by Mortgagee to and for the benefit of Mortgagor, its successors, assigns and legal representatives.

(the foregoing (a)-(e) being collectively referred to as the "Liabilities").

Notwithstanding the foregoing the Premises shall not secure any Liabilities subject to Regulation Z of the Federal Reserve Board or any equivalent state disclosure requirement unless disclosed in a disclosure statement pertaining to such Liabilities.

**THE TOTAL AMOUNT OF INDEBTEDNESS SECURED HEREBY SHALL NOT EXCEED \$52,000,000.00**

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OUTSTANDING AT ANY ONE TIME.

## 4. REPRESENTATIONS.

(a) Mortgagor hereby represents and warrants to Mortgagee that:

(i) [APPLICABLE IF MORTGAGOR IS A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY OR JOINT VENTURE] Mortgagor and any Subsidiary are existing and in good standing under the laws of their state of formation, are duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so might have a material adverse impact on the consolidated assets, condition or prospects of Mortgagor; the execution, delivery and performance of this Mortgage and all related documents and instruments are within Mortgagor's powers and have been authorized by all necessary corporate, partnership or joint venture action.

(ii) Mortgagor has capacity to enter into and perform its obligations hereunder.

(iii) The execution, delivery and performance of this Mortgage and all related documents and instruments have received any and all necessary governmental approval, and do not and will not contravene or conflict with any provision of law or of the partnership or joint venture or similar agreement, charter or by-laws of Mortgagor or any agreement affecting Mortgagor or its property.

(iv) There has been no material adverse change in the business, condition, properties, assets, operations or prospects of Mortgagor, Borrower or any Guarantor since the date of the latest financial statements provided on behalf of Mortgagor, Borrower or any Guarantor to Mortgagee.

(v) Mortgagor has good, marketable, legal and equitable title to the Premises, subject only to Permitted Encumbrances, with the right and full power to mortgage, sell and convey the same; Mortgagor is the lawful owner of the Premises, free and clear of all liens, pledges, charges, mortgages, and claims other than any in favor of Mortgagee, except liens for current taxes not delinquent.

(vi) Mortgagor (and each general partner and joint venturer of Mortgagor) has filed or caused to be filed all federal, state, and local tax returns that are required to be filed, and has paid or has caused to be paid all of its taxes, including without limitation any taxes shown on such returns or on any assessment received by it to the extent that such taxes have become due.

(b) The request or application by Borrower or Mortgagor for any Liability secured hereby shall be a representation and warranty by Mortgagor as of the date of such request or application that: (i) no Event of Default or Unmatured Event of Default (in each case as defined herein) has occurred or is continuing as of such date; and (b) Mortgagor's representations and warranties herein are true and correct as of such date as though made on such date.

5. COVENANTS OF MORTGAGOR. Mortgagor agrees to comply with the following covenants so long as this Mortgage remains in effect:

(a) Payment of Indebtedness. Mortgagor shall pay and perform all Liabilities when due.

(b) Insurance. Mortgagor shall at all times provide, maintain and keep in force such insurance in such amounts and against such risks on or pertaining to the Premises as Mortgagee shall from time to time reasonably request, and in any event including without limitation:

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(i) during construction (if any), all-risks package of builder's risk insurance, including owner's, contractor's, and employer's liability insurance, workmen's compensation insurance, and physical damage insurance;

(ii) insurance against loss by fire, risks covered by the so-called extended coverage endorsement, and other risks as Mortgagee may reasonably require, in amounts equal to not less than one hundred percent (100%) of the full replacement value of the Premises;

(iii) public liability insurance against bodily injury and property damage with such limits as Mortgagee may require;

(iv) rental or business interruption insurance in amounts sufficient to pay, during any period of up to one (1) year in which the Premises may be damaged or destroyed, all of the Liabilities;

(v) steam boiler, machinery, and other insurance of the types and in amounts as Mortgagee may require but in any event not less than customarily carried by persons owning or operating like properties; and

(vi) if the Premises are located in an area that has been identified by the United States Department of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, or other applicable law or regulation, flood insurance in an amount at least equal to the replacement cost of any improvements on the Premises or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, or such other applicable law or regulation, whichever is less.

All insurance policies required hereby ("Policies") shall:

(A) contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the Policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of set-off, counterclaim or deductions against Mortgagor;

(B) provide that the amount payable for any loss shall not be reduced by reason of co-insurance;

(C) be issued by companies and in amounts in each company reasonably satisfactory to Mortgagee;

(D) name Mortgagor and Mortgagee as insureds, as their respective interests may appear, and have attached thereto a mortgagee's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee.

The Mortgagor shall furnish Mortgagee with certificates of insurance in form and substance satisfactory to Mortgagee. Not less than 5 days prior to the date the premium is due for each Policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of the premium. Not less than 30 days prior to the expiration of any certificate of insurance required to be delivered hereunder, Mortgagor shall furnish Mortgagee with a replacement certificate and/or other evidence satisfactory to Mortgagee of the extension and continuance in force of the insurance coverage. Each Policy shall contain a provision that such policy will not be cancelled, amended or reduced in amount or scope without at least 30 days' prior written notice to Mortgagee.

Unless you provide us with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is

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made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

(c) Payment of Taxes and Other Impositions. The Mortgagor agrees to pay or cause to be paid prior to delinquency all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Premises, which are assessed or imposed upon the Premises, or become due and payable, and which create, may create or appear to create a lien upon the Premises, or any part thereof (all of such taxes, assessments and other governmental and non-governmental charges of the above-described or like nature are hereinafter referred to as "Impositions"). Mortgagor shall furnish Mortgagee upon request official receipts evidencing payment thereof. Mortgagor may before any delinquency occurs contest or object to the amount or validity of any Imposition in good faith by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay the collection of the contested Impositions and prevent the sale or forfeiture of the Premises to collect the same; no such contest or objection shall relieve, modify or extend Mortgagor's covenants to pay any such Imposition prior to delinquency unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object, and unless, at Mortgagee's sole option, Mortgagor shall furnish a bond or surety in an amount and form as requested by and satisfactory in all respects to Mortgagee.

(d) Tax and Insurance Escrow At Mortgagee's Option. If an Event of Default has occurred and is continuing and if requested by Mortgagee, in order to provide money for the payment of the Impositions and the premiums on the (insurance) Policies, Mortgagor shall pay to Mortgagee on a monthly basis on such date(s) as Mortgagee shall require such amount as Mortgagee shall estimate will be required to accumulate, by the date 30 days prior to the due date of the next annual installment of such Impositions and premiums, through substantially equal monthly payments by Mortgagor to Mortgagee, amounts sufficient to pay such next annual Impositions and insurance premiums. All such payments shall be held by Mortgagee in escrow, without interest unless required by law. Such amounts held in escrow shall be made available to Mortgagor for the payment of the Impositions and insurance premiums when due, or may be applied thereto directly by Mortgagee if it in its sole discretion so elects.

(e) Maintenance, Repair, Alterations. The Mortgagor shall:

(i) keep the Premises, including without limitation any sidewalk, road, parking or landscape area located thereon, in good condition, repair and order, and free of nuisance;

(ii) not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances, governmental regulations or as may be expressly permitted under the current Lease or any future Lease as long as the work under any future Lease does not materially diminish the appraised value of the collateral property) any improvements which are part of the Premises;

(iii) subject to (f) of this section, promptly repair and restore any portion of the Premises which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;

(iv) subject to any right to contest set forth herein, pay when due all claims for labor performed and materials furnished to and for the Premises;

(v) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or



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hereafter affecting the Premises or any part thereof or requiring any alterations or improvements;

(vi) not commit or permit any waste or deterioration of the Premises;

(vii) not commit, suffer or permit any act to be done in or upon the Premises in violation of any law, ordinance or regulation;

(viii) not initiate or acquiesce in any zoning change or reclassification of the Premises;

(ix) pay all utilities incurred for the Premises; and

(x) keep the Premises free and clear of all liens and encumbrances of every sort except Permitted Encumbrances (as defined above).

(f) Damage and Destruction.

(i) The Mortgagor shall give Mortgagee prompt written notice of any damage to or destruction of any portion or all of the Premises. If and to the extent Mortgagee so consents in writing, losses covered by insurance may be settled and adjusted by Mortgagee. In all other cases, Mortgagee at its option may settle and adjust any insurance claim without the consent of Mortgagor. In any case Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses so incurred by Mortgagee shall be so much additional indebtedness secured by this Mortgage, and shall be reimbursed to Mortgagee upon demand.

(ii) If the Mortgagor is in default, then in the event of any insured damage to or destruction of the Premises or any part thereof the proceeds of insurance payable as a result of such loss shall be applied upon the Liabilities or applied to the repair and restoration of the Premises, as Mortgagee in its sole discretion shall elect. If the Mortgagor is not in default, then the proceeds of insurance shall be applied to the repair and restoration of the Premises;

(iii) If Mortgagee shall elect that proceeds of insurance are to be applied to the repair and restoration of the Premises, Mortgagor hereby covenants promptly to repair and restore the same in such manner as Mortgagee may require; if insurance proceeds are not sufficient to pay for the full repair and restoration costs, Mortgagor shall pay such amounts out of its own funds. Mortgagee shall reimburse Mortgagor for costs incurred in repair and restoration in such manner as it shall deem fit, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens except Permitted Encumbrances.

Notwithstanding anything contained in this section 5(f) to the contrary, as long as the Mortgagor is not in default and after having given Mortgagee written notice as provided above, the Mortgagor shall have the right to settle all losses covered by insurance which losses in any single instance do not exceed Three Hundred Thousand Dollars (\$300,000.00).

(g) Condemnation.

(i) If the Premises or any part thereof or interest therein are taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Mortgagor receive any notice or other information regarding any such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee.

(ii) Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or

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proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All proceeds of compensation, awards, damages, rights of action and proceeds awarded to Mortgagor (all such, "Condemnation Awards") are hereby assigned to Mortgagee and Mortgagor agrees to execute such further assignments of the Condemnation Awards as Mortgagee may require.

(iii) All Condemnation Awards shall be applied upon the Liabilities or applied to the repair and restoration of the Premises, as Mortgagee in its sole discretion shall elect.

(iv) If Mortgagee shall elect that Condemnation Awards are to be applied to the repair and restoration of the Premises, Mortgagor hereby covenants promptly to repair and restore the same in such manner as Mortgagee may require; if the Condemnation Awards are not sufficient to pay for the full repair and restoration costs, Mortgagor shall pay such amounts out of its own funds. Mortgagee shall reimburse Mortgagor for costs incurred in repair and restoration in such manner as it shall deem fit, and at all times the undisbursed balance of Condemnation Awards remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens, except Permitted Encumbrances.

(h) Inspection. Mortgagee and its agents, after 24 hours prior notice to Mortgagor, are authorized to enter at any time upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts Mortgagee is authorized to perform under the terms of this Mortgage or any of the other Loan Documents. Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and shall make such books and records and all supporting vouchers and data available for examination by Mortgagee and its agents at any time during normal business hours, and from time to time on request at the offices of Mortgagee, or at such other location as may be mutually agreed upon.

(i) Financial Information. Mortgagor shall provide to Mortgagee, at such times and in such form as Mortgagee shall from time to time require:

(A) A "rent roll" and other information concerning any and all leases, rentals and tenants of any or all of the Premises;

(B) copies of all assessments, bills and other information pertaining to any and all ad valorem and other taxes and Impositions on or pertaining to any or all of the Premises;

(C) annual company prepared financial statements of the Borrower due within 90 days of every fiscal year end. Gordon Segal shall attest to the accuracy of each statement.

(D) each individual Guarantor shall provide an acceptable personal financial statement every year within 75 days of each year end;

(E) annual tax returns for the Borrower shall be provided within 30 days of filing; and

(F) each individual Guarantor's federal income tax returns, plus all K-1s, shall be provided within 30 days of filing.

(j) Appraisals and Environmental Reports. Without limiting any other provision hereof or of any other Loan Document, Mortgagor agrees to cooperate with any appraisal, environmental audit, report or study, or the like of or pertaining to the Premises or any portion thereof which Mortgagee in its sole discretion and at Mortgagee's sole expense, may require from time to time. Notwithstanding anything to the contrary in this paragraph, if the Mortgagee is required by any governmental law, rule or regulation to have performed an appraisal, environmental audit, report or study, the Mortgagor shall pay the cost, but shall only be responsible for paying the cost one time during the term of the loan.

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(k) **Title, Liens and Conveyances.** Except for Permitted Encumbrances, Mortgagor shall not create, suffer or permit to be created or filed against the Premises, or any part thereof or interest therein, any mortgage lien or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage without the express written consent of Mortgagee. Mortgagor may contest in good faith and by appropriate proceedings the validity of any such lien, charge or encumbrance, if, as preconditions: (i) Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amounts or form as Mortgagee shall require; and (ii) Mortgagor shall diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien, by depositing in court a bond for the amount claimed, or by otherwise giving security for such claim, or in such manner as is or may be prescribed by law, and any amounts expended by Mortgagee in so doing shall be payable by Mortgagor upon demand by Mortgagee together with interest at two percent (2%) in addition to the Prime Rate from the date of demand to the date of payment, and shall be so much additional indebtedness secured by this Mortgage. If title to the Premises is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against the Premises shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust.

(l) **Stamp and Other Taxes.** If any documentary stamp, intangible, recording or other tax or fee becomes due in respect of the Liabilities or this Mortgage or the recording thereof, Mortgagor shall pay such amount in the manner required by law.

(m) **Termination of Current Lease.** In the event that the current lease for the property is terminated and the property is not leased to a comparable replacement tenant (as below under "Interest Reserve") subject to the Northern Trust Company's approval, whose approval shall not be unreasonably withheld, within 210 days, then the failure to have an acceptable tenant is an Event of Default. Notwithstanding anything contained in this paragraph to the contrary, if a new lease is signed, tendered to The Northern Trust Company and approved by The Northern Trust Company, then it shall not be an Event of Default if the lease contains a rent abatement for the first ten months of the lease and an Interest Reserve is established as provided below. Upon the lessor receiving rent payments as provided in the lease, the interest reserve requirement shall cease. If, after the ten month period, rent is not paid as required by the lease, then it shall be an Event of Default.

(n) **No Additional Property Indebtedness.** Borrower shall not incur any additional property indebtedness without the prior written consent of The Northern Trust Company.

(o) **Interest Reserve.** There shall be no interest reserve requirement as long as an executed lease exists:

- (i) with a tenant (Lessee) of equal or better credit worthiness than the current Lessee; and
- (ii) any new lease has the same or better terms as the existing lease.

This includes an extension of the existing lease to the current tenant. However, if a lease as defined above and acceptable to The Northern Trust Company, which acceptance shall not be unreasonably withheld, ceases to exist, the Borrower and Guarantors shall immediately establish an interest reserve equivalent to the amount necessary to service the loan for its remaining term. The interest reserve shall consist of:

- (i) cash or cash equivalents such as marketable securities acceptable to The Northern Trust Company;  
or
- (ii) the pledge of availability under an existing line of credit in the amount necessary to service the debt to maturity.

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Should an acceptable lease, as defined above, be subsequently executed, such reserve will be eliminated for the duration of the lease.

## 6. Assignment of Rents and Leases.

Without limiting the generality of any other provisions hereof, as additional security Mortgagor hereby assigns to Mortgagee the rents, issues and profits of the Premises, and upon the occurrence of any Event of Default, Mortgagee may receive and collect said rents, issues and profits so long as such Event of Default shall exist and during the pendency of any foreclosure proceedings. As of the date of this Mortgage, as additional security, Mortgagor also hereby assigns to Mortgagee any and all written and oral leases, whether now in existence or which may hereafter come into existence during the term of this Mortgage, or any extension hereof, and the rents thereunder, covering the Premises or any portion thereof. The collection of rents by Mortgagee pursuant to this Section shall in no way waive the right of Mortgagee to foreclose this Mortgage in the event of any Event of Default. Notwithstanding the foregoing, until a notice in writing is sent to Mortgagor stating that an Event of Default or any event of condition that with notice or passage of time or both might become an Event of Default has occurred under the terms and conditions of this Mortgage (a "Notice"), Mortgagor may receive, collect and enjoy the lease payments, rents, income, and profits accruing from the Premises (the "Rents"). Mortgagee may, after service of a Notice, receive and collect the Rents as they become due. Mortgagee may thereafter continue to receive and collect all such Rents as long as such Event of Default shall exist and during the pendency of any foreclosure proceedings. Mortgagor hereby appoints Mortgagee its true and lawful attorney, which appointment is irrevocable and coupled with an interest, with full power of substitution and with full power for Mortgagee in its own name and capacity or in the name and capacity of Mortgagor, from and after the service of a Notice (with or without taking possession of the Premises), to demand, collect, receive, and give complete acquittance for any and all Rents, and at Mortgagee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Mortgagor or otherwise, that Mortgagee may deem necessary or desirable in order to collect or enforce the payment of the Rents. Lessees and tenants of the Premises are hereby expressly authorized and directed to pay any and all Rents due Mortgagor to Mortgagee or such nominee as Mortgagee may designate in writing delivered to and received by such lessees and tenants, who are expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all payments so made.

From and after the service of a Notice, Mortgagee is hereby vested with full power to use all measures, legal and equitable, it may deem necessary or proper to enforce this assignment and to collect the Rents, including without limitation the right of Mortgagee or its designee to enter upon the Premises, or any part thereof, with or without process of law, take possession of all or any part of the Premises and all personal property, fixtures, documents, books, records, papers, and accounts of Mortgagor relating thereto, and exclude Mortgagor and its agents and servants wholly therefrom. Mortgagor hereby grants full power and authority to Mortgagee to exercise all rights, privileges, and powers herein granted at any and all times after service of a Notice, without further notice to Mortgagor, with full power to use and apply all of the Rents to the payment of the costs of managing and operating the Premises and of any Liabilities in such order as Mortgagee shall determine. Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of Mortgagor as landlord or as lessor, and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the leases or otherwise. This assignment shall not place responsibility for the control, care, management, or repair of the Premises, or parts thereof, upon Mortgagee, nor shall it make Mortgagee liable for the performance of any of the terms and conditions of any of the leases, for any waste of the Premises by any lessee under any of the leases or any other person, for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss, injury, or death to any lessee, licensee, employee, or stranger.

In the exercise of the powers herein granted to Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

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The assignment contained in this Section is given as collateral security and the execution and delivery hereof shall not in any way impair or diminish the obligations of Mortgagor, nor shall this assignment impose any obligation on Mortgagee to perform any provision of any contract pertaining to the Premises or any responsibility for the non-performance thereof by Mortgagor or any other person. The assignment under this Section is given as a primary pledge and assignment of the rights described herein and such assignment shall not be deemed secondary to the security interest and mortgage of Mortgagee in the Premises. Mortgagee shall have the right to exercise any rights under this Section before, together with, or after exercising any other rights under this Mortgage. Nothing herein shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty, or liability of Mortgagor under this assignment, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all costs (including without limitation attorneys' fees and costs, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, whether in or out of court, in original or appellate proceedings, or in bankruptcy), liability, loss, or damage which Mortgagee may or might incur by reason of this assignment; and any and all such costs, liability, loss, or damage incurred by Mortgagee (whether successful or not), shall be Liabilities hereby secured, and Mortgagor shall reimburse Mortgagee therefor on demand, together with interest at two percent (2%) in addition to the Prime Rate from the date of demand to the date of payment; provided, however, in no event shall the Mortgagor be liable for any liability, loss or damage which the Mortgagor incurs as a result of the Mortgagee's gross negligence or willful misconduct.

7. **EVENTS OF DEFAULT.** The occurrence of any of the following shall constitute an "Event of Default", except for items 7(a) through 7(k) it shall not be an Event of Default until ten (10) days after written notice on any monetary event of default and thirty (30) days after written notice on any non-monetary event of default:

(a) failure to pay, when and as due, any of the Liabilities, or failure to comply with or perform any agreement or covenant of Mortgagor contained herein; or

(b) any default, event of default, or similar event shall occur or continue under any other instrument, document, note, agreement, or guaranty delivered to Mortgagee in connection with this Mortgage, or any such instrument, document, note, agreement, or guaranty shall not be, or shall cease to be, enforceable in accordance with its terms; or

(c) there shall occur any default or event of default, or any event or condition that might become such with notice or the passage of time or both, or any similar event, or any event that requires the prepayment of borrowed money or the acceleration of the maturity thereof, under the terms of any evidence of indebtedness or other agreement issued or assumed or entered into by Borrower, Mortgagor, any Subsidiary, any general partner or joint venturer of Mortgagor, or any Guarantor, or under the terms of any indenture, agreement, or instrument under which any such evidence of indebtedness or other agreement is issued, assumed, secured, or guaranteed, and such event shall continue beyond any applicable period of grace; or

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

(e) any guaranty of or pledge of collateral security for this Note shall be repudiated or become unenforceable or incapable of performance; or

(f) Borrower, Mortgagor or any Subsidiary shall fail to maintain their existence in good standing in their state of formation or shall fail to be duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so might have a material adverse impact on the consolidated assets, condition or prospects of Borrower or Mortgagor; or

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(g) Borrower, Mortgagor, any Subsidiary, any general partner, member or joint venturer of Mortgagor, or Borrower, or all Guarantors shall die, become incompetent, dissolve, liquidate, merge, consolidate, or cease to be in existence for any reason; or any general partner, member or joint venturer of Borrower or Mortgagor shall withdraw or notify any partner, member or joint venturer of Borrower or Mortgagor of its or his/her intention to withdraw as a partner, member or joint venturer (or to become a limited partner) of Borrower or Mortgagor; or any general or limited partner, member or joint venturer of Borrower or Mortgagor shall fail to make any contribution required by the partnership, operating or joint venture agreement of Borrower or Mortgagor as and when due under such agreement; or there shall be any change in the partnership, membership or joint venture agreement of Borrower or Mortgagor from that in force on the date hereof which may have a material adverse impact on the ability of Borrower to repay the Liabilities; or

(h) any person or entity presently not in control of a corporate, limited liability company, partnership or joint venture Borrower or Mortgagor, any corporate general partner or joint venturer of Borrower or Mortgagor, or any Guarantor, shall obtain control directly or indirectly of Borrower or Mortgagor, such a corporate general partner or joint venturer, or any Guarantor, whether by purchase or gift of stock or assets, by contract, or otherwise; or

(i) any proceeding (judicial or administrative) shall be commenced against Borrower, Mortgagor, any Subsidiary, any general partner or joint venturer of Borrower or Mortgagor, or any Guarantor, or with respect to any assets of Borrower, Mortgagor, any Subsidiary, any general partner or joint venturer of Borrower or Mortgagor, or any Guarantor which shall threaten to have a material and adverse effect on the assets, condition or prospects of Borrower, Mortgagor, any Subsidiary, any general partner or joint venturer of Borrower or Mortgagor, or any Guarantor; or final judgment(s) and/or settlement(s) in an aggregate amount in excess of FIVE HUNDRED THOUSAND UNITED STATES DOLLARS (\$500,000.00) in excess of insurance for which the insurer has confirmed coverage in writing, a copy of which writing has been furnished to Mortgagee, shall be entered or agreed to in any suit or action commenced against Borrower, Mortgagor, any Subsidiary, any general partner or joint venturer of Borrower or Mortgagor, or any Guarantor; or

(j) Mortgagor, after having given to Mortgagee 30 days prior written notice and Mortgagee not having objected in writing, shall sell, transfer, convey or assign the title to all or any portion of the Premises, or in the event the beneficiary of Mortgagor (if Mortgagor is a land trust) shall sell, transfer, convey or assign any beneficial interest under the Trust Agreement by which Mortgagor was created (including without limitation a collateral assignment thereof), in either case whether by operation of law, voluntarily, or otherwise, or Mortgagor or such a beneficiary shall contract to do any of the foregoing; or Mortgagor or any other person or entity shall grant or any person other than Mortgagee shall obtain a security interest in or mortgage or other lien or encumbrance upon the Premises; Mortgagor or any other person shall perfect (or attempt to perfect) such a security interest or encumbrance; a court shall determine that Mortgagee does not have a first-priority mortgage and security interest in the Premises enforceable in accordance with the terms hereof; or any notice of a federal tax lien against Borrower, Mortgagor or any general partner or joint venturer of Borrower or Mortgagor shall be filed with any public recorder; or

(k) //Intentionally Omitted//

(l) any bankruptcy, insolvency, reorganization, arrangement, readjustment, liquidation, dissolution, or similar proceeding, domestic or foreign, is instituted by or against Borrower, Mortgagor, any Subsidiary, any general partner or joint venturer of Borrower or Mortgagor, or any Guarantor; or Borrower, Mortgagor, any Subsidiary, any general partner or joint venturer of Borrower or Mortgagor, or any Guarantor shall take any steps toward, or to authorize, such a proceeding; or

(m) Borrower, Mortgagor, any Subsidiary, any general partner or joint venturer of Borrower or Mortgagor, or any Guarantor shall become insolvent, generally shall fail or be unable to pay its(his) (her) debts as they mature, shall admit in writing its(his)(her) inability to pay its(his)(her) debts as they mature, shall make a

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general assignment for the benefit of its(his)(her) creditors, shall enter into any composition or similar agreement, or shall suspend the transaction of all or a substantial portion of its(his)(her) usual business.

## 8. DEFAULT REMEDIES.

(a) Upon the occurrence and during the continuance of any Event of Default specified in Section 7(a)-(k), Mortgagee at its option may declare the Liabilities immediately due and payable without notice or demand of any kind; and (ii) upon the occurrence of an Event of Default specified in Section 7(l)-(m), the Liabilities shall be immediately and automatically due and payable without action of any kind on the part of Mortgagee. Upon the occurrence and during the continuance of any Event of Default, Mortgagee may exercise any rights and remedies under this Mortgage (including without limitation as set forth below in this Section), any related document or instrument (including without limitation any pertaining to collateral), at law or in equity, and may also: (A) either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises, sue for or otherwise collect the Rents, including without limitation those past due and unpaid, and apply the same to the payment of taxes, insurance premiums and other charges against the Premises or in reduction of the indebtedness secured by this Mortgage in such order as it may elect; and the entering upon and taking possession of the Premises, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of Rents, Mortgagee shall be entitled to exercise every right provided for in any of the other Loan Documents or by law upon occurrence of any Event of Default; or (B) commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; or (C) exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of Illinois, and any notice of sale, disposition or other intended action by Mortgagee, sent to Mortgagor at its address specified herein, at least five days prior to such action, shall constitute reasonable notice to Mortgagor.

(b) Foreclosure; Expense of Litigation. When the Liabilities, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Liabilities or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees (including without limitation time charges of attorneys who may be employees of Mortgagee), appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature 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 without limitation the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other Loan Documents or the Premises, including without limitation probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage and immediately due and payable with interest thereon at a rate equal to two percent (2%) in addition to the Prime Rate. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

(c) Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises

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or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including without limitation all such items as are mentioned in (b) of this Section; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any excess to Mortgagor, its successors or assigns, as their rights may appear.

(d) Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises. Mortgagee or any holder of the Note may be appointed as such receiver. Such receiver shall have (i) power to collect the Rents during the pendency of such foreclosure suit, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (ii) power to extend or modify any then existing leases and to make new leases, which extension, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured by this Mortgage and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in its hands in payment in whole or in part of the indebtedness secured by this Mortgage, or found due or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale.

(e) Insurance After 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 repairing and restoring the Premises, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

(f) Other Security, Etc. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. Failure by Mortgagee to exercise any right which it may exercise hereunder, or the acceptance by Mortgagee of partial payments, shall not be deemed a waiver by Mortgagee of any default or of its right to exercise any such rights thereafter.

(g) Not Mortgagee in Possession. Nothing herein contained shall be construed as constituting Mortgagee



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a mortgagee in possession.

(h) **Waiver of Certain Rights.** To the extent permitted by applicable law, Mortgagor agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but rather waives the benefit of such laws. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale or from or under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Premises are located.

(i) **Mortgagee's Use of Deposits.** With respect to any deposits made with or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage, if an Event of Default occurs and is continuing, Mortgagee may, at its option, without being required to do so, apply any moneys or securities which constitute such deposits on any of the Liabilities in such order and manner as Mortgagee may elect. When the Liabilities have been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the prompt payment of the Liabilities and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor.

## 9. RIGHTS OF MORTGAGEE.

If Mortgagor fails to make any payment or to do any act as and in the manner provided herein or in any of the other Loan Documents, Mortgagee in its own discretion, without obligation so to do and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation:

- (a) with process of law, to enter upon and take possession of the Premises;
- (b) to make additions, alterations, repairs and improvements to the Premises which it may consider necessary and proper to keep the Premises in good condition and repair;
- (c) to appear and participate in any action or proceeding affecting or which may affect the Premises, the security hereof or the rights or powers of Mortgagee;
- (d) to pay any Impositions asserted against the Premises and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition;
- (e) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Mortgagee may affect or appears to affect the Premises or the security of this Mortgage or which may be prior or superior hereto;
- (f) in exercising such powers, to pay necessary expenses, including without limitation employment of and payment of compensation to inside and outside counsel or other necessary or desirable consultants, contractors, agents and other employees; and
- (g) filing or recording any document in order to secure the lien rights of the Mortgagee.

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The Mortgagor irrevocably appoints Mortgagee its true and lawful attorney in fact, at Mortgagee's election, to do and cause to be done all or any of the foregoing in the event Mortgagee shall be entitled to take any or all of the action provided for in this Section. Mortgagor shall immediately, upon demand therefor by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys, attorney's fees, legal costs and expenses, and time charges of attorneys who may be employees of Secured Party, in each and every case whether in or out of court, in original or appellate proceedings or in bankruptcy, all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable, with interest thereon at a rate equal to two percent (2%) in addition to the Prime Rate.

## 10. Estoppel Letters.

The Mortgagor shall furnish from time to time within 15 days after Mortgagee's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

## 11. Declaration of Subordination to Leases.

At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases and subleases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.

## 12. BUSINESS LOAN.

Mortgagor represents that the Indebtedness Hereby Secured will be used for the purposes specified in 815 ILCS 205/4 and that the principal sum evidenced by the Note constitutes a business loan which comes within the purview of such paragraph.

## 13. OBLIGATIONS UNCONDITIONAL; WAIVER OF DEFENSES.

Without limiting any other provision hereof, Mortgagor irrevocably agrees that no fact or circumstance whatsoever which might at law or in equity constitute a discharge or release of, or defense to the obligations of, a guarantor or surety shall limit or affect any obligations of Mortgagor under this Mortgage or any document or instrument executed in connection herewith. Without limiting the generality of the foregoing:

(a) Mortgagee may at any time and from time to time, without notice to Mortgagor, take any or all of the following actions without affecting or impairing the liability of Mortgagor on this Mortgage:

- (i) renew or extend time of payment of the Liabilities;
- (ii) accept, substitute, release or surrender any security for the Liabilities; and
- (iii) release any person primarily or secondarily liable on the Liabilities (including without limitation Borrower, any indorser, and any Guarantor).

(b) No delay in enforcing payment of the Liabilities, nor any amendment, waiver, change, or

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modification of any terms of any instrument which evidences or is given in connection with the Liabilities, shall release Mortgagor from any obligation hereunder. The obligations of Mortgagor under this Mortgage are and shall be primary, continuing, unconditional and absolute (notwithstanding that at any time or from time to time all of the Liabilities may have been paid in full), irrespective of the value, genuineness, regularity, validity or enforceability of any documents or instruments respecting or evidencing the Liabilities. In order to hold Mortgagor liable or exercise rights or remedies hereunder, there shall be no obligation on the part of Mortgagee, at any time, to resort for payment to Borrower or any Guarantor or to any other security for the Liabilities. Mortgagee shall have the right to enforce this Mortgage irrespective of whether or not other proceedings or steps are being taken against any other property securing the Liabilities or any other party primarily or secondarily liable on any of the Liabilities.

(c) Mortgagor irrevocably waives presentment, protest, demand, notice of dishonor or default, notice of acceptance of this Mortgage, notice of any loans made, extensions granted or other action taken in reliance hereon, and all demands and notices of any kind in connection with this Mortgage or the Liabilities.

(d) Mortgagor waives any claim or other right which Mortgagor might now have or hereafter acquire against Borrower or any other person primarily or contingently liable on the Liabilities (including without limitation any maker, indorser or Guarantor) or that arises from the existence or performance of Mortgagor's obligations under this Mortgage, including without limitation any right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim or remedy of Mortgagee against Borrower or any other collateral security for the Liabilities, which Mortgagee now has or hereafter acquires, however arising.

14. Environmental Matters. Without limiting any provision of any environmental indemnity agreement or other document executed in connection herewith:

(a) Mortgagor covenants, represents and warrants that to the best of its knowledge:

(i) no substances, including without limitation asbestos or any substance containing more than 0.1 percent asbestos, the group of compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances ("Hazardous Material(s)") (any mixture of a Hazardous Material, regardless of concentration, with other materials shall be considered a Hazardous Material) under any Hazardous Material Law (as defined below) have been or shall be installed, used, generated, manufactured, treated, handled, refined, produced, processed, stored or disposed of, or otherwise present in, on or under the Premises. This provision does not prohibit: (1) the use of unrecycled fuel oil as a boiler fuel; (2) the normal use of consumer products; or (3) the normal use of materials such as cleaning products, copier toner, and similar materials routinely used in offices. "Hazardous Material Law(s)" means any law, regulation, order or decree relating to environmental conditions and industrial hygiene, including without limitation, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. §1801 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, the Clean Air Act, 42 U.S.C. §7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§300f *et seq.*, and all similar federal, state and local environmental statutes and ordinances and the regulations, orders, and decrees now or hereafter promulgated thereunder.

(ii) No activity has been or shall be undertaken on the Premises which would cause: (A) the Premises to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Premises within the ambit of, RCRA or any other Hazardous Material Law;

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(B) a release or threatened release of Hazardous Material from the Premises within the meaning of, or otherwise bring the Premises within the ambit of, CERCLA or SARA or any Hazardous Material Law; or (C) the discharge of Hazardous Material into any watercourse, body of surface or subsurface water or wetland, or the discharge into the atmosphere of any Hazardous Material which would require a permit under any Hazardous Material Law.

(iii) No activity has been or shall be undertaken with respect to the Premises which would cause a violation of or support a claim under any Hazardous Material Law.

(iv) No underground storage tanks or underground Hazardous Material deposits are or were located on the Property and subsequently removed or filled.

(v) No investigation, administrative order, litigation or settlement with respect to any Hazardous Materials is threatened or in existence with respect to the Premises.

(vi) No notice has been served on Mortgagor from any entity, governmental body, or individual claiming any violation of any Hazardous Material Law, or requiring compliance with any Hazardous Material Law, or demanding payment or contribution for environmental damage or injury to natural resources.

(b) Mortgagor agrees unconditionally to indemnify, defend, and hold Mortgagee harmless against any

(i) loss, liability, damage, expense (including without limitation attorney's fees, legal costs and expenses and time charges of attorneys who may be employees of Mortgagee, whether in or out of court, in original or appellate proceedings or in bankruptcy), claim or defect in title arising from the imposition or recording of a lien, the incurring of costs of required repairs, clean up or detoxification and removal under any Hazardous Material Law with respect to the Premises or liability to any third party arising out of any violation of any Hazardous Material Law; and

(ii) other loss, liability, damage, expense (including without limitation attorney's fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, in each and every case whether in or out of court, in original or appellate proceeds or in bankruptcy) or claim which may be incurred by or asserted against Mortgagee, including without limitation loss of value of the Premises directly or indirectly resulting from the presence on or under, or the discharge, emission or release from, the Premises into or upon the land, atmosphere, or any watercourse, body of surface or subsurface water or wetland, arising from the installation, use, generation, manufacture, treatment, handling, refining, production, processing, storage, removal, clean up or disposal of any Hazardous Material, whether or not caused by Mortgagor.

(c) Mortgagor shall pay when due any judgments or claims for damages, penalties or otherwise against Mortgagee, and shall assume the burden and expense of defending all suits and administrative proceedings of any description with all persons, political subdivisions or government agencies arising out of the occurrences set forth in (b) of this Section 14. In the event that such payment is not made Mortgagee, at its sole discretion, may proceed to file suit against Mortgagor to compel such payment.

(d) THIS SECTION 14 SHALL APPLY TO ANY CLAIM, DEMAND OR CHARGE CONTEMPLATED BY THIS MORTGAGE MADE OR ASSERTED AT ANY TIME, AND, WITHOUT LIMITATION, SHALL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THAT ALL OBLIGATIONS OF THE MORTGAGOR OR ANY OTHER PERSON OR ENTITY UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY OTHER RELATED DOCUMENT OR MATTER HAVE BEEN PAID, RELEASED OR FULFILLED IN FULL. Any claim, demand or charge asserted at any time relating to the period of time set forth in this paragraph shall be subject to the terms and conditions of this Mortgage.

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Notwithstanding the above, this Mortgage shall not be construed to impose any liability on Mortgagor for divisible loss or damage resulting solely from Hazardous Material placed, released or disposed on the Premises after foreclosure or sale of the Premises pursuant to the Mortgage or acceptance by Mortgagee of a deed in lieu of foreclosure.

(e) Mortgagor shall immediately advise Mortgagee in writing of

(i) any governmental or regulatory actions instituted or threatened under any Hazardous Material Law affecting the Premises or the matters indemnified hereunder including, without limitation, any notice of inspection, abatement or noncompliance;

(ii) all claims made or threatened by any third party against Mortgagor or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material;

(iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises to be classified in a manner which may support a claim under any Hazardous Material Law; and

(iv) Mortgagor's discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject Mortgagor or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Material Law. Mortgagor shall immediately deliver to Mortgagee any documentation or records as Mortgagee may request in connection with all such notices, inquiries, and communications, and shall advise Mortgagee promptly in writing of any subsequent development.

(f) Mortgagee shall give written notice to Mortgagor of any action against Mortgagee which might give rise to a claim by Mortgagee against Mortgagor under this Mortgage. If any action is brought against Mortgagee, Mortgagor, at Mortgagee's sole option and Mortgagor's expense, may be required to defend against such action with counsel satisfactory to Mortgagee and, with Mortgagee's sole consent and approval, to settle and compromise any such action. However, Mortgagee may elect to be represented by separate counsel, at Mortgagee's expense, and if Mortgagee so elects any settlement or compromise shall be effected only with the consent of Mortgagee. Mortgagee may elect to join and participate in any settlements, remedial actions, legal proceedings or other actions included in connection with any claims under this Mortgage.

## 15. MISCELLANEOUS.

(a) Recitals. The recitals hereto are hereby made a part of this Mortgage.

(b) Time of Essence. Time is of the essence of this Mortgage and of each and every provision hereof.

(c) Subrogation. To the extent that proceeds of the indebtedness secured by this Mortgage are used to pay any outstanding lien, charge or prior encumbrance against the Premises, Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether said liens, charges or encumbrances are released.

(d) Further Assurances. The Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the judgment of Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired.

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(e) **No Defenses.** 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 Liabilities.

(f) **Invalidity of Certain Provisions.** If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured by this Mortgage, or if such lien is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the indebtedness secured by this Mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured by this Mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Mortgage.

(g) **Legality of Terms.** Nothing herein or in any other Loan Document contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively: (i) to require Mortgagor to pay interest at a rate greater than is lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate; or (ii) to require Mortgagor to make any payment or do any act contrary to law; and if any provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall be given a reasonable time to correct any such error.

(h) **Mortgagee's Right to Deal with Transferee.** In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from the covenants and/or undertakings hereunder, and without Mortgagee waiving its rights to accelerate the Liabilities as set forth herein.

(i) **Releases.** The Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises, or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to this Mortgage or any other Loan Documents and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability of any person or entity personally obligated for any Liabilities, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage.

(j) **Covenant to Run with the Land.** All the covenants hereof shall run with the land.

(k) **Notices.** All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been given or made when deposited in the mail, postage prepaid, addressed if to Mortgagee to its main banking office indicated above (Attention: Division Head, Small Business Division), and if to Mortgagor to its address set forth below, or to such other address as may be hereafter designated in writing by the respective parties hereto or, as to Mortgagor, may appear in Mortgagee's records.

(l) **Other.** This Mortgage and any document or instrument executed in connection herewith shall be governed by and construed in accordance with the internal law of the State of Illinois, and shall be deemed to have been executed in the State of Illinois. Unless the context requires otherwise, wherever used herein the singular shall include the plural and vice versa, and the use of one gender shall also denote the others. Captions herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof; references herein to Sections or provisions without reference to the document in which they are contained are references to this

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**Mortgage.** This Mortgage shall bind Mortgagor, its(his)(her) heirs, trustees (including without limitation successor and replacement trustees), executors, personal representatives, successors and assigns, and 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 Mortgagee, its successors and assigns, and each and every holder of any note or other document pertaining to any of the Liabilities, except that Mortgagor may not transfer or assign any of its(his)(her) rights or interest hereunder without the prior written consent of Mortgagee. Without limiting any other provision hereof, Mortgagor agrees to pay upon demand all expenses (including without limitation attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Mortgagee, in each case whether in or out of court, in original or appellate proceedings or in bankruptcy) incurred or paid by Mortgagee or any holder hereof in connection with the enforcement or preservation of its rights hereunder or under any document or instrument executed in connection herewith. If there shall be more than one person or entity constituting Mortgagor, each of them shall be primarily, jointly and severally liable for all obligations hereunder.

(m) WAIVER OF JURY TRIAL, ETC. MORTGAGOR HEREBY IRREVOCABLY AGREES THAT, SUBJECT TO SECURED PARTY'S SOLE AND ABSOLUTE ELECTION, ALL SUITS, ACTIONS OR OTHER PROCEEDINGS WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION HEREWITH SHALL BE SUBJECT TO LITIGATION IN COURTS HAVING SITUS WITHIN OR JURISDICTION OVER THE COUNTY WHERE THE MAIN BANKING OFFICE OF MORTGAGEE IS LOCATED. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED IN OR HAVING JURISDICTION OVER SUCH COUNTY, AND HEREBY IRREVOCABLY WAIVES ANY RIGHT SHE(HE)(IT) MAY HAVE TO REQUEST OR DEMAND TRIAL BY JURY, TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT BY SECURED PARTY IN ACCORDANCE WITH THIS PARAGRAPH, OR TO CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(n) Release Fees. Any time that the Mortgagee shall issue a full or partial release of this Mortgage, then the Mortgagee shall be entitled to a reasonable fee for issuing said full or partial release.

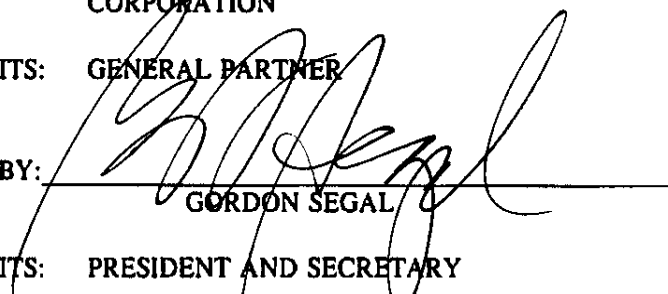
Mortgagor hereby RELEASES AND WAIVES all rights under and by virtue of the homestead exemption laws of the State of Illinois.

IN WITNESS WHEREOF MORTGAGOR HAS SIGNED, SEALED AND DELIVERED THIS MORTGAGE AS OF THE DATE INDICATED ABOVE.

BRICK & MORTAR LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP

BY: 646 MICHIGAN, LTD., AN ILLINOIS CORPORATION

ITS: GENERAL PARTNER

BY:   
GORDON SEGAL

ITS: PRESIDENT AND SECRETARY





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## EXHIBIT A

### LEGAL DESCRIPTION

THE NORTHEAST  $\frac{1}{4}$  (EXCEPT THE EAST 75.00 FEET THEREOF TAKEN FOR WIDENING NORTH MICHIGAN AVENUE) OF BLOCK 34 IN KINZIE'S ADDITION TO CHICAGO, SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 646 NORTH MICHIGAN AVENUE, CHICAGO, ILLINOIS

PERMANENT INDEX NO.: 17-10-113-003-0000

Property of Cook County Clerk's Office

**UNOFFICIAL COPY****EXHIBIT B**

Dated as of September 3, 2013

\$26,000,000.00

Chicago, Illinois

**TERM NOTE**  
(any borrower type)

This Note (as modified from time to time, the "Note") has been executed by BRICK & MORTAR LIMITED PARTNERSHIP, an Illinois limited partnership ("Borrower"), with Borrower's principal office at 1474 Techny Road, Northbrook, Illinois 60062. If more than one person or entity executes this Note, "Borrower" refers to each of them individually and some or all of them collectively, and their obligations hereunder shall be joint and several. If any party comprising "Borrower" is a trustee(s), "Trust Agreement" means the governing trust agreement and/or instruments governing the trust, as modified from time to time, and all related documents and instruments, and "Borrower" also refers to the trustee(s) in its capacity as such and the trust individually and collectively. Various capitalized terms have the meanings set forth in the Section entitled "DEFINITIONS."

**1. MULTIPLE PRINCIPAL PAYMENT TERM LOAN.**

(a) FOR VALUE RECEIVED, Borrower promises to pay to the order of THE NORTHERN TRUST COMPANY, an Illinois banking corporation (hereafter, together with any subsequent holder hereof, called "Lender"), at its banking office at 50 South LaSalle Street, Chicago, Illinois 60603, or at such other place as Lender may direct, the principal amount of TWENTY SIX MILLION UNITED STATES DOLLARS (\$26,000,000.00) (together with portions thereof outstanding from time to time hereunder, as applicable, individually and collectively, the "Loan"). The Loan shall be payable in 83 consecutive installment(s) of interest only, payable monthly on the last day of each month beginning September 30, 2013, plus a final, 84th installment of all then remaining unpaid principal, payable on August 31, 2020 (the "Scheduled Maturity Date"). Notwithstanding any other provision hereof, there shall be only one advance of principal by Lender hereunder.

(b) Lender has no obligation to refinance this Note.

(c) Without limiting any other rights of Lender under this Note or any Related Document, Lender shall have no obligation to make the Loan:

(i) if an Event of Default or Unmatured Event of Default has occurred and is continuing, or would be caused by or exist after the making of the Loan; and

(ii) until Borrower has furnished to Lender all Related Documents and such certified copies of Constituent Documents, resolutions, legal opinions, and other documents,

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all as Lender may request and in such form as Lender may request. Borrower agrees to furnish all such items to Lender prior to the making of the Loan. Any failure by Lender to require all such items as a precondition to the making of the Loan shall not be construed as a waiver of such requirements.

## 2. DEFINITIONS.

(a) As used in this Note the following terms shall have the indicated meanings:

"Constituent Documents" means the articles or certificate of incorporation, by-laws, partnership agreement, certificate of limited partnership, limited liability company operating agreement, limited liability company articles of organization, trust agreement, certificate of formation, and all other documents and instruments pertaining to the formation and ongoing existence of any person or entity which is not a natural person.

"Dollar" and "\$" means lawful money of the United States of America, unless otherwise specified.

"Event of Default"—see section entitled "EVENTS OF DEFAULT."

"Guarantor" means any person, or any persons severally, who now or hereafter guarantees payment or collection of all or any part of this Note or provides any collateral for this Note.

"Lender Affiliate" means Northern Trust Corporation or any direct or indirect subsidiary of Northern Trust Corporation (other than Lender itself).

The term "person" includes both natural persons and organizations.

"Related Document(s)" means this Note as well as any note, agreement, guaranty, Swap Agreement, or other document or instrument previously, now or hereafter delivered to Lender in connection with this Note.

"Related Party(ies)" means any Guarantor, any Subsidiary, and, in addition: (i) as to any Borrower which is a natural person, trusts for the benefit of Borrower; and (ii) as to any Borrower which is not a natural person, to the extent applicable, any general or limited partner, controlling shareholder, joint venturer, member or manager, of Borrower.

"Subsidiary" means any corporation, partnership, limited liability company, joint venture, trust, or other legal entity of which Borrower owns directly or indirectly 50% or more of the

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outstanding voting stock or interest, or of which Borrower has effective control, by contract or otherwise.

"Swap Agreement(s)" means any International Swaps and Derivatives Association, Inc. (ISDA) Master Agreement and Schedule thereto, and any confirmations or other related documents or agreements thereunder pertaining to interest rate swaps or similar products, and any other documents or instruments pertaining to interest rate swaps or similar products, in each case if entered into with or through Lender or any Lender Affiliate.

"Unmatured Event of Default" means any event or condition that would become an Event of Default with notice or the passage of time or both.

(b) As used in this Note, unless otherwise specified: the term "including" means "including without limitation;" the term "days" means "calendar days"; and terms such as "herein," "hereof" and words of similar import refer to this Note as a whole. Unless otherwise defined herein, all terms (including those not capitalized) that are defined in the Uniform Commercial Code of Illinois shall have the same meanings herein as in such Code, as such Code may be amended from time to time (the "UCC"). Unless the context requires otherwise, wherever used herein the singular shall include the plural and vice versa, and the use of one gender shall also denote the others. Captions herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof; references herein to sections or provisions without reference to the document in which they are contained are references to this Note.

### 3. INTEREST; PAYMENTS & PREPAYMENTS.

(a) Borrower agrees to pay interest on the loan from time to time outstanding hereunder at a rate per year equal to the "LIBOR-Based Rate," which shall be equal to the sum of Auto Reprice Contract LIBOR plus the LIBOR Margin. For purposes hereof:

"Auto Reprice Contract LIBOR" means as of any day the offered rate for such day for deposits with maturity periods of one month in United States dollars in the London interbank market as determined and applied by Lender in accord with Lender's customary practices in effect from time to time (as to days when no such offered rate is available and/or Lender or an affiliate of Lender is not generally open for banking business in Chicago, Illinois, Lender will determine and apply a rate in accord with its customary practices in effect from time to time), divided by one minus any

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applicable reserve requirement (expressed as a decimal) on Eurodollar deposits of the same amount and maturity, as determined by Lender in its sole discretion.

"LIBOR Margin" means One and Eight-Tenths percent (1.8%).

For purposes of this Note: the periods referred to in the definitions of the LIBOR-Based Rate are referred to as "Interest Period(s)"; the last day of any Interest Period is referred to as an "Interim Maturity Date"; "Banking Day" means a day on which Lender is generally open for banking business at the office of Lender indicated in the preamble hereto; and "LIBOR Banking Day" means a day on which Lender or any bank affiliate of Lender is generally open for banking business in Chicago, Illinois, and United States dollar deposits are generally traded in London by dealers in such deposits. If an Interest Period would otherwise end on a day which is not a LIBOR Banking Day, it shall automatically be extended to and shall end on the next LIBOR Banking Day; however, if application of the foregoing part of this sentence would cause an Interest Period to end in the following month, such Interest Period shall end on the next preceding LIBOR Banking Day. No Interest Period may extend beyond the Scheduled Maturity Date unless Lender consents otherwise.

(b) Notwithstanding the foregoing, if an Event of Default has occurred and is continuing: (i) Borrower agrees to pay interest on the Loan until paid at a rate equal to two percent (2%) in addition to the rate otherwise applicable under this Note (and in any event not less than the rate in effect on the date the Event of Default first occurs); and (ii) the definition of "LIBOR-Based Rate" shall be deemed amended to include such additional interest payable as a result of the Event of Default.

(c) Without notice to or consent of Borrower, upon the expiration of each Interest Period, the remaining outstanding principal amount of the Loan shall accrue interest for a (each) succeeding Interest Period at the then-applicable LIBOR-Based Rate, as determined by Lender effective as of the first day of each such succeeding Interest Period, in each case without consent of or notice to Borrower, on a rolling, continuing basis.

(d) Borrower agrees to pay accrued interest monthly on the last day of each month of each year, beginning with the first of such dates to occur after the date of the first Loan, at maturity of this Note, and upon payment in full, whichever is earlier or more frequent.

(e) All payments of principal and interest shall be made net of any taxes, costs, fees, losses and expenses incurred or charged by Lender resulting from having principal outstanding

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hereunder at the LIBOR-Based Rate, including:

(i) Taxes (or the withholding of amounts for taxes) of any nature whatsoever including income, excise, and interest equalization taxes (other than income taxes imposed by the United States or any state thereof on the income of Lender), as well as all levies, imposts, duties, or fees whether now in existence or resulting from a change in, or promulgation of, any treaty, statute, regulation, interpretation thereof, or any directive, guideline, or otherwise, by a central bank or fiscal authority (whether or not having the force of law) or a change in the basis of, or time of payment of, such taxes and other amounts resulting therefrom;

(ii) Any reserve or special deposit requirements against assets or liabilities of, or deposits with or for the account of, Lender with respect to principal outstanding at the LIBOR-Based Rate (including those imposed under Regulation D of the Federal Reserve Board) or resulting from a change in, or the promulgation of, such requirements by treaty, statute, regulation, interpretation thereof, or any directive, guideline, or otherwise by a central bank or fiscal authority (whether or not having the force of law);

(iii) Any other costs resulting from compliance with treaties, statutes, regulations, interpretations, or any directives or guidelines, or otherwise by a central bank or fiscal authority (whether or not having the force of law);

(iv) Any breakage fees and other losses and expenses (including interest rate margin and any other losses of anticipated profits, and any minimum breakage fee charged by Lender from time to time) incurred by reason of the liquidation or re-employment of deposits or other funds acquired by Lender to make the Loan or maintain principal outstanding at the LIBOR-Based Rate:

(A) As the result of a voluntary prepayment at a date other than the applicable Interim Maturity Date; or

(B) As the result of Borrower's failure to borrow funds after having notified Lender of Borrower's wish to do so; or

(C) As the result of a mandatory repayment at a date other than the applicable Interim Maturity Date as a result of: (x) exceeding any applicable borrowing base, such as being out of compliance with any "Minimum Liquidity Balance" requirement in any Related Document; (y) the occurrence of an Event of Default and the

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acceleration of any portion of the indebtedness hereunder; or (z) the Scheduled Maturity Date occurring prior to the Interim Maturity Date due to Borrower's selection of an Interest Period which extends beyond the Scheduled Maturity Date; or

(D) As the result of a prohibition on making, maintaining, or repaying principal outstanding at the LIBOR-Based Rate.

If Lender incurs or charges any such taxes, costs, fees, losses and expenses, Borrower, upon demand in writing specifying the amounts thereof, shall promptly pay them; save for manifest error Lender's specification shall be conclusively deemed correct. The Loan shall be conclusively deemed to have been funded by or on behalf of Lender in the London or another offshore interbank market by the purchase of U.S. Dollar deposits or other funds corresponding in amount and maturity to the amounts borrowed and Interest Periods applicable under this Note.

(f) Without limiting Lender's rights pursuant to any other provision hereof, if Lender notifies Borrower that one-month U.S. dollar deposits are not available to Lender in the London interbank market, or that reasonable means do not exist for Lender to determine the LIBOR-Based Rate, or that the LIBOR-Based Rate does not adequately reflect Lender's own funding costs, or that any law, regulation, treaty, or the like prohibits or extends the time at which any principal subject to the LIBOR-Based Rate, or corresponding deposits, may be purchased, maintained, or repaid, then Lender may substitute another rate index selected by Lender in its reasonable discretion, and add the LIBOR Margin to that. Borrower agrees to pay interest at such rate.

**(g) ANY PREPAYMENT AT ANY TIME MAY RESULT IN BORROWER OWING FUNDS UNDER ANY SWAP AGREEMENT IN EFFECT AT SUCH TIME.**

Notwithstanding anything contained in this paragraph (g), Beginning August 31, 2014, the Borrower may make prepayments without penalty or premium, the total of all prepayments may not exceed One Million United States Dollars (\$1,000,000.00). Any prepayment must be made on the last day of the month.

On or after January 31, 2018, the Borrower may cancel the Swap.

(h) Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of 360 days, including the date the Loan is made and excluding the date the Loan or any portion thereof is paid or prepaid.

(i) Notwithstanding the foregoing or any other provision

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hereof or of any Related Document, in no event shall the interest rate under this Note exceed the maximum interest rate allowed under applicable law.

(j) If at any time(s) Borrower and Lender enter into any Swap Agreement pertaining to this Note, then Lender in its reasonable discretion may adjust, to coordinate with its and industry practices pursuant to the Swap Agreement, any or all of: (i) "Interest Period," "Interim Maturity Date," "Banking Day," and "LIBOR Banking Day," and the determination and application thereof; and (ii) interest payment dates. In such circumstances the remainder of this Section and this Note shall continue to apply without change.

#### 4. CROSS-REFERENCES.

(a) This Note is secured without limitation as provided in the following and all related documents, in each case as amended, modified, renewed, restated or replaced from time to time:

Commercial Mortgage dated as of September 3, 2013 executed by the Borrower and encumbering real property all or part of which is commonly known as 646 North Michigan Avenue, Chicago, Illinois.

(b) Payment of Fifty Percent (50%) of this Note has been unconditionally guaranteed by Gordon Segal and Carole Segal.

#### 5. USE OF PROCEEDS.

Borrower represents and warrants that the proceeds of this Note will be used solely for business purposes, and not for personal, family or household use, within the meaning of Federal Truth-in-Lending and similar state laws and regulations.

#### 6. REPRESENTATIONS AND WARRANTIES.

(a) Borrower represents and warrants to Lender that:

(i) Borrower's exact complete legal name is as set forth in the preamble hereto. If Borrower is an organization: Borrower's type of organization and jurisdiction of organization or formation are as set forth in the preamble hereto; Borrower's place of business or, if Borrower has more than one place of business, Borrower's chief executive office, is at Borrower's address set forth



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in the preamble hereto; and Borrower has never been organized or formed in any jurisdiction other than the jurisdiction set forth in the preamble hereto. Except as and if specifically disclosed by Borrower to Lender IN WRITING prior to the execution hereof, during the five (5) years and six months prior to the date hereof:

(A) Borrower has not been known by any legal name different from the one set forth in the preamble hereto nor has Borrower been the subject of any merger, consolidation, or other corporate or organizational reorganization.

(B) If Borrower is an organization, Borrower's place of business or, if Borrower has more than one place of business, Borrower's chief executive office has been at Borrower's address set forth in the preamble hereto.

(ii) Borrower (if Borrower is not a natural person) and any Subsidiary are validly existing and in good standing under the laws of their state of organization or formation, and are duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so might have a material adverse impact on the assets, condition or prospects of Borrower. The execution, delivery and performance of this Agreement and all Related Documents are within Borrower's powers and have been authorized by all necessary action required by law and Borrower's Constituent Documents.

(iii) The execution, delivery and performance of this Agreement and all Related Documents have received any and all necessary governmental approval, and do not and will not contravene or conflict with any provision of law, any Constituent Document or any agreement affecting Borrower or its property.

(iv) There has been no material adverse change in the business, condition, properties, assets, operations or prospects of Borrower or any Related Party since the date of the latest financial statements provided by or on behalf of Borrower or any Related Party to Lender.

(v) Borrower has filed or caused to be filed all federal, state, and local tax returns that are required to be filed, and has paid or has caused to be paid all of its taxes, including any taxes shown on such returns or on any assessment received by it, to the extent that such taxes have become due.

(b) The request or application for the Loan shall be a

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representation and warranty by Borrower as of the date of such request or application that: (i) no Event of Default or Unmatured Event of Default has occurred and is continuing as of such date; and (ii) Borrower's representations and warranties herein and in any Related Document are true and correct as of such date as though made on such date.

7. **EVENTS OF DEFAULT.** Each of the following shall constitute an "Event of Default", except for items 7(a) through 7(k) it shall not be an Event of Default until ten (10) days after written notice on any monetary event of default and thirty (30) days after written notice on any non-monetary event of default:

(a) (i) failure to pay, when and as due, any principal, interest or other amounts payable hereunder or under any Related Document; (ii) failure to comply with or perform any agreement or covenant of Borrower contained herein or in any Related Document, which failure does not otherwise constitute an Event of Default, subject to any applicable notice, grace or cure period; or (iii) if Borrower or any Related Party is a natural person, failure to furnish or cause to be furnished to Lender when and as requested by Lender, but not more often than once every twelve months, fully completed personal financial statements of Borrower or such Related Party on Lender's then-standard form together with such supporting information pertaining to creditworthiness of Borrower or such Related Party as Lender may reasonably request; or

(b) any default, event of default, or similar event shall occur or continue under any Related Document, and shall continue beyond any applicable notice, grace or cure period set forth in such Related Document; or

(c) there shall occur any default or event of default, any similar event, any event that requires the prepayment of borrowed money or permits the acceleration of the maturity thereof, or any event or condition that might become any of the foregoing with notice or the passage of time or both, under the terms of any evidence of indebtedness or other agreement issued or assumed or entered into by Borrower or any Related Party, or under the terms of any document or instrument under which any such evidence of indebtedness or other agreement is issued, assumed, secured, or guaranteed, and such event shall continue beyond any applicable notice, grace or cure period; or

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

(e) this Note or any Related Document, including any

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guaranty of or pledge of collateral security for this Note, shall be repudiated or shall become unenforceable or incapable of performance in accord with its terms; or

(f) Borrower or any Related Party (in each case if not a natural person) shall fail to maintain their existence in good standing in their state of organization or formation or shall fail to be duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so would reasonably be expected to have a material adverse impact on the assets, condition or prospects of Borrower or any Related Party; or

(g) Borrower or any Related Party shall both die, be declared legally incompetent, dissolve, liquidate, merge, consolidate, or cease to be in existence for any reason; or, if Borrower is a partnership or joint venture, any general or limited partner or joint venturer of Borrower shall withdraw from Borrower, or any general partner shall become a limited partner; or the trust under the Trust Agreement shall terminate in whole or in part or be the subject of a distribution of other than income but, in the case of a distribution, only if such distribution would otherwise cause an Event of Default or Unmatured Event of Default to occur; or

(h) except for a successor trustee under the Trust Agreement, any person or entity presently not in control of a Borrower or Related Party which is not a natural person shall obtain control directly or indirectly of such a Borrower or Related Party, whether by purchase or gift of stock or assets, by contract, or otherwise; or

(i) any proceeding (judicial or administrative) shall be commenced against Borrower or any Related Party, or with respect to any of their assets, which would reasonably be expected to have a material and adverse effect on the ability of Borrower to repay this Note; or a judgment or settlement shall be entered or agreed to in any such proceeding which would reasonably be expected to have a material and adverse effect on the ability of Borrower to repay this Note; or any garnishment, summons, writ of attachment, citation, levy or the like is issued against or served upon Lender for the attachment of any property of Borrower or any Related Party in Lender's possession or control; or

(j) Lender shall not have a security interest in any collateral for this Note, of first-priority except as allowed by the applicable Related Documents, and enforceable in accord with the applicable Related Documents; or any notice of a federal tax lien against Borrower or any Related Party shall be filed with any public recorder; or

(k) there shall be any material loss or depreciation in

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excess of thirty percent (30%) of fair market value in the value of any collateral for this Note for any reason (except that the preceding part of this subsection shall not apply if Borrower and any Related Party are in compliance with any "Minimum Liquidity Balance" or other specific borrowing base or like requirement under all Related Documents); or, unless expressly permitted by this Note or the Related Documents, all or any part of any such collateral or any direct, indirect, legal, equitable or beneficial interest therein is assigned, transferred or sold without Lender's prior written consent; or

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

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

## 8. DEFAULT REMEDIES.

(a) Upon the occurrence and during the continuance of any Event of Default specified in (a)-(k) of the Section entitled "EVENTS OF DEFAULT," Lender at its option may declare this Note (principal, interest and other amounts) immediately due and payable without notice or demand of any kind, **ALL OF WHICH ARE HEREBY EXPRESSLY WAIVED BY BORROWER**, whereupon the entire unpaid principal balance of this Note, all interest accrued thereon, and any other amounts payable hereunder shall thereupon at once mature and become due and payable. Upon the occurrence of any Event of Default specified in (l)-(m) of the Section entitled "EVENTS OF DEFAULT," this Note (principal, interest and other amounts) shall be immediately and automatically due and payable without notice, demand or other action of any kind, **ALL OF WHICH ARE HEREBY EXPRESSLY WAIVED BY BORROWER**. Upon the occurrence and during the continuance of any Event of Default, Lender may exercise any rights and remedies under this Note, any Related Document or other document or instrument (including any Related Document pertaining to collateral), and at law or in equity. The time of payment of this Note is also subject to acceleration if an Event of Default occurs.

(b) Lender may, by written notice to Borrower, at any time

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and from time to time, waive any Event of Default or Unmatured Event of Default which shall be for such period and subject to such conditions as shall be specified in any such notice. In the case of any such waiver, Lender and Borrower shall be restored to their former position and rights hereunder, and any Event of Default or Unmatured Event of Default so waived shall be deemed to be cured and not continuing; but no such waiver shall extend to or impair any subsequent or other Event of Default or Unmatured Event of Default. No failure to exercise, and no delay in exercising, on the part of Lender of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of Lender herein provided are cumulative and not exclusive of any rights or remedies provided by law.

(c) ALL CO-SIGNERS AND ENDORSERS OF THIS NOTE ARE TO BE REGARDED AS PRINCIPALS AS TO THEIR RESPECTIVE JOINT AND SEVERAL LIABILITY TO ANY LEGAL HOLDER HEREOF. THE BORROWER, AND EACH OF THE GUARANTORS, SURETIES AND ENDORSERS, HEREBY EXPRESSLY AND SEVERALLY WAIVE GRACE, AND ALL NOTICES, DEMANDS, PRESENTMENTS FOR PAYMENT, NOTICE OF NONPAYMENT, PROTEST AND NOTICE OF PROTEST, NOTICE OF INTENT TO ACCELERATE, NOTICE OF ACCELERATION OF THE INDEBTEDNESS DUE HEREUNDER, AND DILIGENCE IN COLLECTING THIS NOTE OR ENFORCING ANY SECURITY RIGHTS OF LENDER UNDER ANY DOCUMENT SECURING THIS NOTE, AND AGREE: (I) THAT LENDER OR OTHER LEGAL HOLDER OF THIS NOTE MAY, AT ANY TIME, AND FROM TIME TO TIME, ON REQUEST OF OR BY AGREEMENT WITH BORROWER, EXTEND THE DATE OF MATURITY OF ALL OR ANY PART HEREOF, WITHOUT NOTIFYING OR CONSULTING WITH ANY BORROWER OR PRINCIPAL HEREOF, WHO SHALL REMAIN FULLY OBLIGATED FOR THE PAYMENT HEREOF; (II) THAT IT WILL NOT BE NECESSARY FOR LENDER OR ANY HOLDER HEREOF, IN ORDER TO ENFORCE PAYMENT OF THIS NOTE, TO FIRST INSTITUTE OR EXHAUST ITS REMEDIES AGAINST BORROWER OR OTHER PARTY LIABLE THEREFOR OR TO ENFORCE ITS RIGHTS AGAINST ANY SECURITY FOR THIS NOTE; AND (III) TO ANY SUBSTITUTION, EXCHANGE OR RELEASE OF ANY SECURITY NOW OR HEREAFTER GIVEN FOR THIS NOTE OR THE RELEASE OF ANY PARTY PRIMARILY OR SECONDARILY LIABLE HEREON.

9. NO INTEREST OVER LEGAL RATE. It is the intent of Lender and Borrower in the execution of this Note and all other instruments now or hereafter securing this Note to contract in strict compliance with applicable usury law. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in this Note, or in any other instrument executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law; that neither the undersigned nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of this Note shall ever be obligated or required to pay interest on this Note at a rate in

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excess of the maximum interest that may be lawfully charged under applicable law; and that the provisions of this paragraph shall control over all other provisions of this Note and any other instruments now or hereafter executed in connection herewith which may be in apparent conflict herewith. The holder of this Note expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of this Note is accelerated. If the maturity of this Note shall be accelerated for any reason or if the principal of this Note is paid prior to the end of the term of this Note, and as a result thereof the interest received for the actual period of existence of the Loan evidenced by this Note exceeds the applicable maximum lawful rate, the holder of this Note shall, at its option, either refund to the undersigned the amount of such excess or credit the amount of such excess against the principal balance of this Note then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that Lender or any other holder of this Note shall contract for, charge or receive any amount or amounts and/or any thing of value which are determined to constitute interest which would increase the effective interest rate on this Note to a rate in excess of that permitted to be charged by applicable law, an amount equal to interest in excess of the lawful rate shall, upon such determination, at the option of the holder of this Note, be either immediately returned to the undersigned or credited against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Note Borrower acknowledges that it believes the Loan evidenced by this Note to be non-usurious and agrees that if, at any time, Borrower should have reason to believe that such loan is in fact usurious, it will give the holder of this Note notice of such condition and the undersigned agrees that said holder shall have ninety (90) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" as used in this Note shall mean the laws of the State of Illinois or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

10. **PAYMENTS, ETC.** All payments hereunder shall be made in immediately available funds, and shall be applied first to accrued interest and then to principal; however, if an Event of Default occurs, Lender may, in its sole discretion, and in such order as it may choose, apply any payment to interest, principal and/or lawful charges and expenses then accrued. Borrower shall receive immediate credit on payments received during Lender's normal banking hours if made in cash, immediately available funds, or by debit to available balances in an account at Lender;

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otherwise payments shall be credited after clearance through normal banking channels. Borrower authorizes Lender to charge any account of Borrower maintained with Lender for any amounts of principal, interest, taxes, duties, or other charges or amounts due or payable hereunder or under any Related Document, with the amount of such payment subject in Lender's discretion to availability of collected balances. Unless Borrower instructs otherwise, all Loans shall be credited to an account(s) of Borrower with Lender. LENDER AT ITS OPTION MAY MAKE LOANS HEREUNDER UPON TELEPHONIC INSTRUCTIONS AND IN SO DOING SHALL BE FULLY ENTITLED TO RELY SOLELY UPON INSTRUCTIONS, INCLUDING INSTRUCTIONS TO MAKE TRANSFERS TO THIRD PARTIES, REASONABLY BELIEVED BY LENDER TO HAVE BEEN GIVEN BY AN AUTHORIZED PERSON, WITHOUT INDEPENDENT INQUIRY OF ANY TYPE. All payments shall be made without deduction for or on account of any present or future taxes, duties or other charges levied or imposed on this Note, the proceeds, Lender, Borrower or any Related Party by any government or political subdivision thereof. Borrower shall upon request of Lender pay all such taxes, duties or other charges in addition to principal and interest, including all documentary stamp and intangible taxes, but excluding income taxes based solely on Lender's income.

11. **SETOFF.** If an Event of Default has occurred and is continuing, then, to the maximum extent permitted by law, any account, deposit or other indebtedness owing by Lender to Borrower, and any securities or other property of Borrower delivered to or left in the possession of Lender or any affiliate or subsidiary of Lender, or its or their nominee or bailee, may (at any time and without notice of any kind) be set off against and applied in payment of any obligation hereunder or under any Related Document.

12. **NOTICES.** Except as and if otherwise provided herein, all notices, requests and demands to or upon the respective parties hereto shall be in writing and shall be deemed to have been given or made five business days after a record has been deposited in the mail, postage prepaid, or one business day after a record has been deposited with a recognized overnight courier, charges prepaid or to be billed to the sender, or on the day of delivery if delivered manually with receipt acknowledged, in each case addressed or delivered if to Lender to its banking office indicated in the preamble hereto (Attention: Banking) and if to Borrower to its address set forth in the preamble hereto, or to such other address as may be hereafter designated in writing by the respective parties hereto by a notice in accord with this Section.

13. **MISCELLANEOUS.** This Note, the Related Documents, and any

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document or instrument executed in connection herewith or therewith, unless in each case otherwise specifically provided therein: (i) shall be governed by and construed in accordance with the internal law of the State of Illinois, except to the extent if any that the UCC provides for the application of the law of a different State; and (ii) shall be deemed to have been executed in the State of Illinois. This Note shall bind Borrower, its(his)(her) heirs, trustees (including successor and replacement trustees), executors, personal representatives, successors and assigns, and shall inure to the benefit of Lender, its successors and assigns, except that Borrower may not transfer or assign any rights or obligations hereunder without the prior written consent of Lender. Borrower agrees to pay upon demand all expenses (including reasonable attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Lender, in each case whether in or out of court, in original or appellate proceedings or in bankruptcy) incurred or paid by Lender in connection with the enforcement or preservation of its rights hereunder, under any Related Document, or under any document or instrument executed in connection herewith or therewith.

**14. WAIVER OF JURY TRIAL, ETC. BORROWER AND (BY ITS ACCEPTANCE HEREOF AS EVIDENCED BY ITS MAKING OF THE LOAN) LENDER HEREBY IRREVOCABLY AGREE THAT ALL SUITS, ACTIONS OR OTHER PROCEEDINGS WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH THIS NOTE OR ANY RELATED DOCUMENT SHALL BE SUBJECT TO LITIGATION IN COURTS HAVING SITUS WITHIN OR JURISDICTION OVER THE STATE OF ILLINOIS AND THE COUNTY IN SUCH STATE WHERE THE OFFICE OF LENDER INDICATED IN THE PREAMBLE HERETO IS LOCATED. BORROWER AND (BY ITS ACCEPTANCE HEREOF AS EVIDENCED BY ITS MAKING OF THE LOAN) LENDER HEREBY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED IN OR HAVING JURISDICTION OVER SUCH COUNTY AND STATE, AND HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT THEY OR ANY OF THEM MAY HAVE TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS NOTE, ANY RELATED DOCUMENT, OR ANY RELATIONSHIP BETWEEN LENDER AND BORROWER, TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ACCORDANCE WITH THIS SECTION, OR TO CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NO PARTY HERETO MAY SEEK OR RECOVER PUNITIVE DAMAGES IN ANY PROCEEDING BROUGHT UNDER OR IN CONNECTION WITH THIS NOTE OR ANY RELATED DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE LOAN.**

To the maximum extent permitted by applicable law, Lender is hereby authorized by Borrower without notice to Borrower to fill in any blank spaces and dates herein or in any Related Document to conform to the terms of the transaction and/or understanding



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evidenced hereby.

THIS WRITTEN LOAN AGREEMENT AND THE RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

BORROWER:

BRICK & MORTAR LIMITED PARTNERSHIP,  
AN ILLINOIS LIMITED PARTNERSHIP

BY: 646 MICHIGAN, LTD.,  
AN ILLINOIS CORPORATION

ITS: GENERAL PARTNER

BY: \_\_\_\_\_  
GORDON SEGAL

ITS: PRESIDENT AND SECRETARY