

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1400344079 Fee: \$78.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 01/03/2014 03:42 PM Pg: 1 of 21

Report Mortgage Fraud  
800-532-8785

NO 1131284 2 02 3 50

The property identified as: **PIN:** 22-20-428-001-0000

**Address:**

**Street:** 400-402 Illinois Street

**Street line 2:**

**City:** Lemont

**State:** IL

**ZIP Code:** 60439

**Lender:** FIRST MIDWEST BANK

**Borrower:** 400 ILLINOIS STREET, LLC

**Loan / Mortgage Amount:** \$1,350,000.00

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:** 4CCE9488-98F0-4656-A81A-3E24A591D537

**Execution date:** 12/30/2013

Near North National Title  
222 N. LaSalle  
Chicago, IL 60601 21

# UNOFFICIAL COPY

Document Prepared by and  
After Recording Return to:

W. Roger Carlson, Jr.  
Jason A. Doran  
Carlson Partners, Ltd.  
2500 S. Highland Ave., Suite 360  
Lombard, IL 60148

*This space reserved for Recorder's use only*

## MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE is made as of December 30, 2013 by **400 Illinois Street, LLC**, an Illinois limited liability company ("Mortgagor") the address of which is 7500 West Imperial Drive, Bridgeview, Illinois, Attn: Mr. John Patrick Tierney, to **FIRST MIDWEST BANK**, a national banking association, having offices at One Pierce Place, Suite 1500, Itasca, Illinois ("Mortgagee").

### RECITALS

A. Mortgagor has executed and delivered to Mortgagee that certain Promissory Note of even date herewith (hereinafter referred to as the "Note") in the principal amount of ONE MILLION THREE HUNDRED FIFTY THOUSAND AND NO-HUNDREDTHS DOLLARS (\$1,350,000.00) and that certain Collateral Assignment of Leases and Rents (hereinafter referred to as the "Collateral Assignment"), both of even date herewith, the terms and provisions of the Note being incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

B. As security for the repayment of the Note, in addition to the Collateral Assignment, the Mortgagor has agreed to execute and deliver this Mortgage for property commonly know as 400 Illinois Street, Lemont, Illinois.

**THEREFORE**, Mortgagor, to secure the following (hereinafter referred to collectively as the "Obligations"): (i) Mortgagor's obligations under the Note, this Mortgage and the Collateral Assignment; and (ii) any sums advanced by Mortgagee to protect the security of this Mortgage, does by these presents **MORTGAGE, GRANT, CONVEY and RELEASE** unto Mortgagee, its successors and assigns, the following-described real estate (hereinafter referred to as the "Land") and all of its estate, right, title and interest therein, situate, lying and being in the County of Cook and State of Illinois, to-wit:

### **THE LAND MORTGAGED HEREBY IS DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.**

which Land, with the property hereinafter described, is referred to herein collectively as the "Premises" or as the "Mortgaged Premises".

**TOGETHER** with all easements, rights of way, strips and gores of land, vaults, streets, alleys, water rights, mineral rights, and rights used in connection with the Land or to provide a means of access to the Land, and all tenements, hereditaments and appurtenances thereof and thereto pertaining or belonging, and all underground and overhead passageways and licenses in connection therewith;

# UNOFFICIAL COPY

**TOGETHER** with all leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, management agreements, arrangements, concessions, or agreements, written or oral, relating to the use and occupancy of the Land and improvements or any portion thereof located thereon, now or hereafter existing or entered into;

**TOGETHER** with all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto and any and all other proceeds therefrom;

**TOGETHER** with any and all buildings and improvements now or hereafter erected on the Land, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements and all tangible personal property owned by Mortgagor now or any time hereafter located on or at the Land or used in connection therewith, including, but not limited to, all goods, machinery, tools, equipment and all other fixtures, apparatus, equipment, furniture, furnishings, all construction, architectural and engineering contracts, subcontracts and other agreements now or hereafter entered into by Mortgagor and pertaining to the construction of improvements on the Land, plans and specifications and other tests or studies now or hereafter prepared in contemplation of constructing of improvements on the Land, it being understood that the enumeration of any specific articles of property shall in nowise result in or be held to exclude any items of property not specifically mentioned;

**TOGETHER** with all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Mortgagor hereby appoints Mortgagee its attorney-in-fact and authorizes Mortgagee, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Obligations, notwithstanding the fact that the same may not then be due or that the Obligations are otherwise adequately secured;

**TOGETHER** with all of the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter acquire with respect to (i) any and all contract rights and general intangibles relating to the Premises, including, but not limited to, any contract to construct improvements on the Premises and/or prepare plans and specifications with respect thereto, (ii) all permits, licenses and agreements relating to the Premises or the construction of improvements thereon; and (iii) all plans and specifications relating to the construction of improvements on the Premises.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

Mortgagor covenants that it is lawfully seized of the Premises, that the same are unencumbered except for title exceptions approved by Mortgagee, 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 the Premises and the quiet and peaceful possession of the same against the lawful claims of all person whomsoever.

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

## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Representations and Covenants:** Mortgagor hereby represents and covenants to Mortgagee

# UNOFFICIAL COPY

that:

1.1 **Power, etc.:** Mortgagor (a) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois and has complied with all conditions prerequisite to its doing business in the State of Illinois; (b) has the power and authority to own its properties and to carry on its business as now being conducted; (c) is qualified to do business in every jurisdiction in which the nature of its business or its properties makes such qualification necessary; and (d) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

1.2 **Validity of Loan Instruments:** (a) The execution, delivery and performance by Mortgagor of the Note, the Collateral Assignment and this Mortgage (1) are within the powers of Mortgagor; (2) have been duly authorized by all requisite actions; and (3) do not violate any provision of any law, any order of any court or agency of government or any indenture, agreement or other instrument to which Mortgagor is a party, or by which Mortgagor or any portion of the Mortgaged Premises is bound, and are not in conflict with, and will not result in breach of, or constitute (with due notice and/or lapse of time) a default under, any such indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, upon any of its property or assets, except as contemplated by the provisions of this Mortgage, the Note, and the Collateral Assignment; and (b) the Note, the Collateral Assignment and this Mortgage, when executed and delivered by Mortgagor, will constitute the legal, valid and binding obligations of Mortgagor, in accordance with their respective terms.

1.3 **Other Information:** All information given to Mortgagee, its agents, employees, representatives or counsel with respect to the Note, the Collateral Assignment and this Mortgage is accurate and correct in all material respects and complete insofar as completeness may be necessary to give Mortgagee a true and accurate knowledge of the subject matter.

1.4 **Litigation:** There is not now pending against or affecting Mortgagor, nor, to the knowledge of Mortgagor, is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency which if adversely determined would materially impair or affect the financial condition or operation of Mortgagor or the Premises.

2. **Payment of Indebtedness and Performance of Covenants.** Mortgagor shall (a) pay the Obligations when due; and (b) punctually perform and observe all of the requirements of the Note, this Mortgage and the Collateral Assignment.

3. **Maintenance, Compliance with Law, Use, etc.** Mortgagor shall (a) keep the Premises in good condition and free from waste; (b) pay all operating costs of the Premises; (c) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority; (d) comply with any restrictions of record with respect to the Premises and the use thereof, and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy; and (e) cause the Premises to be managed in a competent and professional manner.

#### 4. **Liens.**

4.1 **Prohibition.** Subject to the provisions of Paragraphs 4.2 and 5 hereof, Mortgagor shall not create or suffer or permit any encumbrance to attach to or be filed against the Premises or any part thereof, excepting only (i) the lien of real estate taxes and assessments not due, and (ii) any liens and encumbrances of Mortgagee.

4.2 **Contest of Mechanic's Liens Claims.** Notwithstanding the foregoing prohibition

# UNOFFICIAL COPY

against encumbrances, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any mechanic's lien and defer payment and discharge thereof during the pendency of such contest, provided that:

4.2.1. Such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such mechanic's lien;

4.2.2. Within ten (10) days after Mortgagor has been notified of the filing of such mechanic's lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such mechanic's lien; and

4.2.3 Mortgagor shall have either obtained a title insurance endorsement over such mechanic's liens insuring Mortgagee against loss by reason of the mechanic's liens or Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money (the "Deposits") which shall be sufficient in the judgment of Mortgagee to pay in full such mechanic's lien and all interest which might become due thereon. Mortgagor shall increase the Deposits whenever, in the judgment of Mortgagee, such increase is advisable. The Deposits are to be held without any allowance of interest.

Mortgagee may, at its option, pay the Deposits, or any part thereof, to the mechanic's lien claimant if Mortgagor: (i) fails to maintain sufficient Deposits; or (ii) fails to act in good faith or with reasonable diligence in contesting the mechanic's liens claims. If the mechanic's lien contest is resolved in favor of the claimant and Mortgagor is not in default hereunder, Mortgagee shall pay the Deposits, or any part thereof, if any, to the claimant upon Mortgagee's receipt of evidence satisfactory to Mortgagee of the amount to be paid, and if the amount of the remaining Deposits is insufficient to fully satisfy said amount, Mortgagor shall pay to claimant such shortfall and shall provide evidence of such payment to Mortgagee. If there are any Deposits remaining after paying a claimant, then Mortgagee shall pay such remaining Deposits to Mortgagor, provided Mortgagor is not in default hereunder.

## 5. Taxes.

5.1 **Payment.** Mortgagor shall pay when due, all taxes, assessments and charges of every kind levied or assessed against the Premises or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Mortgagor, and Mortgagor shall furnish to Mortgagee receipts therefor on or before the date the same are due, and shall discharge any claim or lien relating to taxes upon the Premises.

5.2 **Contest.** Mortgagor, in good faith and with reasonable diligence, may contest the validity or amount of any such Taxes, provided that:

5.2.1 Such contest shall prevent the collection of the Taxes so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same;

5.2.2 Mortgagor has notified Mortgagee of the intention of Mortgagor to contest the same before any Tax has been increased by any interest, penalties or costs; and

5.2.3 If the Taxes being contested have not been paid under protest or are not yet due and owing, then Mortgagor has deposited with Mortgagee, at such place as Mortgagee may designate from time to time in writing, a sum of money or other security acceptable to Mortgagee that is sufficient, in Mortgagee's judgment, to pay in full such contested Tax, including interest and penalties, and shall increase such deposit to cover additional interest and penalties whenever Mortgagee deems such an increase advisable.



# UNOFFICIAL COPY

If Mortgagor fails to (i) prosecute such contest with reasonable diligence or (ii) maintain sufficient funds on deposit as hereinabove provided, Mortgagee, at its option, may apply the monies and liquidate any securities deposited with Mortgagee, in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, either deposit with Mortgagee a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Mortgagee has applied funds on deposit on account of such Taxes, restore such deposit to an amount satisfactory to Mortgagee. Provided that Mortgagor is not then in default hereunder, Mortgagee, after final disposition of such contest and upon Mortgagor's written request and Mortgagor's delivery to Mortgagee of an official bill for such Taxes, shall apply the money so deposited in full payment of such Taxes or that part thereof then unpaid, together with all penalties and interest thereon.

## **5.3 Deposits for Taxes and Insurance Premiums.**

5.3.1 Upon the occurrence of an Event of Default hereunder, Mortgagee may require Mortgagor to deposit with Mortgagee on the first business day of every month, with respect to the Taxes and all insurance premiums payable in order to maintain the insurance coverage required by the terms of this Mortgage, an amount equal to one-twelfth (1/12th) of the Taxes and said premiums to become due with regard to the Premises between one (1) and thirteen (13) months after the date of such deposit (said amounts are referred to herein as the "Tax and Insurance Deposits"); provided, however that in the case of the first such deposit, Mortgagor shall deposit in addition an amount which, when added to the aggregate amount of monthly deposits to be made hereunder, will provide (without interest) a sufficient fund to pay such Taxes and insurance premiums when they are due. The Tax and Insurance Deposits shall be based upon Mortgagee's estimate of the amount of Taxes and insurance premiums. Mortgagor shall promptly upon the demand of Mortgagee make additional Tax and Insurance Deposits as Mortgagee may from time to time require due to: (i) failure of Mortgagee to require, or the failure of Mortgagor to make, Tax and Insurance Deposits in previous months; (ii) underestimation of the amounts or the due dates for the payment of Taxes or premiums; or (iii) application of the Tax and Insurance Deposits pursuant to Paragraph 5.3.3 hereof. Mortgagee shall hold all Tax and Insurance Deposits without any allowance of interest thereon.

5.3.2 Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to Mortgagee by Mortgagor of the bills therefor, pay the Taxes and premiums or will, upon the presentation of receipted bills therefor, reimburse Mortgagor for such payments made by Mortgagor. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and premiums when the same shall become due, then Mortgagor shall pay to Mortgagee on demand the amount necessary to make up the deficiency.

5.3.3 Upon an Event of Default under this Mortgage, Mortgagee may, at its option, apply any Tax and Insurance Deposits on hand to the Obligations, in such order and manner as Mortgagee may elect. When the Obligations have been fully paid, any remaining Tax and Insurance Deposits shall be paid to Mortgagor. All Tax and Insurance Deposits are hereby pledged as additional security for the Obligations, and shall be held by Mortgagee irrevocably to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of Mortgagor.

5.3.4 Notwithstanding anything herein contained to the contrary, Mortgagee shall not be liable for any failure to apply the Tax and Insurance Deposits unless Mortgagor, while no Event of Default exists hereunder, shall have: (i) requested Mortgagee in writing to make application of such Deposits to the payment of the Taxes or premiums; and (ii) presented Mortgagee with bills for such Taxes or premiums.

# UNOFFICIAL COPY

5.3.5 The provisions of this Mortgage are for the benefit of Mortgagee and Mortgagor alone. No provision of this Mortgage shall be construed as creating in any other party any rights in and to the Tax and Insurance Deposits or any rights to have the Tax and Insurance Deposits applied to payment of Taxes and premiums. Mortgagee shall have no obligation or duty to any third party to collect Tax and Insurance Deposits.

**6. Change in Tax Laws.** If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Obligations, then Mortgagor, upon demand by Mortgagee, shall pay such taxes or reimburse Mortgagee therefor on demand, unless Mortgagee determines, in Mortgagee's exclusive judgment, that such payment or reimbursement by Mortgagor is unlawful; in which event the Obligations shall be due within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this Paragraph 6 shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against the income of Mortgagee as a complete or partial substitute for taxes required to be paid by Mortgagor pursuant hereto.

**7. Insurance Coverage.** Mortgagor will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Mortgagee may require from time to time, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

7.1 Comprehensive public liability insurance (including contractual liability) naming Mortgagee as an additional insured covering death, injury and/or property damage occurring on or about the Premises or resulting from activity thereat, with liability insurance limits for death of or injury to persons of not less than Two Million Dollars (\$2,000,000.00) and for damage to property of not less than Two Million Dollars (\$2,000,000.00) and such limits of coverage may be obtained through Umbrella or Excess Liability insurance; and

7.2 The types and amounts of coverage as are customarily maintained by owners or operators of like properties.

**8. Insurance Policies.** All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Mortgagee. All Insurance Policies shall (i) include, when available and if applicable, non-contributing Mortgagee endorsements in favor of and with loss payable to Mortgagee, (ii) include standard waiver of subrogation endorsements, if available for the type of coverage; (iii) provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Mortgagee, and (iv) provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Mortgagee, if applicable to the insured claim. Mortgagor will deliver all Insurance Policies premium prepaid certificates evidencing same, to Mortgagee, and will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy.

**9. Proceeds of Insurance.** Mortgagor will give Mortgagee prompt notice of any loss or damage to the Premises or notice of any claims pursuant to any of the Insurance Policies with respect to the Premises, and in case of loss or damage covered by any of the Insurance Policies, as applicable, Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) may at its option either (i) settle and adjust any claim under such Insurance Policies with the consent of Mortgagor, which consent shall not be unreasonably withheld or delayed, or (ii) allow Mortgagor to settle and adjust such claim without the consent of Mortgagee; provided that in either case, Mortgagee shall, and is hereby

# UNOFFICIAL COPY

authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be deemed to be additional Obligations hereunder and shall be reimbursed to Mortgagee upon demand or may be deducted by Mortgagee from said insurance proceeds prior to any other application thereof.

**10. Condemnation and Eminent Domain.** All awards (the "Awards") made to the present, or any subsequent, owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, are hereby assigned by Mortgagor to Mortgagee. Mortgagee may collect the Awards from the condemnation authorities, and may give appropriate acquittances therefor. Mortgagor shall immediately notify Mortgagee of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Premises and shall deliver to Mortgagee copies of all papers served in connection with any such proceedings. Mortgagor shall make, execute and deliver to Mortgagee, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by Mortgagee for the purpose of assigning the Awards to Mortgagee. After deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including attorneys' fees, Mortgagee shall be entitled to apply the net proceeds toward repayment of such portion of the Obligations as it deems appropriate without affecting the lien of this Mortgage.

**11. Assignment of Rents and Leases:**

A. To further secure the Obligations, Mortgagor does hereby sell, assign and transfer unto Mortgagee all the rents, issues and profits now due with respect to the Premises and does hereby sell, assign and transfer unto Mortgagee all Mortgagor's right, title and interest as lessor under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagor or its agents or beneficiaries under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all of such leases and agreements, and all the avails thereunder, unto Mortgagee, and Mortgagor does hereby appoint irrevocably Mortgagee its true and lawful attorney in its name and stead to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as Mortgagee shall, in its discretion determine.

B. Nothing herein contained shall be construed as constituting Mortgagee as a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee. In the proper 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.

C. Mortgagor further agrees to assign and transfer to Mortgagee all future leases upon all or any part of the Premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Premises as Mortgagee shall from time to time require.

D. Mortgagor expressly covenants and agrees that, if Mortgagor, as lessor under any lease for all or any part of the Mortgaged Premises, shall fail to perform and fulfill any term, covenant, condition or provision in said lease or leases, or any of them on its part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, such breach or default shall constitute a default hereunder and entitle Mortgagee to all rights available to it in such event.

E. 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, if any, to insurance proceeds or any award in eminent domain), to any one or more leases affecting any part of the Premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office wherein this Mortgage was registered or filed for record, of a unilateral declaration to that effect.



# UNOFFICIAL COPY

12. **Additional Rights of Mortgagee:** Mortgagee hereby covenants and agrees that:

12.1 If the payment of the Note and any other indebtedness secured hereby or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

12.2 In the event the ownership of the Mortgaged Premises, or any part thereof, becomes vested in a person or entity other than Mortgagor (without hereby implying Mortgagee's consent to any assignment, transfer or conveyance of the Mortgaged Premises), Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgagor in the same manner as with Mortgagor without in any way vitiating or discharging Mortgagor's liability hereunder, under the Note or the Collateral Assignment. No sale of the Mortgaged Premises and no forbearance on the part of Mortgagee shall operate to release, modify, change, or affect the original liability, if any, of Mortgagor, either in whole or in part, under this Mortgage.

12.3 Mortgagee, at its sole option and without notice, (a) may release any part of the Mortgaged Premises, or any person liable under the Note or the Collateral Assignment, without in any way affecting the lien hereof upon any part of the Mortgaged Premises not expressly released; (b) may agree with any party obligated under the Note or the Collateral Assignment, or having any interest in the Mortgaged Premises, to extend the time for the performance of Mortgagor's Obligations and liabilities under the Mortgage; (c) may accept a renewal note or notes therefor; (d) may consent to any plat, map or plan of the Premises; (e) may consent to the granting of any easement; (f) may join in any extension or subordination agreement, or (g) may waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the performance of Mortgagor's Obligations. Any such agreement shall not in any way release or impair the lien hereof, but shall, as applicable, extend the lien hereof as against the title of all parties having any interest in the Mortgaged Premises which interest is subject to this Mortgage.

12.4 This Mortgage is intended only as security for the Obligations. Notwithstanding anything to the contrary contained in this Mortgage, Mortgagee shall have no obligation or liability under, or with respect to, or arising out of Mortgagor's Obligations and shall not be required or obligated in any manner to perform or fulfill any of the Obligations of Mortgagor.

12.5 Upon the occurrence of an Event of Default hereunder, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in this Mortgage. All monies paid for any of the purposes so authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Mortgaged Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate as defined in Paragraph 35 hereof. In making any payment or securing any performance relating to any of Mortgagor's Obligations, Mortgagee shall (as long as it acts in good faith) be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee, and no inaction of Mortgagee hereunder, shall ever be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

13. **Reliance on Tax Bills:** Mortgagee in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or

# UNOFFICIAL COPY

settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

14. **Acceleration in Case of Default:** Any one of the following events shall be deemed an "Event of Default" hereunder:

(a) if default be made in the due and punctual payment of the Note, or any installment due in accordance with the terms thereof, either of principal or interest or in the payment of any other sum required to be paid by Mortgagor or the Maker of the Note set forth in the Note and any such default continues after the expiration of any applicable grace or cure period; or

(b) if default be made by Mortgagor under the Collateral Assignment and any such default continues after the expiration of any applicable grace or cure period provided therein; or

(c) if Mortgagor, any signatory on the Note or any guarantor of the Obligations secured hereby (the foregoing parties are hereinafter referred to collectively as the "Obligor" and individually as an "Obligor") shall file a petition in voluntary bankruptcy or under Title 11 of the United States Code or any other similar law, statute or regulation, state or federal, whether now or hereafter existing, or an answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within thirty (30) days; or

(d) if any Obligor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for such Obligor for all of its property or the major part thereof in any involuntary proceeding, or any court shall have taken jurisdiction of the property of any Obligor or the major part thereof in any involuntary proceedings for the reorganization, dissolution, liquidation or winding up of such Obligor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days; or

(e) if any Obligor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof; or

(f) if there is a violation of Paragraph 37 of this mortgage; or

(g) Mortgagor or any of its direct or indirect constituents or affiliates or any of its brokers or any agents acting or benefiting in any capacity in connection with this transaction: (i) has conducted any business or has engaged in any transaction or dealing with any person or entity with whom or with which United States persons or entities are prohibited from doing business under any Federal statute, regulation or executive order, including, but not limited to, Executive Order 13224 and the USA Patriot Act, and including but not limited to persons or entities identified on the "Specially Designated Nationals & Blocked Persons List" (the "OFAC List") promulgated by the Office of Foreign Assets Control ("OFAC") of the U.S. Treasury Department ("Prohibited Person"), including making or receiving any contribution of funds, goods or services to or for the benefit of a Prohibited Person; (ii) has dealt in, or has otherwise engaged in any transaction relating to, any property or interests in property blocked pursuant to Executive Order 13224, the OFAC List or other United States law, rule or regulation; or (iii) has engaged in or has conspired to engage in any transaction that facilitates, evades or avoids, or has the purpose of facilitating, evading or avoiding, or attempts to violate, any of the requirements or prohibitions set forth in Executive Order 13224, the USA Patriot Act or any economic sanction law, rule or regulation of the United States; or

(h) Mortgagor and its affiliates are not in full compliance with all laws, orders, rules, regulations issued by, and recommendations of, the United States Department of Treasury and OFAC pursuant to the International Emergency Economic Powers Act ("IEEPA"), the USA Patriot Act, or other legal requirements relating to economic sanctions, anti-money laundering or terrorism laws and any executive orders related thereto; or

# UNOFFICIAL COPY

(i) An investor or member of Mortgagor is a "Prohibited Foreign Shell Bank" as such term is defined in the USA Patriot Act, or is a Prohibited Person; or

(j) if any representation or warranty made by Mortgagor in, under or pursuant to the Note, the Collateral Assignment or this Mortgage shall prove to have been false or misleading in any material aspect as of the date on which such representation or warranty was made; or default shall be made in the due observance or performance of any other of the covenants, agreements or conditions contained in this Mortgage, and required to be kept or performed or observed by Mortgagor, other than the defaults described in the preceding clauses (b) through (i) of this Paragraph 14 and any other defaults deemed to be "Events of Default" hereunder, and the same shall continue for thirty (30) days after written notice given by Mortgagee to Mortgagor; provided, however, in the case of an Event of Default not described in the preceding clauses (b) through (i) which cannot, with due diligence, be cured within said thirty (30) day period (the "Thirty Day Cure Period"), Mortgagor fails to proceed within the Thirty Day Cure Period to cure same and thereafter to prosecute the curing of such Event of Default with due diligence (it being intended in connection with an Event of Default not susceptible of being cured with due diligence within the Thirty Day Cure Period that the time within which to cure said Event of Default shall be extended for such period as may be necessary to complete said cure with all due diligence, but in all events such extended cure period shall expire on the date that is sixty (60) days after the expiration of the Thirty Day Cure Period).

Upon the occurrence of an Event of Default, then and in every such case the whole of the principal sum hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, and Mortgagee shall have the right to exercise each and every remedy provided to Mortgagee in the event of a default hereunder.

## 15. Foreclosure; Expense of Litigation:

A. If an Event of Default has occurred hereunder, or when the indebtedness secured hereby, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's 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 paragraph mentioned, and such expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, the Collateral Assignment or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate as set forth in Paragraph 35 hereof and shall be secured by this Mortgage.

B. This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Premises, as Mortgagee may elect. This Mortgage and the right of foreclosure hereunder shall not be impaired or exhausted by one or any foreclosure or by one or any sale, and may be foreclosed successively and in parts, until all of the Premises have been foreclosed against and sold. Mortgagor waives and relinquishes any and all rights that Mortgagor may have to cause or compel a sale of any part or parcel of the Premises less than the entire Premises.

C. Mortgagee may employ counsel for advice or other legal service at Mortgagee's discretion in connection with any dispute as to the obligations of Mortgagor hereunder, or as to the title

# UNOFFICIAL COPY

of Mortgagee to the Mortgaged Premises pursuant to this Mortgage, or in any litigation to which Mortgagee may be a party which may affect the title to the Mortgaged Premises or the validity of the indebtedness hereby secured, and any reasonable attorneys' fees so incurred shall be secured hereby. Any costs and expenses reasonably incurred in connection with any other dispute or litigation affecting the Note, the Collateral Assignment or Mortgagee's title to the Mortgaged Premises, shall be secured hereby. All such amounts shall be payable by Mortgagor to Mortgagee without formal demand, and if not paid, shall include interest at the Default Rate as set forth in Paragraph 35 hereof from the dates of their respective expenditures.

D. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; (ii) on account of all other items which under the terms hereof are secured hereby exclusive of the Note, with interest thereon at the Default Rate; (iii) on account of all principal and interest remaining unpaid on the Note in the order of priority therein described; and (iv) any overplus to Mortgagor, its successors or assigns, as their rights may appear.

E. After an Event of Default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect any indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

16. **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 shall, upon the election of Mortgagee, appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income therefrom after deducting reasonable compensation for the receiver and its counsel as allowed by the court, in payment (in whole or in part) of any or all of any obligation secured hereby, including without limitation the following, in such order of application as Mortgagee may elect: (i) amounts due upon the Note, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure by Mortgagee upon the Premises, including litigation costs; (iv) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same, provided that such application is made prior to foreclosure sale, and (v) the amount of any deficiency in case of a sale and a deficiency.

17. **Mortgagee's Right of Possession in Case of Default:**

A. In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder forthwith upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agents or attorneys, as for condition broken, and Mortgagee in its discretion may, with process of law, enter upon and take and maintain possession of

# UNOFFICIAL COPY

all or any part of the Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, contractors or nominees and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor, and with full power: (i) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (ii) to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iii) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, addition, betterments and improvements to the Premises, including completion of construction in progress, as to it may seem judicious; (iv) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; (v) to employ watchmen to protect the Mortgaged Premises; (vi) to continue any and all outstanding contracts for the erection and completion of improvements to the Premises; (vii) to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Mortgagor; (viii) to receive all avails, rents, issues, profits and proceeds therefrom and to perform such other acts in connection with the management and operation of the Mortgaged Premises as Mortgagee, in its discretion, may deem proper; and (iv) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, or for options to lessees to extend or renew terms to expire beyond the date of the issuance of the 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 any redemption from sale, discharge of the Mortgage indebtedness, satisfaction of any foreclosures decree or issuance of any certificate of sale or deed to any purchaser.

B. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all such liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

18. **Application of Income Received by Mortgagee:** Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine: (a) to the payment of the operating expenses of the Premises including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; (c) to the payment of all repairs, replacements, alterations, additions, betterments, and improvements of the Premises and of placing said



# UNOFFICIAL COPY

property in such condition as will, in the judgment of Mortgagee, make it readily saleable or rentable; and (d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale pursuant hereto.

19. **Access by Mortgagee:** Mortgagor will at all times promptly deliver to Mortgagee duplicate originals or certified copies of all leases, agreements and documents relating to the Premises and shall permit access by Mortgagee to its books and records, construction project reports, if any, insurance policies and other papers for examination and making copies and extracts thereof. Mortgagee, its agents and designees shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

20. **Release Upon Payment and Discharge of Mortgagor's Obligations:** Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon repayment in full of all Obligations due and owing hereunder.

21. **Notices:** All notices or other communications required or permitted to be given hereunder shall be given in writing and delivered either by (a) certified mail, return receipt requested, postage prepaid, (b) a reputable messenger service or a nationally recognized priority delivery service such as Federal Express, or (c) facsimile or other teletype transmission (followed by a hard copy sent as provided in clauses (a) and (b) above), addressed as follows:

**To Mortgagee:**

First Midwest Bank  
One Pierce Place, Suite 1500,  
Itasca, IL 60143-1253  
Attn:  
Telephone:  
Facsimile:

With a copy to:  
Carlson Partners, Ltd.  
2500 S. Highland Ave., Suite 360  
Lombard, Illinois 60148  
Attn: W. Roger Carlson, Jr., Esq.  
Telephone: 630-953-5660  
Facsimile: 630-953-5661

**To Mortgagor:**

(as Sole Member of other Mortgagor)

LBJ Holding Company, Inc,  
7500 West Imperial Drive  
Bridgeview, IL 60455  
Attn:  
Telephone:  
Facsimile:

with a copy to:  
Schuyler, Roche & Crisham, P.C.  
Two Prudential Plaza  
180 N. Stetson Avenue, Suite 3700  
Chicago, Illinois 60601  
Attn: Chris A. Leach, Esq.  
Telephone: 630-565-8402  
Facsimile: 312-565-8300

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by certified mail shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or, if transmitted by messenger or a priority delivery service, upon receipt, provided receipt occurs before 5:00 P.M. on a business day in the jurisdiction of the recipient. Counsel for a party may give notice to the other party with the same effect as if given by a party.

22. **Waiver of Right of Redemption and Other Rights:** To the full extent permitted by law: (a) Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the

# UNOFFICIAL COPY

marshaling thereof, upon foreclosure sale or other enforcement hereof; (b) Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure; (c) Mortgagor hereby expressly waives any and all rights of redemption, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law; (d) Mortgagor agrees that, by invoking or utilizing any applicable law or laws or otherwise, it will not delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted; and (e) Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

23. **Maintenance of Mortgagor's Single Purpose Entity/Separateness:** Mortgagor represents, warrants and covenants as follows: (a) Mortgagor does not own and will not own any encumbered asset or property other than the Mortgaged Premises and incidental personal property necessary for the ownership of the Mortgaged Premises; (b) Mortgagor will not engage in any business other than the ownership of the Mortgaged Premises; (c) Mortgagor has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation) other than (i) the Obligations, and (ii) trade and operational debt incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances. No debt other than the Obligations may be secured by the Mortgaged Premises; (d) Mortgagor has not made and will not make any loans or advances to any third party (including any affiliate or constituent party, any Obligor or any affiliate of any constituent party or Obligor); (e) Mortgagor will remain solvent and Mortgagor will pay its debts and liabilities from its assets as the same shall become due; (f) Mortgagor has done or caused to be done and will do all things necessary to observe corporate formalities and preserve its existence, and Mortgagor will not permit any constituent party or Obligor to amend, modify or otherwise change the operating agreement or other organizational documents of Mortgagor or such constituent party or Obligor in a manner which would adversely affect Mortgagor's existence as a single purpose entity; (g) Mortgagor will at all times hold itself out to the public and will be a legal entity separate and distinct from any other entity; (h) Neither Mortgagor nor any constituent party will seek the dissolution or winding up, in whole or in part, of Mortgagor; (i) Mortgagor will not commingle the assets of Mortgagor with those of any affiliate or constituent party, any Obligor, or any affiliate of any constituent party or Obligor, or any other person; (j) Mortgagor will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, any Obligor, or any affiliate of any constituent party or Obligor, or any other person; and (k) Mortgagor does not and will not hold itself out to be responsible for the debts or obligations of any other person.

24. **Mortgagor's Additional Covenants:** Mortgagor further covenants and agrees with Mortgagee, its successors and assigns as follows:

24.1 Mortgagor will fully comply and cause compliance by tenants with all of the material terms, conditions and provisions of all leases on the Premises so that the same shall not become in default or be canceled, terminated or declared void, and will do all that is needful to preserve all said leases in force.

24.2 Mortgagor will at all times fully comply with and cause the Premises and the use and condition thereof to fully comply with all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate thereto, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, landmark preservation, construction, access, water rights, use, noise and pollution) which are applicable to Mortgagor or the Premises.

# UNOFFICIAL COPY

24.3 Mortgagor shall within fifteen (15) days after a written request by Mortgagee furnish from time to time a signed statement setting forth whether or not any Event of Default, offset or defense then is alleged to exist against the same and, if so, specifying the nature thereof.

24.4 Mortgagor will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the indebtedness secured hereby and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the indebtedness secured hereby, this Mortgage and all other documents securing the indebtedness secured hereby and all assignments thereof.

24.5 Whenever provision is made herein for the approval, satisfaction or consent of Mortgagee, or that any matter be to Mortgagee's satisfaction, unless specifically stated to the contrary, such approval or consent shall be at Mortgagee's sole discretion.

24.6 Mortgagor covenants and agrees that, it will manage and operate the Premises in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). Mortgagor shall send to Mortgagee within five (5) days of receipt thereof, any citation, notice of violation or other notice of potential liability from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. Mortgagor agrees to indemnify, defend (with counsel reasonably acceptable to Mortgagee (at Mortgagor's sole cost), and hold Mortgagee harmless against any claim, response or other costs, damages, liability or demand (including, without limitation, reasonable attorneys' fees and costs incurred by Mortgagee) arising out of any claimed violation by Mortgagor of any of the foregoing laws, regulations or ordinances or breach of any of the foregoing covenants or agreements. The foregoing indemnity shall survive repayment of the Obligations. Mortgagor and Mortgagee acknowledge and agree that the foregoing indemnity shall not extend to any claimed violation that Mortgagor can prove arose from or is a result of an environmental condition existing on the Premises prior to the acquisition of the Premises by Mortgagor.

25. **Binding on Successors and Assigns; Gender.** This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor, its successors, vendees and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons, whether or not such persons shall have executed this Mortgage. The word "Mortgagee" when used herein shall include the successors, vendees and assigns of Mortgagee named herein. Wherever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders. Mortgagor may assign this Mortgage upon notice to but without the consent of Mortgagee.

26. **Captions:** The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

27. **Severability:** In the event any of the provisions contained in this Mortgage, in the Note or in the Collateral Assignment shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, the obligations secured hereby, or by the Note or the Collateral Assignment and same shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and therein. This Mortgage has been executed and delivered at Itasca, Illinois and shall be construed in accordance therewith and governed by the laws of the State of Illinois.

28. **No Liability on Mortgagee:** Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligations,

# UNOFFICIAL COPY

duty or liability of Mortgagor, whether hereunder, under any of the leases affecting the Premises, under any contract relating to the Premises or otherwise. Mortgagor shall and does hereby agree to indemnify against and hold Mortgagee harmless of and from: (i) any and all liability, loss or damage which Mortgagee may incur, as Mortgagee hereunder, under or with respect to any portion of the Premises or under or by reason of its exercise, legally and with due care, of rights hereunder; and (ii) any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any of the contracts, documents or instruments affecting any portion of the Mortgaged Premises or affecting any rights of Mortgagor thereto. Unless Mortgagee assumes such responsibility, Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee, stranger or other person. Should Mortgagee incur any such liability, loss or damage under any of the leases affecting the Premises or in the defense of any claims or demands against it as Mortgagee hereunder, Mortgagor agrees to reimburse Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees. Nothing contained in this Paragraph is intended to create a right for Mortgagee to be indemnified for any illegal or tortious or otherwise wrongful action or inaction.

29. **Mortgagor not a Joint Venturer or Partner:** Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the indebtedness accrued hereby, or otherwise.

30. **Defeasance Clause:** If Mortgagor pays to Mortgagee all sums payable by Mortgagor to Mortgagee hereunder, without deduction, fraud, or delay, then and from thenceforth this Mortgage, and the estate hereby granted, shall cease and become void, anything herein contained to the contrary notwithstanding.

31. **Mortgagee's Right to Exercise Remedies:** The rights and remedies of Mortgagee as provided in the Note, the Collateral Assignment and in this Mortgage, or available under applicable law, shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or against other obligors, if any, or against the Mortgaged Premises, or against any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. No delay or omission of Mortgagee to exercise any right or power accruing upon any default shall impair any such right of power, or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. Nothing in this Mortgage or the Note shall affect the obligation of Mortgagor to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.

32. **Incorporation of Riders, Exhibits and Addenda:** All riders, exhibits and addenda attached to this Mortgage are by express and specific reference incorporated in and made a part of this Mortgage; provided that the covenants contained in each of said riders, exhibits and addenda, and the other things therein set forth shall have the same force and effect as any other covenant or thing herein expressed.

33. **Subrogation:** To the extent that Mortgagee, on or after the date hereof, pays any sum due under any provision or law or any instrument or document creating any lien prior or superior to the lien of this Mortgage, Mortgagee shall have and be entitled to a lien on the Mortgaged Premises equal in priority to the lien discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the indebtedness secured hereby. Mortgagee shall be subrogated, notwithstanding their release of record, to the lien of all mortgages, trust deeds, superior titles, vendors' liens, liens, charges, encumbrances, rights and equities on the Mortgaged Premises, to the extent that any obligation under any thereof is directly or indirectly paid or discharged with proceeds of disbursements or advances by Mortgagee.



# UNOFFICIAL COPY

34. **Mortgagee's Lien for Expenses:** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all liquidated damages and expenses incurred by Mortgagee in connection with the Note, the Collateral Assignment or this Mortgage.

35. **Default Rate:** The term "Default Rate" when used in this Mortgage shall be defined to mean twelve (12%) percent per annum.

36. **Security Agreement:** This Mortgage shall be deemed a Security Agreement as defined in the Illinois Uniform Commercial Code. This Mortgage creates a security interest in favor of Mortgagee in all property including all personal property, fixtures and goods affecting property either referred to or described herein or in any way connected with the use or enjoyment of the Premises. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in any Financing Statement filed to perfect the security interest herein created by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Uniform Commercial Code all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and the hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Mortgaged Premises and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate, irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) the rights in or the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value or (3) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal government and any subdivisions or entity of the Federal government, must be filed in the Commercial Code records.

Notwithstanding the aforesaid, Mortgagor covenants and agrees that it will, upon request by the Mortgagee, execute (or cause to be executed) and delivered to Mortgagee, such renewal certificates, affidavits, extension statements or other documentation in proper form, so as to keep perfected the lien created by any Security Agreement and Financing Statement given to Mortgagee by Mortgagor, and to keep and maintain the same in full force and effect until the entire indebtedness and all interest to accrue thereunder has been paid in full; with the proviso that the failure of the undersigned Mortgagor to so do shall constitute an Event of Default hereunder.

37. **Prohibition on Sale, Financing, Construction or Change in Zoning, etc.:**

37.1 Any sale, conveyance, assignment, pledge, hypothecation, encumbrance or other transfer of title to, or any interest in, or the placing of any lien upon, the Premises, or any ownership interest in Mortgagor (whether voluntary or by operation of law) without Mortgagee's prior written consent, shall be an Event of Default hereunder.

37.2 For the purpose of, and without limiting the generality of, the foregoing Paragraph 37.1, the occurrence at any time of the following event shall be deemed to be an unpermitted transfer



# UNOFFICIAL COPY

of title to the Premises and therefore an Event of Default hereunder: (a) an installment sales agreement wherein Mortgagor agrees to sell the Premises or any part thereof for a price to be paid in installments; or (b) an agreement by Mortgagor leasing all or a substantial part of the Premises for other than actual occupancy, or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any leases and rents arising from the rental of the Premises.

37.3 Mortgagor shall not engage in any grading, excavation or construction of any improvements upon or under the Premises without Mortgagee's prior written consent which may be conditioned or withheld in Mortgagee's sole and absolute discretion; provided, however, if Mortgagor commences, without Mortgagee's prior written consent, any activity on the Property which: (a) does not require a permit or the approval of any governmental authority, and (b) Mortgagor reasonably believes, in good faith, does not constitute grading, excavation or construction, then such activity shall not constitute an Event of Default if cured within ten (10) days after written notice from Mortgagee.

37.4 Mortgagor shall not rezone or resubdivide the Property, take any action with respect to the Statement of Intent and Agreement with the City of Naperville for the Property or otherwise make any change in the existing land use controls and classifications without Mortgagee's prior written consent, which may be conditioned or withheld in Mortgagee's sole and absolute discretion.

37.5 Any consent by Mortgagee to, or any waiver by Mortgagee of any event which is prohibited under this Paragraph 37, shall not constitute a consent to, or waiver of, any right, remedy or power of Mortgagee upon a subsequent Event of Default.

38. **No Oral Modifications:** This Mortgage may not be modified, amended, discharged or waived orally, except by an agreement in writing and signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought. Except as otherwise expressly provided in the Sale Contract, it is understood and agreed that all understandings and agreements heretofore had between the parties hereto with respect to the subject financing are merged in this Mortgage, the exhibits annexed hereto and the Note and other instruments and documents referred to herein, which alone fully and completely express their agreements, and that Mortgagor is not relying upon any statement or representation, not embodied in this Mortgage, the Note, the Collateral Assignment or the Sale Contract and other instruments and documents referred to herein, made by Mortgagee. Mortgagor expressly acknowledges that, except as expressly provided in this Mortgage, the Note, the Collateral Assignment, the Sale Contract and other instruments and documents referred to herein, Mortgagee and the agents and representatives of Mortgagee have not made, and Mortgagee is not liable for or bound in any manner by, any express or implied warranties, guaranties, promises, statements, inducements, representations or information pertaining to the transactions contemplated hereby.

39. **Counterparts:** This Mortgage may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed an original, but all such counterparts shall together constitute but one and the same Mortgage.

[SIGNATURE PAGE TO FOLLOW]

# UNOFFICIAL COPY

**IN WITNESS WHEREOF**, the undersigned Mortgagor has put its hand to this Mortgage as of the date first set forth above.

**400 Illinois Street, LLC,**  
an Illinois limited liability company  
LBJ Holding Company, Inc., Sole Member

By: [Signature]  
Berkshire J. Bohne  
(print)  
Its: President

STATE OF ILLINOIS        )  
  )SS.  
COUNTY OF Cook         )

I, Jack R. Seale, a notary public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that Berkshire J. Bohne, personally known to me to be the Sole Member of 400 Illinois Street, LLC, a limited liability company organized and existing under the laws of the State of Illinois, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such, he signed and delivered said instrument pursuant to proper authority given by said limited liability company, as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

**GIVEN** under my hand and notarial seal this 20 day of December, 2013.

[Signature]  
Notary Public

My Commission expires:



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE LAND

Lot 6 in Block 5 in Truesdell's Addition to Athens, being a subdivision of part of Section 20, Township 37 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois.

22-20-428-001-0000 400-402 ILLINOIS STREET LEMONT, IL 60439

Property of Cook County Clerk's Office