

**Illinois Anti-Predatory  
Lending Database  
Program**

Certificate of Exemption

**Report Mortgage Fraud  
800-532-8785**

The property identified as: **PIN: 17-09-226-013-0000**

**Address:**

**Street:** 58 West Ontario Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60654

**Lender:** First State Bank

**Borrower:** VLND Inc.

**Loan / Mortgage Amount:** \$5,000,000.00

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

**Certificate number:** 96C0BE4C-EAA2-4034-9C3B-2E4314BF9EC9

**Execution date:** 11/26/2013

**UNOFFICIAL COPY**

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING SHOULD  
BE RETURNED TO:

Bradley Arant Boult Cummings LLP (CSS)  
1600 Division Street, Suite 700  
Nashville, Tennessee 37203  
(615) 252-2331

PROPERTY ADDRESS:

58 West Ontario Street  
Chicago, IL

TAX IDENTIFICATION NUMBER(S):

17-09-226-013-0000

**MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT (this "Mortgage") is executed this 25<sup>th</sup> day of November, 2013, by VLND INC. ("Grantor"), an Illinois corporation, to, in favor of and for the benefit of FIRST STATE BANK ("Lender"), a Tennessee banking corporation.

**WITNESSETH:**

In consideration of TEN DOLLARS (\$10.00), the extension of credit by Lender, and other valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor hereby grants, bargains, sells, assigns, warrants, releases, aliens, transfers, conveys and mortgages to Lender and its successors and assigns a present and continuing lien upon and security interest in and to all of the following rights, interests, claims and property (the "Real Estate") described in Exhibit A attached hereto, which is incorporated herein by reference;

**TOGETHER** with all Grantor's present and future right, title, interest, and claim to the Real Estate; and

**TOGETHER** with all Grantor's present and future right, title, interest, and claim to all present and future easements and other appurtenances to the Real Estate, and with all present and future tenements, emblements, and hereditaments, including all buildings, structures and other improvements, minerals and mineral rights, flowers, shrubs, crops, trees and timber; and

**TOGETHER** with all Grantor's present and future right, title, interest, and claim to all trade, domestic and ornamental fixtures now or hereafter attached to the Real Estate, and all

# UNOFFICIAL COPY

accessions and additions thereto and replacements thereof, including, but not limited to, the following items, which are hereby recognized by the parties to this Mortgage as fixtures: all heating, air-conditioning, freezing, lighting, laundry, incinerating and power equipment; engines; pipes; pumps; tanks; motors; conduits; switchboards; plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus; boilers, ranges, furnaces, oil burners and units thereof; appliances, air-cooling and air-circulating apparatus; central vacuum cleaning systems; elevators; escalators; shades; awnings, doors, screens; storm doors and windows; stoves; refrigerators; attached cabinets and shelves; partitions; ducts; compressors; rugs, carpets, tiling, linoleum, and other floor coverings; chandeliers and other lighting fixtures; paneling, woodwork, molding, millwork, and other decorative trimwork; ceiling tiles and panels; and draperies (the Real Estate and all fixtures thereto are collectively referred to herein as the "Property");

**TO HAVE AND TO HOLD** the Property unto Lender, its successors and assigns, forever, free from all rights and benefits under and by virtue of any homestead exemption laws or similar laws of the state or other jurisdiction in which the Property is located (the "State") (which rights and benefits are hereby expressly released and waived) for the uses and purposes herein set forth, to secure the payment and performance of all indebtedness and obligations presently or hereafter owed by Grantor and/or Lakshmi Narayan Restaurants Group, LLC ("**Borrower**") to Lender, and including without limitation (i) the obligations of Grantor under that certain Guaranty dated November 25, 2013, (ii) the obligations of Borrower under that certain Loan Agreement dated November 25, 2013 (the "**Loan Agreement**"), and all modifications, amendments, extensions, renewals, and increases thereof, (iii) the indebtedness and obligations of Borrower evidenced by that certain Promissory Note dated November 25, 2013 made by Borrower in the principal amount of \$5,000,000.00 payable to the order of Lender, and (iv) all modifications, amendments, extensions, renewals, and increases thereof (all of the foregoing collectively referred to as the "**Secured Indebtedness**"). Subject to the terms of the Loan Agreement, the final maturity of the promissory note described hereinabove is November 1, 2018. The Lender's determination of the interest due and the Lender's costs shall be conclusive absent manifest error.

Grantor warrants that Grantor is lawfully seized of the Property and has good right to convey the same, and that Grantor will forever warrant and defend the title thereto unto Lender, its successors and assigns, against the claims of all persons whomsoever. Grantor further warrants that the Property is unencumbered except as indicated on Exhibit B hereto.

**GRANTOR FURTHER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:**

1. **Security Agreement.** Grantor hereby grants to Lender a security interest in all fixtures and personal property presently or hereafter owned by Grantor and located on or used in the operation of the Real Estate, including, but not limited to, all construction materials, goods, equipment, inventory, farm equipment, farm products and fixtures, and all accessions, additions and replacements thereof (except that no security interest is granted under this Paragraph or any other Paragraph hereof in household goods to secure a consumer credit transaction) and all presently owned and hereafter acquired contract rights, accounts and general intangibles pertaining to the Property or Grantor's operation of an enterprise thereon and any maintenance or

# UNOFFICIAL COPY

management contract(s) and the right to use any name associated with the Property), together with all products and proceeds of the foregoing, including insurance proceeds (collectively the "Personalty"). Grantor warrants that the Personalty is unencumbered except as disclosed in Exhibit B hereto. Within five (5) days after request by Lender, Grantor shall deliver to Lender a schedule of all Personalty then in existence. This Instrument shall serve as a financing statement with respect to the Personalty. The original of this Mortgage or a copy hereof may be recorded by Lender as a financing statement in any appropriate public office, at Lender's option and at Grantor's expense. (The Property and the Personalty are collectively referred to herein as the "Premises").

2. **Taxes and Assessments; Annual Reports.** Grantor shall pay when due all taxes and assessments now existing or hereafter levied or assessed upon the Premises. Grantor shall also pay when due all taxes and assessments levied or assessed against Lender, or the holder of any note or other obligation which is part of the Secured Indebtedness, for or on account of the Secured Indebtedness or the interest hereby created in the Premises except for taxes based upon the general income of Lender. Grantor shall, without demand, provide Lender with evidence of the payment of all such taxes and assessments accrued over each year by March 31 of the following year, provided, however, Grantor shall have the right to contest taxes, assessments and liens by appropriate legal proceedings, so long as Grantor first puts a bond or other security with Lender in form and amount reasonably satisfactory to Lender.

3. **Insurance.**

(a) **Casualty and Liability Insurance.** Grantor shall keep the Premises insured for the benefit of Lender against "all risks of physical loss" (except earthquake, unless Lender specifically so requires and also including flood insurance, if applicable) under a casualty insurance policy with the "replacement cost" endorsement. Grantor shall also maintain comprehensive public liability insurance on the Premises in an amount acceptable to Lender. If Lender requires, Grantor shall further obtain insurance for loss of rents and for any other specified insurable contingency. All insurance provided for herein shall be in form and substance satisfactory to, and issued by insurance companies approved by, Lender. All such casualty policies shall name Lender as insured mortgagee pursuant to a non-contribution mortgagee clause satisfactory to Lender, and all such liability insurance policies shall name Lender as an additional insured. All insurers must agree in writing (by the policy provisions, endorsement or letter) to give Lender at least twenty (20) days prior written notice before termination or any reduction of amount or scope of coverage. Grantor hereby assigns to Lender, as further security for the payment of the Secured Indebtedness, all policies of insurance which now or hereafter insure against any loss or damage to the Premises. Immediately upon the request of Lender, Grantor shall deliver such original policies to Lender. Grantor shall promptly give written notice to Lender of any loss or damage to the Premises and will not adjust or settle any such loss without the written consent of Lender. If Lender, on account of any insurance on the Premises, receives any money for loss or damage, such amount may, at the option of Lender, be retained and applied by Lender toward payment of the Secured Indebtedness, or be paid to Grantor, wholly or in part, subject to such conditions as Lender may require. After a default hereunder, Lender is hereby irrevocably appointed attorney-in-fact for Grantor to receive any sums collected under insurance policies insuring the Premises, to endorse any drafts or

# UNOFFICIAL COPY

instruments received under such policies, and to make proof of loss for, settle, and give binding acquittances for claims under such policies.

(b) **Renewal Policies; Failure to Maintain Insurance.** Not less than thirty (30) days prior to the expiration date of each policy of insurance required under this Mortgage, Grantor shall deliver to Lender evidence of the renewal of such policy or policies. Lender may require that such evidence consist of the presentment of a renewal policy or policies marked "premium paid." If Grantor fails to keep the Premises insured as herein provided, Lender may, at Lender's option and without notice to Grantor, obtain such insurance, or Lender may obtain single interest coverage insuring only Lender's interest in the Premises. The cost of any insurance so obtained shall be paid by Grantor.

(c) **Default and Foreclosure.** In the event of the occurrence of any default, as defined in this Mortgage, all right, title and interest of Grantor in and to any insurance policies then in force, and particularly to the unearned premiums therein and existing claims thereunder, shall pass to Lender. Lender may assign and transfer said policies or cancel and surrender the same applying said unearned premiums to the Secured Indebtedness, in such manner as it may elect. In the event of a foreclosure under this Mortgage, or if a deed is executed in lieu of foreclosure hereunder, the purchaser of the Premises shall succeed to all the remaining rights of Grantor, including any right to unearned premiums, in and to all policies of insurance assigned to Lender pursuant to this Mortgage.

4. **Reserve for Assessments and Insurance.** Upon demand by Lender, which shall only be made after a default, Grantor shall furnish to Lender an official statement of the amount of taxes, assessments, insurance premiums, rents, and other charges to become due on the Premises over the succeeding year. Grantor shall thereafter pay to Lender, together with and in addition to any payments of principal and interest payable under the terms of the Secured Indebtedness, an amount reasonably sufficient (as estimated by Lender) to provide Lender with funds to pay taxes, assessments, insurance premiums, rents and other charges next due on the Premises so that Lender will have sufficient funds on hand to pay said charges thirty (30) days before the date on which they become due. Lender may require that such amount be paid in monthly installments during the period over which they accrue or over which they are properly reserved. Lender shall pay said charges to the extent of the amount of the then unused credit therefor as and when they become severally due and payable. An official receipt therefor shall be conclusive evidence of payment and of the validity of such charges. Lender may, at its option, pay any of these charges when payable, either before or after they become past due, without notice, or make advances therefor in excess of the then amount of credit for said charges. The excess amount advanced shall be immediately due and payable to Lender and shall become part of the Secured Indebtedness. Lender may apply any funds held by it for payment of the above charges toward any delinquent payments maturing or due under the terms of the Secured Indebtedness. Lender shall not be liable for any interest on any amount paid to it as herein required, and the money so received may be held and commingled with Lender's own funds, pending payment or application thereof as herein provided. Upon payment in full of the Secured Indebtedness, the amount of any unused credit shall be paid to Grantor.

5. **Flood Insurance.** In the event the Lender determines that the rules or regulations of the Federal Reserve Board, the Comptroller of the Currency or any other applicable

# UNOFFICIAL COPY

governmental authority require that flood insurance coverage be obtained for the Premises or any part thereof in order to comply with such rules or regulations or with the Flood Disaster Protection Act of 1973 as then in effect, then Grantor, upon receiving written notice from the Lender of such determination: (i) shall promptly purchase and pay the premiums for such flood insurance policies as the Lender deems required by such agency or agencies so that the Lender shall be deemed in compliance with the rules and regulations of such agency or agencies and with the Flood Disaster Protection Act of 1973 as then in effect; and (ii) shall deliver such policies to the Lender together with evidence satisfactory to the Lender that the premiums therefor have been paid. Such policies of flood insurance shall be in a form satisfactory to the Lender, shall name the Lender as an insured thereunder, shall provide that losses thereunder be payable to the Lender pursuant to such forms of loss payable clause as the Lender may approve, shall be for an amount at least equal to the indebtedness secured hereby or the maximum limit of coverage made available with respect to the Premises under the National Flood Insurance Act of 1968, as amended, whichever is less, and shall be noncancellable as to the Lender except upon thirty (30) days' prior written notice given by the insurer to the Lender. Within fifteen (15) days prior to the expiration date of each such flood insurance policy, Grantor shall deliver to the Lender a renewal policy or endorsement together with evidence satisfactory to the Lender that the premium therefor has been paid. Proceeds of any flood insurance policy shall be applied in the manner set forth in paragraph (3) for the application of other insurance proceeds.

## 6. Environmental Condition of Premises.

(a) **Grantor's Warranties and Representations.** Grantor warrants and represents to Lender that while Lender has any interest in or lien on the Premises, the Premises described herein are and at all times hereafter, will continue to be in full compliance with all applicable federal, state and local environmental laws, standards, ordinances and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 et seq., the Emergency Planning and Community Right-to-Know Act, 42 USC § 11001 et seq., the Resource Conservation and Recovery Act, 42 USC § 6901 et seq., the Clean Air Act, 42 USC § 7401 et seq., the Toxic Substances Control Act, 15 USC 2601 et seq., and the Federal Water Pollution Control Act, 33 USC § 1251 et seq. ("**Environmental Laws**"); and Grantor further warrants and represents to Lender that, to the best of Grantor's knowledge and belief after due and diligent inquiry:

(i) As of this date, the Premises have not been used to treat, store or dispose of, oil, petroleum products, hazardous substances, extremely hazardous substances, hazardous wastes, regulated substances, toxic substances or hazardous air pollutants as defined or described by the Environmental Laws ("**Hazardous Materials**"); and that no such Hazardous Materials, (including without limitations, any materials containing asbestos), are located on, in or under the Premises or used or emitted in connection therewith; or

(ii) Grantor has fully disclosed to Lender in writing the existence, extent and nature of any Hazardous Materials, on, in, or under the Premises or used or emitted in connection therewith.

# UNOFFICIAL COPY

(iii) Grantor has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals.

(b) **Protected Wetland Status.** To the best of Grantor's knowledge and belief, no portion of the Premises is protected wetlands, or Grantor has fully disclosed to Lender in writing the existence, extent and nature of such wetlands.

(c) **Notification of Change.** Grantor further warrants and represents that it will promptly notify Lender of any change in the nature or extent of i) any Hazardous Materials, maintained on, in or under the Premises or used or emitted in connection therewith and ii) any wetlands located on the property. Grantor also has notified and will notify Lender of Grantor's receipt of any citations, orders, notices, consent agreements, lawsuits, claims, or similar communications from a government agency or third party alleging a violation of any Environmental Laws (including allegations of a violation of the common law).

(d) **Indemnification.** Grantor shall indemnify and hold Lender harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against Lender as a direct or indirect result of any warranty, representation, or portion thereof, made by Grantor in this section, being false or untrue in any respect or as a result of any requirement under any Environmental Law, which requires the elimination, treatment or removal of any Hazardous Materials.

(e) **Lender Right to Conduct Environmental Inspection.** Lender shall have the right at any time and from time to time (but not more frequently than once per year unless required by applicable law) prior to full payment and satisfaction of the Secured Indebtedness to arrange for or conduct environmental inspections of the Premises (including, but not limited to, sampling of materials for laboratory analysis). The cost of such inspection shall be borne as agreed between Grantor and Lender, except that the cost of any such inspections conducted in contemplation of foreclosure or pursuant to Section 16 hereof entitled "Expenses", shall be the obligation of Grantor.

(f) **Survival of Grantor's Obligations.** Grantor's obligations hereunder to Lender shall not be limited to any extent by the term of the Secured Indebtedness, and, as to any act or occurrence prior to payment in full and satisfaction of the Secured Indebtedness, shall continue, survive and remain in full force and effect notwithstanding payment in full and satisfaction of the Secured Indebtedness and this Mortgage or foreclosure under this Mortgage, or delivery of a deed in lieu of foreclosure.

7. **No Archeological Encumbrances.** Grantor warrants that to the best of Grantor's knowledge the Premises do not include any cemetery, Native American burial ground or village, or any other matter of archeological significance that would require the notification or consent of any persons or entity in connection with any excavation or construction thereon.

8. **Maintenance of Premises.** Grantor shall maintain the Premises in good condition and repair. Grantor shall promptly repair, restore, replace or rebuild any part of the

# UNOFFICIAL COPY

Premises, now or hereafter encumbered by this Mortgage, which may incur any substantial damage. Without the prior written consent of Lender, there shall be no removal, demolition, or material alteration of any part of the Premises, including, but not limited to, any building, structure, parking lot, driveway, landscape scheme, timber or other ground improvement which would cost more than \$50,000.00 or which would impact the value of the Premises by more than \$50,000.00. Grantor shall not demolish any income-producing buildings on the Premises without Lender's prior written consent, which shall not be unreasonably withheld. Grantor shall complete within a reasonable time and timely pay for any building, structure or other improvement presently at any stage of the process of construction on the Premises. Grantor shall not initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or prescribing the uses which may be made of the Premises or any part thereof, without the prior written approval of Lender. Lender and any persons authorized by Lender shall have the right to enter and inspect the Premises at all times both before and after default during normal business hours.

**9. Impairment of Property Value by Public Authority.** Notwithstanding any taking of any of the Premises by eminent domain, alteration of the grade of any street or other injury to, or decrease in value of, the Premises by any public or quasi-public authority or corporation, Grantor shall continue to pay all amounts that shall be or become due on the Secured Indebtedness. Compensation for any such taking or injury shall be payable only to Lender, and said award or payment may, at the option of Lender, be retained and applied by Lender toward payment of the Secured Indebtedness, or be paid over, wholly or in part, to Grantor, subject to such conditions as Lender may require. If, prior to the receipt by Lender of such award or payment, the Premises shall have been sold on foreclosure of this Mortgage, Lender shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, together with any expenses of collecting said award or payment.

**10. Assignment of Awards.** As used herein, the term "Award" shall include all amounts that Grantor may be entitled to receive as a result of defects in or damage to the Premises, whether such amount is determined by judgment, settlement, or otherwise. Grantor hereby assigns to Lender the right to receive all Awards, to the extent that such awards do not exceed the outstanding Secured Indebtedness at the time of the award. Lender is hereby irrevocably appointed as Grantor's attorney-in-fact for the receipt of Awards and the endorsement of any instruments received in connection with an Award. Lender may, at its option, apply such Awards or any part thereof against the Secured Indebtedness, or pay the Awards, or that portion of them not applied to the Secured Indebtedness, over to Grantor, subject to such conditions as Lender may require; provided, that Lender agrees that, if the amount of damage or taking is \$100,000.00 or less, Grantor shall have the right to use up to \$100,000.00 of such proceeds for the restoration or repair of the Premises on such conditions as Lender may reasonably require. Grantor shall notify Lender of all defects in and damage to the Premises affecting the value thereof, and shall be included as a party plaintiff in all suits to collect damages as a result of such defects or damage. No claims that may result in Awards may be settled without Lender's written consent. Lender is hereby irrevocably appointed as Grantor's attorney-in-fact to sue on or settle any claim that might result in an Award, but Lender shall have no duty to sue on or settle any such claim.



# UNOFFICIAL COPY

11. **Assignment of Leases.** To secure the payment of the Secured Indebtedness, Grantor hereby grants, transfers and assigns to Lender all of the right, title and interest of Grantor in and to any and all present and future leases and licenses of the Premises (collectively the "Leases"), together with all renewals, modifications or extensions thereof; together with all rents, income and profits arising therefrom; together with all options or other rights pertaining thereto; and together with all present or future policies of lease insurance and guarantees, if any, of the obligations of the lessee or licensee under any Lease. This assignment does not impair any restriction on leasing, licensing or sale of the Premises provided elsewhere herein. Additionally, this assignment shall not be construed as subordinating Lender's rights hereunder to any Lease.

12. **Covenants Regarding Leases.** Grantor covenants with Lender as follows:

(a) **Faithful and Diligent Lessor.** Grantor will observe and perform all of its obligations under the Leases, and will not cause or allow a default on its part thereunder, and shall diligently enforce or secure the performance of all obligations of the lessees under each Lease (the "Lessees").

(b) **No Further Assignment.** Grantor will not further assign any of the Leases, or any interest therein, without the prior written approval of Lender. Any attempted assignment without such approval shall be void.

(c) **Collection of Rent.** Grantor will not collect any of the rent or other amounts arising under any Lease more than one month in advance. Lender may elect at any time to have Lessees make payments under the Leases directly to Lender for application to the Secured Indebtedness.

(d) **No Amendment or Waiver.** Grantor will not amend or waive any of the terms of any Lease without the prior written consent of Lender; and Grantor will not engage in any formal or informal agreement with any Lessee and will not engage in any course of dealing with Lessee with regard to the Lease as to impair the enforceability of any of Lessee's obligations as set forth therein.

(e) **No Termination or Consent.** Grantor will not terminate any Lease or accept a surrender of the Premises subject thereto or consent to any assignment or subletting under any Lease without the prior written consent of Lender.

(f) **No Alterations.** Grantor will not allow any Lessee to materially alter the Premises, without the prior written consent of Lender.

(g) **Notice of Default.** Grantor will promptly notify Lender if any Lessee defaults under a Lease.

(h) **No Merger.** Grantor agrees that, if by some means a Lessee acquires fee simple title to the Premises, the Lease shall not be extinguished by merger into the fee, and the Lease shall remain in full effect to secure the Secured Indebtedness.

(i) **No Assumption by Lender.** Grantor acknowledges and agrees that neither the execution of this Mortgage nor the exercise of any remedies hereunder by Lender

# UNOFFICIAL COPY

shall be deemed an undertaking by Lender to assume liability for the performance of any of Grantor's obligations under the Lease.

(j) **Information Regarding Leases.** Upon demand by Lender, Grantor shall deliver to Lender i) executed counterpart originals of all Leases then in effect, and ii) a statement certified by Grantor (or by an executive officer or general partner of Grantor, if Grantor is a corporation or partnership) disclosing the income and expenses of Grantor's conduct of any business on the Premises, the operation of the Premises, or the leasing of the Premises for the last twelve (12) month calendar period prior to the giving of such notice.

(k) **Use of Rents.** Grantor shall have the right to use rents, issues, profits, etc. arising from the Premises for reasonable and necessary expenses of the Premises absent the occurrence of a default under this Mortgage. Upon the occurrence of a default, however, Grantor's right to the use of such funds shall terminate and all such funds shall thereafter be remitted to Lender. Pending such remittance, any such funds in Grantor's possession or control shall be deemed held in trust for Lender and any application thereof that is inconsistent with the provisions hereof shall be deemed a conversion of Lender's collateral. Grantor's obligation to conserve such amounts for Lender shall arise upon the occurrence of any default, whether or not Lender has accelerated any of the Secured Indebtedness or given notice to Grantor of the exercise of any remedies.

(l) **Execution of Subordination and Attornment.** Upon request by Lender, Grantor shall deliver to Lender subordination and attornment agreements from all lessees, in form and substance acceptable to Lender.

13. **No Other Encumbrances or Sale Without Consent.** Except for any encumbrances specifically identified on Exhibit B hereto, Grantor shall not create or suffer to be created any lien or security interest in any or all of the Premises, whether by mortgage, deed of trust, or otherwise, without first obtaining the written consent of Lender. Grantor shall not directly or indirectly lease, transfer, sell, convey or mortgage any legal or equitable interest in the Premises, or agree to do any of the foregoing, without first obtaining the written consent of Lender. The transfer of an interest in Grantor shall be considered a transfer of an interest in the Premises for the purposes of this paragraph. Specifically prohibited without written consent, but not to the limitation of the foregoing, are i) the granting of junior encumbrances on the Premises, ii) the transfer of any interest in the Premises to produce a "wraparound" financing arrangement, or iii) the transfer of any interest in the Premises whether or not accompanied by the purported assumption by the grantee of Grantor's obligations under the Secured Indebtedness.

14. **Defense of Lender's Interest.** Grantor will promptly cause to be removed all claims or liens that may hereafter arise against any of the Premises, except as listed in Exhibit B hereto. If Lender, in its discretion, should deem it necessary to bring or defend any action to exercise, protect or establish any of its rights hereunder, Grantor agrees to participate in such action in good faith and to the extent requested by Lender. Grantor will pay Lender's expenses of bringing or defending such action, including reasonable attorneys' fees.

15. **Further Assurances of Obligation and Title; Estoppel Letters.** Upon demand, Grantor shall execute and deliver to Lender any further instrument or instruments, including, but

# UNOFFICIAL COPY

not limited to, deeds of trust, security agreements, extensions of any liens created herein, financing statements, assignments, and renewal and substitution notes, as to reaffirm, to correct and to perfect the evidence of the obligation hereby secured, the legal title of Lender to the Premises, and the security interest arising under this Mortgage. Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact to execute any documents necessary to perfect or extend Lender's rights hereunder. Grantor shall pay all fees and expenses incurred by Lender in the filing of such instruments. Within five (5) days after request made by Lender, Grantor shall certify by a writing, duly acknowledged, to Lender or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on the Secured Indebtedness and whether or not any offsets or defenses exist against the Secured Indebtedness, with a description of the basis for any alleged offset or defense.

**16. Expenses.** Upon demand, Grantor will advance to Lender or, at Lender's option, reimburse Lender for, the following expenses, which Lender may incur without notice to Grantor:

(a) **Taxes.** All taxes that Lender may be required to pay because of the Secured Indebtedness or because of Lender's interest in any property securing the payment of the Secured Indebtedness, except for taxes based upon the general income of Lender.

(b) **Administration.** All expenses that Lender may incur in connection with the preparation, execution, administration or enforcement of this Mortgage or of any other document pertaining to the Secured Indebtedness.

(c) **Reappraisal.** The cost of obtaining appraisal updates or reappraisals of the Premises, as Lender may require the same from time to time in Lender's sole discretion.

(d) **Costs of Collection; Protection of Collateral.** All court costs and other costs of collecting any debt, overdraft or other obligation included in the Secured Indebtedness, including compensation for time spent by employees of Lender, together with all costs of preserving, insuring, preparing for sale (whether by improvement, repair or otherwise), managing, maintaining or selling the Premises or any other collateral securing the Secured Indebtedness, or of performing any of Grantor's obligations under any Lease.

(e) **Prior Encumbrances.** All amounts that Lender may hereafter advance to prevent a default or foreclosure under any deed of trust, mortgage, judicial lien, or other encumbrance that may be a lien prior to that of this Mortgage including, but not limited to, any and all payments of principal, interest, escrow charges, late charges, attorneys' fees, foreclosure publication costs, and other amounts that may be so paid by Lender.

(f) **Litigation.** All costs arising from any litigation, investigation, or administrative proceeding (whether or not Lender is a party thereto) that Lender may incur as a result of the Secured Indebtedness or as a result of Lender's association with Grantor, including, but not limited to, expenses incurred by Lender in connection with a case or proceeding involving Grantor under any chapter of the Bankruptcy Code or any successor statute thereto.

(g) **Attorneys' Fees.** Reasonable attorneys' fees incurred in connection with any of the foregoing.

# UNOFFICIAL COPY

If Lender pays any of the foregoing expenses, they shall become a part of the Secured Indebtedness and shall bear interest at the highest lawful rate. This paragraph shall remain in full effect regardless of the full payment of the Secured Indebtedness, the purported termination of this Mortgage, the delivery of the executed original of this Mortgage to Grantor, or the content or accuracy of any representation made by Grantor to Lender; provided, however, Lender may terminate this paragraph by executing and delivering to Grantor a written instrument of termination specifically referring to this paragraph.

17. **Default Defined.** The occurrence of any one or more of the following shall constitute a default under this Mortgage.

(a) **Monetary Default.** The failure of Grantor, Borrower and/or any guarantor to timely pay when due any amount included in the Secured Indebtedness.

(b) **Breach of Covenant.** The failure of Grantor or any other party to perform or observe any obligation or covenant made with respect to the Secured Indebtedness.

(c) **Breach of Warranty.** Lender's discovery that any warranty or representation made with respect to the Secured Indebtedness is not true.

(d) **Waste of Premises.** The occurrence of actual or threatened waste of the Premises, or should any part thereof be removed, damaged, abandoned, or materially altered so that the value of the Premises be diminished, irrespective of the resulting value of the Premises.

(e) **Other Lien.** The filing of any federal or state tax lien, judgment lien, lis pendens, claim of lien for labor or material or any other claim or lien against the Premises or Grantor's interest therein not removed by payment, bond or other collateral satisfactory to Lender within ten (10) days from the date of recording.

(f) **Impairment of Premises.** The depreciation of the fair market value of the Premises below the amount of the outstanding Secured Indebtedness, for any reason.

(g) **Challenge to Priority.** The assertion of any claim of priority to any security provided for herein by recording or in any legal or equitable proceeding, except for the prior interests, if any, disclosed in this Mortgage.

(h) **Other Default of Grantor.** The occurrence of any event under any other deed of trust, mortgage or other encumbering instrument, deed or agreement, given or made regarding the Premises, which would authorize the acceleration of any debt to any such third party, regardless of whether the third party waives its right to so accelerate.

(i) **Receivership.** The placing of the Premises under control or in the custody of any court.

(j) **Tax Upon Lender.** The occurrence, after the date of this Mortgage, of the passage of any law or ordinance of the United States, the State or any political subdivision thereof, wherein the Premises are situated, or the rendering of any decision by a court of competent jurisdiction, creating or providing for any tax, assessment or charge against the

# UNOFFICIAL COPY

Premises, this Mortgage or the Secured Indebtedness, or any interest of Lender in the Premises or the obligations secured hereby, that is to be paid by Lender, unless reimbursement by Grantor is permitted thereunder.

(k) **Lease Default.** The occurrence of a default by Grantor under any Lease.

(l) **Default Under Other Instrument.** The occurrence of a default under the Note or any other deed of trust, note, security agreement, or other document evidencing or securing any or all of the Secured Indebtedness, and the expiration of any applicable notice and cure period contained therein.

**18 Remedies Upon Default.** Immediately upon the occurrence of a default under Paragraph 17, Lender may, at its discretion and without any notice to Grantor except as specified below, do any one or more of the following:

(a) **Acceleration.** Lender may accelerate the maturity of any and all debts and obligations included in the Secured Indebtedness.

(b) **Rights Under Uniform Commercial Code.** Lender may exercise any or all rights it may have with respect to the Personalty or Fixtures to the Real Property under the Uniform Commercial Code as adopted in the State (the "UCC"). Grantor agrees that the sale of any Personalty pursuant to the UCC may be performed at public or private sale; that notice of such a sale shall be deemed commercially reasonable if given ten (10) days prior to such sale; that Lender may adjourn any public sale to a different time or place by notice at the announced time and place but without further advertisement or notice; that Lender may sell the Personalty in such lots as it may deem appropriate; and that any advertisement of such a sale shall be sufficiently descriptive of the Personalty if it describes the same by item or type. In addition to the remedies elsewhere provided herein, Lender may, upon default, at its election, sell some or all of the Personalty together with the Property by complying with the provisions hereof and applicable law regarding the sale of the Property, in which case the provisions of applicable real estate law, rather than the UCC, shall control as to all aspects of the sale, and the sale shall be conclusively determined to be commercially reasonable if conducted in accordance with such provisions. Any sale of the Property pursuant to the power of sale provided for herein shall be presumed to include all fixtures then included with the Property unless Lender advertises to the contrary.

(c) **Exercise of Grantor's Rights under Leases.** Lender may instruct any or all Lessees to send all payments of rent and other amounts due under the Lease directly to Lender or its designated agent and to regard Lender as the owner of all of the rights (but not the obligations) of the Grantor under the Lease. After receipt of such notice from Lender, Lessees shall make all such payments directly to Lender or its agent, and, if Lender so requests, shall direct to Lender or its agent all requests and notices under the Lease, including, but not limited to, requests to sublet or alter the Premises. Grantor hereby directs Lessees to comply with any such instructions received from Lender, without any inquiry on Lessee's part and without any further direction from Grantor. Lender may exercise the rights of Grantor under any Lease including, but not limited to, the collection of rent in the manner and to the extent that it deems appropriate, including, but not limited to, the institution of legal or administrative proceedings

# UNOFFICIAL COPY

for the collection of rent thereunder. Without limiting the foregoing, Lender is specifically authorized to consent to any subletting or alteration of the Premises or to take any other action requested by any Lessee, in Lender's discretion. Additionally, Lender may agree to such amendments of the Lease as Lender may deem appropriate.

**(d) Performance of Grantor's Obligations Under Leases.** Lender may, but shall not be obligated to, perform or have performed any or all obligations of Grantor under the Leases; provided, however, Lender's performance of such obligations shall not be deemed an assumption by it of Grantor's obligations under any Lease, unless Lender specifically so agrees with any given Lessee in writing.

**(e) Further Assignment of Leases.** Lender may assign Grantor's right to rents or any other interest in the Leases to such person or entity and on such terms as Lender may deem appropriate.

**(f) Possession.** Subject to the terms of any written agreement with Grantor or any other secured lender, Lender may, at its option, enter upon and take possession of the Premises without the appointment of a receiver, or an application therefor; obtain the appointment of a receiver to exercise any remedies of Lender hereunder; employ a managing agent of the Premises and lease the same, either in its own name, or in the name of Grantor; and collect the rents, incomes, issues and profits of the Premises.

**(g) Foreclosure.** Lender may, at its option, commence an action to foreclose this Mortgage in the manner provided in this Mortgage or by law.

**(h) Attorney-in-Fact.** Any legal proceeding, contractual obligation, further assignment or other action taken by Lender in the course of exercising its remedies hereunder may be entered into or initiated by Lender either in its own name as Grantor's assignee or in the name of Grantor. Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of taking any such action upon default hereunder.

**(i) Application of Proceeds of Foreclosure and Other Remedies.** All amounts received by Lender pursuant to the exercise of remedies hereunder shall be applied first to expenses due Lender including, but not limited to, expenses of foreclosure and all expenses incurred in leasing the Premises, retaining a managing agent therefor, or fulfilling Grantor's obligations under any Lease, including attorneys' fees; second, to interest included in the Secured Indebtedness; third, to principal included in the Secured Indebtedness, in such order as Lender may elect; and the surplus, if any, shall be paid to the party or parties entitled thereto.

**19. Agreements Relating to Sale and Default.** In the event of any sale under this Mortgage or pursuant to any order in any judicial proceedings or otherwise, the Premises or any part thereof may be sold, in one parcel or in such parcels, manner or order as Lender, in its sole discretion, may direct. At Lender's option, a sale may be conducted alternately as a single parcel and in tracts, to be closed under whichever method yields a greater total price. Notwithstanding the provisions of this Mortgage, any foreclosure of all or any portion of the lien of this Mortgage shall be in accordance with the Illinois Mortgage Foreclosure Act, 735 ICLS 5/15-1101 et seq., as from time to time amended (the "Act"). Grantor acknowledges that the transaction of which

# UNOFFICIAL COPY

this Mortgage is a part of a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act). To the fullest extent permitted by law, Grantor hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act, and to the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium law, under any state or federal law.

**20. Priority of Security for Future Advances.** It is the intention of the parties hereto that the Premises shall secure all indebtedness presently or hereafter owed Lender by Grantor, and that the priority of Lender's security for all such indebtedness shall be controlled by the time of proper recording of this Mortgage. This Paragraph shall serve as notice to all persons who may seek or obtain a lien on the Premises subsequent to the date of recording of this Mortgage that until this Mortgage is released, any debt owed Lender by Grantor, including advances made subsequent to the recording of this Mortgage, shall be secured with the priority afforded this Mortgage as recorded.

**21. Secured Indebtedness Not Limited by Statements for Tax and Registration Authorities.** Any legend appearing on the face hereof and any affidavit that may be submitted to recording authorities herewith pursuant to any requirement of taxation or registration authorities is included for the benefit of such authorities only and does not affect the terms of Lender's agreement with Grantor as provided by this Mortgage and by other documents pertaining to the Secured Indebtedness or the priority of the lien of this Mortgage or any advances made hereunder.

**22. Information From Other Lienholders.** Grantor hereby irrevocably authorizes Lender to obtain a statement from the owner of any other presently existing or future obligation secured by any or all of the Premises, at any time and without notice to Grantor, as to the amount of principal, interest, and expenses secured thereby and as to the existence of a default thereunder. The owner of each such obligation, including, but not limited to, the owner of any obligation secured by a deed of trust on any or all of the Premises, is hereby directed to provide Lender with such information upon request by Lender, without making any inquiry of Grantor whatsoever, and Grantor agrees that all such owners of other obligations (and their servicing agents) shall incur no liability for providing such information to Lender.

**23. Application of Amounts to Indebtedness; Prepayment.** Should Lender elect to apply insurance or condemnation proceeds or any other sum to which it is entitled (other than regular payments on the Secured Indebtedness) toward the reduction of the amount of the Secured Indebtedness, the resulting reduction of the Secured Indebtedness shall occur in the inverse order of its maturity and shall not postpone the obligation of Grantor to make its regular payments as long as any amount of the Secured Indebtedness remains outstanding. No voluntary prepayment on the Secured Indebtedness shall be allowed except as specifically provided for in a note or other obligation which is part of the Secured Indebtedness.

**24. No Subordination to Contractors.** Lender has not consented to any priority of a contractor's lien for construction of any improvements to the Property, and any such lien hereafter arising shall be subordinate to the lien of this Mortgage.

# UNOFFICIAL COPY

**25. Choice of Security; No Third Party Beneficiaries.** If the Secured Indebtedness, or any part thereof, is now or hereafter further secured by other deeds of trust, security interests, contracts of guaranty, assignments of leases or of other collateral, Lender may at its option pursue recovery from any one or more thereof, in such order as it may determine, and Lender shall not be required to marshal assets. This Instrument has been executed for the exclusive benefit of Lender and there are no third party beneficiaries hereof.

**26. Waiver of Redemption Rights, Exemptions, etc.** Any sale of any or all of the Premises pursuant to the power of sale or judicial sale provided for herein or in realization of the security interest granted herein shall be made free from the equity of redemption, statutory right of redemption, homestead, dower, curtesy, exemption rights, and all other rights and interests of Grantor, all of which are hereby expressly waived.

**27. Indulgence not Waiver.** Any indulgence in Grantor's departure from the terms of this Mortgage shall not prejudice Lender's rights to require strict compliance herewith and to exercise any rights Lender possesses under this Mortgage, including the right to declare a default and proceed with any remedy available under this Mortgage.

**28. Gender and Number.** The pronouns used herein shall include, when appropriate, either gender and both singular and plural. Without limiting the foregoing, if more than one Grantor executes this Mortgage, each reference to Grantor shall be construed as a reference to all Grantors jointly and each Grantor severally. The word "Premises," whenever used herein, is not used in a strictly collective sense, but includes parts and fractions of the property herein conveyed as well as the aggregate of such property.

**29. Severability; Conformity to Law.** Should any provision or clause of this Mortgage be held invalid for any reason, the remaining provisions of this Mortgage shall be given effect to the extent possible absent the invalid provision. To this end, the provisions of this Mortgage are declared to be severable. Additionally, the provisions hereof are subject to all applicable federal, state and local laws and regulations, and shall be read to so comply if specific facts surrounding the execution hereof cause any provision to be contrary to any applicable law or regulation under the circumstances. Without limiting the foregoing the Secured Indebtedness shall not include i) any obligations for which this Mortgage may not serve as collateral due to prohibitions included in Regulation U issued by the Federal Reserve Board, and ii) any obligations for which a notice or disclosure is or was required to be given regarding the security provided by this Mortgage, if such notice or disclosure is not or was not given in accordance with applicable law.

**30. Amendment.** Any amendment to or modification of this Mortgage, to be valid, must be made in writing, signed by Grantor and Lender, and duly recorded. Grantor and Lender may agree to (a) extend the time for payment of all or any part of the Secured Indebtedness; (b) reduce, rearrange or otherwise modify the terms of payment thereof; (c) accept a renewal note or notes therefor; and (d) otherwise deal with the Property or the loan documents evidencing the Secured Indebtedness, all without notice to or the consent of any junior lienholder or any other person having an interest in the Property and/or subordinate to the lien of this Mortgage and without the consent of Grantor if Grantor has then parted with title to the Property. No such extension, reduction, modification, renewal or dealing shall affect the priority of this Mortgage



# UNOFFICIAL COPY

or release any liability of Grantor or any other person or impair the security hereof in any manner whatsoever.

**31. Nonexclusive Powers and Remedies.** The rights of Lender arising under this Mortgage are in addition to all rights that Lender may have at law or equity. Without limiting the foregoing, all provisions of this Mortgage that pertain to the rights and duties of Lender upon foreclosure of the Premises shall be regarded as cumulative with the rights of Lender otherwise available at law. No act of Lender, including the institution of suit to recover any part of the Secured Indebtedness, shall be construed as an election to proceed under any one provision herein to the exclusion of any others or as an election of remedies to the bar of any other remedy allowed at law or in equity.

**32. Irrevocability of Power of Attorney.** Whenever in this Mortgage Lender is appointed as attorney-in-fact of Grantor, such power of attorney is coupled with an interest and is irrevocable and shall not be affected by the death, disability, or incapacity of Grantor. Additionally, all such power are granted with full power of substitution.

**33. Scope of Definitions.** The words "Grantor" and "Lender," whenever used herein, shall include the respective parties originally entering into this Mortgage and their respective heirs, executors, administrators, legal representatives, successors and assigns, and all those holding under any of them. This paragraph should not be construed as limiting any other provisions hereof restricting the transfer of the Premises or Grantor's assignment hereof.

**34. Time of Essence.** Time is of the essence of this Mortgage.

**35. Governing Law.** The validity, construction, and enforcement of this Mortgage shall be governed by the laws of the State of Illinois applicable to contracts executed and performed entirely within that state.

**36. Captions Not Controlling.** Captions to the paragraphs of this Mortgage have been included for convenience only and do not limit or control the contents of the respective paragraphs.


**37. Notices.** Any communications concerning this Mortgage shall be addressed as set forth in the Loan Agreement.

**38. Street Address.** The Premises are located at 58 West Ontario, Chicago, Illinois.

# UNOFFICIAL COPY

This Mortgage, Assignment of Leases and Security Agreement is executed as of the date first written above.


VLND INC., an Illinois corporation

By:   
Bharathbhai Patel,  
Its President

STATE OF Illinois )  
COUNTY OF Cook )

Before me, Michael T. Rossiaky, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Bharathbhai Patel, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of VLND INC., the within named bargainor, an Illinois corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such President.

23<sup>rd</sup> WITNESS my hand and seal at office in Schaumburg, Illinois, this the 23<sup>rd</sup> day of November, 2013.

  
Notary Public

My Commission Expires:  
09/16/2017



# UNOFFICIAL COPY

This Mortgage, Assignment of Leases and Security Agreement is executed as of the date first written above.

FIRST STATE BANK, a Tennessee banking corporation

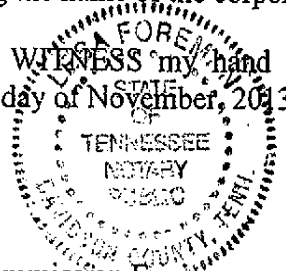
By: [Signature]

Title: Commercial Bank President / CBP

STATE OF Tennessee )  
COUNTY OF DAVIDSON )

Before me LISA LOREMBY, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Mark Winzell, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the CBP of FIRST STATE BANK, the within named bargainor, a Tennessee banking corporation, and that he as such CBP, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such CBP.

26 WITNESS my hand and seal at office in Ormsville Tennessee, this the day of November, 2013.



[Signature]  
Notary Public

My Commission Expires: 11/22/2016

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

The east 2/3 of Lot 4 (except the north 9 feet thereof) in Block 23 in Wolcott's addition to Chicago in the east 1/2 of the northeast 1/4 of Section 9, Township 39 north, Range 14 east of the Third Principal Meridian, in Cook County, Illinois.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT B

### PERMITTED ENCUMBRANCES

1. General or special taxes and assessments required to be paid in the year 2014 and subsequent years, not yet due and payable.
2. A Senior Mortgage granted by Grantor in favor of Lender.

Property of Cook County Clerk's Office