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Illinois Anti-Predatory Lending Database Program



Doc#: 141118088 Fee: \$66.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 04/21/2014 03:11 PM Pg: 1 of 15

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 14-20-416-006-0000

Address:

Street: 3345 N. Seminary

Street line 2:

City: Chicago

State: IL

ZIP Code: 60657

Lender: Frederick B. Axelrod and John Giandelone

Borrower: Eric Giandelone

Loan / Mortgage Amount: \$202,524.31

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Certificate number: AF90E620-9A86-4C8A-BA03-C656701F48A1

Execution date: 04/17/2014

UNOFFICIAL COPY**MORTGAGE and SECURITY AGREEMENT**

This Instrument Prepared by:

Deborah S. Ashen
Law Offices of D.S. Ashen, Ltd.
217 N. Jefferson St.
Suite 601
Chicago, IL 60661

This **MORTGAGE AND SECURITY AGREEMENT** (the "Mortgage") is made as of the 4 day of April, 2014 by Eric Giandelone ("Mortgagor") of 193 Mackubin St., Unit 3, St. Paul, MN 55102, in favor of Frederick B. Axelrod and John Giandelone ("Mortgagee") of 627 Big Canyon Drive East, Palm Springs, CA 92264,

RECITALS:

A. Mortgagee has extended credit to Mortgagor in the principal sum of Two Hundred Two Thousand Five Hundred Twenty Four 31/100 Dollars (\$202,524.31) (the "Indebtedness"); and,

B. Mortgagor has, concurrent with the execution of this Mortgage, executed and delivered to Mortgagee its Secured Promissory Note (the "Note") in the amount of the Indebtedness set forth above, by which Note Mortgagor promises to pay the principal sum and interest in accordance with the terms of the Note with payment due on or before January 1, 2034, all of said principal and interest payable at the offices of the Mortgagee:

NOW, THEREFORE, the Mortgagor to secure the repayment of the Indebtedness, provisions and limitations of the Note, and the performance of the covenants and agreements herein contained, by the Mortgagor to be performed, and also in consideration of the sum of One (\$1) Dollar in hand paid, the RECEIPT WHEREOF IS HEREBY acknowledged, does by these presents GRANT, REMISE, RELEASE, CONVEY AND MORTGAGE unto Mortgagee, and the Mortgagee's successors and assigns, all of Mortgagor's interest in and to that certain parcel of real property situated in the City of Chicago, County of Cook and State of Illinois, to wit:

THE SOUTH 1/4 OF LOT 6 AND LOT 7 IN IN BLOCK 3 OF BAXTER'S SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 14-20-416-006-0000

Commonly known as: 3345 N. Seminary, Chicago, IL 60657

with the property hereinafter described, is referred to herein as the "Premises."

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TOGETHER with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily) and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, stoves and water heaters. All of the foregoing are declared to be a part of said real estate whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed in the Premises by Mortgagor or their successors or assigns shall be considered as constituting part of the real estate.

TO HAVE AND TO HOLD the Premises unto the Mortgagee, and the Mortgagee's successors and assigns, forever, for the purposes, and upon the uses herein set forth, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the Mortgagor does hereby expressly release and waive.

The following covenants, conditions and provisions shall apply with respect to this Mortgage.

1. **MAINTENANCE OF MORTGAGED PREMISES.** Mortgagor shall (1) comply with all of the terms and conditions of the Construction Loan Agreement (the "Loan Agreement") by and between Mortgagor and Mortgagee dated even date herewith, with regard to the installation of Improvements to the Premises; (2) keep said Premises in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien hereof; (3) pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Mortgagee; and, (4) comply with all requirements of law or municipal ordinances with respect to the Premises and the use thereof.

2. **ESCROW FOR REAL ESTATE TAXES.** Mortgagee may, by written notice to Mortgagor, require Mortgagor to pay, in addition to the monthly payments of principal and interest ("Installment Payments") required by the Note, an amount per month equal to one-twelfth (1/12th) of the current real estate taxes assessed against the Premises in an escrow account (the "tax escrow account") to be maintained by Mortgagee for the payment of the taxes assessed against the Premises. In the event Mortgagee makes a demand upon Mortgagor to establish a tax escrow account, Mortgagor shall, within sixty (60) days of the date of the demand, deposit with Mortgagee an amount, along with payments falling due after the demand, sufficient to satisfy the estimated tax payments currently due on the Premises, whether yet properly payable to any governmental body assessing such tax (the "tax deficiency"). If Mortgagor fails to deposit the amount of the tax deficiency with Mortgagee within the aforesaid sixty (60) day period, Mortgagee may declare Mortgagor to be in default under the terms of this Mortgage. Mortgagee may at its option, but shall not be required to, advance funds to satisfy the tax deficiency and, in the event that Mortgagee so advances funds for that purpose, interest shall accrue on the amount of funds so advanced at the rate

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equal to the Default Rate as prescribed in the Note. Mortgagee shall not be obligated to pay interest on the tax escrow account nor shall Mortgagee be obligated to segregate Mortgagor's funds in a separate account but may co-mingle the funds in one or more of its general accounts.

3. **MORTGAGEE'S RIGHTS IN THE EVENT OF THE IMPOSITION OF CERTAIN TAXES.** In the event of the enactment after this date of any law of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of the mortgages or debts secured by mortgages or Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this mortgagee, Mortgagor shall pay such taxes or assessments, or reimburse Mortgagee therefore; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by Illinois law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable one hundred eighty (180) days from the giving of such notice, unless Loan can be refinanced on terms acceptable to Mortgagee.

4. **FEDERAL TAXES OTHER THAN INCOME TAXES.** If, by the laws of the United States of America or of any state having jurisdiction in the Premises, any tax is due or becomes due in respect of the issuance of the note hereby secured, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agree to indemnify Mortgagee, and Mortgagee's successors and assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note secured hereby.

5. **INSURANCE.** Mortgagor, at its sole cost and expense, shall at all times maintain insurance in conformity with the requirements for the maintenance of Insurance as prescribed in the Loan Agreement.

6. **EVENTS OF DEFAULT.** The occurrence of any of the following events shall be an "Event of Default" hereunder:

6.1 The occurrence of an Event of Default under the Note, the Assignment of Rents and Leases or the Loan Agreement by and between Mortgagor and Mortgagee (collectively the "Loan Documents") which default is not cured in the manner provided for in the Loan Documents; and,

6.2 Within the Cure Period granted in the Loan Agreement between Mortgagor and Mortgagee, the failure by Mortgagor to promptly perform, or cause to be performed, any of its obligations set forth herein or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under this Mortgage.

7. **MORTGAGEE'S RIGHT TO MAKE PAYMENTS TO PROTECT ITS INTERESTS IN PREMISES.** In case of default herein, Mortgagee may, but need not, make any

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payment or perform any act hereinbefore required by Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment. All monies paid for any of the purposes herein 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 become indebtedness secured hereby and become immediately due and payable without notice and with interest thereon at the highest rate now permitted by Illinois law. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to the Mortgagee on account of any default hereunder on the part of the Mortgagor.

8. **MORTGAGEE'S RIGHT TO RELY UPON TAX BILLS.** Mortgagee making any payment hereby authorized relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office ("Public Documents") 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. Mortgagee will furnish copies of Public Documents to Mortgagor, who shall have the right to take appropriate action or request Mortgagee to do so.

9. **FORECLOSURE OF MORTGAGE.** When the indebtedness hereby secured shall become due under the terms of the Note, whether by acceleration or otherwise, or there exists any other Event of Default under the terms of this Mortgage, 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, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches, and examinations, title insurance, policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or provide evidence to bidders to any sale which may be had pursuant to a court-ordered decree of sale or sale held pursuant to consent of the Mortgagor, of the true condition of the title to or value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the default rate, as specified in the Note, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which the Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any actual or threatened suit or proceeding which might affect the premise or the security hereof.

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10. **WAIVER OF RIGHT OF REDEMPTION.** Mortgagor, on behalf of itself and any successors-in-interest to Mortgagor, pursuant to the provisions of Section 15-1601 of the Illinois Code of Civil Procedure [735 ILCS 5/15-1601] does hereby waive the Right of Redemption from a Judgment of Foreclosure of the Mortgage.

11. **APPLICATION OF PROCEEDS FROM SALE OF MORTGAGED PREMISES.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraphs hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the note; fourth, any surplus over and above distribution and application to Mortgagor, its beneficiaries, legal representatives or assigns, as their rights may appear.

12. **APPOINTMENT OF RECEIVER.** Upon or at any time after the filing of a complaint to foreclose this mortgage, the court in which such complaint is filed may appoint a receiver of said 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 the Mortgagee may be placed in possession and appointed as such receiver. Such receiver shall have power to collect rents, issues and profits of said 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 in its hands in payment in whole or in part of: (1) The indebtedness secured hereby, or by any decree foreclosing this mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (2) the deficiency in case of a sale and deficiency.

13. **HAZARDOUS SUBSTANCES.** Mortgagor represents and warrants to Mortgagee that: (a) during the period of Mortgagor's ownership of the Premises there will be any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about the Premises; (b) Mortgagor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Mortgagee in writing: (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Premises, or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; (c) Except as previously disclosed to and acknowledged by Mortgagor in writing: (i) neither Mortgagor nor any tenant, contractor, agent or other authorized use of the Premises shall use,

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generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Premises and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Mortgagor authorizes Mortgagee and its agents to enter upon the Premises to make such inspections and tests as Mortgagee may deem appropriate to determine compliance of the Premises with this section of the Mortgage. Any inspections or tests made by Mortgagee shall be for Mortgagee's purposes only and shall not be construed to create any responsibility or liability on the part of Mortgagee to Mortgagor or to any other person. The representations and warranties contained herein are based on Mortgagor's due diligence in investigating the Premises for hazardous waste. Mortgagor hereby (a) releases and waives any future claims against Mortgagee for indemnity or contribution in the event Mortgagor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Mortgagee against any and all claims, losses, liabilities, damages, penalties and expenses which Mortgagee may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Mortgagor's ownership or interest in the Premises, whether or not the same was or should have been known to Mortgagor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Mortgagee's acquisition of any interest in the Premises, whether by foreclosure or otherwise. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq., Clean Air Act of 1966, as amended, 42 U.S.C. §7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq., or Hazardous Materials Transportation Act, 49 U.S.C. App. §1801 et seq.

14. **WAIVER OF DEFENSES.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the note hereby secured.

15. **MORTGAGEE'S RIGHT OF INSPECTION.** Upon reasonable notice to Mortgagee, which shall be not less than twenty four (24) hours, Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

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16. **GUARANTOR'S CONFIRMATION OF MODIFICATION OF TERMS.** If the payment of the Note 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 therefore, or interested in said 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 the Mortgagee, notwithstanding such extension, variation or release.

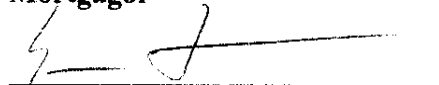
17. **PROHIBITION AGAINST TRANSFER OF PROPERTY.** Except as specifically permitted under the Loan Agreement, Mortgagor covenants and agrees not to: sell, convey, assign or transfer, or promise or contract to sell, convey, assign or transfer, all or any part of the Premises or any interest therein, or amends or terminates any ground lease affecting the Premises, or if title to the Premises, or any direct or indirect interest therein, is otherwise sold or transferred, voluntarily or involuntarily, including without limitation sale or transfer in any proceeding for foreclosure or judicial sale of the Premises, in each case without Mortgagee's prior written consent, Mortgagee shall be entitled to immediately accelerate the amounts due under the Note and declare all indebtedness secured by this Mortgage to be immediately due and payable. Failure to pay such indebtedness within thirty (30) days after notice to Mortgagor of such acceleration shall constitute an Event of Default hereunder.

18. **MORTGAGEE'S OBLIGATION TO RELEASE LIEN.** Mortgagee shall release this Mortgage and lien thereof by proper instrument upon payment and discharge of the indebtedness secured hereby and payment of a fee, as specified in section 3.3.7 of the Loan Agreement, to Mortgagee for the execution of such release.

19. **TERMS OF MORTGAGE BINDING ON BENEFICIARIES AND ALL PARTIES HAVING AN INTEREST IN MORTGAGOR.** This mortgage and all provisions hereof, shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the note or this mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein and the holder or holders, from time to time, of the Note secured hereby.

IN WITNESS WHEREOF the Mortgagor has executed this Mortgage on the day and year first above written.

Mortgagor



Eric Giandelone

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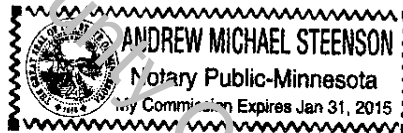
STATE OF *MN*)
) ss.
COUNTY OF *Famsay*)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Eric Giandelone personally known to me, appeared before me this day and acknowledge that he executed the foregoing Mortgage and Security Agreement as the free and voluntary act of the Company and as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this *4* day of *April*, 2014.

Andrew Steenson

Notary Public



After recording mail to:

Deborah S. Ashen
Ashen/Faulkner
217 N. Jefferson St., Suite 601
Chicago, IL 60661
(312) 655-0800

UNOFFICIAL COPY**SECURED PROMISSORY NOTE**

\$202,524.31

4/1/20 Chicago, Illinois
 _____, 2014

FOR VALUE RECEIVED, ERIC GIANDELONE, (the "**Maker**"), promises to pay to the order of FREDERICK B. AXELORD and JOHN GIANDELONE (collectively the "**Lender**"), at 627 Big Canyon Drive East, Palm Springs, CA 92264, California, or such other place as Lender may designate in writing, in the manner provided hereinafter, the principal sum of TWO HUNDRED TWO THOUSAND FIVE HUNDRED TWENTY FOUR 31/100 DOLLARS (\$202,524.31) (the "**Loan**"), or so much thereof as may now or hereafter be advanced by Lender to or for the benefit of Maker, on the Maturity Date (as hereinafter defined), or (iii) at the date to which the indebtedness evidenced hereby is accelerated pursuant to the terms of this Promissory Note (this "**Note**") with interest, in the manner and upon the terms and conditions set forth below.

1. **Interest Rate.** Interest shall accrue from the date of first disbursement hereunder on the principal balance of the Loan remaining from time to time outstanding at the rate ("**Interest Rate**") calculated pursuant to the following provision:

Provided that there is no Event of Default (as hereinafter defined) hereunder, or the existence of a condition which with the passage of time and the giving of notice, if applicable, would constitute an Event of Default under the terms of this Note, commencing on the Disbursement Date (as hereinafter defined) through the Maturity Date, the Interest Rate shall be the 4% per annum. For purposes hereof, "**Disbursement Date**" shall mean the date upon which the first proceeds evidenced by this Note are disbursed pursuant to the direction of Maker.

Interest shall be payable on the basis of a year consisting of three hundred sixty (360) days and charged for the number of days actually elapsed.

2. **Principal and Interest Payments.** Principal and interest payments in the amount of \$1,227.26 shall be payable in monthly installments on the first (1st) day of each month commencing January 1, 2014 and continuing on the first (1st) day of each month thereafter through December 1, 2033. On or before January 1, 2034 (the "**Maturity Date**"), one final balloon payment of all outstanding unpaid principal and interest shall be due and owing.

3. **Late Charges.** If any monthly installment of principal or interest or any other amount due hereunder is not paid on or before the fifteenth (15th) day after the day on which such payment is due, Maker shall pay Lender a late charge in an amount equal to ten percent (10%) of the amount due to defray part of the increased cost of collecting the late payments and the opportunity cost incurred by Lender because of the unavailability of the funds.

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4. **Application of Payments.** All payments on account of the indebtedness evidenced by this Note shall be applied first to the payment of fees, charges and expenses, including, without limitation, late charges, due Lender hereunder or under any of the Loan Documents, next, toward payment of interest due on the unpaid principal balance hereof, and the remainder, if any, to principal due hereunder.

5. **Prepayments.** Maker shall have the right to prepay this Note, in whole or in part, at any time, without penalty or premium.

6. **Security for Payment.** The payment of this Note is secured in part by that certain Mortgage and Security Agreement of even date herewith executed by Maker (collectively "Mortgage"), and all other documents evidencing or securing the repayment of the Loan (this Note, Mortgage and all other documents evidencing or securing the indebtedness evidenced by this Note which are executed and delivered to Lender as additional evidence of or security for repayment of the Loan, whether now or hereafter existing, and all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, are collectively referred to herein as the "Loan Documents"). All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Documents are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein, and Maker covenants and agrees to keep and perform them or cause them to be kept and performed, strictly in accordance with their terms.

7. **Defaults and Acceleration.** IT IS HEREBY EXPRESSLY AGREED by Maker that time is of the essence hereof. Each of the following events shall constitute an event of default ("Event of Default") hereunder: (i) the failure of Maker to pay any amount within 5 days after the date when the same becomes due and payable under this Note or any of the other Loan Documents whether interest or principal or both or any other amount due hereunder or under the Loan Documents and whether as an installment, by acceleration or on the Maturity Date or otherwise; or (ii) the occurrence of any other default or event of default under the terms of this Note, Pledge Agreement or any of the other Loan Documents, after the expiration of the 30 days following notice thereof to Borrower. At any time during the existence of any Event of Default, at the option of Lender, the entire unpaid principal balance of this Note, and all interest accrued thereon, and all other sums due by Maker hereunder or under the other Loan Documents shall, with prior written notice to Maker, become due and payable immediately.

8. **Default Interest Rate.** While any Event of Default exists, Maker promises to pay interest on the amount of principal due and outstanding hereunder at the rate of twelve percent (12%) per annum ("Default Interest Rate") and shall be payable upon demand.

9. **Nature of Remedies.** The remedies of Lender as provided in this Note and any of the other Loan Documents shall be cumulative and concurrent, and may be pursued singly, successively, or together against either or any of Maker or any guarantor hereof or any other security, at the sole and absolute discretion of Lender.

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10. **Waivers, Consents, Etc.** Maker and any endorsers, sureties or guarantors hereof and any and all others who are now or may become liable for all or part of the obligations of Maker under this Note (all of the foregoing being collectively referred to herein as "**Obligors**"), agree to be jointly and severally bound hereby and jointly and severally, waive presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest, and protest of this Note and, except as expressly provided to the contrary herein or in the other Loan Documents, all other notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note, and agree that the liability of each of them shall be unconditional, joint and several, without regard to the liability of any other party and shall not in any manner be affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Lender. Each Obligor hereby consents to any and all extensions of time, renewals, waivers or modifications that may be granted by Lender with respect to the payment or other provisions of this Note, and to the release of the collateral, or any part thereof, with or without substitution, and agree that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to them or affecting their liability hereunder. Maker hereby authorizes Lender, at any time after an Event of Default hereunder, to apply any money, or other property which Lender may have or hold on deposit or otherwise for Maker, towards the payment of this Note. By execution hereof Maker hereby specifically pledges and grants to Lender a security interest in any money or other property which Lender may have or hold on deposit for the undersigned.

11. **Non-Waiver.** Lender shall not by any act of omission or commission be deemed to waive any of its rights or remedies hereunder unless such waiver is in writing and signed by Lender and then only to the extent specifically set forth therein. A waiver of one event shall not be construed as continuing or as a bar to or waiver of such right or remedy in connection with a subsequent event.

12. **Business Loan.** Maker warrants and represents to Lender that Maker shall use the proceeds represented by this Note solely for proper business purposes, and consistently with all applicable laws and statutes. Maker further warrants and represents to Lender and covenants with Lender that Maker is not in the business of extending credit for the purpose of purchasing or carrying margin securities (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds represented by this Note will be used to purchase or carry any margin securities or to extend credit to others for the purpose of purchasing or carrying any margin securities.

13. **No Transfer of Premises.** Any sale, conveyance or transfer of any right, title or interest in the Premises, or any portion thereof or the execution of any contract or agreement to sell, convey or transfer the Premises shall, at the option of Lender, constitute an Event of Default and upon such default, Lender or the holder hereof may declare the entire indebtedness evidenced by this Note and the other Loan Documents to be immediately due and payable and exercise any rights and remedies under the Loan Documents immediately or at any time after such Event of Default.

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14. Interest Laws. It being the intention of Lender and Maker to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in this Note or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any interest ("**Excess Interest**") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by this Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in this Note or any of the other Loan Documents, then in such event: (i) the provisions of this paragraph shall govern and control; (ii) neither Maker nor any of the other Obligor shall be obligated to pay any Excess Interest; (iii) any Excess Interest that Lender may have received hereunder shall, at the option of Lender, be (a) applied as a credit against the then outstanding principal balance of the Loan, accrued and unpaid interest thereon, not to exceed the maximum amount permitted by law, or both, (b) refunded to the payor thereof, or (c) any combination of the foregoing; (iv) the applicable Interest Rate or rates hereunder shall be automatically subject to reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and this Note and the other Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in such applicable interest rate or rates, and (v) neither Maker nor any of the other Obligor shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.

15. Subsequent Holders. Upon any endorsement, assignment, or other transfer of this Note by Lender or by operation of law, the term "**Lender**," as used herein, shall mean the endorsee, assignee or other transferee or successor to Lender then becoming the holder of this Note.

16. Subsequent Obligors. This Note and all provisions hereof shall be binding on all persons claiming under or through Maker. The terms "**Maker**" and "**Obligors**," as used herein, shall include the respective successors, assigns, legal and personal representatives, executors, administrators, devisees, legatees and heirs of Maker and any other Obligors.

17. Fees and Expenses. If at any time or times after the date of this Note, Lender: (i) employs counsel which Lender reasonably believes is necessary for advice or other representation (a) with respect to this Note, any of the other Loan Documents or any collateral securing the Note, (b) to represent Lender in any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute or proceeding (whether instituted by Lender, Maker or any other person) in any way or respect relating to this Note, any of the other Loan Documents, any collateral securing the Note or Maker's affairs, or (c) to enforce any rights of Lender against Maker; (ii) takes any action to protect, collect, sell, liquidate or otherwise dispose of any collateral securing the Note; and/or (iii) attempts to or enforces any of Lender's rights and remedies against Maker or any guarantor of the Note; the reasonable costs and expenses incurred by Lender in any manner or way with respect to the foregoing shall be part of the indebtedness evidenced by this Note, payable by Maker to Lender on demand. Without limiting the generality of the foregoing, such reasonable expenses and costs include: court costs, reasonable attorneys' fees and expenses, and accountants' fees and expenses and other expert fees.

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18. **Administration Fees.** Intentionally Deleted

19. **Costs and Expenses.** Maker hereby acknowledges and agrees that certain costs and expenses advanced by the Lender and charged to Maker (including, but not limited to, appraisal fees, attorney's fees, title fees and environmental inspection report fees) may include not only the Lender's actual out-of-pocket costs but additionally a "mark-up" by the Lender. Maker acknowledges and agrees that said "mark-up" will be an amount determined by the Lender, in its sole discretion, which may, but does not need to be, deemed reasonable and/or customary to others, and will represent compensation for the Lender's oversight, review and analysis as well as a profit for the Lender for providing these services. Maker agrees to pay the Lender's charges for such services rendered by it or others and authorizes the Lender to charge said fees directly to the loan balance at the discretion of the Lender.

20. **Interpretation.** Whenever possible each provision of this Note and the other Loan Documents shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note or any of the other Loan Documents shall be prohibited or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of said documents. As used in this Note, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

21. **Governing Law; Litigation.** THE VALIDITY OF THIS NOTE, ITS CONSTRUCTION, INTERPRETATION AND ENFORCEMENT, AND THE RIGHTS OF MAKER AND LENDER SHALL BE DETERMINED UNDER, GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MAKER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS NOTE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MAKER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.


22. **Jury Waiver.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, MAKER HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS NOTE, OR IN ANY WAY CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE DEALINGS OF MAKER AND LENDER WITH RESPECT TO THIS NOTE, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MAKER HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT LENDER MAY FILE A COPY OF THIS NOTE WITH ANY COURT OR OTHER TRIBUNAL AS

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WRITTEN EVIDENCE OF THE CONSENT OF MAKER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

23. **Notices.** Any notice, request or demand that Lender or Maker may desire or be required to give to the other shall be in writing and shall be mailed or delivered to the intended recipient thereof at its address hereinabove set forth or at such other address as such intended recipient may, from time to time, by notice in writing, designate to the sender pursuant hereto. Any such notice shall be deemed to have been delivered (i) upon receipt when sent by nationally recognized overnight air courier, or (ii) two (2) business days after mailing by United States certified mail, postage prepaid, return receipt requested, or (iii) when delivered in person, and receipted for. Unless specifically required herein, notice of the exercise of any option granted to Lender by this Note is not required to be given.

IN WITNESS WHEREOF, this Note has been executed and delivered on the date first set forth above.



Eric Giandelone