

1/3

# UNOFFICIAL COPY

2014-05179-PT



Illinois Anti-Predatory  
Lending Database  
Program

Doc#: 1430949009 Fee: \$86.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 11/05/2014 09:20 AM Pg: 1 of 25

Certificate of Exemption

Report Mortgage Fraud  
800-532-8785

PREMIER TITLE

The property identified as: PIN: 14-29-127-012-0000

**Address:**

**Street:** 2829 North Lincoln

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60657

**Lender:** Fifth Third Bank

**Borrower:** Steven P. Rempas

**Loan / Mortgage Amount:** \$8,710,000.00

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:** 9EAE0F0E-42FF-4B05-B7EF-1F423D70A90B

**Execution date:** 10/28/2014

25

**UNOFFICIAL COPY**

MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF RENTS AND  
LEASES AND FIXTURE FILING

COOK COUNTY

This Document Prepared By and After  
Recording Please Return To:

Adam Smith, Esq.  
Polsinelli PC  
900 West 48<sup>th</sup> Place, Suite 900  
Kansas City, Missouri 64112

Space Above for Recorder's Use Only

**DOCUMENT COVER SHEET**

**TITLE OF DOCUMENT:** Mortgage, Security Agreement, Assignment of Rents and  
Leases and Fixture Filing

**DATE OF DOCUMENT:** October 28, 2014

**MORTGAGOR(S):** Steven P. Rempas as to Parcel No. 1  
1475 Glen Lake LLC as to Parcel No. 2

**LENDER(S):** Fifth Third Bank  
222 S. Riverside, 29<sup>th</sup> Floor  
Chicago, Illinois 60606

**PARCEL NO. 1**

**COMMONLY KNOWN AS:** 2829 NORTH LINCOLN, CHICAGO, IL 60657

**P.I.N.:** 14-29-127-012-0000

**PARCEL NO. 2**

**COMMONLY KNOWN AS:** 1475 GLEN LAKE ROAD, HOFFMAN ESTATES, IL 60169

**P.I.N.:** 07-08-409-016-000

**LEGAL DESCRIPTION:** See Exhibit A attached hereto for the legal description of  
the premises ("**Premises**").

# UNOFFICIAL COPY

## MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (THIS IS A FUTURE ADVANCE MORTGAGE)

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING ("**Mortgage**") is executed as of the 28<sup>th</sup> day of October, 2014, by and among STEVEN P. REMPAS and 1475 GLEN LAKE LLC, an Illinois limited liability company (hereinafter referred to as "**Mortgagor**"), having an address of 1475 Glen Lake Rd., Hoffman Estates, Illinois 60169, and FIFTH THIRD BANK, an Ohio banking corporation and its successors and assigns, as beneficiary (hereinafter referred to as "**Lender**" or "**Mortgagee**"), having an address at 222 S. Riverside, 29<sup>th</sup> Floor, Chicago, Illinois 60606.

### Recitals

The following recitals are a material part of this Mortgage:

A. Mortgagor has entered into a Credit Agreement with Lender dated as of even date herewith (together with any further amendments, modifications, replacements, restatements, renewals and extensions thereof, the "**Credit Agreement**"), which Credit Agreement evidences certain Loans being made to Mortgagor and certain of its Affiliates and Subsidiaries. Under the terms of the Credit Agreement, (i) Mortgagor Webster Dental Management, Ltd., The Dental Team, Ltd. d/b/a Webster Dental Care of Portage Park, Ltd., Webster Dental Care North Suburban, Ltd., Webster Dental Care Lakeview, Ltd., Webster Dental Care of Hoffman Estates, P.C., Webster Dental Care of Cicero, P.C., Water Tower Endodontics Chicago, Ltd. (collectively the "**Corporate Borrowers**"), and Steven P. Rempas ("**Rempas**") and together with the Corporate Borrowers, the "**Borrowers**") have executed and delivered to Lender that certain Term Note dated as of even date herewith in the original principal amount of \$7,150,000.00 (the "**Facility A Note**"), that certain Term Note dated as of even date herewith in the original principal amount of \$1,360,000.00 (the "**Facility B Note**"), that certain Multi-Draw Capex Note dated as of even date herewith in the original principal amount of \$200,000.00 (the "**Facility C Note**"), (ii) the Group A Borrowers and Mark Zieba ("**Zieba**") have executed and delivered to Lender that certain Term Note dated as of even date herewith in the original principal amount of \$160,000.00 (the "**Facility D Note**"), and (iii) Webster Dental Care of Mundelein, Ltd., Zieba and Jonathan Gregoire have executed and delivered that certain Multi-Draw Acquisition Note in the original principal amount of \$2,000,000.00 (the "**Facility E Note**"). The Facility A Note, the Facility B Note, and the Facility C Note are collectively referred to herein as the "**Notes**." The Notes shall bear interest on the principal amount outstanding at a fluctuating rate per annum as set forth in the Credit Agreement or the Notes. From and after the date of any Default, interest on funds outstanding under the Note shall accrue at the Default Rate. The entire principal balance outstanding plus all accrued but unpaid interest under the Note shall become due and payable on the Maturity Date, as defined in each of the Notes, the latest of which is October 28, 2019. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Credit Agreement. **NOTICE TO MORTGAGOR: THE NOTES CONTAIN VARIABLE INTEREST RATES.**

# UNOFFICIAL COPY

B. For purposes of this Mortgage the following are hereinafter sometimes collectively referred to as the “**Obligations**”:

(i) Borrower’s obligations to Lender under the Notes (which for the avoidance of doubt, does not include the Facility D Note nor the Facility E Note), the Credit Agreement, this Mortgage (including, without limitation, the performance of each covenant and agreement or Mortgage incorporated herein by reference or contained herein), and any other Credit Documents (as hereinafter defined) now or hereafter executed and delivered by Borrowers;

(ii) any other indebtedness or other obligations of any Borrower to Lender, owing or which may hereafter become owing, now or hereafter existing, whether monetary, nonmonetary, direct, indirect, acquired, joint, several, joint and several, liquidated, unliquidated, existing, future, fixed, contingent or otherwise; and

(iii) any replacements, renewals, consolidations, extensions and other modifications of any of the above, together with any interest, fees, expenses and other charges thereon, and any amounts expended by or on behalf of Lender for the protection and preservation of the mortgage lien and security interest granted herein.

C. The Credit Agreement, the Notes, this Mortgage and any other agreements, documents or instruments evidencing, securing or otherwise relating to any of the Obligations, and any replacements, renewals, extensions and other modifications of any of the foregoing, are hereinafter sometimes collectively called the “**Credit Documents**.”

NOW, THEREFORE, Mortgagor does hereby MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, CONVEY, ASSIGN AND PLEDGE, to Lender, and to Lender’s successors and assigns forever, all of Mortgagor’s right, title and interest, if any, in and to the following property, whether such property or interest therein is now owned or existing or hereafter acquired or arising (collectively, the “**Property**”): (i) Mortgagor’s fee simple interest in the Premises, including, without limitation, (a) all awards heretofore made or hereafter to be made for the taking by eminent domain of the whole or any part of the Premises, or any estate or easement therein, including any awards for change of grade of streets, all of which awards are hereby assigned to the Lender; and (b) all insurance proceeds relating to the Premises including, but not limited to, any proceeds attributable to any injury to or decrease in the value of the Premises or the Property; (ii) all estates, easements, interests, licenses, privileges, tenements, hereditaments, appurtenances, rights and rights of way, public or private, pertaining, belonging or otherwise relating to the Premises or any of the other Property, (iii) all buildings and improvements now or later situated under, upon or over any of the Premises; (iv) all franchises, permits, licenses and other rights therein respecting the use, occupation or operation of the Premises or the activities conducted thereon or thereabout; (v) all rents, income and other benefits arising out of or otherwise related to the Premises and all leases on or affecting the Premises, and any security deposits, contract rights, general intangibles, actions, rights of action, and unearned insurance premiums relating to such leases or the Premises; (vi) all building materials and supplies, equipment, furniture, fixtures, inventory, and operating supplies, attached to or used or usable in connection with the operation or maintenance of the Premises, HVAC equipment, lighting fixtures, electrical boxes, and plumbing fixtures, whether now or hereafter

# UNOFFICIAL COPY

acquired or installed, and in all additions, parts, and accessions attached to or used in connection therewith, and the cash and non-cash proceeds thereof, and (viii) all accessions to, substitutes for, and all modifications, replacements, renewals, products and proceeds of any of the foregoing. Unless otherwise indicated, a reference to the “**Property**” means all and/or any part of the Property.

Mortgagor, on a continuing basis, warrants, represents, covenants and agrees to and with Lender (which covenants, representations, warranties and agreements to the extent permitted by law shall be deemed to run with the land) as follows:

1. Indebtedness Secured. This Mortgage has been given and is intended to secure the full and prompt payment and performance of the Obligations. This Mortgage shall secure, among other things, the payment and performance of all future advances, future obligations and future extensions of credit. The priority of the lien hereunder securing such future advances, future obligations, and future extensions of credit shall relate back to the date this Mortgage was recorded. The lien of the mortgage will be valid even if no advance is made at the date of execution or if there is no indebtedness when a future advance is made. **THE MAXIMUM PRINCIPAL AMOUNT OF OBLIGATIONS THAT MAY BE SECURED BY THIS MORTGAGE AT ANY ONE TIME IS SEVENTEEN MILLION FOUR HUNDRED TWENTY AND 00/100 DOLLARS (\$17,420,000.00)**. In addition, the Mortgage shall secure unpaid balances of advances made by Lender (together with interest thereon) with respect to the Property, for the payment of Impositions, as hereinafter defined, insurance premiums and costs incurred for the protection of the Property and any charges, expenses and fees, including, without limitation, attorneys’ fees, which, by the terms hereof, shall be added to and increase the Obligations. This Mortgage shall remain in full force and effect with respect to all of the Property until all Obligations shall have been paid and performed in full. If the Obligations are paid and performed in accordance with the terms of the applicable Credit Documents, including, without limitation, the observance of all the agreements contained in this Mortgage, this Mortgage shall become void and shall be released at the sole expense of Mortgagor.

2. Payment of Obligations. Borrowers shall promptly pay when due all sums of any nature whatsoever due and owing on the Obligations.

3. Title to Premises and Other Representations and Warranties. Mortgagor represents, warrants and covenants to Lender that: (i) Mortgagor is lawfully vested with and possessed fee simple title to the Premises, owns the improvements now located thereon in fee simple absolute, shall own any improvements hereafter located thereon, and has good and marketable title to the remainder of the Property that is currently owned by Mortgagor; (ii) the Property is free of all liens, encumbrances, adverse claims and other defects of title whatsoever, except for liens created pursuant to this Mortgage and except as set forth on Exhibit B hereto; (iii) Mortgagor does hereby and shall forever warrant and defend Mortgagor’s title to and interest in the Property and the validity and priority of the lien of this Mortgage against all claims and demands whatsoever of any Person; (iv) the improvements presently on the Premises are in full compliance with all applicable zoning and building codes, ordinances and regulations; (v) any improvements hereafter constructed on the Premises shall be constructed in compliance with the Plans and Specifications, all applicable Laws, appropriate set back requirements, restrictive covenants and the requirements of any governmental authority, and shall lie wholly within the



# UNOFFICIAL COPY

boundaries of the Premises; (vi) to Mortgagor's knowledge there are no actions, suits or proceedings pending or threatened against or affecting Mortgagor or the Property; and (vii) Mortgagor has the good and unrestricted right, full power and lawful authority to subject the Property to this Mortgage.

4. Charges and Liens. Mortgagor shall pay all taxes, assessments, and other charges, fines, and impositions attributable to the Property, together with any interest or penalties imposed for late payments thereof, that are due or may become due and be a lien against the Property ("**Impositions**"). Mortgagor shall submit to Lender evidence of the timely payment of such Impositions.

5. Preservation and Maintenance of Property. Mortgagor (a) shall put, keep and maintain the Property and the sidewalks, curbs and alleys adjoining or abutting the same in good and lawful order, condition and repair, excepting ordinary wear and tear, (b) shall make or cause to be made, as and when the same shall become necessary, all structural and non-structural repairs, whether exterior or interior, ordinary or extraordinary, foreseen or unforeseen, (c) shall not commit or suffer any waste or permit impairment or deterioration of the Property, (d) shall not cause, conduct or permit any nuisance on or to the Property (e) shall pay when due all claims for labor performed and materials furnished that, if not paid, may result in the filing of a mechanic's or other lien against the Property, and (f) shall not demolish, remove, or materially alter any part of the Property without the prior written consent of Lender.

6. Restoration. If any of the improvements or equipment comprising the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (whether or not covered by insurance), or by any taking in condemnation proceedings or the exercise of any right of eminent domain, Mortgagor shall give prompt notice to Lender of any damage to the Property by fire or other casualty, irrespective of the amount of such damage.

7. Inspection. Lender, and its agents, contractors and representatives, may enter upon and inspect the Property for any purposes until this Mortgage is released. Without limiting the generality of the foregoing, Lender, and its agents, contractors and representatives, may from time to time enter upon the Property and conduct upon the Property inspections and tests to determine the extent to which any hazardous substances, wastes or other environmentally unsound material have been placed or discharged upon or otherwise affect the Property.

8. Compliance with Laws; Use of Property. Mortgagor shall promptly comply with all present and future laws, statutes, ordinances, rules, regulations and other requirements (including, without limitation, applicable zoning and building requirements) of all governmental and quasi-governmental authorities whatsoever having jurisdiction in respect of the Property and the sidewalks, curbs and alleys adjoining or abutting the Premises, and the condition, repair, maintenance, use and occupation thereof. Mortgagor shall promptly make all changes, alterations and improvements necessary to comply with all such present and future laws, statutes, ordinances, rules, regulations and other requirements.

Mortgagor shall promptly perform and observe all of the terms, covenants and conditions of all instruments of record affecting the Property, non-compliance with which may affect the security of this Mortgage, or which shall impose any duty or obligation upon Mortgagor or any

# UNOFFICIAL COPY

tenant or other occupant of the Premises, and Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Property. Mortgagor shall not use or permit the use of the Property in any manner which would tend to impair the value of the Property or materially increase the risk of fire or other casualty.

9. Insurance. Mortgagor shall insure the Property in accordance with and upon the terms and conditions provided for in the Credit Agreement.

**IF MORTGAGOR FAILS TO MAINTAIN ANY INSURANCE REQUIRED HEREUNDER OR UNDER THE OTHER CREDIT DOCUMENTS OR FAILS TO PROVIDE EVIDENCE OF SUCH INSURANCE AS REQUIRED HEREUNDER OR UNDER THE OTHER CREDIT DOCUMENTS, LENDER MAY, BUT SHALL NOT BE OBLIGATED TO, PURCHASE SUCH REQUIRED INSURANCE AT MORTGAGOR'S EXPENSE TO PROTECT ITS INTERESTS IN THE PROPERTY. THIS INSURANCE MAY, BUT NEED NOT, PROTECT THE MORTGAGOR'S INTERESTS IN THE PROPERTY. THE COVERAGE THAT LENDER PURCHASES SHALL NOT BE REQUIRED TO PAY ANY CLAIM THAT THE MORTGAGOR MAKES OR ANY CLAIM THAT IS MADE AGAINST THE MORTGAGOR IN CONNECTION WITH THE PROPERTY. THE MORTGAGOR MAY LATER CANCEL ANY INSURANCE PURCHASED BY LENDER, BUT ONLY AFTER PROVIDING EVIDENCE THAT THE MORTGAGOR HAS OBTAINED THE INSURANCE REQUIRED HEREUNDER AND UNDER ANY OTHER CREDIT DOCUMENT. IF LENDER PURCHASES INSURANCE FOR THE PROPERTY, MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF THE INSURANCE, INCLUDING THE INSURANCE PREMIUM, INTEREST THEREON FROM THE DATE OF EACH SUCH PAYMENT OR EXPENDITURE AT THE THEN APPLICABLE RATE UNDER THE NOTES AND ANY OTHER CHARGES LENDER MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. ALL SUMS SO PAID OR EXPENDED BY LENDER, THE INTEREST THEREON AND THE OTHER CHARGES IN CONNECTION THEREWITH SHALL BE ADDED TO THE OBLIGATIONS AND SHALL BE SECURED BY THE LIEN OF THIS MORTGAGE. THE COSTS OF THE INSURANCE OBTAINED BY THE LENDER MAY BE MORE THAN THE COST OF INSURANCE MORTGAGOR MAY BE ABLE TO OBTAIN ON ITS OWN.**

10. Deposits for Impositions and Insurance. Upon notice from Lender, Mortgagor shall deposit with Lender on the first day of each month an amount equal to one-twelfth (1/12th) of (i) the aggregate annual payments for the Impositions, and (ii) the annual insurance premiums on the policies of insurance required to be obtained and kept in force by Mortgagor under this Mortgage. In addition, upon notice from Lender, Mortgagor shall deposit with Lender such sum of money which, together with such monthly installments, shall be sufficient to pay all the Impositions and insurance premiums at least thirty (30) days prior to the due date thereof. If the amounts of any Impositions are not ascertainable at the time any deposit is required to be made, the deposit shall be made on the basis of the amounts of the Impositions for the prior tax year and, upon the amounts of the Impositions being fixed for the then current year, Mortgagor shall, upon notice from Lender, deposit any deficiency with Lender. If the amount of the insurance

# UNOFFICIAL COPY

premiums is not ascertainable at the time any deposit is required to be made, the deposit shall be made on the basis of the amount of the insurance premiums for the prior year of the policy or policies, and, upon the amount of the insurance premiums being fixed for the then current year of the policy or policies, Mortgagor shall, upon notice from Lender, deposit any deficiency with Lender. If on a date thirty (30) days prior to the due date for the payment of any of the Impositions or the insurance premiums there shall be insufficient funds on deposit with Lender to pay the same, Mortgagor shall, upon notice from Lender, forthwith make a deposit with Lender in the amount of such deficiency. The funds so deposited with Lender shall be held by Lender without interest, and may be commingled with other funds of Lender, and provided that an Event of Default has not occurred, such funds shall be applied in payment of the Impositions and insurance premiums when due to the extent that Mortgagor shall have deposited funds with Lender for such purpose. Upon the occurrence of an Event of Default, the funds deposited with Lender may, at the option of Lender, be retained and applied toward the payment of any or all of the Obligations, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender. Mortgagor shall furnish Lender with a bill for each of the Impositions and insurance premiums and such other documents necessary for their payment at least thirty (30) days prior to the date they first become due. Upon an assignment of this Mortgage prior to any default hereunder by Mortgagor, Lender shall have the right and obligation to pay over the balance of such deposits in its possession to the assignee, and thereupon Lender shall be completely released from all liability with respect to such deposits and Mortgagor shall look solely to the assignee in reference thereto. The provisions of the preceding sentence shall apply to each and every assignment or transfer of such deposits to a new assignee.

11. Condemnation. If any of the Property is taken by condemnation, eminent domain or other taking, any award or other compensation due or received by Mortgagor in respect thereof shall be paid over to Lender. All such awards or other compensation which are received by Lender may, at Lender's election, except as otherwise provided in the Credit Agreement, (i) be applied to reduce the outstanding balance of the Obligations, whether then due or not, or (ii) turned over, in whole or in part, by Lender to Mortgagor on such terms and conditions as Lender may elect for the purposes of rebuilding or otherwise improving the Property.

The application of any award or other compensation toward payment or performance of any of the Obligations shall not be deemed a waiver by Lender of its right to receive payment or performance of the balance of the Obligations in accordance with the provisions of the Credit Documents. Lender shall have the right, but shall be under no obligation, to question the amount of the award or other compensation, and Lender may accept same without prejudice to the rights that Lender may have to question such amount. In any such condemnation or eminent domain action or proceeding Lender may be represented by attorneys selected by Lender if the counsel selected by Mortgagor is not reasonably satisfactory to Lender, and all sums paid by Lender in connection with such action or proceeding, including, without limitation, attorneys' fees, shall, on demand, be immediately due from Mortgagor to Lender and the same shall be added to the Obligations and shall be secured by this Mortgage.

12. Assignment of Rents and Leases. Mortgagor hereby presently assigns to Lender all of Mortgagor's right, title and interest in and to any Leases, as defined hereinafter, with respect to the Property, and all rents, issues and profits of the Property. "Lease" shall mean every lease or sublease or occupancy agreement for the use or hire of all or any portion of the Property



# UNOFFICIAL COPY

which shall be in effect on the date hereof, or which shall hereafter be entered into, and by which Mortgagor is a lessor or the like, and any renewals, extensions or other modifications thereof. Mortgagor grants to Lender, with or without Lender or any other Person (including, without limitation, a receiver) taking possession of the Property, the right to give notice to the tenants of this assignment, to collect rents, issues and profits from the tenants and to enter onto the Property for purposes of collecting the same and to let the Property and to apply such rents, issues and profits, after payment of all charges and expenses relating to the Property, to the Obligations. This assignment shall be an absolute assignment, subject to the license herein granted to Mortgagor and Mortgagor's obligations hereunder, and shall continue in effect until the Obligations are fully paid and performed. Lender hereby grants a revocable license to Mortgagor to collect and use such rents, issues and profits; provided, however, that the foregoing license shall be automatically revoked, without any action on Lender's part, upon the occurrence of an Event of Default. Mortgagor hereby agrees to indemnify Lender for, and hold Lender harmless from, any and all liability and expenses arising from any such Lease or other agreement or any assignments thereof, and no assignment of any such Lease or other agreement shall place the responsibility for the control, care, management or repair of the Property upon Lender, nor make Lender liable for any negligence or other tortious conduct, whether by Lender or any other Person, with respect to the management, operation, upkeep, repair or control of the Property resulting in injury, death, property or other damage or loss of any nature whatsoever. Mortgagor shall not cancel, amend or otherwise modify the terms and conditions of any Lease without obtaining Lender's prior consent; nor shall Mortgagor accept payments of rent or the like more than one month in advance without obtaining Lender's prior consent. Lender may exercise Lender's rights from time to time under this section without first commencing foreclosure proceedings against the Property if Lender so elects. Any such election by Lender to exercise Lender's rights from time to time under this section shall not prohibit Lender from simultaneously or thereafter foreclosing upon the Property or exercising any other rights available to Lender hereunder or at law.

13. Lender's Right to Perform Mortgagor's Covenants. If Mortgagor shall fail promptly and fully to pay, perform or observe any of the Obligations, then Lender may, at Lender's option, but without any obligation to do so, and without waiving or releasing Mortgagor from any of the Obligations, pay any Obligation or perform any Obligation or take such other action as Lender deems necessary or desirable in order to cause such Obligation to be paid, performed or observed, as the case may be. Mortgagor hereby grants to Lender, and agrees that Lender shall have, the absolute and immediate right to enter in and upon the Property to such extent and as often as Lender, in Lender's discretion, deems necessary or desirable for such purpose. Lender may pay and expend such sums of money as Lender, in its discretion, deems necessary for any such purpose, and Mortgagor hereby agrees to pay to Lender, on demand, all such sums so paid or expended by Lender, together with interest thereon from the date of each such payment or expenditure at the Default Rate (as hereinafter defined). Any interest paid under this section in excess of the maximum interest rate permitted by law shall be deemed payment in reduction of the principal amount of the Obligations and the excess, if any, shall be refunded to Mortgagor without interest. All sums so paid or expended by Lender, and the interest thereon, shall be added to the Obligations and shall be secured by the lien of this Mortgage.

14. Security Agreement. Mortgagor hereby grants to Lender, as further security for the Obligations, a security interest in all personal property of Mortgagor now or hereafter located

# UNOFFICIAL COPY

on or about the Premises or the improvements thereon, or which otherwise relate to the Property or Mortgagor's use of the Property in any respect, including, without limitation, all of Mortgagor's presently owned or hereafter acquired (i) goods, chattels, furniture, equipment, machinery, parts and tools, together with all additions, attachments, accessories, accessions and repairs thereto, (ii) building materials and supplies, (iii) inventory, (iv) accounts, chattel paper, instruments and general intangibles, (v) the Property which constitutes fixtures or personal property, including, without limitation, any buildings and/or improvements that are deemed to be personal property, whether due to be severed from the Premises or otherwise, and (vi) all proceeds, products, replacements, additions and substitutions of the foregoing property described in the immediately preceding subclauses (i) through (v) (all of the foregoing property described in the immediately preceding subclauses (i) through (vi) being referred to herein as the "**Personalty**"). The parties intend that this instrument shall constitute both a security agreement and a fixture financing statement within the meaning of the Uniform Commercial Code as enacted in the State of Illinois with respect to all of Mortgagor's right, title and interest, whether now owned or existing or hereafter acquired or arising, in all Property and Personalty which constitutes fixtures and personal property, and that a security interest shall attach thereto, and to all products and proceeds thereof, for the benefit of Lender to secure the Obligations.

15. Transfer of the Property. Mortgagor shall not sell, assign, mortgage, hypothecate, transfer, or sublease the Property, without the prior written consent of Lender.

16. Liens. This Mortgage is and shall be maintained as a valid first mortgage lien on the Property subject to no other liens, claims or encumbrances, except for liens created pursuant to this Mortgage and except as set forth on Exhibit B hereto. Mortgagor shall not create or permit to exist any security interest, lien, claim or other encumbrance against the Property, except for except for liens created pursuant to this Mortgage, liens in respect of local real property taxes which are not yet due and payable, and except as set forth on Exhibit B hereto.

17. Default. The Obligations shall become immediately due and payable in full at the option of Lender upon the occurrence of any one or more of the following (subject to any and all applicable cure periods) (an "**Event of Default**"):

a) Borrowers shall fail to pay any installment of principal, interest or fees, if any, owing under the Notes or under any of the other Obligations in accordance with their respective terms and such failure continues for a period beyond any applicable grace period afforded in the Credit Documents;

b) Mortgagor shall fail to pay any Imposition on or before the date such Imposition may be paid without any penalty, interest or other premium;

c) Mortgagor shall fail to pay timely any premiums for insurance required hereunder or Mortgagor shall fail to reimburse Lender on demand for premiums paid by it on the insurance required hereunder;

d) Mortgagor shall directly or indirectly create, suffer or permit to be created or to stand against the Property or against the rents, issues and profits therefrom, any lien, security interest, charge, mortgage, Mortgage or other encumbrance not expressly permitted

# UNOFFICIAL COPY

herein, or in the Credit Agreement or other Credit Documents, without in each instance obtaining Lender's prior written consent thereto;

e) Any representation or warranty of any Borrower to Lender set forth herein or elsewhere, including, without limitation, the other Credit Documents, having been incorrect, incomplete or misleading in any material respect at the time when made, or any such representation or warranty subsequently becomes incorrect, incomplete or misleading in any material respect and Mortgagor fails to give Lender prompt notice thereof;

f) Except as otherwise provided for in this Mortgage, Mortgagor shall sell, convey, alienate, assign or otherwise transfer the Property, or any part thereof or interest therein, in any manner, whether voluntary, involuntary, by operation of law or otherwise, or Mortgagor shall enter into any agreement, written or oral, to so sell, convey, alienate, assign or otherwise transfer the Property, or any part thereof or interest therein;

g) There shall occur a default or an event of default under any other mortgage or like real property security instrument which encumbers the Property, or under any document evidencing any obligation secured thereby, or any foreclosure or similar proceeding shall commence with respect to the Property;

h) Mortgagor shall deliver to Lender any notice terminating or purporting to terminate, or Mortgagor shall take any other action to terminate or purporting to terminate, the operation of this Mortgage as security for any future advances or future obligations;

i) The condemnation or taking of any part of the Premises which, in Lender's determination, materially and adversely affects the use or intended use of the Property as a whole or otherwise materially and adversely affects Mortgagor's business prospects;

j) Any loss, theft, damage or destruction of any of the Property not fully covered (subject to such deductibles as Lender shall have permitted) by insurance;

k) If there shall occur any default or event of default (however defined or described) under the Credit Agreement, the Notes or any of the other Credit Documents;

l) If this Mortgage after delivery to Lender shall for any reason, except to the extent permitted by the terms thereof, cease to create a valid and perfected first priority lien and security interest in any of the collateral purported to be covered thereby; or

m) Any challenge, whether by litigation or otherwise, shall be asserted against the validity of the Notes, this Mortgage or any of the Credit Documents, including, without limitation, a claim that such transaction violates any federal, state or municipal constitution, charter, law, ordinance, regulation, resolution or rule, or any court order.

18. Appointment of Receiver. After the occurrence of an Event of Default, or if any action shall be commenced to foreclose this Mortgage, without obligation to do so, Lender, to the extent permitted by applicable law, may apply for the appointment of a receiver of the rents, issues and profits of the Property without notice or demand, and shall be entitled to the appointment of such receiver as a matter of right, without consideration of the value of the

# UNOFFICIAL COPY

Property as security for the amounts due to Lender or the solvency of any Person liable for the payment of such amounts.

19. Acceleration; Remedies. Upon the occurrence of an Event of Default at any time thereafter and subject to any applicable notice and cure provisions, Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided for under (i) any of the other Credit Documents or (ii) by law or equity:

a) Accelerate Obligations. Lender shall have the right at its option without notice to Borrowers to declare the entire Obligations immediately due and payable, including any prepayment charge or fee payable under the terms of the Notes or this Mortgage.

b) Collect Rents. To the extent permitted by law, Lender shall have the right, without notice to Mortgagor, to take possession of the Property and collect the rents, including amounts past due and unpaid and apply the net proceeds, over and above Lender's costs, against the Obligations. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the rents are collected by Lender, then Mortgagor irrevocably designates Lender as Mortgagor's attorney-in-fact to endorse instruments received in payment thereof in the name of Mortgagor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

c) UCC Remedies. Lender shall have the right to exercise any or all of the remedies available to Lender under the Uniform Commercial Code in effect in the applicable state as to any of the Property subject thereto.

d) Mortgagee in Possession. To the extent permitted by applicable law, Lender shall have the right to be placed as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Obligations. The mortgagee in possession or receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Obligations by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver. Nothing shall be construed as constituting Lender a mortgagee in possession in the absence of actual taking of possession of the Property by Lender.

e) Foreclosure. Lender may, to the extent permitted by law, institute an action of judicial foreclosure, or take such other action as the law may allow, at law or in equity, to enforce this Mortgage and to realize upon the Property or any other security which is herein or elsewhere provided for, and to proceed to final judgment and execution for the entire unpaid balance of the Obligations, together with, to the extent permitted by applicable law, all other sums secured by this Mortgage, all costs of suit, and interest at the then applicable rate under the Notes on any judgment obtained by Lender from and after the date of any judicial sale of the



# UNOFFICIAL COPY

Property (which may be sold in one parcel or part or in such parcels or parts, manner or order as Lender shall elect) until actual payment is made to Lender on the full amount due Lender. Lender may foreclose or otherwise realize upon one parcel or any other part of the Property, on one or more occasions, without releasing this Mortgage or precluding the further foreclosure or other realization hereunder of any other parcels or parts of the Property not so foreclosed or realized upon. Failure to join or to provide notice to tenants or any other Persons as defendants or otherwise in any foreclosure action or suit shall not constitute a defense to such foreclosure or other action. Upon any foreclosure sale, whether by virtue of judicial proceedings or otherwise, Lender may bid and purchase the Property or any part thereof or interest therein, and upon compliance with the terms of the sale, may hold, retain, possess and dispose of the same in Lender's own absolute right, without further accountability. In lieu of paying cash for the Property, Lender may make settlement for the purchase price by crediting against the sums secured by this Mortgage the sale price of the Property as adjusted for the expenses of sale and costs of the action and any other sums for which Mortgagor is obligated to reimburse Lender under this Mortgage.

f) Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Obligations due to Lender after application of all amounts received from the exercise of rights provided in this section.

g) Other Remedies. Exercise each of its other rights and remedies under this Mortgage.

h) Application of Proceeds. Except as otherwise required by law, apply the proceeds of any foreclosure or disposition hereunder to payment of the following: (i) the expenses of such foreclosure or disposition, (ii) the cost of any search or other evidence of title procured in connection therewith and revenue stamps on any deed or conveyance, (iii) all sums expended under the terms hereof, not then repaid, with accrued interest in the amount provided herein, (iv) all other sums secured hereby and (v) the remainder, if any, to the person or persons legally entitled thereto.

20. Waiver of Redemption and Reinstatement. To the extent permitted by applicable law, Mortgagor hereby irrevocably waives and releases: (i) any right of redemption after the date of any sale of the Property upon foreclosure, whether statutory or otherwise, in respect of the Property now or hereafter in force (irrespective of whether Lender or any other Person purchases the Property at such foreclosure); (ii) the benefit of any and all valuation and appraisal laws now or hereafter in force; (iii) all exemption laws whatsoever and all moratoriums, extensions or stay laws or rules, or orders of court in the nature of either of them, now or hereafter in force; and (iv) any right to have the Property marshalled upon any foreclosure of this Mortgage. Without limiting the foregoing, Mortgagor waives all rights of reinstatement and redemption pursuant to 735 ILCS 5/15-1601 et seq., as the same may be amended from time to time.

21. Expenses of Lender. To the extent permitted by applicable law, all costs and expenses paid or incurred by Lender, including, without limitation, attorneys' fees, in any action, proceeding or dispute of any kind in which Lender is made a party or appears as a plaintiff or defendant, affecting Lender, this Mortgage, the other Credit Documents and/or the Property, including, but not limited to, the enforcement of this Mortgage, any condemnation action



# UNOFFICIAL COPY

involving the Property, any action to protect the security hereof, or any case or proceeding under Title 11 of the United States Code, with interest thereon from the time of payment by Lender at the Default Rate, shall be added to and included in the Obligations and shall be secured by this Mortgage and, upon demand, shall be immediately due from Mortgagor.

22. Interest After Maturity. The principal amount of the Obligations and any other amounts secured by this Mortgage and, to the extent permitted by law, any accrued interest thereon, shall bear interest from and after maturity, whether or not resulting from acceleration, at the Default Rate, payable on demand, but this shall not constitute an extension of time for payment of the Obligations or such other amounts or accrued interest.

23. Attorneys' Fees. If this Mortgage shall be foreclosed, or if any of the other Credit Documents are placed in the hands of an attorney for collection or is collected through any court, including any bankruptcy court, Mortgagor, to the extent permitted by applicable law, shall pay to Lender reasonable attorneys' fees, court costs, disbursements and other costs incurred (irrespective of whether litigation is commenced in pursuance thereof) in collecting or attempting to collect the Obligations or enforcing or defending Lender's rights hereunder, or under the other Credit Documents, or under any other collateral securing the Obligations, and all allowances provided by law, to the extent allowed by the laws of the state in which the Property is located, or any state in which any of such other collateral for the Obligations is situated, or other applicable law.

24. Discontinuance of Action. Lender may from time to time, to the extent permitted by applicable law, take action to recover any sums, whether interest, principal or any other obligation or sums, required to be paid under this Mortgage or the other Credit Documents, as the same become due, without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default existing when such earlier action was commenced. If Lender shall have proceeded to enforce any right under this Mortgage or the other Credit Documents, and such proceedings shall have been discontinued or abandoned for any reason, then in every such case Mortgagor and Lender shall be restored to their former positions and the rights, remedies and powers of all parties hereto shall continue as if no such proceedings had been taken.

25. Taxes.

a) Upon passage after the date of this Mortgage of any law of the United States, the State of Illinois or any other governmental entity which deducts from the value of real property, for purposes of taxation, any indebtedness secured by mortgages or which changes in any way the laws for the taxation of mortgages or debts secured by mortgages for State or local purposes or the manner of the collection of any such taxes, and which imposes a tax, either directly or indirectly, on this Mortgage or all or any part of the sum secured hereby or the interest thereon, Lender may declare the whole of the Obligations and the interest accrued thereon, due on a date to be specified by not less than thirty (30) days' written notice to Mortgagor; provided, however, that such declaration shall be ineffective if Mortgagor is permitted by law to pay such tax in addition to all other payments required hereunder, without any penalty or charge thereby accruing to Lender, and if Mortgagor pays such tax on or before the date specified by Lender in such notice.

# UNOFFICIAL COPY

b) Mortgagor shall pay any taxes except income taxes imposed on Lender relating to this Mortgage.

26. Recording and Other Fees: Further Assurances. Mortgagor shall pay all recording and filing fees, all recording taxes and all other costs and expenses in connection with the preparation, execution and recordation and other manner of perfection of this Mortgage and any other Credit Documents, and shall reimburse Lender on demand for all costs and expenses of any kind incurred by or on behalf of Lender in connection therewith. Mortgagor agrees to execute and deliver promptly such instruments and other documents, and promptly to take such action or promptly refrain from taking such action, as Lender may request, from time to time, to evidence, create, perfect, continue or otherwise assure Lender of the real and personal property security interests granted, or purported to be granted, to or for the benefit of Lender hereunder and all other rights and benefits granted, or purported to be granted, to or for the benefit of Lender hereunder; all at the sole cost and expense of Mortgagor. Without limiting the generality of the foregoing, Mortgagor shall, at any time on request of Lender, execute or cause to be executed and shall deliver financing statements, continuation statements, security agreements, or the like, in respect of any Property and Mortgagor shall pay all filing fees, including, without limitation, fees for filing continuation statements, in connection with such financing statements.

27. Forbearance by Lender not a Waiver. Any forbearance by Lender in the exercise of any right or remedy hereunder, under the Notes, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. Any waiver by Lender of an Event of Default must be explicitly stated in writing signed by Lender and shall not be deemed a waiver of any other Event of Default or of the same type of Event of Default on any other occasion in the future.

28. Mortgagor Not Released. Extension of the time for payment or modification of the amortization of the sums secured by this Mortgage granted by Lender shall not in any manner operate to release the liability of Mortgagor or any endorser or guarantor, except strictly in accordance with the terms of any such extension or modification. Lender may grant such extension or modification without consent of any endorser or guarantor. No such extension or modification shall affect the priority of this Mortgage or impair the security hereof.

29. Remedies Cumulative. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage, the other Credit Documents, or afforded by law or equity, and may be exercised concurrently, independently, or successively.

30. Release. Any part of the Property may be released from the lien and security interest of this Mortgage without affecting the lien and security interest of the remaining Property. Upon payment and performance in full of all Obligations hereunder, Lender shall, at Mortgagor's expense, cause to be filed a release of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's reasonable termination fee as determined by Lender from time to time. If, however, payment is made by Borrowers, whether voluntarily or otherwise, or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment (a) to Mortgagor's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, (b) by reason of any judgment, decree or under any court or administrative body having jurisdiction

# UNOFFICIAL COPY

over Lender or any of Lender's property, or (c) by reason of any settlement or compromise of any claim made by Lender with any claimant (including without limitation Mortgagor), the indebtedness shall be considered unpaid for the purpose of enforcement of this Mortgage and this Mortgage shall continue to be effective or shall be reinstated, as the case may be, notwithstanding any cancellation of this Mortgage or of any note or other instrument or agreement evidencing the indebtedness and the Property will continue to secure the amount repaid or recovered to the same extent as if that amount never had been originally received by Lender, and Mortgagor shall be bound by any judgment, decree, order, settlement or compromise relating to the Obligations or to this Mortgage.

31. Possession. Until in default, Mortgagor may remain in possession and control of and operate and manage the Property and collect the rents from the Property.

32. Notices. All notices, demands, consents, approvals and requests given or required to be given by any party hereto to any other party hereto shall be in writing and delivered (a) in person, by messenger or overnight courier, (ii) by registered or certified mail, return receipt requested and postage prepaid, or (iii) by facsimile, to the applicable party at its address or facsimile number set forth below, or at such other address or facsimile number as such party hereafter may designate as its address for communications hereunder by notice so given.

If to Mortgagor: 1475 Glen Lake LLC  
1475 Glen Lake Rd.  
Hoffman Estates, Illinois 60169  
Attention: Steven P. Rempas, President

and also: Donald A. Levy  
4711 Golf Road, Suite 708  
Skokie, Illinois 60076

If to Lender: Fifth Third Bank  
222 S. Riverside, 29th Floor  
Chicago, Illinois 60606  
Attn: Kelly Ryan

And also: Polsinelli PC  
161 N. Clark Street  
Suite 4200  
Chicago, Illinois 60601  
Attn: Lisa Katz

Such notices and communications shall be deemed delivered upon receipt (or refusal to accept delivery) provided that all notices and communications sent by facsimile shall also be evidenced by the facsimile machine's confirmation identifying the recipient's facsimile number and transmission and provided further that all notices or other communications sent by facsimile shall also delivered by another means permitted by under this section.

# UNOFFICIAL COPY

33. Severability. If any term or provision of this Mortgage or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and enforceable to the fullest extent permitted by law. If any payments (including, without limitation, any interest payments) required to be made hereunder or under the other Credit Documents shall be in excess of the amounts allowed by law, the amounts of such payments shall be reduced to the maximum amounts allowed by law.

34. Indemnification Against Liabilities. Mortgagor shall protect, indemnify, hold harmless and defend Lender from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon incurred by or asserted against Lender by reason of (a) ownership of an interest in the Property, (b) any accident or injury to or death of Persons or loss of or damage to or loss of the use of property occurring on or about the Property, or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (c) any use, non-use or condition of the Property, or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage or the other Credit Documents, (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Property made or suffered to be made by or on behalf of Mortgagor, (f) any negligence or other tortious act on the part of Mortgagor or any of its agents, contractors, lessees, licensees or invitees, or (g) any work in connection with any alterations, changes, new construction or demolition of the Property; except to the extent that any such liabilities, obligations, claims, damages, penalties, causes of actions, costs or expenses are, caused by, or otherwise arise out of, Lender's gross negligence or intentional misconduct. Mortgagor will pay and hold Lender harmless against any and all liability with respect to any intangible personal property tax or similar imposition of the state in which the Property is located or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by Lender in respect of this Mortgage, the other Credit Documents or the Obligations. All amounts payable to Lender under this section shall be payable on demand and shall be deemed Obligations secured by this Mortgage and any such amounts which are not paid within five days after demand therefor shall bear interest at the Default Rate from the date of such demand. In case any action, suit or proceeding is brought against Lender by reason of any such occurrence, Mortgagor, upon request of Lender will, at Mortgagor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Mortgagor and approved by Lender. All of Mortgagor's obligations under this section shall survive the foreclosure, release or other termination of this Mortgage and the satisfaction of the Obligations.

35. Environment.

a) Compliance. With respect to the Property, Mortgagor shall at all times comply in all respects with all Environmental Laws. Lender shall not assume or be deemed to assume any responsibility, liability, or obligation with respect to compliance with any federal, state, or local environmental law, rule, regulation, order, permit, license, ordinance, judgment or decree; provided, however, that in the event of the imposition or assumption for any reason

# UNOFFICIAL COPY

whatsoever of any such responsibility, liability, or obligation, Mortgagor agrees to indemnify and hold Lender harmless from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements, of any kind or nature whatsoever, including without limitation, attorneys' and experts' fees, which may be imposed on, incurred by or asserted against it in any way relating to or arising from the Obligations, this Mortgage, the other Credit Documents and/or the Property. All of Mortgagor's obligations under this section shall survive the foreclosure, release or other termination of this Mortgage and the satisfaction of the Obligations.

b) Notices. Mortgagor shall give prompt written notice to Lender of:

i) any proceeding or written inquiry by any governmental authority with respect to the presence of any Hazardous Substances on the Property or the migration thereof from or to other property;

ii) all written claims made or threatened by any third party against Mortgagor or the Property relating to any loss or injury resulting from any Hazardous Substance;

iii) Mortgagor's discovery of any occurrence or condition on the Property or any real property adjoining or in the vicinity of the Property that would reasonably be expected to cause the Property or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use of the Property under any applicable Environmental Law, or to be otherwise subject to any material restrictions on the ownership, occupancy, transferability or use of the Property under any applicable Environmental Law;

iv) the discovery of any release of a Hazardous Substance at, on or under or from the Property which must be reported to a governmental authority under any applicable Environmental Law or which may require remediation under any Environmental Law;

v) any written notice of violation or complaint from a governmental authority and relating to an applicable Environmental Law;

vi) any written notices or reports Mortgagor provides to a governmental authority relating to instances of noncompliance with an applicable Environmental Law; and

vii) any written application Mortgagor provides to a governmental authority to obtain or amend a permit or approval relating to the generation, storage, processing, emission, treatment, or disposal of a Hazardous Substance or air contaminant.

c) Legal Proceeding. Lender shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Property in connection with any Environmental Law and have Lender's reasonable attorneys' fees in connection therewith paid by Mortgagor.



# UNOFFICIAL COPY

d) Remedial Work. In the event that any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the “**Remedial Work**”) is required to be undertaken under any applicable local, state or federal law or regulation, any judicial order, or by any governmental entity because of, or in connection with, the current or reasonably threatened future presence or release of a Hazardous Substance in or into the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the Property (or any portion thereof), Mortgagor shall promptly after written demand for performance thereof by appropriate governmental authorities or Lender (or such shorter period of time as may be required under any applicable law, regulation, order or agreement or, if any applicable law, regulation, order or agreement expressly specifies a longer period of time, such longer period), commence and thereafter diligently prosecute to completion, all such Remedial Work. All Remedial Work shall be performed by contractors selected by Mortgagor and approved in advance by Lender, and under the supervision of a consulting engineer selected by Mortgagor and approved by Lender. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, but not limited to, Lender’s reasonable attorneys’ fees and reasonable costs incurred in connection with its monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work following Lender’s written notice to Mortgagor of such alleged failure and adequate time for Mortgagor to correct such alleged failure, Lender may, but shall not be required to, cause such Remedial Work to be performed and all reasonable costs and expenses thereof, or incurred in connection therewith, shall become part of the indebtedness secured hereby.

e) Environmental Risk Assessment. At any time (a) the Lender reasonably believes that Hazardous Substances have been disposed of on, or have been released to or from any of the Property and such release or disposal may reasonably be expected to result in liability to Mortgagor or Lender under applicable Environmental Laws (a “**Triggering Event**”), or (b) after an Event of Default within thirty (30) days after a written request therefor by Lender, Mortgagor shall deliver to Lender a report prepared at Mortgagor’s expense by an environmental consultant acceptable to Mortgagor detailing the results of an environmental investigation with respect to the Triggering Event or the matter resulting in the Event of Default the scope of which is acceptable to Lender, including results of any soil and ground water samples that may have been taken in connection with such investigation.

36. No Representations. By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Lender pursuant to this Mortgage or the other Credit Documents, including, but not limited to, any officer’s certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Lender.

37. Intentionally Omitted

38. Successors and Assigns. The terms, covenants and provisions of this Mortgage shall apply to and be binding upon Mortgagor and all subsequent owners and other Persons who

# UNOFFICIAL COPY

have an interest in the Property, and shall inure to benefit of Lender, the successors and assigns of Lender, and all subsequent holders of this Mortgage, but the provisions of this section shall not be construed to modify the provisions of this Mortgage relating to default upon transfer of the Property.

39. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, AND AS SEPARATELY BARGAINED-FOR CONSIDERATION TO LENDER, MORTGAGOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY (WHICH LENDER ALSO WAIVES) IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR OTHERWISE RELATING TO THIS MORTGAGE, ANY DOCUMENTS, INSTRUMENTS OR AGREEMENTS EXECUTED AND DELIVERED IN CONNECTION HERewith, THE OBLIGATIONS, OR LENDER'S CONDUCT IN RESPECT OF ANY OF THE FOREGOING. TO EFFECTUATE THE FOREGOING, LENDER IS HEREBY GRANTED AN IRREVOCABLE POWER OF ATTORNEY TO FILE, AS ATTORNEY-IN-FACT FOR EACH MORTGAGOR, A COPY OF THIS AGREEMENT IN ANY COURT, AND THE COPY OF THIS AGREEMENT SO FILED SHALL CONCLUSIVELY BE DEEMED TO CONSTITUTE MORTGAGOR'S WAIVER OF TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR OTHERWISE RELATING TO ANY OF THE CREDIT DOCUMENTS, THE OBLIGATIONS, THE COLLATERAL OR LENDER'S CONDUCT IN RESPECT OF ANY OF THE FOREGOING.

40. Venue. Any litigation under this Mortgage shall be commenced in the circuit courts of the State of Illinois, with venue in Cook County, Illinois; provided, however, that any litigation with respect to the foreclosure or realization upon the Mortgagee's security interest in the Premises shall be commenced in the district courts of the county in which the Premises is located.

41. Miscellaneous.

a) This Mortgage and its provisions cannot be changed, waived, discharged or terminated orally but only by an agreement in writing, signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

b) This Mortgage and the rights of the parties hereunder shall for all purposes be governed by the internal laws of the State of Illinois.

c) This Mortgage shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

d) All terms and words used in this Mortgage, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

e) If there shall be more than one Mortgagor, the representations, warranties, covenants and other obligations of Mortgagor hereunder shall be the joint and several representations, warranties, covenants and other obligations of each and every Mortgagor. Whenever the terms of this Mortgage prohibit Mortgagor from doing or permitting to be done,

# UNOFFICIAL COPY

whether voluntarily or otherwise, any act or event, any such negative covenants shall apply to each and every Mortgagor and the failure of any one Mortgagor in respect thereof shall be deemed a default of such negative covenant notwithstanding that any other Mortgagor may not be in default of such negative covenant.

f) The section headings in this Mortgage are for convenience of reference only and shall not limit or otherwise affect any of the terms hereof.

g) All covenants contained herein shall run with the Property until the Obligations have been fully paid and performed.

h) Time is of the essence in the payment and performance by Mortgagor of the Obligations.

[SIGNATURE PAGE TO FOLLOW]

# UNOFFICIAL COPY

MORTGAGOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND MORTGAGOR AGREES TO ITS TERMS.

1475 GLEN LAKE LLC,  
an Illinois limited liability company

By: *SPR*

Name: Steven P. Rempas

Title: Manager

*SPR*  
Steven P. Rempas

## Acknowledgment

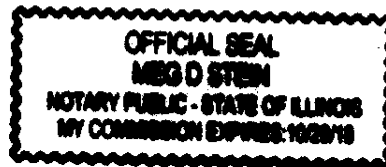
STATE OF ILLINOIS )

COUNTY OF Cook )  
) ss.

On this 28 day of Oct, 2014 before me, Meg D. Stein (name of notary), a Notary Public in and for said state, personally appeared Steven P. Rempas, the Manager of 1475 Glen Lake LLC, an Illinois limited liability company, known to me to be the person who executed the within Mortgage, Security Agreement, Assignment of Rents and Fixture Filing on behalf of said entity by authority of said limited liability company and acknowledged to me that s/he executed the same for the purposes therein stated.

*Meg D Stein*  
Notary Public

My commission expires: 10/29/18



# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF Cook )

On this 18 day of Oct, 2014 before me, Meg D. Stein (name of notary), a Notary Public in and for said state, personally appeared Steven P. Rempas, known to me to be the person who executed the within Mortgage, Security Agreement, Assignment of Rents and Fixture Filing and acknowledged to me that he executed the same for the purposes therein stated.

Meg D Stein  
Notary Public

My commission expires: 10/29/18



PREMIER TITLE  
1000 JORIE BLVD., SUITE 136  
OAK BROOK, IL 60523  
630-571-2111



# UNOFFICIAL COPY

## EXHIBIT A

### Legal Description of Premises

File No.: 2014-05179-PT

#### PROPERTY DESCRIPTION

The land referred to in this commitment is described as follows:

PARCEL 1:

LOTS 20 AND 21 IN ALBERT WISNER'S SUBDIVISION OF BLOCK 10 IN THE SUBDIVISION OF THAT PART LYING NORTHEAST OF THE CENTER OF LINCOLN AVENUE OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF LOT 13 IN BLOCK 192 IN THE HIGHLANDS WEST AT HOFFMAN ESTATES XX1, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 AND PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF HOFFMAN ESTATES, SCHAUMBURG TOWNSHIP, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 13, BEING THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF HIGGINS ROAD WITH THE EASTERLY LINE OF GLEN LAKE ROAD, THENCE NORTHERLY ALONG THE EASTERLY LINE OF GLEN LAKE ROAD, NORTH 13 DEGREES, 22 MINUTES 43 SECONDS EAST, A DISTANCE OF 260.04 FEET TO A POINT OF CURVATURE THENCE NORTHERLY ALONG A CURVED LINE, CONVEXED TO THE EAST 399.68 FEET IN RADIUS, FOR AN ARC LENGTH OF 2.64 FEET TO THE POINT OF BEGINNING, THENCE CONTINUING NORTHERLY ALONG THE LAST DESCRIBED CURVED LINE, A DISTANCE OF 98.95 FEET TO THE NORTHWEST CORNER OF SAID LOT 13, THENCE SOUTH EASTWARD ALONG NORTHERLY LINE OF SAID LOT 13, SOUTH 72 DEGREES, 18 MINUTES 55 SECONDS EAST, A DISTANCE OF 172.83 FEET; THENCE SOUTH 13 DEGREES, 22 MINUTES 43 SECONDS WEST, A DISTANCE OF 95.00 FEET; THENCE NORTH 72 DEGREES 18 MINUTES 55 SECONDS WEST, A DISTANCE OF 160.46 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

# UNOFFICIAL COPY

## EXHIBIT B

### Liens and Encumbrances

1. Existing Commercial Lease dated November 15, 2012 made by 1475 Glen Lake LLC to Webster Dental Care of Hoffman Estates, PC and all rights thereunder of the lessees and of any person claiming by, through or under the lessees.
2. Existing Commercial Lease dated November 15, 2012 made by Steven P. Rempas to Webster Dental Care of Lakeview, Ltd. and all rights thereunder of the lessees and of any person claiming by, through or under the lessees.
3. Existing Chicago Apartment Lease dated May 16, 2012 made by Steven P. Rempas to Blake Yanics and Pilar Selz and all rights thereunder of the lessees and of any person claiming by, through or under the lessees.
4. Existing Chicago Apartment Lease dated May 17, 2012 made by Steven P. Rempas to Venu Raghavan and Ananath Raghavan and all rights thereunder of the lessees and of any person claiming by, through or under the lessees.
5. 30 foot building setback line along the westerly line of the land, as shown on the plat of subdivision. (Affects Parcel 2)
6. Covenants, conditions and restrictions (exception therefrom those prohibited by law) and easements contained in deeds recorded as document 20655199 and 20655200 relating to use of the land.
7. Easement in favor of The Illinois Bell Telephone Company, and their respective successors and/or assigns, to install, operate and maintain all equipment necessary for the purpose of serving the land and other property, together with the right of access to said equipment, and the provisions relating thereto contained in the grant recorded/filed as document 23773964, Affecting Parcel 2.
8. Encroachment of building located mainly on the subject land onto the property southwesterly and adjoining by and approximately distance of 0.09 feet, as disclosed by the survey made by North Shore LTD dated May 19, 2003 number 35205-U.
9. Encroachment of concrete located mainly on the subject land onto the property westerly and adjoining, as disclosed by the survey made by North Shore Survey LTD dated May 19, 2003, number 35205-U.