

8187548 AM 10FZ

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1527216043 Fee: \$118.00
RHSP Fee:\$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/29/2015 03:20 PM Pg: 1 of 41

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 24-20-300-024

Address:

Street: 6155 West 115th Street

Street line 2:

City: Alsip

State: IL

ZIP Code: 60803

Lender: Standard Bank and Trust Company

Borrower: AJC Distribution, LLC

Loan / Mortgage Amount: \$4,000,000.00

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

Certificate number: 2218CF65-F861-4C70-B98B-B63729569D40

Execution date: 9/29/2015

CCRD REVIEWER

UNOFFICIAL COPY

8187548 AEM 1092

RECORDATION REQUESTED BY:

Standard Bank and Trust Company
7800 W. 95th Street
Hickory Hills, IL 60457

WHEN RECORDED MAIL TO:

Standard Bank and Trust Company
7725 W. 95th Street
Hickory Hills, IL 60457

THIS INSTRUMENT PREPARED BY:

Chuhak & Tecson, P.C.
Attention: Valerie J. Freueich
30 S. Wacker, Suite 2600
Chicago, IL 60606
312/444-9300

ILLINOIS REAL ESTATE

6155 West 115th Street, Alsip, IL 60803

**SECOND RESTATEMENT OF MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS SECOND RESTATEMENT OF MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“**Mortgage**”) is dated as of September 29, 2015, is by STANDARD BANK AND TRUST COMPANY, having its principal place of business at 7800 W. 95th Street, Hickory Hills, Illinois 60457, not personally but as Trustee (“**Trustee**”) under a Trust Agreement dated August 8, 2001, and known as Trust No. 17031 (“**Trust**”) and AJC DISTRIBUTION, LLC, an Illinois limited liability company having its principal place of business at 6155 W. 115th Street, Alsip, Illinois 60803 (“**Distribution**” or alternatively as “**Borrower**” and together with the Trust, collectively and individually, as required by context, the “**Grantor**” or “**Mortgagor**”), in favor of STANDARD BANK AND TRUST COMPANY, having its principal place of business at 7800 West 95th Street, Hickory Hills, Illinois 60457 (“**Lender**” or alternatively “**Mortgagee**”).

RECITALS:

A. The Trustee is the title holder of record of certain real estate commonly known as 6155 W. 115th Street, Alsip, Illinois and legally described on Exhibit A attached hereto and incorporated herein by reference.

B. The Trustee holds fee simple title and Borrower holds all of the beneficial and equitable interest in and to certain Real Property (defined below) in Cook County, Illinois, commonly known as 6155 West 115th Street, Alsip, IL 60803.

UNOFFICIAL COPY

C. Pursuant to the Promissory Note (defined below) and the Loan Agreement (defined below), Lender has provided a commercial real estate loan facility at a variable rate to Borrower in the original principal amount of FOUR MILLION AND 00/100 U.S. DOLLARS (\$4,000,000.00). The Loan (defined below) is evidenced by a Promissory Note of even date herewith in the original principal amount of FOUR MILLION AND 00/100 U.S. DOLLARS (\$4,000,000.00) (together with all amendments, restatements, replacements, renewals, extensions, modifications, consolidations, increases, substitutions and refinancings, the "**Promissory Note**"), executed and delivered by the Borrower to the order of Lender and by that certain Commercial Real Estate Loan and Security Agreement of even date herewith (together with all amendments, restatements, replacements, renewals, extensions, modifications, consolidations, increases, substitutions and refinancings, the "**Loan Agreement**"), by Grantor and Lender, and is secured by this Mortgage and certain additional security documents and instruments.

D. William M. Codo, Robert S. Codo, David M. Peters and Judith Peters (collectively, the "**Individual Guarantors**") have guaranteed the loan facility, as have ACCORD CARTON CO., an Illinois corporation ("**Carton**"), ACCORD PACKAGING, LLC, a Delaware limited liability company ("**Packaging**") and REC Partners, an Illinois general partnership (collectively or individually as required by context, the "**Entity Guarantors**") (the Individual Guarantors and the Entity Guarantors are for convenience referred to herein collectively and individually, as required by context, as the "**Guarantor**"). The Entity Guarantors are Affiliates of Grantor and the Individual Guarantors constitute owners and/or management of the Borrower and Entity Guarantors.

E. The Lender has previously provided the Entity Guarantors with the following currently existing loan facilities:

(i) Lender has provided Carton with a revolving line of credit loan facility in the current Facility A Maximum Loan Amount of Seven Million and 00/100 Dollars (\$7,000,000.00) which is internally referenced by Lender as Loan #4160830101 ("**Revolving Loan**").

(ii) Lender has provided Borrower with a commercial real estate loan facility in the original principal amount of Four Million and 00/100 Dollars (\$4,000,000.00) which is internally referenced by Lender as Loan #1540169 ("**Mortgage Loan**").

(iii) Lender has provided Carton with a term loan facility in the original principal amount of Three Million Four Hundred Thirty Three Thousand Three Hundred Twenty Eight and 00/100 Dollars (\$3,433,328.00) which is internally referenced by Lender as Loan #2013000476 ("**Term Loan E**") and collectively with Revolving Loan and Mortgage Loan, the "**Existing Loans**").

F. The Existing Loans were provided to Borrower and its Affiliates pursuant to that certain Amended and Restated Loan and Security Agreement dated as of April 18, 2012, as modified by that certain First Amendment to Amended and Restated Loan and Security Agreement effective as of May 20, 2013, by that certain Second Amendment to Amended and Restated Loan and Security Agreement effective as of October 5, 2013, by that certain Third

UNOFFICIAL COPY

Amendment to Amended and Restated Loan and Security Agreement effective as of January 5, 2014, by that certain Fourth Amendment to Amended and Restated Loan and Security Agreement effective as of October 5, 2014, by that certain Fifth Amendment to Amended and Restated Loan and Security Agreement effective as of May 5, 2015, by that certain Sixth Amendment to Amended and Restated Loan and Security Agreement effective as of August 5, 2015 (together with all other amendments, restatements, replacements, renewals, extensions, modifications, consolidations, increases, substitutions and refinancings, the “**Existing Loan Agreement**”), by Entity Guarantors and Lender. Inasmuch as they are Affiliates, Entity Guarantors and Borrower are all benefited by the Loan and the Existing Loans. The Existing Loans are cross collateralized with the Loan and thus the Existing Loans are also secured by this Mortgage and were so secured pursuant to the Prior Mortgage. The Property described herein is collateral for the Loan and the Existing Loans.

G. The Existing Loans were secured by, among other Collateral, a lien created by that certain Restatement of Mortgage and Security Agreement with Assignment of Rents dated as of April 18, 2012 and recorded with the Cook County Recorder of Deeds on May 1, 2012 against the Real Property, as document number 1212212010, as modified by that certain First Modification of Restatement of Mortgage and Security Agreement with Assignment of Rents dated as of May 20, 2013 and recorded with the Cook County Recorder of Deeds on June 28, 2013 as document number 1317933027, by that certain Second Modification of Restatement of Mortgage and Security Agreement with Assignment of Rents dated as of January 5, 2014 and recorded with the Cook County Recorder of Deeds on April 3, 2014 as document number 1409342101 and by that certain Third Modification of Restatement of Mortgage and Security Agreement with Assignment of Rents effective as of May 5, 2015 and recorded with the Cook County Recorder of Deeds on ---- as document number ----- (collectively, the “**Prior Mortgage**”). This Mortgage amends and restates the Prior Mortgage.

H. The Promissory Note, the Notes evidencing the Existing Loans, the Existing Loan Agreement and the Loan Agreement are incorporated herein by this reference. Reference is made to the Loan Agreement for a complete statement of the terms and conditions of the Loan, and payment thereof. Capitalized terms not defined in this Mortgage which are defined in the Loan Agreement shall have the meanings set forth in the Loan Agreement. Reference is also made to the Existing Loan Agreement for a complete statement of the terms and conditions of the Existing Loans and payment thereof. This Mortgage, the Promissory Notes, the Loan Agreement, the Existing Loan Agreement and all other documents and instruments heretofore, now or hereafter given as security for, to guarantee the payment of, or to perfect or continue the lien or security interest thereby created to secure the Indebtedness, obligations and all liabilities of Borrower and its affiliates under the Loan and Existing Loan to Lender, and any other documents, instruments and agreements executed in connection therewith and all amendments, modifications, restatements, replacements, consolidations, substitutions, renewals, extensions, and increases to any of the foregoing, whether heretofore or hereafter existing, and whether primary or secondary, direct or indirect, absolute or contingent are herein collectively referred to as the “**Loan Documents**.” This Mortgage is given as equal security to all other collateral security for all of the Indebtedness, obligations and liabilities of Borrower and of the Entity Guarantors pursuant to the Existing Loans, without preference or priority by reason of priority of time or of the negotiation hereof or otherwise. The Loan is payable, with interest, at a Maturity Date which is set forth in the Loan Agreement.

UNOFFICIAL COPY

1. As a condition of the Loan and financial assistance to Borrower, Lender has required Borrower to execute and deliver this Mortgage on the Real Property (defined below). Borrower is willing and has granted this Mortgage as security for the Indebtedness (defined below), including, without limitation, the Loan and all accrued interest thereon, and has also granted a security interest in all the rights, powers, privileges, title and beneficial interest of Grantor therein, upon the terms and provisions hereinafter set forth.

AGREEMENTS:

SECTION 1: DEFINITIONS

1.1 Definitions. The following words shall have the following meanings when used in this Mortgage. Terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Loan Agreement, which is incorporated herein by reference.

Act. The word "Act" means the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et. seq.*, as such Law may be amended from time to time.

Borrower. The word "Borrower" is defined in the preamble of this Mortgage, which preamble is incorporated into this Mortgage.

Business Day. The words "Business Day" mean any day that is not a Saturday, Sunday or other day on which commercial banks in Chicago, Illinois are required or permitted by Law to be closed.

Charges. The word "Charges" has the meaning set forth in Section 3.3(a).

Default Rate. The words "Default Rate" mean the Interest Rate then applicable to the Promissory Note **plus** five percent (5%).

Entity Guarantor or Entity Guarantors. The word "Entity Guarantor" or "Entity Guarantors" mean, individually or collectively, Accord Carton Co., an Illinois corporation, Accord Packaging, LLC, a Delaware limited liability company and REC Partners, an Illinois general partnership, and their respective successors and permitted assigns.

Environmental Laws. The words "Environmental Laws" mean any Federal, state or local Law, rule, regulation, ordinance, order, code or statute applicable to Borrower or its respective property, in each case as amended (whether now existing or hereafter enacted or promulgated), controlling, governing or relating to the pollution or contamination of the air, water or land concerning hazardous, special or toxic materials, wastes or substances, petroleum and petroleum by-products or any fraction thereof and asbestos, or any judicial or administrative interpretation of such Laws, rules, regulations, including, the Water Pollution Control Act (33 U.S.C. §1251 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), Safe Drinking Water Act (42 U.S.C. §3000(f) *et seq.*), Toxic Substances Control Act (15 U.S.C. §2601 *et seq.*), Clean Air Act (42 U.S.C. §7401 *et seq.*), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C.

UNOFFICIAL COPY

§9601 *et seq.*), Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 and Hazardous Materials Transportation Act (49 U.S.C. §1801, *et seq.*).

Excluded Swap Obligation. The words “Excluded Swap Obligation” mean, with respect to (i) a Guarantor of a Swap Obligation, including the grant of a Security Interest to secure the guaranty of such Swap Obligation, or (ii) any Borrower other than a Grantor, any Swap Obligation if, and to the extent that, such Swap Obligation is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s or Borrower’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty or grant of such Security Interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Swap Obligation or Security Interest is or becomes illegal.

Event of Default. The words “Event of Default” have the meaning set forth in Section 7.1.

Facility. The word “Facility” means the warehouse and packaging and manufacturing facility and other improvements located on the Real Property.

Grantor. The word “Grantor” means the Trust and AJC DISTRIBUTION, LLC, an Illinois limited liability company having its principal place of business at 6155 W. 115th Street, Alsip, Illinois 60803, and its successors and permitted assigns. Grantor is one of the entities constituting the mortgagor under this Mortgage and is the Borrower of the Loan.

Guarantor. The word “Guarantor” means, collectively, the Entity Guarantors and the Individual Guarantors, and their respective personal representatives, heirs, legatees, estate, successors and permitted assigns.

Hedging Agreement. The words “Hedging Agreement” mean any agreement with respect to any swap, collar, cap, future, forward or other derivative transaction, whether exchange-traded, over-the-counter or otherwise, including any involving, or settled by reference to, one or more interest rates, currencies, commodities, equity or debt instruments, any economic, financial or pricing index or basis, or any similar transaction, including any option with respect to any of these transactions and any combination of these transactions.

Hedging Obligation. The words “Hedging Obligation” mean, with respect to any Person, any liability of such Person under any Hedging Agreement, including any and all cancellations, buy backs, reversals, terminations or assignments under any Hedging Agreement.

Improvements. The word “Improvements” means and includes without limitation all site improvements, the Facility and other existing and future buildings, structures, facilities,

UNOFFICIAL COPY

fixtures, landscaping, additions, replacements, installed equipment, and other construction to be placed on the Real Property.

Indebtedness. The word "Indebtedness" is used in its most comprehensive sense and means and includes without limitation any and all Loans and all other obligations, debts, liabilities and indebtedness of Borrower to Lender or any under those Loan Document constituting documents evidencing the Existing Loans provided by Lender to the Entity Guarantors, all of any and every kind or nature, as well as all claims by Lender against Borrower relating to, or arising from, the transactions contemplated by the Loan Agreement, this Mortgage or any other Loan Document, whether now or hereafter existing, voluntary or involuntary incurred, due or not due, absolute or contingent, liquidated or unliquidated, whether arising by operation of law, contract or otherwise, under the Loan Agreement, this Mortgage or Loan Documents, or acquired by Lender from any other source; whether Borrower may be liable individually or jointly with others; whether Borrower may be obligated as a guarantor, surety, or otherwise; and whether recovery on such Indebtedness may be or hereafter may become barred or unenforceable by any statute of limitation or otherwise. Notwithstanding the foregoing, Indebtedness shall include Hedging Obligations, but shall exclude any Excluded Swap Obligations of (i) a Guarantor, or (ii) a Borrower other than Grantor.

Lease. The word "Lease" means Mortgagor's and/or Borrower's right, title and interest in any and all leases, subleases, licenses, concessions or grants of other possessory interests (written or oral) now or hereafter in force, covering or affecting the Real Property, or any part thereof or interest therein, together with all rights, powers, privileges, options and other benefits of Mortgagor thereunder (but under no circumstances any liabilities, obligations or responsibilities thereunder).

Lender. The word "Lender" means **STANDARD BANK AND TRUST COMPANY**, an Illinois state bank, its successors and assigns. Lender is the mortgagee under this Mortgage.

Loan(s). The word "Loan" or "Loans" means the loan facilities contemplated by the Loan Agreement, whether now or hereafter existing, and however evidenced, including those loans and financial accommodations described on any exhibit or schedule attached to the Loan Agreement from time to time. Where context requires, the word(s) may also mean the Existing Loans which are also secured hereby.

Loan Agreement. The words "Loan Agreement" mean that certain Commercial Real Estate Loan Agreement between the Lender and the Grantor dated of even date herewith and all amendments, restatements, renewals, supplements, modifications, replacements, consolidations, substitutions, extensions, and increases thereto, whether heretofore or hereafter existing as referenced in Recital B.

Loan Documents. The words "Loan Documents" are defined in Recital D and also mean and include all promissory notes, credit agreements, loan agreements, guarantees, security agreements, mortgages, deeds of trust, collateral assignments, financing statements, consents, contracts, subordination agreements, Hedging Agreements, chattel mortgages,

UNOFFICIAL COPY

pledges, control agreements, powers of attorney and any and all other instruments, agreements and documents, whether heretofore now or hereafter existing, executed in connection with the Indebtedness as any or all of the foregoing may be amended or modified.

Material Adverse Effect. The words “Material Adverse Effect” mean (a) a material adverse change in, or a material adverse effect upon, the assets, affairs, business, properties, prospects, condition (financial or otherwise) or results of the operations of the Borrower taken as a whole, (b) a material impairment of the ability of Borrower, Guarantor or Grantor, as applicable, to pay or perform any of its obligations under this Mortgage, the Loan Agreement or any other Loan Document, or (c) a material adverse change in (i) the condition, value or operation of any substantial portion of the Collateral, (ii) the legality, validity, binding effect or enforceability against Borrower, Guarantor or Grantor of this Mortgage, the Loan Agreement or any other Loan Document, (iii) the perfection or priority of any Security Interest granted to Lender under this Agreement, this Mortgage, the Loan Agreement or any other Loan Document, or (iv) the rights or remedies of Lender under this Mortgage, the Loan Agreement or any other Loan Document.

Maximum Amount Secured. The words “Maximum Amount Secured” mean the amount of Forty Million and 00/100 Dollars (\$40,000,000.00).

Mortgage. The word “Mortgage” means this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing between Grantor and Lender, and includes without limitation all Security Interest provisions relating to the Personal Property and Rents; it restates and substitutes for the Prior Mortgage.

Permitted Exceptions. The words “Permitted Exception” mean those encumbrances and title exceptions specifically approved from time to time by Lender including without limitation in Exhibit B hereof.

Person. The word “Person” means any individual, sole proprietorship, corporation, partnership, limited partnership, limited liability partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, cooperative, institution, government (whether foreign, federal, state, provincial, county, city, municipal or otherwise including without limitation any instrumentality, division, agency, body, department or political subdivision thereof) or other party or entity of any kind.

Personal Property. The words “Personal Property” mean all Rents, equipment, fixtures, and other articles of tangible and intangible personal property now or hereafter owned by Borrower or Grantor, now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and all permits, licenses, contract rights, certificates of occupancy and together with all proceeds from any sale or other disposition of the Property, including without limitation all insurance proceeds, refunds of premiums and proceeds of any condemnation award or purchase in lieu of condemnation.

UNOFFICIAL COPY

Promissory Note. The words "Promissory Note" mean the Promissory Note of even date herewith as referenced in Recital B as described in the Loan Agreement. Where context requires as a result of the cross-collateralization of the Existing Loans with the Loan, the word(s) may also mean the Notes evidencing the Existing Loans and described in the Prior Mortgage, which are also secured hereby.

Property. The word "Property" means collectively the Real Property (including Improvements), Personal Property, Rents and all other rights, title and interests arising from the Real Property or Personal Property.

Real Property. The words "Real Property" have the meaning set forth in Section 2.1 as legally described in Exhibit A attached hereto and incorporated herein by reference.

Rents. The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future Leases, including all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such Leases, of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such Leases and to receive and collect payments and proceeds thereunder.

Security Interest. The words "Security Interest" mean and include any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge or title retention contract, lease or consignment intended as a security device, or any other security or lien, interest, claim or encumbrance whatsoever, whether created by Law, contract, or otherwise.

Swap Obligation. The words "Swap Obligation" mean any Hedging Obligation that constitutes a "swap" within the meaning set for in Section 1a(47) of the Commodity Exchange Act, as amended from time to time.

UCC. The word "UCC" means the Uniform Commercial Code of the State of Illinois, as in effect from time to time. Provided, however, in the event that, by reason of mandatory provisions of Law, any or all of the attachment, perfection or priority of Lender's security interest in any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of Illinois, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

SECTION 2: GRANT OF MORTGAGE

2.1 Grant of Mortgage. For valuable consideration, Grantor mortgages, warrants, and conveys to Lender all of Grantor's right, title, and interest in and to the real property commonly known as 6155 West 115th Street, Alsip, IL 60803 and legally described on the attached Exhibit A.

UNOFFICIAL COPY

together with all Improvements; all rights of the ways, streets, avenues, sidewalks, and alleys adjoining the real property; all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, ditch rights (including stock in utilities with ditch or irrigation rights) and other rights, liberties and privileges of the real property or in any way now or hereafter appertaining thereto, including any claim at law or in equity, as well as any after acquired title, franchise or license and the reversions and remainders thereof; all rents, issues, deposits and profits accruing and to accrue from the real property and the avails thereof; all tenants' security deposits, tax and insurance deposits, utility deposits and insurance premium rebates to which Grantor may be holding; and all Personal Property whether or not the same be attached to such Improvements, it being intended and agreed that all such property owned by Grantor and placed by it on the real property or used in connection with the operation or maintenance thereof shall, so far as permitted by Law, be deemed for the purposes of this Mortgage to be part of the real estate and covered by this Mortgage (collectively, the "**Real Property**"). The Real Property tax identification number is shown on the attached Exhibit A.

2.2 SCOPE. THIS MORTGAGE, THE ASSIGNMENT OF LEASES AND RENTS AND THE SECURITY INTEREST IN THE PERSONAL PROPERTY AND RENTS, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS ON THE PROMISSORY NOTE AND LOAN; (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF BORROWER OR GRANTOR UNDER THE LOAN AGREEMENT, THIS MORTGAGE AND UNDER THE OTHER LOAN DOCUMENTS AND (3) PAYMENT OF THE INDEBTEDNESS ON THE EXISTING LOANS PROVIDED BY LENDER TO THE ENTITY GUARANTORS WHO ARE AFFILIATES OF BORROWER, AND ALL OTHER LOANS, TO BORROWER OR AN ENTITY GUARANTOR, WHETHER IN EXISTENCE OR ENTERED INTO AFTER THE DATE HEREOF WHICH ARE CROSS-COLLATERALIZED WITH THE LOAN. ANY EVENT OF DEFAULT UNDER THE LOAN AGREEMENT OR ANY OTHER LOAN DOCUMENT REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE TERMS SET FORTH HEREIN.

THE AMOUNT SECURED BY THIS MORTGAGE SHALL NOT EXCEED THE MAXIMUM AMOUNT SECURED.

SECTION 3: GRANTOR'S AGREEMENTS

3.1 Performance. Grantor shall strictly perform all of Grantor's obligations under this Mortgage.

3.2 Possession, Use and Maintenance of the Property. Grantor agrees that the following provisions shall govern Grantor's possession, use and maintenance of the Property:

(a) Possession and Use. Until the occurrence of an Event of Default, Grantor may: (i) remain in possession and control of the Property; and (ii) use, operate or manage the Property.

UNOFFICIAL COPY

(b) **Duty to Maintain.** Grantor shall maintain, and cause its lessees to maintain, the Property in good and tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value or appropriate under sound management practices.

(c) **Hazardous Substances.** Comply, and cause the Grantor to comply with all Environmental Laws applicable to Borrower, Grantor or the Real Property in all substantial and material respects, except where any such non-compliance with any Environmental Laws will have a Material Adverse Effect in which case Grantor's compliance must be full and complete. Without in any way limiting the foregoing, Grantor agrees that all hazardous waste and hazardous substances that may be used by any Person for any purpose upon the Real Property, shall be used or stored thereon only in a safe, approved manner, in accordance with commercially reasonable standards and all applicable Environmental Laws for such storage, that the Real Property will not be used for the principal purpose of storing such hazardous waste and substances, and that no such storage or use will otherwise be allowed on the Real Property which causes, or which will increase the likelihood of causing, the release or threatened release of any hazardous waste or hazardous substances onto the Real Property. The disposal of any hazardous waste or substances will be done in compliance with all applicable Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Real Property to make such inspections, tests and audits at Grantor's expense, as Lender may deem appropriate to determine compliance of the Real Property with this section of the Mortgage all in form, manner and type as Lender may then require. Grantor shall fully cooperate and make the Real Property available to Lender at such times as Lender may reasonably request in order to conduct such inspections, tests and audits. Any inspection, test or audit made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other Person. Grantor hereby (i) releases and waives any present and future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such Laws, and (ii) agrees to indemnify and hold Lender harmless against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender 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 Grantor's ownership or interest in the Real Property, whether or not the same was or should have been known to Grantor. 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 the Mortgage and shall not be affected by Lender's acquisition of any interest in the Real Property, whether by foreclosure or otherwise. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," used herein, shall have the same meanings as set forth in any applicable Environmental Law. The provisions of this section are in addition to and not in limitation of those provisions contained in the Environmental Indemnity Agreement in favor of Lender of even date herewith.

(d) **Compliance with Laws; Permits and Authorizations.** In addition to Grantor's obligation to comply with all Environmental Laws as set forth in Subsection (c) above, Grantor shall promptly comply with all federal, state and local Laws, regulations and orders applicable to Grantor or the Property, in all material respects, except where any such non-compliance may have a Material Adverse Effect. Grantor's compliance must be full and complete. Grantor shall obtain and maintain any and all licenses, permits, franchises, governmental authorizations, patents, trademarks, copyrights or other rights necessary for the ownership of its properties and

UNOFFICIAL COPY

the advantageous conduct of its business and as may be required from time to time by applicable Law. Grantor agrees that if Lender determines that a particular federal, state or local qualification or registration is necessary or advisable to effectuate the intent of this Mortgage or any other Loan Document, Grantor shall promptly obtain such qualification or registration.

(e) **Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance or commit, permit, or suffer any stripping of or waste on or to the Property or any portion thereof. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

(f) **Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without the prior written consent of Lender. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with improvements of at least equal value, quality, condition and functionality free from any Security Interests.

(g) **Lender's Right to Enter.** In addition to Lender's right to inspect the Property for its compliance with Environmental Laws, Lender and its agents and representatives may enter upon the Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the other terms and conditions of this Mortgage. Grantor shall also make available and furnish to Lender Grantor's books and records and such financial information concerning the Property as reasonably requested by Lender.

(h) **Duty to Protect.** Grantor agrees to neither abandon nor leave the Property unattended. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are necessary to protect and preserve the Property.

(i) **Defense of Title.** Grantor agrees to forever defend the title to the Property against the claims of all Persons. In the event any action or proceeding is commenced that questions Grantor's title to the Property or the interest of Lender under this Mortgage, Grantor shall defend such action or proceeding at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the action or proceeding and to be represented by counsel of Lender's own choice (at Grantor's expense), and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

3.3 Liens, Taxes and Charges. Grantor agrees to comply with the following provisions regarding liens, taxes and charges:

(a) **Liens and Payment.** Grantor shall not create, suffer or permit to be created, suffered or filed against the Property any mortgage, lien, claim or encumbrance, except for the lien of taxes and assessments not due, and except as otherwise provided in the following Subsection (b). Grantor shall pay when due and owing (and in all events prior to delinquency) all indebtedness, obligations, assessments, taxes or charges ("**Charges**") imposed upon, levied against or on account of the Property before any additional amount required to be paid, penalty or interest accrues thereon.

UNOFFICIAL COPY

(b) Right to Contest. Grantor will not be required to pay and discharge any such Charges so long as: (i) the legality of the same shall be promptly contested in good faith by appropriate proceedings and the Grantor promptly notifies Lender of such Charge; (ii) Grantor shall have deposited with Lender cash, a sufficient corporate surety bond or other security satisfactory in form and substance to Lender in an amount adequate to provide for the release of such Charge, plus any interest, costs, reasonable attorneys' fees or other amounts that could accrue as a result of foreclosure or sale of the Property as a result of such unpaid Charge; (iii) such contest operates to suspend collection of the Charge; and (iv) none of the Collateral is subject to forfeiture or loss (or the loss of priority of any Security Interest in such Collateral) by reason of the institution or prosecution of such contest as determined by Lender. Grantor, upon demand of Lender, will furnish to Lender evidence of payment of such Charges, and will authorize the appropriate obligor or governmental official to deliver to Lender at any time a written statement of any such Charges.

(c) Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted against the Property on account of such work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances reasonably satisfactory to Lender that Grantor can and will pay the cost of such work, services, or materials.

3.4 Insurance; Property Damage Insurance and Condemnation. Grantor agrees to comply with the provisions of the Loan Agreement relating to the maintenance of insurance on or with respect to the Property and the use of any such insurance or condemnation (or purchase in lieu of condemnation) proceeds. Grantor shall procure for, deliver to and maintain for the benefit of Lender during the term of this Mortgage, all such insurance as required by Lender including, but not limited to, casualty insurance against loss or damage by fire, lightning and other hazards and casualties as are now included in so-called "extended coverage" policies in amounts not less than the full insurable replacement value of all Improvements and equipment from time to time on the Property, and comprehensive public liability insurance in an amount satisfactory to Lender. All insurance policies shall be in form and amounts with companies satisfactory to Lender. All insurance policies shall (i) include, when available, non-contributing Lender endorsements in favor of and with loss payable to Lender; (ii) name Lender as additional insured with respect to liability insurance; (iii) include standard waiver of subrogation endorsements; (iv) provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Lender; and (v) provide that no claims shall be paid thereunder without thirty (30) days' advance written notice to Lender. Grantor will deliver all insurance policies premium prepaid, or certified photocopies thereof, to Lender and, will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Grantor concurrent in form or contributing in the event of loss with the insurance policies. If Grantor fails to provide such insurance, Evidence of Insurance or if any policy is canceled, reduced, or not renewed, Lender may, but shall not be obligated, to obtain such insurance, and the cost thereof shall be additional Indebtedness of Grantor to Lender secured hereby and bearing interest at the Default Rate. Grantor will promptly upon demand pay directly to or reimburse Lender for all premiums and other costs incurred in procuring such insurance. In the event of foreclosure of this Mortgage or other transfer of title to the Property in extinguishment in whole or in part of the Indebtedness, all right, title and interest of

UNOFFICIAL COPY

Grantor in and to such policies then in force concerning the Property, and all proceeds payable thereunder, shall thereupon vest in the purchaser at such foreclosure or judicial sale or in Lender in the event of such transfer. This insurance may, but need not, protect Grantor's interests in the Property. The coverage purchased by Lender may not pay any claim that Grantor makes or any claim that is made against Grantor in connection with the Property. Grantor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Grantor has obtained insurance, as required by this Mortgage and the Loan Agreement. If Lender purchases insurance for the Property, Grantor will be responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the placement of such insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the Lender-purchased insurance may be added to the Indebtedness. The costs of the Lender-purchased insurance may be more than the cost of insurance which Grantor may be able to obtain on its own.

Grantor hereby assigns to Lender all proceeds from any insurance policies pertaining to the Property, and Lender is hereby authorized and empowered, at its option but subject to any applicable limitations set forth in the Loan Agreement, to make or file proofs of loss or damage and to adjust or compromise any loss, and to collect and receive the proceeds from any such policies; provided, however, if no Event of Default or Unmatured Event of Default shall have occurred and be continuing at the time of the adjustment, Grantor (without the consent or approval of Lender) may adjust insurance losses of One Hundred Fifty Thousand and 00/100 U.S. Dollars (\$150,000.00) or less; provided further, however, Lender shall not be held responsible for any failure to collect any insurance proceeds regardless of the cause of failure.

3.5 Payment of Tax and Insurance.

(a) Grantor shall pay before any penalty attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Property or any part thereof and which, if unpaid, might by law become a lien or charge upon the Property or any part thereof. Such amounts, together with all annual premiums for insurance policies required to be maintained under this Mortgage or in the Loan Agreement are collectively referred to herein as the "**Impositions.**"

(b) If any state, federal, municipal or other governmental Law, order, rule or regulation, which becomes effective subsequent to the date hereof, in any manner changes or modifies existing Laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes, so as to impose on Lender a tax by reason of its ownership of any or all of the Loan Documents or measured by the principal amount of the Promissory Note, requires or has the practical effect of requiring Lender to pay any portion of the real estate taxes levied in respect of the Property to pay any tax levied in whole or in part in substitution for real estate taxes or otherwise affects materially and adversely the rights of Lender in respect of the Promissory Note or this Mortgage, Borrower's Indebtedness to Lender and its obligations and all interest accrued thereon shall, upon thirty (30) days' notice, become due and payable forthwith at the option of Lender, whether or not there shall have occurred an Event of Default.

UNOFFICIAL COPY

3.6 Representations and Warranties. Grantor makes the following representations, warranties and agreements regarding title to the Property and compliance with applicable Laws:

(a) **Title.** Grantor represents and warrants that: (i) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens, security interests and encumbrances other than those set forth in Exhibit B attached hereto and incorporated herein by reference and (ii) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender. The Grantor warrants that it has sole and exclusive title to and possession of the Property, excepting only the Permitted Exceptions. The lien of this Mortgage, subject only to Permitted Exceptions, is and will continue to be a valid lien upon all of the Property.

(b) **Organization; Authority.** Grantor: (i) is a duly organized and validly existing limited liability company and in good standing under the Laws of the State of Illinois; and (ii) is qualified to do business in every jurisdiction in which the nature of its business or properties make such qualification necessary and the failure to so qualify would have a Material Adverse Effect on the business or financial affairs of Grantor.

(c) **Permits and Approval.** All permits, certificates, approvals and licenses required for or in connection with the ownership, use, occupancy or enjoyment of the Property have been duly and validly issued and are and shall at all times hereafter be in full force and effect, or, prior to commencement of any construction for which such permits, certificates, approvals or licenses are required, will be in full force and effect. All streets and highways necessary for access to and full use, occupancy and operation of the Property have been completed and are open and available to the Property without further condition or cost to Grantor.

(d) **Environmental Condition of Property.** Other than waste generated, handled, stored, or transported from Grantor's or Borrower's properties and/or disposed of in the ordinary course of Grantor's, Borrower's or a tenant's business in accordance and compliance with applicable Environmental Laws: (i) there has not been any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or hazardous substance by any Person on or under the Property; (ii) any actual or threatened litigation or claims of any kind by any Person relating to such matters; and (iii) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Property except in compliance with all applicable Environmental Laws. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for hazardous waste and hazardous substances.

(e) **Compliance With Laws.** In addition to Grantor's representations and warranties concerning the environmental condition of the Property in Subsection 3.6(d), Grantor represents and warrants that the Property and Grantor's use of the Property complies with all existing applicable federal, state and local Laws, and such rules, regulations and ordinances adopted pursuant to any of the foregoing, except as otherwise set forth on Schedule 3.6(e) attached hereto and made a part hereof.

3.7 Lender's Rights as to Rents. Lender is hereby given and granted the following

UNOFFICIAL COPY

rights, powers and authority and Grantor shall comply with the following:

- (a) **No Transfer of Rents.** Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents.
- (b) **Lender May Collect Rents.** Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all Leases of the Property and all Rents from the Property. Lender shall have the right at any time, and even though no Event of Default shall have occurred under this Mortgage, to collect and receive the Rents, including amounts past due and unpaid and Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Unless and until Lender exercises its right to collect the Rents, Grantor may collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of such Rents as cash collateral in a bankruptcy proceeding.
- (c) **Notice to Tenants.** Lender may send notices to any and all tenants of the Property advising them of this Mortgage and directing all Rents to be paid directly to Lender or as Lender directs. Payments by tenants or any other Person liable therefore to Lender shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed.
- (d) **Property Manager.** To the extent that Grantor has employed a manager or agent to manage the Property or collect the Rents, Grantor shall immediately inform such manager or agent of this Mortgage and such manager or agent shall turn to the rights of Lender hereunder.
- (e) **Lease the Property.** After obtaining possession of the Property, Lender may rent or lease the whole or any part of the Property to any Person for such term or terms and on such conditions as Lender may deem appropriate.
- (f) **Future Leases.** Grantor agrees to assign and transfer to Lender all future Leases upon all or any part of the Property and to execute and deliver, at the request of Lender, all such further assurances and assignments in the Property, as Lender shall from time to time require.
- (g) **Employ Agents.** Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.
- (h) **Other Acts.** After obtaining possession of the Property, Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.
- (i) **Application of Rents.** Except as set forth in Section 7.2(c), Lender shall determine the order of application of any and all Rents received by it; however (subject to Section 7.2(c)), any Rents received by Lender that are not applied to costs and expenses as set forth in this Section 3.7, shall be applied to the Indebtedness, notwithstanding the fact that such portion of the Indebtedness

UNOFFICIAL COPY

may not be due and payable or that such portion of the Indebtedness is otherwise adequately secured.

3.8 Expenditures by Lender. If Grantor fails to comply with any provision of this Mortgage, or if any action or proceeding is commenced that would materially adversely affect Lender's interests in the Property, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate. Any amount that Lender expends in so doing will be payable on demand together with interest at the Default Rate from the date paid by Lender to the date of repayment by Grantor and secured by this Mortgage. The rights provided for in this section shall be in addition to any other rights or any remedies to which Lender may be entitled on account of an Event of Default. Any such action by Lender shall not be construed as curing any Event of Default and shall not bar Lender from any remedy that it otherwise would have had but for such payment.

3.9 Changes in Tax Laws. If, by the Laws of the United States of America, or of any state or municipality having jurisdiction over Lender, Borrower, Grantor or the Real Property, any tax is imposed or becomes due in respect of the issuance of the Promissory Note or the recording of this Mortgage, Borrower and Grantor, jointly and severally, agree to pay such tax in the manner required by such Law. In the event that any Law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Real Property for the purpose of taxation any lien thereon, or imposing upon Lender the payment of the whole or any part of the taxes required to be paid by the Borrower or Grantor changing in any way the Laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Lender in the Real Property, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness, then Borrower and Grantor upon demand by Lender shall pay such taxes or reimburse Lender therefor, unless Lender determines, in Lender's exclusive judgment, that such payment or reimbursement is unlawful; in which event Lender may elect to declare the Indebtedness due within thirty (30) days after giving notice thereof to Borrower and Grantor, excepting only such tax which may be levied against the income of Lender as a complete or partial substitute for taxes required to be paid pursuant hereto.

SECTION 4: SECURITY AGREEMENT

4.1 Security Agreement. This Mortgage is a Security Agreement pursuant to which Grantor grants Lender a Security Interest to any of the Property constituting fixtures, Rents and other Personal Property, and Lender shall have all of the rights of a secured party under the UCC with respect thereto.

4.2 Security Interest. Grantor authorizes Lender to file any financing statements (including any financing statements filed by Lender prior to the date of this Mortgage) and take whatever other action is requested by Lender to perfect and continue Lender's Security Interest in the Property constituting fixtures, Rents and other Personal Property. In addition and not by way of limitation of the foregoing, Grantor hereby irrevocably authorizes Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and/or amendments or continuations thereto that (i) indicate the Collateral as "all assets" of Grantor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of the jurisdiction wherein such financing statement or amendment is filed.

UNOFFICIAL COPY

or as being of an equal or lesser scope or within greater detail; and (ii) contain any other information required by Section 5 of Article 9 of the UCC of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing such Security Interest. Upon an Event of Default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Lender and make it available to Lender within five (5) Business Days after notice from Lender.

4.3 Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the Security Interest granted by this Mortgage may be obtained (each as required by the UCC), are set forth on Schedule 8.1(o) of this Mortgage.

4.4 Remedies. If any Event of Default shall occur, Lender, in addition to any other rights and remedies which it might have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC including, without limiting the generality of the foregoing, the right to take possession of the Collateral of any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. If any Event of Default then exists, Lender shall have the right, without breaching the peace, to enter upon the premises of Grantor where the Collateral is located (or is believed to be located) without any obligation to pay rent to Grantor or any landlord which is an Affiliate of the Borrower, or any other place or places under the control of Grantor where the Collateral is believed to be located and kept, and remove the Collateral therefrom to the premises of Lender or any agent of Lender, for such time as Lender may desire, in order to effectively collect or liquidate the Collateral, and/or Lender may require Grantor to assemble the Collateral and make it available to Lender at a place or places to be designated by Lender. If an Event of Default then exists, Lender shall have the right to obtain access to Grantor's data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Lender deems appropriate which is related to the preservation or disposition of the Collateral or to the collection of the Indebtedness or Obligations.

Any notice required to be given by Lender of a sale, lease or other disposition or other intended action by Lender with respect to any of the Collateral which is deposited in the United States mail, postage prepaid and duly addressed to Grantor at the address specified herein, at least ten (10) days prior to such proposed action, shall constitute fair and reasonable notice to Grantor of any such action. The net proceeds realized by Lender upon any such sale or other disposition, after deduction for the reasonable expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Lender in connection therewith, shall be applied as provided herein toward satisfaction of the Indebtedness and the Obligations. Lender shall account to Grantor for any surplus realized upon any such sale or other disposition, and Grantor shall remain liable for any deficiency. The commencement of any action, legal or equitable, or the rendering of any judgment or decree for any deficiency shall not affect Lender's Lien on the Collateral until the Indebtedness and Obligations are fully paid. Grantor agrees that

UNOFFICIAL COPY

Lender has no obligation to preserve rights to the Collateral against any other parties. To the extent Grantor has the power, without violating the terms of any agreement existing as of the Loan Closing Date, to grant such a license, Lender is hereby granted a license or other right to use, without charge, any of Grantor's (or any Affiliate of Grantor's) labels, patents, production certificates, type certificates, supplemental certificates, copyrights, rights of use of any name, trade secrets, trade names, trade styles, trademarks, service marks and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale and selling any Collateral.

In addition to all such rights and remedies, the sale, lease or other disposition of the Collateral, or any part thereof, by Lender after an Event of Default may be for cash, credit or any combination thereof, and Lender may purchase all or any part of the Collateral at public or, if permitted by Law, private sale, and in lieu of actual payment of such purchase price, may set-off the amount of such purchase price against the Indebtedness and Obligations then owing. Any sale of the Collateral may be adjourned from time to time with or without notice. Lender may, in its sole discretion, cause any Collateral to remain on Grantor's Property, at Grantor's expense, pending sale or other disposition of such Collateral. Lender shall have the right to conduct such sales on Grantor's Property, at Grantor's expense, or elsewhere on such occasion or occasions as Lender may see fit.

Grantor shall pay to Lender on demand all Charges and any and all reasonable expenses, including legal expenses, attorneys' fees, and out of pocket costs, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral.

(e) **Characterization as Personalty.** The grant of a security interest to Lender in this Mortgage shall not be construed to derogate from or impair the lien or provisions of or the rights of Lender hereunder with respect to any property described herein which is real property or which the parties have agreed to treat as real property. The stated intention of Grantor and Lender is that everything used in connection with the production of income from the Real Property or adapted for use thereon is, and at all times and for all purposes and in all proceedings, both legal and equitable, at Lender's election, regarded as real property, irrespective of whether or not the same is physically attached to the Real Property and Improvements.

SECTION 5: FURTHER ASSURANCES; ATTORNEY-IN-FACT

5.1 Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, control agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor under this Mortgage and any other Loan Documents to which it is a party, and (b) the Security Interests created by this Mortgage as first and prior liens and Security Interests on the Property, whether

UNOFFICIAL COPY

now owned or hereafter acquired by Grantor. Unless prohibited by Law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this section.

5.2 Attorney-in-Fact. If Grantor fails to do any of the things referred to in Section 5.1, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's opinion, to accomplish the matters referred to in Section 5.1.

SECTION 6: DUE ON SALE; FULL PERFORMANCE

6.1 Due on Sale; Consent by Lender. Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property, or any, right, title or interest therein. A "sale or transfer" means the conveyance of the Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of a Real Property interest including without limitation those described in the Loan Agreement as Asset Dispositions. If any Grantor (other than the Trust) is a corporation, partnership or limited liability company, transfer also includes any Change of Control as defined in the Loan Agreement. Without limiting the generality of the foregoing, any sale, conveyance, assignment, hypothecation or transfer prohibited in the Loan Agreement shall be deemed a sale, conveyance, assignment, hypothecation or other transfer prohibited by the foregoing sentence. However, Lender shall not exercise this option if such exercise is prohibited by federal Law or the then current Law of the State of Illinois.

6.2 Full Performance. Lender shall execute and deliver to Grantor a suitable release of this Mortgage and suitable statements of termination for any financing statement on file evidencing Lender's Security Interest in the Rents and the Personal Property upon presentation of satisfactory evidence that all Indebtedness secured by this Mortgage has been fully paid.

SECTION 7: EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default. It shall be an "Event of Default" hereunder in the event of (a) an Event of Default as such term is defined in the Loan Agreement, (b) any Default or Event of Default in the Other Loans or (c)(i) Grantor's failure to pay any amount due and payable under this Mortgage, (ii) any representation or warranty made by Grantor at any time proves to be incorrect in any material respect when made, or (iii) Grantor should default in the performance or observance of any other term, covenant, condition or agreement to be performed by Grantor under this Mortgage and such default is not remedied within five (5) days after written notice shall have been given by Lender to Grantor.

7.2 Rights and Remedies. Upon the occurrence of any Event of Default and at any time thereafter, Lender, at its option and without affecting the lien hereby created or the priority of

UNOFFICIAL COPY

said lien or any other rights of Lender hereunder, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by Law or equity:

(a) **Accelerate Indebtedness.** Lender shall have the right without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment fee which Borrower would be required to pay.

(b) **UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the UCC.

(c) **Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and, as provided in Section 3.7(b), to collect the Rents, and to apply the net proceeds, over and above Lender's costs, to payment of the Indebtedness. In furtherance of this right, Lender may require any tenant, licensee or other user of the Property to make payments of rent, license fees or use fees directly to Lender. Payments by tenants, licensees or other users of the Property 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 subsection either in person, by agent, or through a receiver.

(d) **Mortgagee in Possession or Receiver.** Lender shall have the right to be placed as mortgagee in possession or to have a receiver appointed without the requirement of the posting of any bond, 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 Indebtedness. 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 Indebtedness by a substantial amount or the Persons liable for payment of the Indebtedness are solvent or insolvent. Employment by Lender shall not disqualify a person from serving as a receiver.

(e) **Sale of Property and Judicial Foreclosure.** Lender shall be permitted to: (i) immediately judicially foreclose the lien of this Mortgage; or (ii) if allowed under Illinois Law at the time of such Event of Default, immediately sell the Property or any part of the Property either in whole or in separate parcels, as prescribed by Illinois Law, under power of sale, which power is hereby granted to Lender to the full extent permitted by Illinois Law, and thereupon, to make and execute to any purchaser(s) thereof deeds of conveyance pursuant thereto.

(f) **Deficiency Judgment.** If permitted by applicable Law, Lender may obtain a judgment for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Mortgage.

(g) **Rent.** During the continuance of any Event of Default and if Lender or any judicially appointed receiver has a right to exclude Grantor from all or part of the Property, Grantor agrees to pay the fair and reasonable rental value for the use and occupancy of the Property, or any portion thereof which are in its possession and being occupied for such period and, upon default of any such payment, will vacate and surrender possession of the Property to

UNOFFICIAL COPY

Lender or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of premises for non-payment of rent, however, designated.

(h) Other Rights and Remedies. Lender shall have all other rights and remedies provided in this Mortgage, any other Loan Document or available at Law or in equity.

7.3 Sale of the Property. Lender shall be under no obligation to marshal any assets in favor of Borrower, or any other Person, or against or in payment of any or all of the Indebtedness. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

7.4 Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property subject to Lender's Security Interest or of the time after which any private sale or other intended disposition of such Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of any public sale or the time after which disposition may be made by a private sale.

7.5 Election of Remedies. Lender's election to pursue rights or remedy under this Agreement shall be cumulative and non-exclusive of any other rights and remedies that Lender may have under this Mortgage or any other Loan Document, by operation of Law or otherwise.

SECTION 8: MISCELLANEOUS PROVISIONS

8.1 MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

(a) Interpretation. In addition to those rules of interpretation contained in the Loan Agreement, the following apply: (i) Where the context so requires, words used in the singular shall include the plural, and vice versa, and in particular the words "Borrower," "Guarantor" and "Grantor" shall be construed to include any one or more of them or all of them and words of one gender shall include all genders; (ii) Section, Schedule and Exhibit references are to this Mortgage unless otherwise specified; the words "hereof" and "hereunder" and words of similar import when used in this Agreement shall refer to this Mortgage as a whole and not to any particular provision of this Mortgage; (iii) the term "including" is not limiting, and means "including, without limitation"; (iv) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including;" and (v) the words "to Grantor's knowledge," "known to Grantor," or "knowledge of Grantor," or words of such import shall mean all knowledge (actual or constructive) of an individual Grantor or the officers, directors, general partners, managers or managing members of a Grantor who is not an individual, after reasonable and diligent inquiry.

(b) Joint and Several Obligations. Each Grantor hereunder shall be fully bound by the terms of this Mortgage and any other Loan Document to which it is a party, the obligations

UNOFFICIAL COPY

hereunder and thereunder being joint and several. Lender shall have the right to proceed immediately against Grantor or any other grantor to enforce its rights hereunder or thereunder and Lender is not required to take any action or proceeding of any kind against any other Person or any Property of Borrower, grantor or other Person before proceeding against Grantor.

(c) **Missing Information.** If this Mortgage contains any blanks when executed by Grantor, Lender is hereby authorized, without notice to Grantor, to complete any such blanks according to the terms upon which this Mortgage is executed by Grantor and is accepted by Lender.

(d) **Entire Agreement; Amendments.** This Mortgage, together with the other Loan Documents, constitutes the complete understanding and agreement of the parties as to the matters set forth in this Mortgage and supersedes all prior written or oral understandings, discussions and agreements with respect thereto and there are no promises, undertakings, representations or warranties by Lender relative to the subject matter thereof not expressly set forth or referred to herein or in the other Loan Documents. No amendment, modification, termination or waiver of any provision of this Mortgage shall be effective unless evidenced in writing and signed by the party or parties sought to be charged or bound by the amendment, modification, termination or waiver.

(e) **Reliance by Lender; Survival.** All representations, warranties and covenants made by Grantor in this Mortgage or in any certificate or other instrument delivered by Grantor to Lender under this Mortgage or any other Loan Document shall be considered to have been relied upon by Lender, regardless of any investigation made by Lender or on Lender's behalf, and shall survive the making of any Loans to Borrower, the satisfaction of any payment of the Indebtedness and release of this Mortgage.

(f) **Loan Agreement.** The Loan Agreement is hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length. The terms, provisions, covenants and conditions of this Mortgage shall be construed in such a manner as to be consistent with the terms of the Loan Agreement and any other instruments executed in connection with or as security for the Indebtedness and obligations secured hereby; provided, however, in the event of a conflict between the terms of this Mortgage and the terms of the Loan Agreement, the terms of the Loan Agreement shall control.

(g) **Further Financing.** In determining whether or not to make the Loan secured hereby, Lender evaluated the background and experience of Grantor in owning and operating property such as the Property, found it acceptable and relied and continues to rely on the same as the means of maintaining the value of the Property which is Lender's security for repayment of the Indebtedness. Grantor and Borrower are well-experienced in borrowing money and owning and operating property such as the Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan, and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Grantor recognizes and agrees that Lender is entitled to keep its loan portfolio at current interest rates either by making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than Grantor. Grantor further recognizes that any secondary junior financing placed upon the Property (i) may divert funds which would otherwise be used to pay the Indebtedness secured hereby; (ii) could result in acceleration and

UNOFFICIAL COPY

foreclosure by such junior encumbrance which would force Lender to take measures and incur expenses to protect its security; (iii) would detract from the value of the Property should Lender come into possession thereof with the intention of selling the same; (iv) would result in the existence of a potentially adverse party in any bankruptcy or liquidation proceeding; and (v) would impair Lender's right to accept a deed-in-lieu of foreclosure. In accordance with the foregoing and for the purposes of (a) protecting Lender's security, both of repayment and of value of the Property as security for the Loan; (b) giving Lender the full benefit of its bargain and contract with Grantor and (c) keeping the Property and the beneficial interest free of subordinate financing liens, Grantor agrees that, even if this Section is deemed a restraint on alienation, it is a reasonable one. Nothing herein shall imply that Lender is ever, under any circumstances, under any obligation or duty to consent to any transaction which would otherwise be prohibited hereunder and that Lender may withhold its consent in its sole and complete discretion.

(h) Lease Modifications. Grantor shall not materially modify or otherwise materially amend the terms and conditions of any Lease without the prior written consent of Lender to such modification. Grantor shall promptly notify Lender in writing in the event that, at any time during the term of this Mortgage and following the completion of construction: (i) the vacancy rate with respect to all leased spaces within the Property exceeds twenty percent (20%); (ii) any forcible detainer proceeding is commenced by or on behalf of Grantor against any tenant; (iii) any tenant is more than three (3) months in arrears in the payment of rent or (iv) Grantor receives any notice of any pending bankruptcy or similar action involving any tenant of the Property or if any Lease is deemed an asset or a liability of any debtor in any pending bankruptcy action. Grantor will provide complete and accurate copies of each and every Lease affecting the Property (i) whenever a new Lease or modification of an existing Lease is entered into and (ii) upon request of Lender.

(i) Rent Roll. No less often than quarterly, and from time to time upon the request of Lender, Grantor shall provide to Lender a full, accurate and complete Rent Roll of the Property with such detail and information and upon such forms as Lender may, from time to time require certified as complete and accurate by the Manager or other Duly Authorized Officer of Grantor.

(j) Governing Law. This Mortgage and all acts, agreements, certificates, assignments, transfers and transactions hereunder, and all rights of the parties hereto, shall be governed as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal Laws and decisions of the State of Illinois, including Laws regulating interest, loan charges, loan fees and brokerage commissions without regard to conflicts of Law principles. Grantor and Lender agree that the transaction evidenced by this Mortgage bears a reasonable relationship to the State of Illinois.

(k) Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be invalid, illegal or unenforceable as to any Person or circumstance, such finding shall not render that provision invalid, illegal or unenforceable as to any other Person or circumstance. If feasible, any such offending provision shall be deemed to be modified to be within the limits of validity, legality and enforceability; provided, however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Mortgage in all other respects shall remain valid and enforceable.

UNOFFICIAL COPY

(l) **Advice of Counsel; Joint Interpretation.** Grantor acknowledges that it has been advised by its competent counsel with respect to this transaction and this Mortgage, including all waivers, consents, indemnification obligations and releases contained herein. The parties hereto have participated jointly in the negotiation and drafting of this Mortgage and in the event an ambiguity or question of intent or interpretation arises, this Mortgage shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Mortgage or any schedules or exhibits attached hereto or any amendment hereof.

(m) **Caption Headings.** The sections, titles and caption headings in this Mortgage are for convenience purposes only, without substantive meaning, and are not to be used to interpret or define the provisions of this Mortgage.

(n) **Time is of the Essence.** Time is of the essence in the performance and observance of each covenant, agreement, provision and term of this Mortgage and in making payments of all amounts due to Lender hereunder.

(o) **Notices.** Any notice, demand, request, consent, approval, declaration or other communication ("**Notice**") shall or may be given, served or delivered upon any party by another party, or whenever any party desires to give, serve or deliver upon another party any Notice, each such Notice shall be in writing and shall be delivered in person (by personal delivery, delivery service or reputable overnight courier service), or facsimile transmission and confirmed immediately in writing by a copy mailed by United States mail, postage prepaid, addressed as hereafter set forth, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed to those Persons at those addresses set forth on Schedule 8.1(o), or at such other address as may be substituted by Notice given as herein provided. The giving of any Notice required hereunder may be waived in writing by the party entitled to receive such Notice. Every Notice shall be deemed to have been duly given, served or delivered on the date on which (i) personally delivered (whether in person, by delivery service, or by reputable overnight courier service), (ii) the date of the facsimile transmission (provided the confirmation mailing was sent as provided herein), or (iii) on the date of receipt (other than as provided in (i) above) if sent by United States mail; provided, however, that if any Notice is tendered to an addressee and delivery thereof is refused by such addressee, such Notice shall be effective upon such tender unless expressly set forth in such Notice. Failure or delay in delivering copies of any Notice to Persons designated to receive copies, if any, shall in no way adversely affect the effectiveness of such Notice.

(p) **Successors and Assigns.** All covenants, conditions and agreements contained herein by or on behalf of Grantor shall bind Grantor's heirs, executors, administrators, successors and assigns (including each and every record owner from time to time of the Real Property or any Person having an interest therein), and shall inure to the benefit of Lender and its successors and assigns (including each and every record owner from time to time of the Real Property or any other Person having an interest therein). Wherever Lender is referred to herein such reference shall be deemed to include the holder from time to time of any Promissory Note; and each holder of such Promissory Note shall have all the rights afforded hereby, and may enforce the provisions hereof, as fully as if Lender had designated such holder of the Promissory Note herein by name. If ownership of the Property becomes vested in a Person other than Grantor, Lender, without notice to Grantor,

UNOFFICIAL COPY

may deal with Grantor's heirs, executors, administrators, successors and assigns with reference to this Mortgage and the Indebtedness by way of forbearance, extension or any other modification without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

(q) **Waivers and Consents.** Lender's failure to require strict compliance and performance of any provision of this Mortgage shall not suspend, waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith. Any suspension or waiver by Lender of any right under this Mortgage shall not suspend, waive, affect or diminish such right under this Mortgage, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character. None of the obligations, undertakings, agreements, warranties, covenants and representations of Grantor, or rights of Lender contained in this Mortgage, shall be deemed to have been suspended or waived by Lender unless such suspension or waiver is in writing signed by Lender, and directed to Grantor specifying such suspension or waiver. No prior suspension or waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a suspension or waiver of any of Lender's rights or of any obligations of Grantor as to any future transactions. Grantor agrees that foregoing waivers are intended to benefit the Lender and shall not limit or otherwise affect Grantor's liability hereunder or the enforceability of this Mortgage.

(r) **Lender's Discretion.** Whenever this Mortgage requires either Lender's consent, election, approval, waiver or similar action or otherwise vests in Lender the authority to make decisions or determinations, such actions, decisions or determinations shall be made or withheld in Lender's sole and absolute discretion, unless specifically provided otherwise by a more restrictive standard and the granting of any consent, election, approval, waiver or similar action by Lender, or any decision or determination made by Lender, in any instance shall not constitute Lender's continuing consent, election, approval, waiver or similar action, or Lender's decision or determination, in subsequent instances where such action, decision, or determination is required.

(s) **Protective Advances.** All advances, disbursements, and expenditures made or incurred by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the Act, including, without limitation, those provisions of the Act hereinbelow referred to:

(i) all advances by Lender in accordance with the terms of this Mortgage to (i) preserve, maintain, repair, restore or rebuild the Improvements upon the Property; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in subsection (b)(5) of Section 15-1302 of the Act;

(ii) payments by Lender of: (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) real estate taxes and assessments, general and special and all other taxes and Impositions of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval,

UNOFFICIAL COPY

any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act:

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) attorneys' fees and other costs or expenses incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Mortgage or arising from the interest of Lender hereunder, or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Property;

(v) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the Act;

(vi) expenses deductible from proceeds of sale as referred to in Sections 15-1512(a) and (b) of the Act;

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (i) any premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation (regarding maintenance of any existing insurance in effect at the time a receiver or Lender takes possession of the Property) as imposed by Section 15-1704(c)(1) of the Act; (ii) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (iii) payments deemed by Lender to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement and common ownership association declarations or agreements, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (iv) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (v) payments required to be paid by Grantor or Lender pursuant to any Lease or other agreement for occupancy of the Property; and (vi) if this Mortgage is insured, payments of FHA or private mortgage insurance required to keep such insurance in force.

All Protective Advances shall be so much additional Indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after Default. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b) (5) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in.

UNOFFICIAL COPY

(i) any determination of the amount of Indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem, pursuant to Sections 15-1603(d)(2) and 1603(e) of the Act;

(iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(v) application of income in the hands of any receiver or Lender in possession; and

(vi) computation of any deficiency judgment pursuant to Sections 15-1508(b)(2), 15-1508(e) and 15-1511 of the Act.

(t) **Agency.** Nothing in this Mortgage shall be construed to constitute the creation of a partnership or joint venture between Lender and Grantor or any other Person. Lender is not considered a partner or joint venturer by reason of its becoming a mortgagee in possession or pursuing any rights pursuant to this Mortgage or any other Loan Document. Lender is not an agent or representative of Grantor. This Mortgage does not create a contractual relationship with, shall not be construed to benefit or bind Lender in any way with or create any contractual duties by Lender to, any contractor, subcontractor, materialman, laborer, or any other Person other than Grantor.

(u) **Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

(v) **Subrogation.** If any part of the Indebtedness is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Property or any part thereof, then Lender shall be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

(w) **Option to Subordinate.** At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all Leases of all or any part of the Real Property upon the execution by Lender and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Real Property is situated, of a unilateral declaration to that effect.

UNOFFICIAL COPY

(x) **Effect of Extensions and Amendments.** If the payment of the Indebtedness, or any part thereof, is extended or varied, or if any part of the security or guarantees therefor is released, all Persons now or at any time hereafter liable therefor, or interested in the Property, 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 and effect; the right of recourse against all such Persons being expressly reserved by Lender; notwithstanding any such extension, variation or release. Any Person taking a junior mortgage, or other lien upon the Real Property or any part thereof or any interest therein, shall take said mortgage or other lien subject to the rights of Lender to amend, modify, extend or release the Promissory Note, this Mortgage or any other Loan Document. In each case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

(y) **Deed In Trust.** If title to the Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Property shall be construed as a similar prohibition or restriction against the creation of any lien on, or Security interest in, the beneficial interest or power of direction of such trust.

(z) **Covenants Run with Land.** All of the covenants of this Mortgage shall run with the land constituting the Real Property and be binding on any successor owners thereof.

(aa) **Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption Law of the State of Illinois as to all Indebtedness secured by this Mortgage.

(bb) **Waiver of Redemption, Reinstatement, Notice, Marshaling, etc. PURSUANT TO SECTION 15-1601(B) OF THE ACT, GRANTOR ACKNOWLEDGES THAT THE PROPERTY DOES NOT CONSTITUTE EITHER: (I) "AGRICULTURAL REAL ESTATE" AS SUCH TERM IS DEFINED IN SECTION 15-1201 OF THE ACT; OR (II) "RESIDENTIAL REAL ESTATE" AS SUCH TERM IS DEFINED IN SECTION 15-1219 OF THE ACT. GRANTOR HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS OF REINSTATEMENT AND REDEMPTION, IF ANY, UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING AN INTEREST IN THE PROPERTY, IT BEING THE INTENT HEREOF THAT ANY AND ALL SUCH RIGHTS OF REINSTATEMENT AND REDEMPTION OF GRANTOR AND OF ALL OTHER PERSONS ARE AND SHALL BE DEEMED TO BE HEREBY WAIVED TO THE FULL EXTENT PERMITTED BY THE PROVISIONS OF ILLINOIS COMPILED STATUTES 735 ILCS 5/15-1601 OR OTHER APPLICABLE LAW OR REPLACEMENT STATUTES. GRANTOR FURTHER AGREES, TO THE EXTENT PERMITTED BY LAW, THAT IF A DEFAULT OCCURS HEREUNDER, NEITHER GRANTOR NOR ANYONE CLAIMING THROUGH OR UNDER IT SHALL OR WILL SET UP, CLAIM OR SEEK TO TAKE ADVANTAGE OF ANY HOMESTEAD EXEMPTION, APPRAISEMENT, VALUATION, STAY, EXTENSION, MORATORIUM OR OTHER LAWS NOW OR HEREAFTER IN FORCE IN ORDER TO PREVENT OR HINDER ENFORCEMENT OR FORECLOSURE OF THIS MORTGAGE, OR ABSOLUTE SALE OF THE PROPERTY, OR THE FINAL AND ABSOLUTE PUTTING INTO POSSESSION THEREOF, IMMEDIATELY AFTER**

UNOFFICIAL COPY

SUCH SALE, OF THE PURCHASERS THEREAT, AND GRANTOR, FOR ITSELF AND ALL WHO MAY AT ANY TIME CLAIM THROUGH OR UNDER IT, HEREBY WAIVES AND RELEASES TO THE FULL EXTENT THAT IT MAY LAWFULLY SO DO THE BENEFIT OF SUCH LAWS AND ANY AND ALL RIGHTS TO HAVE THE ASSETS COMPRISED IN THE SECURITY INTENDED TO BE CREATED HEREBY MARSHALED UPON ANY FORECLOSURE OF THE LIEN HEREOF.

(cc) FORUM SELECTION AND CONSENT TO JURISDICTION. GRANTOR HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION, SUIT OR PROCEEDING ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS MORTGAGE SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN ANY STATE OR FEDERAL COURT IN THE COUNTY WHERE THE REAL PROPERTY IS SITUATED OR CHICAGO, ILLINOIS; PROVIDED THAT NOTHING IN THIS MORTGAGE SHALL BE DEEMED TO OR OPERATE TO PRECLUDE LENDER FROM TAKING LEGAL ACTION, FILING SUIT OR COMMENCING A PROCEEDING IN ANY OTHER JURISDICTION. GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT IN THE COUNTY WHERE THE REAL PROPERTY IS SITUATED OR CHICAGO, ILLINOIS FOR THE PURPOSE OF ANY SUCH LEGAL ACTION, SUIT OR PROCEEDING AS SET FORTH ABOVE. GRANTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ILLINOIS. GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LEGAL ACTION, SUIT OR PROCEEDING IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LEGAL ACTION, SUIT OR PROCEEDING HAS BEEN BROUGHT IN ANY INCONVENIENT FORUM.

(dd) WAIVER OF JURY TRIAL. GRANTOR AND LENDER EACH IRREVOCABLY AND KNOWINGLY WAIVE (TO THE FULLEST EXTENT PERMITTED BY LAW) ANY RIGHT TO A TRIAL BY JURY IN ANY LEGAL ACTION, SUIT OR PROCEEDING (INCLUDING, WITHOUT LIMITATION, ANY COUNTERCLAIM) BROUGHT TO ENFORCE OR DEFEND ANY RIGHTS OR RESOLVE ANY DISPUTES (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) AMONG THEM, ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO (i) THIS MORTGAGE, OR ANY OTHER LOAN DOCUMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT THAT MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT OR TRANSACTIONS RELATED HERETO OR THERETO, OR (ii) ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR OTHER LOAN DOCUMENT, AND AGREE THAT ANY SUCH LEGAL ACTION, SUIT OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GRANTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY INDEMNIFIED PERSON UNDER THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT ON ANY THEORY OF

UNOFFICIAL COPY

LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

(ff) **Usury.** It is expressly stipulated and agreed to be the intent of Grantor and Lender to at all times comply with applicable Law now or hereafter governing the interest payable on the Indebtedness and obligations secured hereby. If the applicable Law is ever revised, repealed, or judicially interpreted so as to render usurious any amount called for under the Promissory Note or the Loan Agreement (or under any other instrument evidencing or relating to any of the Indebtedness), or contracted for, charged, taken, reserved or received with respect to the Loan secured hereby, or if Lender's acceleration of the Indebtedness or any prepayment by Grantor results in Grantor having paid any interest in excess of that permitted by Law, then it is Grantor's and Lender's express intent that all excess amounts theretofore collected by Lender be credited on the principal balance of the Indebtedness (or, if the Indebtedness has been paid in full, refunded to Grantor), and the provisions of the Promissory Note, the Loan Agreement and this Mortgage and other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the then applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder.

[SIGNATURE PAGES FOLLOW]

UNOFFICIAL COPY

[SIGNATURE PAGE OF GRANTOR]

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

IN WITNESS WHEREOF, Trustee has caused this Second Restatement of Mortgage and Security Agreement with Assignment of Rents to be signed and attested and its corporate seal to be hereunder affixed by its duly authorized Officers as of September 29, 2015, pursuant to proper authority granted.

STANDARD BANK AND TRUST COMPANY, not personally but as trustee under trust agreement dated August 8, 2001 and known as Trust Number 17031

This instrument is signed, sealed and delivered by STANDARD BANK AND TRUST COMPANY, solely in its capacity as Trustee as aforesaid. Any and all duties, obligations and liabilities of the Trustee hereunder are to be performed by said STANDARD BANK AND TRUST COMPANY only as such Trustee. Any claims, demands and liabilities which may at any time be asserted against the Trustee hereunder shall be paid, collected or satisfied against only this property or assets in the possession of said STANDARD BANK AND TRUST COMPANY as Trustee as aforesaid, and the said STANDARD BANK AND TRUST COMPANY does not undertake, nor shall it have any personal or individual liability or obligation of any nature whatsoever by virtue of the execution and deliver hereof, nor shall STANDARD BANK AND TRUST COMPANY, either individually or as Trustee, be under any duty or obligation to sequester the rents, issues and profits arising from the property described or any other property which it may hold under the terms and conditions of said Trust Agreement.

By: *Heather Raineri*
Name: Heather Raineri
Title: ATO

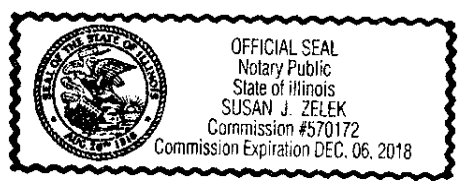
By: *Jay D. Faler*
Name: Jay D. Faler
Title: AVP & TO

This instrument is signed, sealed and delivered by STANDARD BANK AND TRUST COMPANY, solely in its capacity as Trustee as aforesaid. Any and all duties, obligations and liabilities of the Trustee hereunder are to be performed by said STANDARD BANK AND TRUST COMPANY only as such Trustee. Any claims, demands and liabilities which may at any time be asserted against the Trustee hereunder shall be paid, collected or satisfied against only the property or assets in the possession of said STANDARD BANK AND TRUST COMPANY as Trustee as aforesaid, and the said STANDARD BANK AND TRUST COMPANY does not undertake, nor shall it have any personal or individual liability or obligation of any nature whatsoever by virtue of the execution and delivery hereof, nor shall STANDARD BANK AND TRUST COMPANY, either individually or as Trustees, be under any duty or obligation to sequester the rents, issues and profits arising from the property described or any other property which it may hold under the terms and conditions of said Trust Agreement.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a notary public in and for said County and State, DOES HEREBY CERTIFY that Heather Raineri and Jay D. Faler personally known to me to be Officers of Standard Bank and Trust Company and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Officers of said Corporation, they signed and delivered the said instrument and caused the corporate seal of said Corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said Corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Corporation AS TRUSTEE, for the uses and purposes therein set forth.

Given under my hand and official seal as of September 29, 2015.



Susan J. Zelek
NOTARY PUBLIC

My Commission Expires: _____

UNOFFICIAL COPY

[SIGNATURE PAGE OF GRANTOR -BORROWER]

IN WITNESS WHEREOF, AJC DISTRIBUTION, LLC has caused this Second Restatement of Mortgage and Security Agreement with Assignment of Rents to be signed by its duly authorized Manager and all Members as of September 29, 2015, pursuant to proper authority granted.

MORTGAGOR:

AJC DISTRIBUTION, LLC, an Illinois limited liability company

By: _____
Name: William M. Codo
Title: Member and Sole Manager

By: _____
Name: Robert S. Codo
Title: Member

By: _____
Name: David M. Feiers
Title: Member

By: _____
Name: Christopher C. Codo
Title: Member

Property of Cook County Clerk's Office

UNOFFICIAL COPY

[SIGNATURE PAGE OF GRANTOR -BORROWER]

IN WITNESS WHEREOF, AJC DISTRIBUTION, LLC has caused this Second Restatement of Mortgage and Security Agreement with Assignment of Rents to be signed by its duly authorized Manager and all Members as of September 29, 2015, pursuant to proper authority granted.

MORTGAGOR:

AJC DISTRIBUTION, LLC, an Illinois limited liability company

By: William M Codo Manager
Name: William M. Codo
Title: Member and Sole Manager

By: Robert S Codo MEMBER
Name: Robert S. Codo
Title: Member

By: David M. Peters MEMBER
Name: David M. Peters
Title: Member

By: Christopher C. Codo MEMBER
Name: Christopher C. Codo
Title: Member

Property of Cook County Clerk's Office

UNOFFICIAL COPY

[SIGNATURE PAGE OF GRANTOR]

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

IN WITNESS WHEREOF, Trustee has caused this Second Restatement of Mortgage and Security Agreement with Assignment of Rents to be signed and attested and its corporate seal to be hereunder affixed by its duly authorized Officers as of September 29, 2015, pursuant to proper authority granted.

STANDARD BANK AND TRUST COMPANY, not personally but as trustee under trust agreement dated August 8, 2001 and known as Trust Number 7031

This instrument is signed, sealed and delivered by STANDARD BANK AND TRUST COMPANY, solely in its capacity as Trustee as aforesaid. Any and all duties, obligations and liabilities of the Trustee hereunder are to be performed by said STANDARD BANK AND TRUST COMPANY only as such Trustee. Any claims, demands and liabilities which may at any time be asserted against the Trustee hereunder shall be paid, collected or satisfied against only this property or assets in the possession of said STANDARD BANK AND TRUST COMPANY as Trustee as aforesaid and the said STANDARD BANK AND TRUST COMPANY does not undertake, nor shall it have any personal or individual liability or obligation of any nature whatsoever by virtue of the execution and delivery hereof, nor shall STANDARD BANK AND TRUST COMPANY, either individually or as Trustee, be under any duty or obligation to sequester the rents, issues and profits arising from the property described or any other property which it may hold under the terms and conditions of said Trust Agreement.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a notary public in and for said County and State, DOES HEREBY CERTIFY that _____ and _____, personally known to me to be Officers of Standard Bank and Trust Company and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Officers of said Corporation, they signed and delivered the said instrument and caused the corporate seal of said Corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said Corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Corporation AS TRUSTEE, for the uses and purposes therein set forth.

Given under my hand and official seal as of September __, 2015.

NOTARY PUBLIC

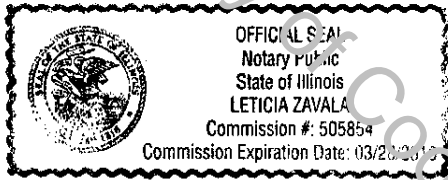
My Commission Expires: _____

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the Undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT WILLIAM M. CODO, personally known to me to be the same person whose name is subscribed to the foregoing instrument and personally known to me to be a Member and the Sole Manager of AJC DISTRIBUTION, LLC, an Illinois limited liability company ("Company"), appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of September, 2015.



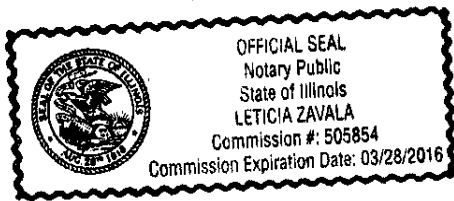
Leticia Zavala
NOTARY PUBLIC

My Commission Expires: 03/28/2016

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the Undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT ROBERT S. CODO, personally known to me to be the same person whose name is subscribed to the foregoing instrument and personally known to me to be a Member of AJC DISTRIBUTION, LLC, an Illinois limited liability company ("Company"), appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of September, 2015.



Leticia Zavala
NOTARY PUBLIC

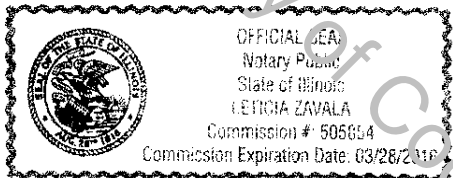
My Commission Expires: 03/28/2016

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the Undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT DAVID M. PETERS, personally known to me to be the same person whose name is subscribed to the foregoing instrument and personally known to me to be a Member of AJC DISTRIBUTION, L.L.C, an Illinois limited liability company ("Company"), appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of September, 2015



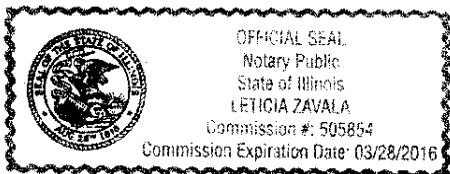
Leticia Zavala
NOTARY PUBLIC

My Commission Expires: 03/28/2016

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the Undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT CHRISTOPHER C. CODO, personally known to me to be the same person whose name is subscribed to the foregoing instrument and personally known to me to be a Member of AJC DISTRIBUTION, L.L.C, an Illinois limited liability company ("Company"), appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of September, 2015.



Leticia Zavala
NOTARY PUBLIC

My Commission Expires: 03/28/2016

UNOFFICIAL COPY

EXHIBIT A

Legal Description

Property: 6155 West 115th Street, Alsip, Illinois 60803 County: Cook

LEGAL DESCRIPTION: PARCEL: LOT 1 (EXCEPT THE NORTH 17.00 FEET THEREOF) IN KEEBLER SUBDIVISION, BEING A SUBDIVISION OF THE NORTH 678.33 FEET OF THE WEST 539.97 FEET OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SUBDIVISION OF KEEBLER SUBDIVISION RECORDED AUGUST 17, 1977 AS DOCUMENT 24062706, IN COOK COUNTY, ILLINOIS.

PARCEL 2: THE EAST 25.00 FEET OF THE SOUTH 628.33 FEET OF THE NORTH 678.33 FEET OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number(s): 24-20-300-024, 24-20-301-009

UNOFFICIAL COPY

EXHIBIT B **PERMITTED EXCEPTIONS**

1. Real Estate Taxes not due and payable.
2. This Mortgage and other mortgages in favor of Lender, including without limitation any senior mortgage(s) in favor of Lender.
3. Assignments of Rents and Leases in favor of Lender.
4. Leases of space in the Property entered into by Borrower in accordance with the terms of the Loan Agreement or otherwise approved by Lender.
5. Zoning ordinances (the terms of which are and will be complied with).
6. Public Utility Easements (the terms of which are and will be kept free of encroachments)
7. Other exceptions to title accepted by Lender on a Pro Forma approved by Lender.

Property of Cook County Clerk's Office


UNOFFICIAL COPY

Schedule 3.6(c)

Non-Compliance With Laws

None.

Property of Cook County Clerk's Office



UNOFFICIAL COPY

Schedule 8.1(o)

Names and Addresses for Providing Notices

Notices in writing to the Grantor shall be directed as follows.

In case:

With a copy to:

Goldstine, Skrodzki, Russian, Nemeec and Hoff, Ltd.

Kenneth J. Nemeec, Jr.
835 McClintock Drive, Second Floor
Burr Ridge, Illinois 60527-0860
Telephone: 630-655-6000
Facsimile: 630-655-9808
Email: kjn@gsmh.com

Notices in writing to Lender shall be directed as follows:

Standard Bank and Trust Company
Attn: Brian R. Burke
Senior Vice President
7800 W. 95th Street
Hickory Hills, IL 60457
Tel: (708) 499-2062
Fax: (708) 598-7459
Email: brian.burke@StandardBanks.com

With a copy to:

Chuhak & Teeson, P.C.
Attention: Valerie J. Freireich
30 S. Wacker, Suite 2600
Chicago, IL 60606
Tel: (312) 855-4332
Fax: (312) 444-9027

Property of Cook County Clerk's Office