

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1617410010 Fee: \$82.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/22/2016 09:32 AM Pg: 1 of 23

CT CT/16009291WF  
NSC Doc 1.84

Report Mortgage Fraud  
800-532-8785

Bm

The property identified as: PIN: 02-15-201-012-0000

Address:

Street: 120-168 W. Northwest Highway

Street line 2:

City: Palatine

State: IL

ZIP Code: 60067

Lender: Evergreen Bank Group

Borrower: Eurofresh Plaza L.L.C.

Loan / Mortgage Amount: \$2,750,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 7770 et seq. because the application was taken by an exempt entity.

S ✓  
P 23  
S ✓  
SC ✓  
INT ✓

Certificate number: AF032D7A-F59F-4F5A-AA14-8C9671CD286E

Execution date: 6/6/2016

**UNOFFICIAL COPY****RECORDATION REQUESTED BY:**

Evergreen Bank Group  
 Oak Brook Office  
 1515 West 22nd Street, Suite  
 100W  
 Oak Brook, IL 60523

**WHEN RECORDED MAIL TO:**

Evergreen Bank Group  
 Oak Brook Office  
 1515 West 22nd Street, Suite  
 100W  
 Oak Brook, IL 60523

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**FOR RECORDER'S USE ONLY**
**This Mortgage prepared by:**

Michael Obremski, Paralegal  
 Evergreen Bank Group  
 1515 West 22nd Street, Suite 100W  
 Oak Brook, IL 60523

**MORTGAGE**

**MAXIMUM LIEN.** At no time shall the principal amount of indebtedness secured by the Mortgage, not including sums advanced to protect the security of the Mortgage, exceed \$5,500,000.00.

**THIS MORTGAGE** dated June 9, 2016, is made and executed between Eurocash Plaza L.L.C., an Illinois limited liability company, with an address at 1 Pacer Trail, South Barrington, IL 60010-6165 (referred to below as "Grantor") and Evergreen Bank Group, whose address is 1515 West 22nd Street, Suite 100W, Oak Brook, IL 60523 (referred to below as "Lender").

**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 following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Cook County, State of Illinois:

**PARCEL 1:**

THAT PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF THE NORTHWEST HIGHWAY AND THE WEST LINE OF SAID NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15; THENCE SOUTHEASTERLY ALONG SAID CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 167.31 FEET; THENCE NORTHEASTERLY PERPENDICULAR AND AT RIGHT ANGLES TO THE CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING OF TRACT HEREIN DESCRIBED; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE CENTERLINE OF SAID

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NORTHWEST HIGHWAY, A DISTANCE OF 373.00 FEET; THENCE NORTHERLY ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15, A DISTANCE OF 530.00 FEET; THENCE NORTHWESTERLY ALONG A LINE PARALLEL WITH THE SAID CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 504.99 FEET; THENCE SOUTHERLY ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15, A DISTANCE OF 380.00 FEET; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 182.00 FEET; THENCE SOUTHWESTERLY, A DISTANCE OF 141.42 FEET TO THE POINT OF BEGINNING;

(EXCEPT FROM SAID TRACT THAT PART DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF TRACT AFORESAID, A DISTANCE OF 55.5 FEET SOUTH OF THE NORTHWEST CORNER THEREOF; THENCE SOUTH ALONG THE WEST LINE OF SAID TRACT, A DISTANCE OF 214.49 FEET; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID TRACT, A DISTANCE OF 246.90 FEET; THENCE NORTHEASTERLY ALONG A LINE HAVING AN INTERIOR ANGLE OF 95 DEGREES, 06 MINUTES, 30 SECONDS WITH THE LAST DESCRIBED LINE, A DISTANCE OF 204.99 FEET; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID TRACT, A DISTANCE OF 1.10 FEET; THENCE NORTHEASTERLY ALONG A LINE, WHICH IS PERPENDICULAR TO THE NORTH LINE OF TRACT AFORESAID, A DISTANCE OF 16.55 FEET TO A LINE 33.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID TRACT; THENCE NORTHWESTERLY ALONG SAID PARALLEL LINE, A DISTANCE OF 265.26 FEET; THENCE WESTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING); ALSO,

EXCEPT FROM SAID TRACT THAT PART DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF TRACT AFORESAID, A DISTANCE OF 305.00 FEET SOUTH OF THE NORTHWEST CORNER THEREOF; THENCE SOUTH ON SAID WEST LINE OF TRACT, A DISTANCE OF 75.00 FEET; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 182.00 FEET; THENCE NORTHEASTERLY ALONG A LINE AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 70.71 FEET; THENCE NORTHWESTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING), IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

A PARCEL OF LAND LYING WITHIN THE FOLLOWING DESCRIBED TRACT:

THAT PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF THE NORTHWEST HIGHWAY AND THE WEST LINE OF SAID NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15; THENCE SOUTHEASTERLY ALONG SAID CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 167.31 FEET; THENCE NORTHEASTERLY PERPENDICULAR AND AT RIGHT ANGLES TO THE CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE CENTERLINE OF SAID NORTHWEST HIGHWAY, A DISTANCE OF 373.00 FEET; THENCE NORTHERLY ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15, A DISTANCE OF 530.00 FEET; THENCE NORTHWESTERLY ALONG A LINE PARALLEL WITH THE SAID CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 504.99 FEET; THENCE SOUTHERLY ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15, A DISTANCE OF 380.00 FEET; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 182.00 FEET; THENCE SOUTHWESTERLY, A DISTANCE OF 141.42 FEET TO THE POINT OF BEGINNING, SAID PARCEL BEING DESCRIBED AS: BEGINNING AT A POINT IN THE WEST LINE OF TRACT AFORESAID, A DISTANCE OF 55.5 FEET SOUTH OF THE NORTHWEST CORNER THEREOF; THENCE SOUTH ALONG THE WEST LINE OF SAID TRACT, A DISTANCE OF 214.49 FEET; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE NORTH

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LINE OF SAID TRACT, A DISTANCE OF 246.90 FEET; THENCE NORTHEASTERLY ALONG A LINE HAVING AN INTERIOR ANGLE OF 90 DEGREES, 06 MINUTES, 30 SECONDS WITH THE LAST DESCRIBED LINE, A DISTANCE OF 204.99 FEET; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID TRACT, A DISTANCE OF 1.10 FEET; THENCE NORTHEASTERLY ALONG A LINE, WHICH IS PERPENDICULAR TO THE NORTH LINE OF TRACT AFORESAID, A DISTANCE OF 16.55 FEET TO A LINE 33.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID TRACT; THENCE NORTHWESTERLY ALONG SAID PARALLEL LINE, A DISTANCE OF 265.26 FEET; THENCE WESTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

A PARCEL OF LAND LYING WITHIN THE FOLLOWING DESCRIBED TRACT: THAT PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF THE NORTHWEST HIGHWAY AND THE WEST LINE OF SAID NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15; THENCE SOUTHEASTERLY ALONG SAID CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 167.31 FEET; THENCE NORTHEASTERLY PERPENDICULAR AND AT RIGHT ANGLES TO THE CENTERLINE OF THE NORTHWEST HIGHWAY, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE CENTERLINE OF SAID NORTHWEST HIGHWAY, A DISTANCE OF 373.00 FEET; THENCE NORTHERLY ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15, A DISTANCE OF 530.00 FEET; THENCE NORTHWESTERLY ALONG A LINE PARALLEL WITH THE SAID CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 504.99 FEET; THENCE SOUTHERLY ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15, A DISTANCE OF 380.00 FEET; THENCE SOUTHEASTERLY ALONG A LINE PARALLEL WITH THE CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 182.00 FEET; THENCE SOUTHWESTERLY, A DISTANCE OF 141.42 FEET TO THE POINT OF BEGINNING, SAID PARCEL BEING DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE WEST LINE OF TRACT AFORESAID, A DISTANCE OF 305.00 FEET SOUTH OF THE NORTHWEST CORNER THEREOF; THENCE SOUTH ON SAID WEST LINE OF SAID TRACT, A DISTANCE OF 75.00 FEET TO THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTHEASTERLY ON THE SOUTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 182.00 FEET TO AN INSERT CORNER OF SAID TRACT; THENCE NORTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 70.71 FEET; THENCE NORTHWESTERLY ALONG A STRAIGHT LINE TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**PARCEL 4:**

NON-EXCLUSIVE EASEMENTS FOR THE INGRESS AND EGRESS AND FOR THE PASSAGE AND PARKING OF MOTOR VEHICLES AND PEDESTRIANS OVER AND ACROSS ALL PARKING AREAS, DRIVEWAYS, SERVICE AREAS, ENTRANCES AND EXITS WHICH ARE NOW OR MAY ULTIMATELY BE CONSTRUCTED ON PARCELS 1 AND 2, AS CONTAINED IN INDENTURE MADE BY AND BETWEEN O'HARE INTERNATIONAL BANK, AS TRUSTEE UNDER TRUST NUMBER 69-L-141 AND LUCKY STORES, INC., A CALIFORNIA CORPORATION DATED NOVEMBER 22, 1971 AND RECORDED DECEMBER 27, 1971 AS DOCUMENT 21759216 AND IN CORRECTIVE GRANT OF EASEMENTS MADE BY AND BETWEEN THE ABOVE PARTIES DATED MARCH 13, 1973 AND RECORDED JUNE 1, 1973 AS DOCUMENT 22345213, IN COOK COUNTY, ILLINOIS.

**PARCEL 5:**

EASEMENT FOR INGRESS AND EGRESS OVER A PORTION OF THE DIOR PARCEL, AS DESCRIBED IN THE EASEMENT AGREEMENT RECORDED AS DOCUMENT 97879665.

**PARCEL 6:**

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF NORTHWEST HIGHWAY AND THE WEST LINE OF SAID NORTHEAST 1/4 OF NORTHEAST 1/4 OF SECTION 15; THENCE SOUTHEASTERLY

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ALONG SAID CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 167.31 FEET; THENCE NORTHEASTERLY PERPENDICULAR AND AT RIGHT ANGLES TO THE CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTHEASTERLY ALONG A LINE PERPENDICULAR TO THE CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 141.42 FEET; THENCE NORTHWESTERLY ALONG A LINE PARALLEL TO THE CENTERLINE OF NORTHWEST HIGHWAY, A DISTANCE OF 181.77 FEET TO A POINT IN A LINE 50.00 FEET EAST OF AND PARALLEL WITH THE SAID WEST LINE OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 THENCE SOUTH ON SAID LINE, A DISTANCE OF 149.95 FEET TO A POINT IN A LINE 50.00 FEET NORTHEASTERLY OF, BY RIGHT ANGLE MEASURE, OF SAID CENTERLINE OF NORTHWEST HIGHWAY; THENCE SOUTHEASTERLY ON SAID LINE, A DISTANCE OF 131.9 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

The Real Property or its address is commonly known as 120-168 West Northwest Highway, Palatine, IL 60067-3558. The Real Property tax identification number is 02-15-201-011-0000; 02-15-201-012-0000; 02-15-201-013-0000; and 02-15-201-014-0000.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**FUTURE ADVANCES.** In addition to the Note, this Mortgage secures all future advances made by Lender to Grantor whether or not the advances are made pursuant to a commitment. This Mortgage secures, in addition to the amounts specified in the Note, future advances in an unlimited amount, together with all interest thereon, which future advances Lender is obligated to make so long as Grantor complies with all the terms and conditions of the Note or other loan agreement.

**THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) 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 Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable

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## MORTGAGE (Continued)

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federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests 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. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender 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 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 and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. 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), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. 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.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. 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 reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, 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 an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as

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## MORTGAGE (Continued)

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the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Illinois law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**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 on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Mortgage:

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as

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## MORTGAGE (Continued)

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otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Mortgage:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, 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.



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## MORTGAGE (Continued)

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**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Mortgage:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. 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 this security interest.

**UNOFFICIAL COPY****MORTGAGE  
(Continued)**

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Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**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 Uniform Commercial Code) are as stated on the first page of this Mortgage.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

**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, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, 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 sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Grantor pays all the Indebtedness, including without limitation all future advances, when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Pents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**REINSTATEMENT OF SECURITY INTEREST.** If payment is made by Grantor, whether voluntarily or otherwise, or by guarantor or by any third party, on the Indebtedness and thereafter Lender is forced to remit the amount of that payment (A) to Grantor's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, (B) by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Lender or any of Lender's property, or (C) by reason of any settlement or compromise of any claim made by Lender with any claimant (including without limitation Grantor), the Indebtedness shall be considered unpaid for the purpose of enforcement of this Mortgage and this Mortgage shall continue to be effective or shall be reinstated, as the case may be, notwithstanding any cancellation of this Mortgage or of any note or other instrument or agreement evidencing the Indebtedness and the Property will continue to secure the amount repaid or recovered to the same extent as if that amount never had been originally received by Lender, and Grantor shall be bound by any judgment, decree, order, settlement or compromise relating to the Indebtedness or to this Mortgage.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Default on Other Payments.** Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge

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## MORTGAGE (Continued)

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of any lien.

**Environmental Default.** Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**Default in Favor of Third Parties.** Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or Grantor's ability to perform Grantor's obligations under this Mortgage or any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Grantor would be required to pay.

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## MORTGAGE (Continued)

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**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 Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then 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. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Mortgagee in Possession.** Lender shall have the right to be placed as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the 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. Employment by Lender shall not disqualify a person from serving as a receiver.

**Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

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

**Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. 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.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness

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(Continued)**

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payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**NOTICES.** Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**REAL ESTATE TAX RESERVE REQUIREMENT.** Grantor agrees to establish and maintain a real estate tax reserve account in such amount deemed to be sufficient by Lender and shall pay monthly into that reserve account an amount equivalent to 1/12th of the annual real estate taxes (plus a two [2] month cushion) as estimated by Lender, so as to provide sufficient funds for payment of each year's taxes one month prior to the date the taxes become delinquent. If the amount so estimated and paid shall prove to be insufficient to pay such taxes and other charges, Grantor shall pay the difference on demand of Lender. All such payments shall be held in an interest-free reserve account with Lender and may be commingled with the general funds of Lender. Lender shall have the right to draw upon the reserve account to pay such items, and Lender shall not be required to determine the validity or accuracy of any item before paying it. Nothing in the Note or Related Documents shall be construed as requiring Lender to advance other monies for such purposes, and Lender shall not incur any liability for anything it may do or omit to do with respect to the reserve account. All amounts in the reserve account are hereby pledged to further secure the Indebtedness, and Lender is hereby authorized to withdraw and apply such amount on the Indebtedness upon the occurrence of a default or Event of Default as described in the Note and Related Documents. Grantor acknowledges and agrees that from time to time Lender may adjust the required monthly real estate tax reserve payments to more accurately reflect the real estate taxes assessed against the real property securing the Note. The above notwithstanding, Grantor shall not be required to establish or maintain a real estate tax escrow account for the JPMorgan Chase Bank N.A. "Out Lot" (PIN 02-15-201-011-0000) (the "Out Lot") provided Grantor delivers evidence of payment of the Out Lot taxes within thirty (30) days of the required county real property tax due date to Lender.

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

**Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

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## MORTGAGE (Continued)

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**Governing Law.** This Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Illinois without regard to its conflicts of law provisions. This Mortgage has been accepted by Lender in the State of Illinois.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Cook County, State of Illinois.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

**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.

**Successors and Assigns.** Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Mortgage.

**Waive Jury.** All parties to this Mortgage hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

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

**Waiver of Right of Redemption.** NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS MORTGAGE, GRANTOR HEREBY WAIVES, TO THE EXTENT PERMITTED UNDER 735 ILCS 5/15-1601(b) OR ANY SIMILAR LAW EXISTING AFTER THE DATE OF THIS MORTGAGE, ANY AND ALL RIGHTS OF REDEMPTION ON GRANTOR'S BEHALF AND ON BEHALF OF ANY OTHER PERSONS PERMITTED TO REDEEM THE PROPERTY.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Borrower.** The word "Borrower" means Eurofresh Plaza L.L.C. and includes all co-signers and co-makers

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## MORTGAGE (Continued)

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signing the Note and all their successors and assigns.

**Default.** The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

**Grantor.** The word "Grantor" means Eurofresh Plaza L.L.C..

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision of this Mortgage, together with all interest thereon.

**Lender.** The word "Lender" means Evergreen Bank Group, its successors and assigns.

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender.

**Note.** The word "Note" means the promissory note dated June 9, 2016, in the original principal amount of \$2,750,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The interest rate on the Note is 4.250% based on a year of 360 days. Payments on the Note are to be made in accordance with the following payment schedule: in 59 regular payments of \$14,993.18 each and one irregular last payment estimated at \$2,423,329.79. Grantor's first payment is due July 9, 2016, and all subsequent payments are due on the same day of each month after that. Grantor's final payment will be due on June 9, 2021, and will be for all principal and all accrued interest not yet paid. Payments include principal and interest.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of

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## MORTGAGE (Continued)

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personal property now or hereafter owned by Grantor, and 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 together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

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

**GRANTOR:**

**EUROFRESH PLAZA L.L.C.**

By: 

**Guido Tenuta, Manager of Eurofresh Plaza L.L.C.**

Property of Cook County Clerk's Office



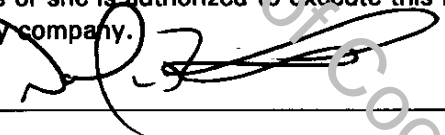
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## MORTGAGE (Continued)

### LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

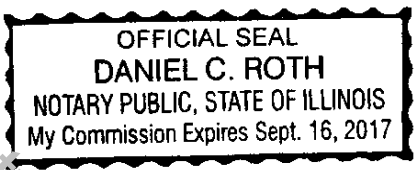
STATE OF Illinois )  
 ) SS  
 COUNTY OF Cook )

On this 9 day of June, 2016 before me, the undersigned Notary Public, personally appeared **Guido Tenuta, Manager of Eurofresh Plaza L.L.C.**, and known to me to be a member or designated agent of the limited liability company that executed the Mortgage and acknowledged the Mortgage to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Mortgage and in fact executed the Mortgage on behalf of the limited liability company.

By  Residing at Cook Co.

Notary Public in and for the State of Illinois

My commission expires 9/16/17



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## RIDER TO MORTGAGE

This RIDER TO MORTGAGE dated as of June 9, 2016 (the “**Rider**”), is executed by and between EUROFRESH PLAZA L.L.C., an Illinois limited liability company whose address is 1 Pacer Trail, South Barrington, Illinois 60010-6165 (“**Grantor**”), and EVERGREEN BANK GROUP, an Illinois banking corporation, whose address is 1515 West 22<sup>nd</sup> Street, Suite 100W, Oak Brook, Illinois 60523 (“**Lender**”).

### RECITALS:

A. Lender requires Grantor to execute and deliver that certain Mortgage of even date herewith to which this Rider is attached (the “**Mortgage**”).

B. Grantor and Lender desire amend the Mortgage pursuant to the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Grantor and the Lender hereby agree as follows:

### AGREEMENTS:

1. DEFINITIONS. Capitalized words and phrases used herein without definition shall have the respective meanings ascribed to such words and phrases in the Mortgage.

2. AMENDMENTS TO THE MORTGAGE.

2.1 Compliance with Environmental Laws. The Section on Page 4 of the Mortgage titled “Compliance with Environmental Laws” shall be amended such that Grantor’s representations and warranties shall be made to Grantor’s actual knowledge after due inquiry.

2.2 Nuisance, Waste. The first sentence of the Section on Page 4 of the Mortgage titled “Nuisance, Waste” shall be amended as follows: “Grantor shall not knowingly cause, conduct, or knowingly permit any nuisance nor commit, permit, or suffer any strapping of or waste on or to the Property or any portion of the Property.” Further, the following sentence shall be added at the end of such Section: “Lender acknowledges that, as of the date of this Mortgage, Iba Swaiss d/b/a George’s Fine Wine & Liquor and Lee’s Family Martial Arts, Inc. are in default of their leases of portions of the Property with Grantor, with arrearages of \$38,550.02 and \$21,296.00, respectively, and that any waiver by Grantor of these defaults does not constitute waste or otherwise a breach of this Section.”

2.3 Removal of Improvements. The Section on Page 5 of the Mortgage titled “Removal of Improvements” shall only apply to improvements with a fair market value in excess of \$10,000.00.

2.4 Lender’s Right to Enter. The Section on Page 5 of the Mortgage titled “Lender’s Right to Enter” shall be amended to require Lender and its agents to provide Grantor

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with no less than forty-eight (48) hours prior written notice before entering upon the Real Property.

2.5 Right to Contest. In the Section on Page 6 of the Mortgage titled "Right to Contest," Grantor shall have thirty (30) days after a lien arises or, if a lien is filed, thirty (30) days from Grantor's receipt of notice of the filing to take the actions set forth therein. However, to the extent that such actions cannot be reasonably completed within such thirty (30) day period, such period shall be extended to sixty (60) days provided that Borrower has commenced taking such actions within such thirty (30) day period.

2.6 Application of Proceeds. The Section on Page 7 of the Mortgage titled "Application of Proceeds" shall be amended as follows:

(a) The first sentence of such Section shall be amended to require Grantor to provide Lender with notice of any loss or damage to the Property in excess of \$10,000.00.

(b) The fourth sentence of such Section shall be amended to require Lender to pay the costs of restoration and repair from the proceeds, rather than reimbursing Grantor for such costs from the proceeds.

2.7 Lender's Expenditures The first sentence of the Section on Page 7 of the Mortgage titled "Lender's Expenditures" shall be amended as follows: "If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any material provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to pay under this Mortgage or any Related Documents (subject to all applicable cure periods), Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate to resolve such proceeding or cure such noncompliance."

2.8 Taxes. Within the Section on Page 8 of the Mortgage titled "Taxes," item (4) is amended to exclude taxes on income.

2.9 Security. Within the Section starting on Page 8 of the Mortgage and continuing onto Page 9 titled "Security Interest," references to a default shall be replaced with "an Event of Default." Furthermore, in the last sentence of such Section, "three (3) days" shall be replaced with "thirty (30) days."

2.10 Full Performance. The Section on Page 9 of the Mortgage titled "Full Performance" shall be amended to require Lender promptly to take the actions specified therein after Grantor's payment of all the Indebtedness and to specifically require Lender to prepare a release of this Mortgage for recordation by Borrower at Borrower's sole expense. Furthermore, the final sentence of that Section shall be deleted in its entirety.

2.11 Events of Default. Within the Section on Page 9 of the Mortgage titled "Events of Default," the events detailed therein shall only constitute an Event of Default after Lender has provided Grantor with a written notice of default setting forth Grantor's default with specificity and Grantor has failed to cure such default within thirty (30) days of Grantor's receipt

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of such notice. However, to the extent such default cannot be reasonably cured within such thirty (30) day period, such period shall be extended to sixty (60) days provided that Borrower has commenced taking curative action within such thirty (30) day period.

2.12 Environmental Defaults. The Section starting on Page 9 of the Mortgage and continuing onto Page 10 titled "Environmental Defaults" shall only apply to Grantor's failure to comply with material terms, obligations, covenants, or conditions.

2.13 Other Defaults. The Section on Page 10 of the Mortgage titled "Other Defaults" shall only apply to Grantor's failure to comply with material terms, obligations, covenants, or conditions.

2.14 Defective Collateralization. The Section on Page 10 of the Mortgage titled "Defective Collateralization" shall not apply to the extent the Mortgage or Related Documents cease to be in full force and effect due to the Lender's breach of any such agreement.

2.15 Breach of Other Agreement. The Section on Page 10 of the Mortgage titled "Breach of Other Agreement" shall only applied to material breaches by Grantor.

2.16 Adverse Change. The phrase "or Lender believes the prospect of payment or performance of the Loan is impaired" shall be deleted from the Section on Page 10 of the Mortgage titled "Adverse Change."

2.17 Insecurity. The Section on Page 10 of the Mortgage titled "Insecurity" shall be deleted in its entirety.

2.18 Collect Rents. The Section starting on Page 10 of the Mortgage and continuing onto Page 11 titled "Collect Rents" shall require Lender to provide Grantor with notice of its intent to exercise its right thereunder.

2.19 Real Estate Reserve Requirement. The Section on Page 12 of the Mortgage titled "Real Estate Tax Reserve Requirement" shall be amended as follows:

(a) In the event that Lender demands payment from Grantor in accordance with this Section, Grantor shall have thirty (30) days from the date of such written demand to make such payment.

(b) The fifth sentence of such Section shall be amended in its entirety to read as follows: "Nothing in the Note or Related Documents shall be construed as requiring Lender to advance other monies for such purposes, and Lender shall not incur any liability for anything it may do or omit to do with respect to the reserve account, except for actions taken in breach of this Mortgage or the Related Documents.

(c) The sixth sentence of such Section shall be amended in its entirety to read as follows: "All amounts in the reserve account are hereby pledged to further secure the Indebtedness, and Lender is hereby authorized to withdraw and apply such amount on the

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Indebtedness upon the occurrence of an Event of Default as described in the Note and Related Documents.”

2.20 Annual Reports. In the Section on Page 12 of the Mortgage titled “Annual Reports,” Grantor shall be required to furnish the items referenced therein to Grantor in accordance with the parties’ Business Loan Agreement of even date herewith, rather than upon Lender’s request.

2.21 Choice of Venue. The Section on Page 13 of the Mortgage titled “Choice of Venue” shall be deleted in its entirety.

2.22 Successors and Assigns. In the Section on Page 13 of the Mortgage titled “Successors and Assigns,” the following sentence is added at the end of such Section: “All covenants and agreements by or on behalf of Lender contained in this Mortgage or any Related Documents shall bind Lender’s successors and assigns and shall inure to the benefit of Grantor and its successors and assigns.”

2.23 Default. The Section on Page 13 of the Mortgage titled “Default” shall be amended in its entirety as follows:

**Default.** The word “Default” means an “Event of Default” as defined in this Mortgage.

3. CONTINUING FORCE AND EFFECT OF MORTGAGE. Except as specifically modified or amended by the terms of this Rider, all other terms and provisions of the Mortgage shall continue in full force and effect

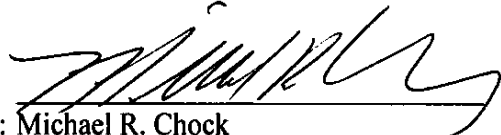
4. COUNTERPARTS. This Rider be executed in any number of counterparts, all of which shall constitute one and the same agreement.

*[Signatures appear on following page]*



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EVERGREEN BANK GROUP,  
an Illinois banking corporation

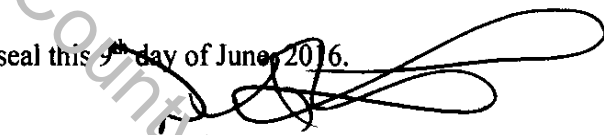
By:   
Name: Michael R. Chock  
Title: Senior Vice President

STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL R. CHOCK, the senior vice president of EVERGREEN BANK GROUP, an Illinois banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such senior vice president, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said banking corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 9<sup>th</sup> day of June, 2016.



  
\_\_\_\_\_  
Notary Public