

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

Doc#. 1710855076 Fee: \$82.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 04/18/2017 11:16 AM Pg: 1 of 18

The property identified as: **PIN: 16-02-415-022-0000**

Address:

Street: 901 N Central Park Ave

Street line 2:

City: Chicago

State: IL

ZIP Code: 60651

Lender: Finance of America Commercial LLC

Borrower: Waiyash LLC

Loan / Mortgage Amount: \$146,200.00

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.

Certificate number: 2871B9F2-BDDB-4D05-9EA6-B0C556ADEE6C

Execution date: 4/14/2017

UNOFFICIAL COPY

Prepared By and Return
 After Recording To: Blanca Roman
 Finance of America Commercial LLC
 5 Revere Dr. Ste. 130
 Northbrook, IL 60062

Loan Number: 171237-23

Address: **901 N Central Park Ave**
Chicago, IL 60651

PIN # 16-02 415-022-0000 Vol. 0540

Above Space for Recorder's Use Only

MORTGAGE ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT is made as of **April 14, 2017** by **Waiyash LLC, an Illinois Limited Liability Company** (herein called the "Mortgagor"), whose address is **3756 Monarch Cir Naperville, IL 60564**, to **Finance of America Commercial LLC** (herein, together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee"), whose address is **5 Revere Dr. Ste 130, Northbrook, IL 60062**.

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee, that certain Note (herein called the "Note") dated the date hereof, in the principal sum of **One Hundred Forty Six Thousand Two Hundred Dollars and No Cents (\$146,200.00)**, as amended from time to time, bearing interest at the rate equal to **7.99%**; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in the Note provided, are herein called the "Indebtedness Hereby Secured."

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for such payment, performance and observance) and in consideration of the premises and Ten Dollars (\$10.00) in hand paid by the Mortgagee to the Mortgagor, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby GRANT, RELEASE, REMISE, ALIEN, MORTGAGE, WARRANT and CONVEY unto the Mortgagee all and sundry rights, interests and property hereinafter described (all herein together called the "Premises"):

A. All of the real estate described in Exhibit A attached hereto and made a part hereof and all other real estate, if any, given as security for the Loan at any time in the future (herein called the "Real Estate");

B. All buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including, but not limited to, all fixtures, equipment,

UNOFFICIAL COPY

machinery, appliances, and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings or improvements (all herein generally called the "Improvements");

C. All privileges, reservations, easement, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;

D. All leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (all herein generally called "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;

E. All rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (all herein generally called "Rents"), subject to the right, power and authority given to the Mortgagor to collect and apply the Rents;

F. All right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or Improvements, or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by Mortgagor;

G. Any interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;

H. All right, title and interest of Mortgagor in and to all tangible personal property (herein called "Personal Property") owned by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or Improvements or used or useful in connection therewith (whether or not affixed thereto);

I. All the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises, and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (all herein generally called "Awards").

J. Any and all mortgages and other security, if any, given by Borrower to secure payment of the Loan, it being intended by the Borrower that all such collateral and security is cross-collateralized with the collateral for the Loan secured by this Mortgage.

TO HAVE AND TO HOLD all and sundry the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

FOR THE PURPOSE OF SECURING:

A. Payment of the indebtedness with interest thereon evidenced by the Note and any and all modifications, extensions and renewals thereof, and all other Indebtedness Hereby Secured;

UNOFFICIAL COPY

B. Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under this Mortgage or in any document evidencing or securing the loan made by Mortgagee to Mortgagor;

C. Performance by any Guarantor of its obligations under any Guaranty or other instrument given to further secure the payment of the Indebtedness Hereby Secured or the performance of any obligation secured hereby;

D. Performance by Borrower or Guarantor(s), as the case may be, under any document, certificate or other instrument executed and delivered by any such party as security for the Loan or to induce Lender to make the Loan;

provided that the aggregate of the Indebtedness Hereby Secured shall at no time exceed **One Hundred Forty Six Thousand Two Hundred Dollars and No Cents (\$146,200.00)**.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness Hereby Secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

AND IT IS FURTHER AGREED THAT:

1. Payment of Indebtedness The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Note, and all other Indebtedness Hereby Secured, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein or in the Note provided on the part of the Mortgagor to be performed and observed.

2. Maintenance, Repair, Restoration, Prior Liens, Parking The Mortgagor will: (a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed, whether or not proceeds of insurance are available or sufficient for the purpose; (b) keep the Premises in good condition and repair, without waste, and free from mechanics', material men's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit reasonably satisfactory evidence of the discharge of such lien to the Mortgagee; (d) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises; (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof; (f) cause the Premises at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations (herein called "Environmental Regulations"), so that no cleanup, claim or other obligation or responsibility arises from a violation of any such laws, statutes, or ordinances, rules and regulations; and (g) at the direction of Mortgagee, obtain and furnish to Mortgagee at Mortgagor's expense, an environmental audit or survey from an expert satisfactory to Mortgagee with respect to the Premises.

3. Taxes The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor.

UNOFFICIAL COPY

4. Insurance Coverage The Mortgagor will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including: (a) Insurance against loss to the Improvements and Personal Property caused by fire, lightning and risks covered by the so-called "Extended Coverage" endorsement together with "vandalism and malicious mischief", or by the so-called "all perils" endorsement and such other risks as the Mortgagee may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Improvements and Personal Property, plus the cost of debris removal, with full replacement cost endorsement, "agreed amount" endorsement, and "contingent liability from operations of building laws" endorsement; (b) During the making of any alterations or improvements to the Premises builder's risk insurance covering claims based on the owner's contingent liability not covered by the insurance provided insurance covering all persons engaged in making such alterations or improvements; (c) Federal Flood Insurance in the maximum obtainable amount up to the amount of the Indebtedness Hereby Secured evidenced by the Note, if the Premises is in a "flood plain area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended; and (d) Such other insurance of the types and in amounts as the Mortgagee may require.

5. Insurance Policies All policies of insurance to be maintained and provided as required shall: (a) be in forms, companies and amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee; (b) contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee; (c) be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer; (d) provide for thirty (30) days' prior written notice of cancellation to Mortgagee; (e) contain no deductible amount in excess of \$5,000; and (f) provide that any waiver of the insured's subrogation rights shall not void coverage; and Mortgagor will deliver all policies, including additional and renewal policies, to Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration

6. Proceeds of Insurance The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and:

A. In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either to settle and adjust any claim under such policies without the consent of the Mortgagor, or allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagor may itself adjust losses aggregating not in excess of Twenty-Five Thousand Dollars (\$25,000); provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand;

B. In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty") and if, in the reasonable judgment of the Mortgagee, the Premises can be restored prior to Loan maturity, to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness Hereby Secured, and the insurers do not deny liability to the insureds, then, if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoring") the Premises or any part thereof subject to Insured Casualty;

C. If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection B above, then at any time from and after the Insured Casualty, upon thirty (30) days' written notice to Mortgagor, Mortgagee

UNOFFICIAL COPY

may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;

D. No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagee; and

E. Nothing contained in this Mortgage shall create any responsibility or liability upon the Mortgagee to collect any proceeds of any policies of insurance, or Restore any portion of the Premises damaged or destroyed through any cause.

7. Condemnation The Mortgagor will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises, including damages to grade, and:

A. Mortgagor hereby assigns transfers and sets over unto Mortgagee the entire proceeds of any Award consequent upon any Taking. If, in the reasonable judgment of the Mortgagee, the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the Premises prior to such Taking and adequately securing the outstanding balance of the Indebtedness Hereby Secured then, if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, the Award shall be applied to reimburse Mortgagor for the cost of Restoring the portion of the Premises remaining after such Taking;

B. If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection B above, then at any time from and after the Taking, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;

C. No interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagee.

8. Disbursement of Insurance Proceeds and Condemnation Awards In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with reasonably satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances reasonably satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidence of costs and payments as the Mortgagee may reasonably require and approve.

9. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor shall pay such tax in the manner required by such law.

10. Prepayment Privilege. Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) at any time.

11. Effect of Extensions of Time. Mortgagor covenants and agrees that if the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the lien and all provisions hereof shall continue in full force and effect; the right of recourse against

UNOFFICIAL COPY

all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release.

12. Effect of Changes in Tax Laws. In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purpose of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefore. If Mortgagee is advised by counsel that such payment or reimbursement by Mortgagor to Mortgagee is prohibited as a matter of law, Mortgagee may require the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such Ninety (90) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable.

13. Effect of Changes in Tax Laws. In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purpose of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefore. If Mortgagee is advised by counsel that such payment or reimbursement by Mortgagor to Mortgagee is prohibited as a matter of law, Mortgagee may require the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such Ninety (90) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable.

14. Mortgagee's Performance of Mortgagor's Obligations. In case of default therein under this Mortgage, the Note or under any other document, certificate, or instrument evidencing, securing or otherwise executed and delivered to Lender as an inducement to Lender to make the Loan evidenced by the Indebtedness Hereby Secured (collectively, the "Loan Documents"), the Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof, and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein or in any other Loan Documents required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and in connection therewith:

A. The Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien, title, or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax, assessment, lien or claim;

B. Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including managements fees, of every kind and nature in connection therewith, so that the Premises, Improvements and Personal Property shall be operational and usable for their intended purpose;

C. All monies paid for any of the purposes herein authorized or authorized by any other instrument evidencing or securing the Indebtedness Hereby Secured, and all expenses paid and incurred in connection therewith, including reasonable attorney's fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete

UNOFFICIAL COPY

construction, furnishing and equipping, or to rent, operate and manage the Premises and such Improvements, or to pay any such operating costs and expenses thereof, or to keep the Premises, Improvements and Personal Property operational and usable for their intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate");

D. Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor; and

E. The Mortgagee, in making any payment hereby authorized relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof, for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, or in connection with the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate, and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

15. Inspection of Premises. The Mortgagee shall have the right to inspect the Premises at all reasonable times upon reasonable advance notice except emergency, and access thereto shall be permitted for that purpose.

16. Restrictions on Transfer. It shall be an immediate Event of Default hereunder if, without the prior written consent of the Mortgagee, any of the following shall occur, and in any event Mortgagee may condition its consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require:

A. If the Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein;

B. If the Mortgagor is a trustee (a "Trustee Mortgagor"), then if any beneficiary of the Mortgagor shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagor;

C. If the Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage security interest or other encumbrance or alienation of any such shareholder's shares in such corporation; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over the Counter" market, then this Section shall be inapplicable;

D. If the Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee Mortgagor is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer; or

E. If the Mortgagor is a limited liability company, or if any beneficiary of a trustee Mortgagor is a limited liability company, then if any member in such limited liability company

UNOFFICIAL COPY

shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the membership interest of such limited liability company; or

F. If there shall be any change in control (by way of transfers of stock ownership, partnership interests, membership interests or otherwise) in any general partner or member which directly or indirectly controls or is a general partner or member of a partnership, joint venture or limited liability company beneficiary as described in this Section;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that provisions of this Section shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, share of stock of or partnership, joint venture or membership interest in the Mortgagor or any beneficiary of a Trustee Mortgagor; and provided further that no consent by Mortgagee to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Mortgagee consequent thereon.

17. Permitted Transfers. The provisions of Section 15 shall not be applicable to transfers of the Premises, or part thereof, or interest therein or any beneficial interests, shares of stock, or partnership, joint venture or membership interests, as the case may be, in the Mortgagor, or any beneficiary of a Trustee Mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee.

18. Uniform Commercial Code. This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State in which the Premises is located (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all herein called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section shall not limit the generality or applicability of any other provision of this Mortgage, but shall be in addition thereto:

A. The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof;

B. The Collateral is to be used by the Mortgagor solely for business purposes;

C. The Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to the Real Estate but will not be affixed to any other real estate;

D. No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto;

E. Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Event of Default not having previously been cured), the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in this Mortgage, and thereupon Mortgagee shall have the remedies of a secured

UNOFFICIAL COPY

party under the Code, including without limitation the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);

F. The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof, so long as any part of the Indebtedness Hereby Secured remains unsatisfied; and

19. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur:

A. If default is made in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default is made in the making of any payment of any other monies required to be made hereunder or under the Note, and any applicable period of grace specified in the Note shall have elapsed; or

B. If an Event of Default pursuant to Section 15 hereof shall occur and be continuing without notice or grace of any kind; or

C. If (and for the purpose of this Section only, the term Mortgagor shall mean and include not only Mortgagor but any beneficiary of a Trustee Mortgagor and each person who, as Guarantor, co-maker or otherwise shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein),

a. The Mortgagor shall file a petition in voluntary bankruptcy under the Bankruptcy Code of the United States or any similar law, state or federal, now or hereafter in effect, or

b. The Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or

c. Within sixty (60) days after the filing against Mortgagor of any involuntary proceedings under such Bankruptcy Code or similar law, such proceedings shall not have been vacated or stayed, or

d. The Mortgagor shall be adjudicated as bankrupt, or a trustee or receiver shall be appointed for the Mortgagor or for all or the major part of the Mortgagor's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgagor's property or the Premises in any involuntary proceeding for the protection, reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days, or

e. The Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises; or

D. If default shall continue for 15 days after notice thereof by Mortgagee to Mortgagor ... the

UNOFFICIAL COPY

due and punctual performance or observance of any other agreement or condition herein or in the Note contained; provided that if such default is not susceptible of cure within such 15-day period, such 15-day period shall be extended to the extent necessary to permit such cure if, but only if, Mortgagor shall commence such cure within such 15-day period and shall thereafter prosecute such cure to completion diligently and without delay, within 30 days, and no other Event of Default shall occur; or

E. If any default shall occur under any of the Loan Documents, which remains uncured following any applicable notice and cure period; or

F. If any Guarantor (as this term is defined below) shall be dissolved, die or be adjudged legally incompetent; or the death, dissolution or legal incompetency of any Mortgagor; then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice, all Indebtedness Hereby Secured to be immediately due and payable, whether or not such default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Note, or any of the other Loan Documents or by law or in equity conferred.

20. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and:

A. In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, s enographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises; and

B. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees and expenses of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises or the rights of Mortgagee hereunder or as to which Mortgagee may be made a party by virtue of its interest in the Premises pursuant to this Mortgage or otherwise, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall constitute so much additional Indebtedness Hereby Secured, and shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate.

21. Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and lastly, any surplus to the Mortgagor, and its successors or assigns, as their rights may appear.

22. Receiver. Mortgagor consents and agrees that:

UNOFFICIAL COPY

A. Upon an Event of Default, Mortgagee shall be entitled to have appointed a receiver of the Premises and the Mortgagor for itself and for any subsequent owner and/or mortgagor of the Premises hereby waives any and all defenses and objections to the application for a receiver as above provided and hereby specifically consents to such appointment;

B. Such appointment may be made either before or after sale, without notice and without requiring bond, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee hereunder, or any holder of the Note, may be appointed as such receiver;

C. Such receiver shall have the power to collect the Rents during the pendency of such foreclosure suit and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such Rents and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period; and

D. The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of: (a) the Indebtedness Hereby Secured or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

23. **Insurance Upon Foreclosure.** In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

24. **Waiver.** The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Mortatorium Law" now or at any time hereafter in force, nor claim, take or insist upon the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

A. The Mortgagor hereby expressly waives any and all rights of redemption from foreclosure or sale, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of 735 ILCS 5/15-1101, *et seq.*, or other applicable law or replacement statutes;

B. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

C. If the Mortgagor is a trustee, Mortgagor represents that the provisions of this

UNOFFICIAL COPY

Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the Trust Estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

25. **Assignment.** As further security for the Indebtedness Hereby Secured, the Mortgagor has, has assigned to the Mortgagee all of the rents, issues and profits, and/or any and all Leases and/or the rights of management of the Premises, all as therein more specifically set forth, which said Assignment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length; and in connection with the foregoing:

A. The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment;

B. Mortgagor irrevocably hereby designates, makes, constitutes and appoints Mortgagee (and all persons designated by Mortgagee) as Mortgagor's true and lawful attorney and agent in fact with power (but only upon the occurrence of an Event of Default), without notice to Mortgagor and at such time or times thereafter as Mortgagee, at its sole election, may determine, in the name of Mortgagor, Mortgagee or in both names: (i) to demand payment of the Rents and performance of the Leases; (ii) to enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (iii) to exercise all of Mortgagor's rights, interests and remedies in and under the Leases and to collect the Rents; (iv) to settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (v) to prepare, file and sign Mortgagor's name on any proof of claim in bankruptcy, or of the Leases; (vi) to endorse the name of Mortgagor upon any payments or proceeds of the Rents and to deposit the same to the account of Mortgagee; and (vii) to do all acts and things necessary, in Mortgagee's sole discretion, to carry out any or all of the foregoing. The power of attorney granted Mortgagee under this paragraph shall be coupled with an interest and shall be irrevocable and same cannot be modified or altered without the written consent of Mortgagee.

C. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of lessor under any Lease; and the Mortgagor shall and does hereby indemnify and agree to defend and hold the Mortgagee harmless of and from any and all liability, loss or damage which the Mortgagee may or might incur under any Lease or by reason of the Assignment; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not), shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

26. **Mortgagee in Possession.** Upon an Event of Default, Mortgagee is entitled to become a mortgagee in possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee.

27. **Business Loan.** Mortgagor represents and agrees that the loan evidenced by the Note and secured hereby is a business loan within the purview of 815 ILCS 205/4, et seq. (or any substitute, amended or replacement statutes) and is transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor, or if the Mortgagor is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of the Mortgagor as contemplated by said Section. Borrower represents and warrants to Lender that: (i) the proceeds of this Note will be used solely for business, commercial investment, or similar purposes, and that no portion of it will be used for personal, family, or household purposes, and (ii) Borrower is using the proceeds of the loan for buying, rehabbing, and selling non-owner occupied and investor-owned units.

UNOFFICIAL COPY

28. Contests. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', material men's or other liens or claims for lien upon the Premises (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

A. Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee promptly after obtaining knowledge of same;

B. Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including reasonable fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand); and

C. Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand.

29. Indemnification. Mortgagor does hereby covenant and agree that:

A. Mortgagee shall have no responsibility for the control, care, management or repair of the Premises and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, immediate stranger or other person;

B. No liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers hereby granted to the Mortgagee; and Mortgagor hereby expressly waives and releases any such liability; and

C. Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of exercise by Mortgagee of any right hereunder, and any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any violation of, or liability under any Environmental Regulation (other than due solely to an act or omission of Mortgagee after obtaining possession or control of the Premises) or of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the Indebtedness Hereby Secured or in any contracts, agreements or other instruments relating to or affecting the Premises; any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment. It is expressly understood and agreed that to the extent that Mortgagee is strictly liable under any Environmental Laws, the Mortgagor's obligations to Mortgagee under this paragraph shall likewise be without regard to fault on the part of the Mortgagor with respect to the violation or condition which results in liability to Mortgagee.

UNOFFICIAL COPY

30. Mortgagor Not a Joint-Venturer or Partner. Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor; and without limiting the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Hereby Secured, or otherwise.

31. Title in Mortgagor's Successors. In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagor the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor and the Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises; but nothing in this Section contained shall vary or negate the provisions of Section 15 hereof.

32. Rights Cumulative. Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

33. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein) and shall inure to the benefit of the Mortgagee and its successors and assigns and wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such from time to time holder of the Note shall have and enjoy all of the rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagee.

34. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

35. Waiver of Defense. No action for the enforcement of the lien of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

36. Addresses and Notices. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof or electronic facsimile transmission thereof, or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, or upon the next business day after timely and proper deposit, charges paid, with any overnight carrier with respect to next day service, to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder.

A copy of all notices shall be directed as follows:

UNOFFICIAL COPY

If to Mortgagor: 3756 Monarch Cir Naperville, IL 60564

37. Interest at the Default Rate. Without limiting the generality of any provision herein or in the Note contained, from and after the occurrence of any Event of Default hereunder, all of the Indebtedness Hereby Secured shall bear interest at the Default Rate.

38. Time. Time is of the essence hereof and of the Note, Assignment and all other instruments or Loan Documents delivered in connection with the Indebtedness Hereby Secured.

39. Applicable Law. This Mortgage shall be construed in accordance with the laws of Illinois.

40. Assignment. Mortgagee may at any time assign its rights in the Note and the Loan Documents, or any part thereof and transfer its rights in any or all of the collateral, and Mortgagee thereafter shall be relieved from all liability with respect to such collateral. In addition, Mortgagee may at any time sell one or more participations in the Note. Mortgagor may not assign its interest in the Note, or any other agreement with Mortgagee or any portion thereof, either voluntarily or by operation of law, without the prior written consent of Mortgagee.

41. Rental of Collateral. **BORROWER SHALL NOT OCCUPY, USE OR ESTABLISH THE PROPERTY OR ANY OTHER PROPERTY WHICH CONSTITUTES COLLATERAL FOR THE LOAN AS BORROWER'S RESIDENCE, OR ALLOW ANYONE ELSE OR ANYTHING ELSE TO OCCUPY ANY SUCH PROPERTY DURING THE TERM OF THE LOAN, WITHOUT FIRST OBTAINING LENDER'S PRIOR WRITTEN CONSENT.**

[Remainder of page intentionally left blank; signature page follows.]

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOT 22 IN THE SUBDIVISION OF LOTS 513 AND 536 BOTH INCLUSIVE, IN DICKEY'S THIRD ADDITION TO CHICAGO IN THE SOUTHEAST 1/4 OF SECTION 2, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address of Property:

901 N Central Park Ave
Chicago, IL 60651

Permanent Index No.:

16-02-415-022-0000 Vol. 0540

Property of Cook County Clerk's Office