

UNOFFICIAL COPY

Doc#: 1735557101 Fee: \$98.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/21/2017 11:01 AM Pg: 1 of 26

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud

844-768-1713

010020924

The property identified as: P.N: 32-07-403-038-0000

Address:

Street: 1705 Cambridge Avenue

Street line 2:

City: Flossmoor

State: IL

ZIP Code: 60422

Lender: BMO Harris Bank

Borrower: Stanley C. Rakestraw Revocable Trust dated February 29, 1996 and Pamela M. Rakestraw Revocable Trust dated February 29, 1996

Loan / Mortgage Amount: \$17,000,000.00

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

Certificate number: 05229850 C09B-43A6-91 B5-BDF-950715DEF

Execution date: 11/3/2017

UNOFFICIAL COPY

**THIS DOCUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO:**

Charles A. Semmelhack
HOWARD & HOWARD ATTORNEYS
PLLC
200 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604
Telephone: 312-372-4000

PROPERTY ADDRESS:

1705 Cambridge Avenue
Flossmoor, IL 60422

Permanent Index #: 32-07-403-038-
0000

010020824

This space reserved for Recorder's use only.

**MORTGAGE,
ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING**

This **MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING** dated as of November 3, 2017 (this "**Security Instrument**"), is executed by **STANLEY C. RAKESTRAW, TRUSTEE OF STANLEY C. RAKESTRAW REVOCABLE TRUST DATED FEBRUARY 29, 1996 AND PAMELA M. RAKESTRAW, TRUSTEE OF THE PAMELA M. RAKESTRAW REVOCABLE TRUST DATED FEBRUARY 29, 1996** (collectively, the "**Mortgagor**"), to and for the benefit of **BMO HARRIS BANK, N.A.**, a national banking association, its successors and assigns (the "**Lender**").

RECITALS:

A. Pursuant to the terms and conditions contained in that certain Agreement and Guarantor Consent, dated October 13, 2017 (the "**Agreement**"), among Stanley C. Rakestraw and Pamela M. Rakestraw, as guarantors, SCR Medical Transportation, Inc. (the "**Borrower**"), Lender and the other parties thereto to secure all Indebtedness (as defined in the Agreement) under the Loan Documents (as defined in the Agreement; said Loan Documents, as any may be amended, restated, supplemented or otherwise modified from time to time, collectively, the "**Loan Agreement**"), the Lender has loans to the Borrower in the original principal amount of **EIGHT MILLION FIVE HUNDRED THOUSAND AND 00/100ths DOLLARS** (\$8,500,000.00) (collectively referred to in this Security Instrument as the "**Loan**"). The Loan shall be evidenced by those certain promissory notes issued under the Loan Agreement (as amended, restated or replaced from time to time, collectively, the "**Note**"), executed by the Borrower and made payable to the order of the Lender in the original principal amount of the Loan with interest at the rate per annum as stated in the Loan Agreement (hereby incorporated herein), and continuing through and including as provided in the Loan Documents (the

UNOFFICIAL COPY

“**Maturity Date**”), except as the maturity of the Note may be extended or accelerated pursuant to the terms hereof, of the Note, of the Loan Agreement or of any other document or instrument now or hereafter given to evidence or secure the payment of the Note or delivered to induce the Lender to disburse the proceeds of the Loan (the Note and the Loan Agreement, together with such other documents executed in connection therewith or ancillary thereto, as amended, restated or replaced from time to time, being collectively referred to herein as the “**Loan Documents**”).

B. Borrowers, or persons owning Borrowers, have an ownership interest in Mortgagor, which holds title to the Premises. Mortgagor will derive substantial direct and indirect benefit from the loans and financial accommodations to be made to Borrowers pursuant to the Loan Documents, and Mortgagor wishes to provide further assurance and security to the Lender to secure the Indebtedness, including, without limitation, all of Mortgagor’s obligations under any Guaranty, this Security Instrument and the other Loan Documents.

C. A condition precedent to the Lender’s extension of the Loan to the Borrower is the execution and delivery by the Mortgagor of this Security Instrument.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor agrees as follows:

AGREEMENTS:

The Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to the Lender, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as the “**Premises**”), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

(a) The real estate located in the County of Cook, State of Illinois, and legally described on **Exhibit “A”** attached hereto and made a part hereof (the “**Real Estate**”);

(b) All improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by the Mortgagor and located on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of the Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by the Mortgagor or on its behalf (the “**Improvements**”);

(c) All easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of the Mortgagor of, in and to the same;

UNOFFICIAL COPY

(d) All rents, revenues, issues, profits, proceeds, income, royalties, Letter of Credit Rights (as defined in the Uniform Commercial Code of the State of Illinois (the "Code") in effect from time to time), escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by the Mortgagor thereon, to be applied against the Indebtedness (as hereinafter defined); provided, however, that the Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

(e) All interest of the Mortgagor in all leases now or hereafter on the Premises, whether written or oral (each, a "Lease", and collectively, the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to the Mortgagor to collect the rentals under any such Lease;

(f) All fixtures and articles of personal property now or hereafter owned by the Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Premises, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner, it being mutually agreed that all of the aforesaid property owned by the Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness;

(g) All warranties, guarantees, permits, licenses, governmental approvals, utility commitments, utility rights (including rights to capacity or service), drainage and detention rights, plans and specifications, architectural and landscape plans and drawings, Declarant and Developer rights (including under any Declaration), development or annexation rights or other similar rights, inclusive of any prepaid impact fees, impact fee credits or other similar development credits in favor of the Mortgagor, and all surveys and all engineering, soils, seismic, geological and environmental reports, studies and certificates and other technical descriptions with respect to the Premises now owned or hereafter created or acquired by the Mortgagor, including, without limitation, any warranties, guaranties, indemnities, contractual rights, claims, demands and causes of action pertaining to the development, construction, design or completion of the Premises and/or the common areas, streets, utilities or other infrastructure; and

(h) All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds

UNOFFICIAL COPY

or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

TO HAVE AND TO HOLD the Premises, unto the Lender, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Event of Default; the Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan, the Debt, the Obligations, and all interest, late charges, prepayment premium, if any, exit fee, if any, interest rate swap or hedge expenses (if any), reimbursement obligations, fees and expenses for letters of credit issued by the Lender for the benefit of Borrower, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the obligations and liabilities of Borrower to the Lender relating to any transaction (including an agreement with respect thereto) now existing or hereafter entered into by Borrower and the Lender or any of its subsidiaries or affiliates or their successors; (iii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Borrower or any other obligor to or benefiting the Lender which are evidenced or secured by or otherwise provided in the Note, this Security Instrument or any of the other Loan Documents; and (iv) the reimbursement to the Lender of any and all sums incurred, expended or advanced by the Lender pursuant to any term or provision of or constituting additional indebtedness under, secured by or in connection with this Security Instrument, the Loan Agreement, any of the other Loan Documents or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, the "**Indebtedness**").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.** The Mortgagor represents, warrants and covenants that (a) the Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of the Lender; and (b) the Mortgagor has legal power and authority to mortgage and convey the Premises.

2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** The Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, the Mortgagor will:

(a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, 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', materialmen's or like liens or claims or other liens or claims for lien

UNOFFICIAL COPY

(subject to the Mortgagor's right to contest liens as permitted by the terms of Section 27 hereof);

(c) pay when due the Indebtedness in accordance with the terms of the Note, the Loan Agreement and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by the Mortgagor under the Note, the Loan Agreement, this Security Instrument and the other Loan Documents;

(d) pay when due any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Lender (subject to the Mortgagor's right to contest liens as permitted by the terms of Section 27 hereof);

(e) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;

(f) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;

(g) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Security Instrument;

(h) make no material alterations in the Premises or demolish any portion of the Premises without the Lender's prior written consent, except as required by law or municipal ordinance;

(i) suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Lender's prior written consent;

(j) pay when due all operating costs of the Premises;

(k) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without the Lender's prior written consent;

(l) provide and thereafter maintain adequate parking areas within the Premises as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; and

(m) comply, and cause the Premises at all times to be operated in compliance, with all applicable federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations.

UNOFFICIAL COPY

3. **Payment of Taxes and Assessments.** 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, or any obligation or agreement secured hereby, subject to the Mortgagor's right to contest the same, as provided by the terms hereof; and the Mortgagor will, upon written request, furnish to the Lender duplicate receipts therefor within ten (10) days after the Lender's request.

4. **Tax Deposits.** At the Lender's option, the Mortgagor shall deposit with the Lender, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of one hundred five percent (105.00%) of the most recent ascertainable annual Taxes on the Premises. If requested by the Lender, the Mortgagor shall also deposit with the Lender an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as estimated by the Lender. Such deposits are to be held without any allowance of interest and are to be used for the payment of Taxes next due and payable when they become due. So long as no Event of Default shall exist, the Lender shall, at its option, pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from the Mortgagor) or shall release sufficient funds to the Mortgagor for the payment thereof. If the funds so deposited are insufficient to pay any such Taxes for any year (or installments thereof, as applicable) when the same shall become due and payable, the Mortgagor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of the Lender. The Lender, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

5. **Lender's Interest In and Use of Deposits.** Upon an Event of Default, the Lender may, at its option, apply any monies at the time on deposit pursuant to **Section 4** hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as the Lender may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, the Mortgagor shall immediately, upon demand by the Lender, deposit with the Lender an amount equal to the amount expended by the Mortgagor from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to the Mortgagor. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of the Mortgagor. The Lender shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless the Mortgagor, prior to an Event of Default, shall have requested the Lender in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. The Lender shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

6. **Insurance.**

UNOFFICIAL COPY

(a) The Mortgagor shall keep the improvements on the Premises insured by a policy or policies of All Risk Replacement Cost Insurance (with Agreed Amount Endorsement) against loss or damage by, or abatement of rental income resulting from fire, flood and such other hazards, casualties and contingencies (including, but not limited to, extended coverage, vandalism and malicious mischief), in an amount equal to the full replacement value thereof. The Mortgagor will also maintain Flood Insurance, if required, pursuant to a designation of the area in which the Premises are located as flood prone or a flood risk area, as defined by the Flood Disaster Protection Act of 1973, as amended, in an amount satisfactory to the Lender, however, such amount will be at least equal to the amount necessary so that none of the parties hereto shall be deemed a co-insurer of a loss, as well as comply with any additional requirements of the National Flood Insurance Program as set forth in said Act. The Mortgagor shall deliver to the Lender the policies evidencing the required insurance with premiums fully paid for one year in advance, and with standard mortgagee clauses (making all losses payable to the Lender). Renewals of the required insurance (together with evidence of premium prepayment for one (1) year in advance) shall be delivered to the Lender at least thirty (30) days before the expiration of any existing policies. All policies and renewals shall provide that they may not be canceled or amended without giving the Lender thirty (30) days prior written notice of cancellation or amendment. Should the Mortgagor fail to insure or fail to pay the premiums on any required insurance or fail to deliver the policies or renewals as provided above, the Lender may have the insurance issued or renewed (and pay the premiums on it for the account of the Mortgagor) in amounts and with companies and at premiums as the Lender deems appropriate. If the Lender elects to have insurance issued or renewed to insure the Lender's interest, the Lender shall have no duty or obligation of any kind to also insure the Mortgagor's interest or to notify the Mortgagor of the Lender's actions. Any sums paid by the Lender for insurance, as provided above, shall be a lien upon the Premises, added to the amount secured by this Security Instrument, and payable immediately by the Mortgagor to the Lender, with interest on those sums at the highest rate charged by the Lender on any of the Indebtedness (but not to exceed the maximum interest rate permitted by law).

(b) As set forth in the Loan Agreement, the Mortgagor shall maintain for the mutual benefit of the Lender and the Mortgagor general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Premises or any elevators therein and on, in or about the adjoining streets and passageways, such insurance to afford protection to the limits of not less than those then customarily carried with respect to premises similar in construction, general location, use and occupancy to the Premises. All of such insurance shall be primary and non-contributing with any insurance which may be carried by the Lender.

(c) All such insurance policies shall be paid in accordance with the terms of the policies currently in force. In the event such coverage is provided as part of a blanket policy, then in such event the amount of the coverage specifically applicable to the Premises shall be stated on the face of the policy. All insurance policies are to be held by and, to the extent of its interest, are to be for the benefit of and first payable in case of

UNOFFICIAL COPY

loss to the Lender as first Lender without contribution, and the Mortgagor shall deliver to the Lender a new policy of replacement insurance for any expiring policy, with evidence of advance premium payments, to the Lender at its principal office in Chicago, Illinois, at least ten (10) days before the date of such expiration or at such other place or to such other party as the Lender may, from time to time, designate in writing.

(d) All amounts recoverable under any policy of casualty insurance are hereby assigned to the Lender and the Lender is authorized and empowered, at its option to adjust or compromise any loss covered by any insurance policies on the Premises, and to collect and receive the proceeds from any such policy or policies. After deducting from said proceeds any reasonable expenses incurred by it in the collection or handling thereof, and provided that the Note has not matured or no Event of Default (as hereinafter defined) then exists, Mortgagor shall be allowed to use the insurance proceeds to restore and rebuild the Premises. To the extent the proceeds are not used to restore or rebuild the Premises, or if the Note has matured or an Event of Default then exists, the insurance proceeds shall be applied to the Indebtedness.

The Lender is hereby irrevocably appointed by the Mortgagor as attorney-in-fact for the Mortgagor to assign any policy to itself or its nominees in the event of the foreclosure of this Security Instrument. In the event of foreclosure of this Security Instrument, or other transfer of title in lieu of foreclosure of the Premises, all right, title and interest of the Mortgagor in and to any insurance policies then in force, shall pass to the purchaser or grantee thereof.

7. **Condemnation.** If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to the Lender, who is empowered to collect and receive the same and to give proper receipts therefor in the name of the Mortgagor and the same shall be paid forthwith to the Lender. Such award or monies shall be applied on account of the Indebtedness, irrespective of whether any of such Indebtedness is then due and payable. Notwithstanding the provisions of this section to the contrary, if any condemnation or taking of less than the entire Premises occurs and provided that no Event of Default and no event or circumstance which with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and if such partial condemnation, in the reasonable discretion of the Lender, has no material adverse effect on the operation or value of the Premises, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by the Mortgagor.

8. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Security Instrument, the Note or any of the other Loan Documents, the Mortgagor shall pay such tax in the manner required by any such law. The Mortgagor further agrees to reimburse the Lender for any sums which the Lender may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, the Mortgagor shall not be required to pay any income or franchise taxes of the Lender.

UNOFFICIAL COPY

9. **Lease Assignment.** As further security, Mortgagor grants a continuing security interest in, pledges, assigns, transfers, delivers and grants to Lender all now existing and hereafter arising Leases, whether written or oral, whereby any person or entity agrees to pay money or other consideration for the use, possession or occupancy of, or any estate in, the Premises or any part thereof and all now existing and hereafter arising rents, issues, profits, royalties, avails, income and other benefits derived or owned by Mortgagor directly or indirectly from the Premises (collectively, the "**Rents**"), it being the intention hereby to establish an absolute transfer and assignment of all such Leases and Rents (the "**Assignment**"). Mortgagor hereby irrevocably appoints Lender its attorney-in-fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Lender) with or without taking possession of the Premises as provided in this Security Instrument, to lease any portion of the Premises to any party on such terms as Lender shall determine, and to collect all rents due with the same rights and powers and subject to the same immunities as Lender would have upon taking possession pursuant to the terms of this Security Instrument. Mortgagor represents that no rent has been or will be paid by any person or entity in possession of any portion of the Premises for more than one (1) installment in advance and that payment of none of the Rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Mortgagor. Mortgagor waives any right of set off against any person in possession of any portion of the Premises. Mortgagor agrees that Mortgagor will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing contained in this Security Instrument shall be construed as constituting Lender a mortgagee-in-possession in the absence of the taking of the actual possession of the Premises pursuant to this Security Instrument. Mortgagor hereby expressly waives all liability of Lender in the exercise of the powers granted to Lender pursuant to this Security Instrument. Mortgagor shall assign to Lender all future leases on any part of the Premises and shall execute and deliver to Lender, upon request by Lender, all such further assurances and assignments as Lender may require. Although the assignment herein is a present assignment, Lender shall not exercise any of the rights or powers conferred upon Lender pursuant to this **Section 9** until an Event of Default (defined below) occurs or exists pursuant to the terms of this Security Instrument. This Security Instrument shall not obligate Lender with any of the duties or obligations of a lessor of the Premises as set forth in any lease of any portion of the Premises.

10. **Effect of Extensions of Time and Other Changes.** If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in the Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by the Lender, notwithstanding such extension, variation, release or change.

11. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation, (b) the imposition upon the Lender of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by the Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or the Lender's interest in the

UNOFFICIAL COPY

Premises, or the manner of collection of taxes, so as to affect this Security Instrument or the Indebtedness or the holders thereof, then the Mortgagor, upon demand by the Lender, shall pay such Taxes or charges, or reimburse the Lender therefor; provided, however, that the Mortgagor shall not be deemed to be required to pay any income or franchise taxes of the Lender. Notwithstanding the foregoing, if in the opinion of counsel for the Lender it is or may be unlawful to require the Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the Lender may declare all of the Indebtedness to be immediately due and payable.

12. Lender's Performance of Defaulted Acts and Expenses Incurred by Lender.

If an Event of Default has occurred, the Lender may, but need not, make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient by the Lender, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim hereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of the Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by the Lender in regard to any tax referred to in **Section 8** above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by the Mortgagor to the Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Interest Rate (as defined in the Loan Agreement). In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by the Lender in connection with (a) sustaining the lien of this Security Instrument or its priority, (b) protecting or enforcing any of the Lender's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Security Instrument, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Security Instrument, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by the Mortgagor to the Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Interest Rate. The interest accruing under this section shall be immediately due and payable by the Mortgagor to the Lender, and shall be additional Indebtedness evidenced by the Note and secured by this Security Instrument. The Lender's failure to act shall never be considered as a waiver of any right accruing to the Lender on account of any Event of Default. Should any amount paid out or advanced by the Lender hereunder, or pursuant to any agreement executed by the Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then the Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Fixture Filing.

UNOFFICIAL COPY

(a) This Security Instrument is intended to be a financing statement within the purview of Section 9-502(c) of the Code with respect to the Collateral (as defined in the Loan Agreement) and the Goods (as defined in the Code) described in the Loan Agreement, which Goods are or may become fixtures relating to the Premises. The addresses of the Mortgagor (Debtor) and the Lender (Secured Party) are hereinbelow set forth. This Security Instrument is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located. The Mortgagor is the record owner of the Premises.

(b) The Mortgagor represents and warrants that: (i) the Mortgagor is the record owner of the Premises; (ii) the Mortgagor's principal residence is located in the State of Illinois; and (iii) the Mortgagor's exact legal name is as set forth on the first (1st) page of this Security instrument.

14. Restrictions on Transfer.

(a) The Mortgagor, without the prior written consent of the Lender, shall not effect, suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of the Premises or any part thereof or interest therein, whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise (each, a "**Prohibited Transfer**"); provided, however, that the foregoing provisions of this section shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, 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 or personal representatives, or (iv) to leases permitted by the terms of the Loan Documents, if any.

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

UNOFFICIAL COPY

result in acceleration and foreclosure by any such junior encumbrancer which would force the Lender to take measures and incur expenses to protect its security; (iii) would detract from the value of the Premises should the Lender come into possession thereof with the intention of selling same; and (iv) would impair the Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by the Lender would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (a) protecting the Lender's security, both of repayment and of value of the Premises; (b) giving the Lender the full benefit of its bargain and contract with the Mortgagor; (c) allowing the Lender to raise the interest rate and collect assumption fees; and (d) keeping the Premises free of subordinate financing liens, the Mortgagor agrees that if this section is deemed a restraint on alienation, that it is a reasonable one.

15. Events of Default; Acceleration. Each of the following shall constitute an "**Event of Default**" for purposes of this Security Instrument:

(a) The occurrence of an "Event of Default" under the Loan Agreement, the Note or any other Loan Document or the Original Loan; or

(b) The Mortgagor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by the Mortgagor under this Security Instrument or the Assignment; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by this Security Instrument or the Assignment and the value of the Premises are not impaired, threatened or jeopardized, then the Mortgagor shall have a period (the "**Cure Period**") of thirty (30) days after the Mortgagor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if the Mortgagor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate.

If an Event of Default occurs, the Lender may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to the Mortgagor or any other Borrower, with interest thereon accruing from the date of such Event of Default until paid at the Default Interest Rate.

16. Foreclosure; Expense of Litigation.

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, the Lender shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Security Instrument or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101, *et seq.*, Illinois Compiled Statutes (as all of the same may be amended from time to time, the "**Mortgage Foreclosure Law**"). In the event of a foreclosure sale, the Lender is hereby authorized,

UNOFFICIAL COPY

without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as the Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as the Lender may deem reasonably necessary either to prosecute such suit or to evidence bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this section and such other expenses and fees as may be incurred in the enforcement of the Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Security Instrument, including the reasonable fees of any attorney employed by the Lender in any litigation or proceeding affecting this Security Instrument, the Loan Agreement, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by the Mortgagor, with interest thereon until paid at the Default Interest Rate and shall be secured by this Security Instrument.

17. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Mortgage Foreclosure Law and, unless otherwise specified therein, in such order as the Lender may determine in its sole and absolute discretion.

18. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Security Instrument, the court in which such complaint is filed shall, upon petition by the Lender, appoint a receiver for the Premises in accordance with the Mortgage Foreclosure Law. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and the Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when the Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Security

UNOFFICIAL COPY

Instrument, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

19. Lender's Right of Possession in Case of Default. At any time after an Event of Default has occurred, the Mortgagor shall, upon demand of the Lender, surrender to the Lender possession of the Premises. The Lender, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude the Mortgagor and its employees, agents or servants therefrom, and the Lender may then hold, operate, manage and control the Premises, either personally or by its agents. The Lender shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, the Lender shall have full power to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same;
- (b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as the Lender deems are necessary;
- (e) insure and reinsure the Premises and all risks incidental to the Lender's possession, operation and management thereof; and
- (f) receive all of such avails, rents, issues and profits.

20. Application of Income Received by Lender. The Lender, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as the Lender may determine:

- (a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to the Lender and

UNOFFICIAL COPY

its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

21. Compliance with Illinois Mortgage Foreclosure Law.

(a) If any provision in this Security Instrument shall be inconsistent with any provision of the Mortgage Foreclosure Law, provisions of the Mortgage Foreclosure Law shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Mortgage Foreclosure Law.

(b) If any provision of this Security Instrument shall grant to the Lender (including the Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 18 of this Security Instrument any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in the Lender or in such receiver under the Mortgage Foreclosure Law in the absence of said provision, the Lender and such receiver shall be vested with the powers, rights and remedies granted in the Mortgage Foreclosure Law to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Mortgage Foreclosure Law, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Sections 12, 15 or 28 of this Security Instrument, shall be added to the Indebtedness and/or by the judgment of foreclosure.

22. Rights Cumulative. Each right, power and remedy herein conferred upon the Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or 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 Lender, 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 Lender 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 Event of Default or acquiescence therein.

23. Lender's Right of Inspection. The Lender and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable

UNOFFICIAL COPY

times upon not less than twenty four (24) hours prior notice to the Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

24. Release Upon Payment and Discharge of Mortgagor's Obligations. The Lender shall release this Security Instrument and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by the Lender in connection with the execution of such release.

25. Notices. Any notices, communications and waivers under this Security Instrument shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by overnight express carrier, addressed in each case as follows:

If to Mortgagor: at the property address

If to Lender: BMO Harris Bank N.A.
 111 West Monroe
 Chicago, IL 60603
 Att: Dawn Sparr

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this **Section 25** shall be deemed received on the date when actually received or when such delivery is refused, as the case may be.

26. Waiver of Rights. The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "**Moratorium Law**" now or at any time 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 marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and 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 Illinois Compiled Statutes 735 ILCS 5/15-1601 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 remedy herein or otherwise granted or delegated to the Lender but will suffer and permit the execution of

UNOFFICIAL COPY

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, the Mortgagor represents that the provisions of this section (including the waiver of reinstatement and redemption rights) were made at the express direction of the Mortgagor's beneficiaries and the persons having the power of direction over the Mortgagor, and are made on behalf of the trust estate of the Mortgagor and all beneficiaries of the Mortgagor, as well as all other persons mentioned above.

27. **Contests.** Notwithstanding anything to the contrary herein contained, the 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' materialmen's or other liens or claims for lien upon the Premises (each, a "**Contested Lien**"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

(a) The Mortgagor shall forthwith give notice of any Contested Lien to the Lender at the time the same shall be asserted;

(b) The Mortgagor shall either pay under protest or deposit with the Lender the full amount (the "**Lien Amount**") of such Contested Lien, together with such amount as the Lender may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment the Mortgagor may furnish to the Lender a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to the Lender;

(c) The 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 the Lender to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of the Lender's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Interest Rate until paid, and payable upon demand); and

(d) The Mortgagor shall pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to the Mortgagor, or (ii) forthwith upon demand by the Lender if, in the opinion of the Lender, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided, however, that if the Mortgagor shall fail so to do, the Lender 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 Lender to obtain the release and discharge of such liens; and any amount expended by the Lender in so doing shall be so much additional Indebtedness bearing interest at the Default Interest Rate until paid, and payable upon demand; and provided further that the Lender may in such case use and apply monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

UNOFFICIAL COPY

28. Expenses Relating to Loan Documents.

(a) The Mortgagor will pay (and will be jointly and severally liable with the other Borrower for) all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Loan Agreement, Note, this Security Instrument or any of the other Loan Documents, including without limitation, the Lender's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Security Instrument and all federal, state, county and municipal taxes, and other taxes (provided the Mortgagor shall not be required to pay any income or franchise taxes of the Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Loan Agreement, the Note and this Security Instrument. The Mortgagor recognizes that, during the term of this Security Instrument, the Lender:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which the Lender shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, the Lender's taking possession of and managing the Premises, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with the Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the Indebtedness or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with the Mortgagor or any of its agents, employees or attorneys pertaining to the Lender's approval of actions taken or proposed to be taken by the Mortgagor which approval is required by the terms of this Security Instrument.

UNOFFICIAL COPY

(b) All expenses, charges, costs and fees described in this section shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Interest Rate and shall be paid, together with said interest, by the Mortgagor forthwith upon demand.

29. **Further Instruments.** Upon request of the Lender, the Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Security Instrument and of the other Loan Documents.

30. **Additional Indebtedness Secured.** All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Security Instrument secures more than the stated principal amount of the Note and interest thereon; this Security Instrument secures any and all other amounts which may become due under the Note, any of the other Loan Documents or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by the Lender to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Security Instrument.

31. **Indemnity.** The Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against the Lender in the exercise of the rights and powers granted to the Lender in this Security Instrument, and the Mortgagor hereby expressly waives and releases any such liability, except to the extent resulting from the gross negligence or willful misconduct of the Lender. The Mortgagor shall indemnify and save the Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "**Claims**"), of whatever kind or nature which may be imposed on, incurred by or asserted against the Lender at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which the Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Security Instrument or for the purpose of protecting the lien of this Security Instrument; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to the Lender in accordance with the terms of this Security Instrument; provided, however, that the Mortgagor shall not be obligated to indemnify or hold the Lender harmless from and against any Claims directly arising from the gross negligence or willful misconduct of the Lender. All costs provided for herein and paid for by the Lender shall be so much additional Indebtedness and shall become immediately due and payable upon demand by the Lender and with interest thereon from the date incurred by the Lender until paid at the Default Interest Rate.

32. **Subordination of Property Manager's Lien.** Any property management agreement for the Premises entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Premises shall be subject and subordinate to the lien of this Security Instrument and shall provide that the Lender may terminate such agreement, without penalty or cost, at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short

UNOFFICIAL COPY

form thereof, at the Lender's request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, the Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with the Lender, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Security Instrument.

33. Compliance with Environmental Laws. Concurrently herewith the Borrower and the Guarantor (as defined in the Loan Agreement) have executed and delivered to the Lender that certain Environmental Indemnity Agreement dated as of the date hereof (the "**Indemnity**") pursuant to which the Borrower and the Guarantor have indemnified the Lender for environmental matters concerning the Premises, as more particularly described therein. The provisions of the Indemnity are hereby incorporated herein and this Security Instrument shall secure the obligations of the Mortgagor thereunder.

34. Future Advances. If this Security Instrument is given to secure a revolving loan, it shall secure not only presently existing indebtedness under the Loan Agreement, the Note and the other Loan Documents, but also future advances, whether such advances are obligatory or to be made at the option of the Lender, or otherwise, as are made within twenty (20) years from the date hereof to the same extent as if such future advances were made on the date of the execution of this Security Instrument, although there may be no advance made at the time of execution of this Security Instrument and although there may be no Indebtedness outstanding at the time any advance is made. The lien of this Security Instrument shall be valid as to all Indebtedness including future advances, from the time of its filing for record in the recorder's or registrar's office of the county in which the real estate is located. If this Security Instrument secures, among other Indebtedness, a "revolving credit" arrangement, it does so within the meaning of 815 ILCS 205/4.1 and 205 ILCS 5/5d. Any disbursements which the Lender may make under this Security Instrument, the Note or the Loan Agreement or any other document with respect hereto (e.g., for payment of taxes, insurance premiums or other advances to protect the Lender's liens and security interests, as permitted hereby) shall be additional Indebtedness secured hereby. This Security Instrument is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.

35. Remedies Against Other Collateral. The Mortgagor hereby acknowledges that certain Loan Documents other than this Security Instrument create liens on collateral located in counties or states other than the counties and state in which the Premises are located. The Mortgagor further acknowledges that this Security Instrument and the other Loan Documents are cross-defaulted and the Loan secured hereby are also secured by the other Loan Documents. The Mortgagor agrees that the Lender may proceed, at the same or at different times, to foreclose any or all liens against such collateral (or sell such collateral under power of sale) by any proceedings appropriate in the county and state where such collateral lies, and that no event of enforcement taking place in any county or state pursuant to any of the Loan Documents shall preclude or bar enforcement in any other county or state. Any foreclosure or other appropriate remedy brought in any county or state in which collateral is located may be brought and prosecuted as to any part of such collateral without regard to the fact that foreclosure proceedings or other appropriate

UNOFFICIAL COPY

remedies have or have not been instituted elsewhere on any other part of the collateral for the Loan.

36. Miscellaneous.

(a) Successors and Assigns. This Security Instrument and all provisions hereof shall be binding upon and enforceable against the Mortgagor and its assigns and other successors. This Security Instrument and all provisions hereof shall inure to the benefit of the Lender, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions; Governing Law. In the event that any provision of this Security Instrument is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Mortgagor and the Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Security Instrument and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Security Instrument is to be construed in accordance with and governed by the laws of the State of Illinois.

(c) Municipal Requirements. The Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Security Instrument to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Mortgagor hereby assigns to the Lender any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Security Instrument or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by the Mortgagor which would result in a violation of any of the provisions of this subsection shall be void.

(d) Rights of Tenants. The Lender shall have the right and option to commence a civil action to foreclose this Security Instrument and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of the Lender. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Option of Lender to Subordinate. At the option of the Lender, this Security Instrument shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by the

UNOFFICIAL COPY

Lender of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(f) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Premises by the Lender pursuant to this Security Instrument.

(g) Relationship of Lender and Mortgagor. The Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of the Mortgagor or of any lessee, operator, concessionaire or licensee of the Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, the Lender shall not be deemed to be such partner, joint venturer, agent or associate on account of the Lender becoming a mortgagee-in-possession or exercising any rights pursuant to this Security Instrument, any of the other Loan Documents, or otherwise. The relationship of the Mortgagor and the Lender hereunder is solely that of debtor/creditor.

(h) Time of the Essence. Time is of the essence of the payment by the Mortgagor of all amounts due and owing to the Lender under the Loan Agreement, the Note and the other Loan Documents and the performance and observance by the Mortgagor of all terms, conditions, obligations and agreements contained in this Security Instrument, the Loan Agreement and the other Loan Documents.

(i) No Merger. The parties hereto intend that this Security Instrument and the lien hereof shall not merge in fee simple title to the Premises, and if the Lender acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Security Instrument and the lien hereof shall not merge in the fee simple title and this Security Instrument may be foreclosed as if owned by a stranger to the fee simple title.

(j) Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to SEVENTEEN MILLION AND 00/100ths DOLLARS (\$17,000,000.00); provided, however, in no event shall the Lender be obligated to advance funds in excess of the face amount of the Note.

(k) CONSENT TO JURISDICTION. TO INDUCE THE LENDER TO ACCEPT THE NOTE, THE MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO THE LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS SECURITY INSTRUMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS. THE MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON THE MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO THE MORTGAGOR AT THE ADDRESS

UNOFFICIAL COPY

STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

(l) WAIVER OF SPECIAL DAMAGES. THE MORTGAGOR WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE MORTGAGOR MAY HAVE TO CLAIM OR RECOVER FROM THE LENDER IN ANY LEGAL ACTION OR PROCEEDING, ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

(m) WAIVER OF JURY TRIAL. THE MORTGAGOR AND THE LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS SECURITY INSTRUMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS SECURITY INSTRUMENT OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS SECURITY INSTRUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

(n) Complete Agreement. This Security Instrument, the Loan Agreement, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Mortgagor and the Lender.

[Remainder of Page Intentionally Left Blank - Signature Page Follows]

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

LOT 1 IN SOMER'S RESUBDIVISION OF TRACT 23 IN FREDERICK H. BARTLETT'S GOLF AND COUNTRY CLUB ESTATES, BEING A SUBDIVISION OF THE SOUTH 2150 FEET OF THE EAST ¼ OF THE SOUTHWEST 1/4 OF SECTION 7 AND EAST 40 FEET LYING NORTH OF SOUTH 2150 FEET OF SAID EAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 7, ALSO THE WEST 674.71 FEET OF THE SOUTHEAST 1/4 OF SAID SECTION 7, TOWNSHIP 35 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PROPERTY ADDRESS OF REAL ESTATE: 1705 Cambridge Avenue
Flossmoor, IL 60422

PERMANENT TAX INDEX NUMBER: 32-07-403-038-0000

4811-1220-8721, v. 1

Property of Cook County Clerk's Office