



7. **Condemnation.** Borrower hereby assigns, transfers and sets over unto Lender the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. At the sole discretion and election of Lender, the proceeds of the award may be applied upon or in reduction of the indebtedness secured hereby, whether then due or not, or to require Borrower to restore or rebuild. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall be applied on account of the indebtedness secured hereby. If the Premises is abandoned by Borrower or if after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within five (5) days of the date of such notice, Lender is authorized to settle, collect and apply the proceeds at Lender's discretion.

8. **Variation.** If the payment of the indebtedness 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 said Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation or release.

9. **Prepayment.** At such time as the Borrower is not in default either under the terms of the Note secured hereby or under the terms of this Mortgage, the Borrower shall have the privilege of making full prepayment on the principal of said Note (in addition to the required payments) in accordance with the terms and conditions, if any, set forth in said Note.

10. **Obligations Relating to Premises.** Borrower shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep said Premises in good condition and repair, free of waste and mechanics' liens 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 superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Lender; (d) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; (e) make no material alterations to said Premises, except as required by law or municipal ordinance and provided Lender has given prior written consent; (f) not use or suffer or permit use of the Premises for any purpose other than that for which the same is now used; (g) not initiate or acquiesce in any zoning reclassification without Lender's written consent; (h) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note; and (i) pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgement of this Mortgage and all other documents securing the indebtedness secured hereby and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the indebtedness secured hereby, this Mortgage and all other documents securing the indebtedness secured hereby, and all assignments thereof.

11. **Borrower's Assurances and Covenants.** Borrower further covenants and agrees with Lender, its successors and assigns as follows:

A. Borrower will fully comply and cause compliance by tenants with all of the material terms, conditions and provisions of all leases on the Premises, so that the same shall not become in default or be cancelled, terminated or declared void, and will do all that is needful to preserve all said leases in force. Except for taxes and assessments to be paid by Borrower pursuant to Paragraph 1 of this Mortgage, Borrower will not create or suffer or permit to be created, subsequent to the date of this Mortgage, any lien or encumbrance which may be or become superior to any lease affecting the Premises; and

B. No construction shall be commenced upon the Land or upon any adjoining land at any time owned or controlled by Borrower or by other business entities related to Borrower, unless the plans and specifications for such construction shall have been submitted to and approved in writing by Lender to the end that such construction shall not, in the sole judgment of Lender, entail prejudice to the loan evidenced by the Note and secured by this Mortgage.

C. Borrower will at all times fully comply with and cause the Premises and the use and condition thereof to fully comply with all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate thereto, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, landmark preservation, construction, access, water rights, use, noise and pollution) which are applicable to Borrower or the Premises.

D. Borrower shall within fifteen (15) days after a written request by Lender furnish from time to time a signed statement setting forth the amount of the obligation secured hereby and whether or not any event of Default, offset or defense then is alleged to exist against the same and, if so, specifying the nature thereof.

12. **Inspection.** Lender shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

13. **Default.** If (a) default be made in the due and punctual payment of the Note, or any installment due in accordance with the terms hereof, either of principal or interest or in any payment required to be made under the terms of said Note or this Mortgage, or (b) a petition shall be filed by or against the Borrower in voluntary or involuntary bankruptcy or under Chapter XI, XII or XIII of the Federal Bankruptcy Act or any similar law, state or federal, whether now or hereafter existing, or (c) the Borrower shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for the Borrower or for all Borrower's property or the major part thereof in any proceeding, or any court shall have taken jurisdiction of the property of the Borrower or the major part thereof in any proceeding for the arrangement, liquidation or winding up of the affairs of the Borrower; or (d) the Borrower shall make an assignment for the benefit of creditors, or shall admit in writing inability to pay Borrower's debts generally as they become due; or (e) default shall be made in the due observance or performance of any other of the covenants, agreements or conditions hereinbefore or hereinafter contained or as contained in any other instrument evidencing, securing or guarantying the Note, required to be kept or observed by the Borrower or any other signatory to any such instrument of lending, securing or guarantying the Note, and the same shall continue for five (5) days (any and all of the foregoing being herein referred to as an "Event of Default"), then and in every such case the whole of said principal sum hereby secured shall, at once, at the option of Lender become immediately due and payable, together with accrued interest thereon, without notice to Borrower.

14. **Prohibition on Sale or Financing.**

A. Any sale, conveyance, assignment, pledge, hypothecation, encumbrance or other transfer of title to, or any interest in, or the placing of any lien upon the Premises (whether voluntary or by operation of law) without Lender's prior written consent shall be an Event of Default hereunder.

B. It is understood and agreed that the indebtedness secured hereby was created solely due to the financial sophistication, creditworthiness, background and business sophistication of Borrower and Lender continues to rely upon same as the means of maintaining the value of the Premises. It is further understood and agreed that any secondary or junior financing placed upon the Premises or the improvements located thereon, or upon the interests of Borrower may divert funds which would otherwise be used to pay the indebtedness secured hereby, and could result in acceleration and/or foreclosure by any such junior lienor. Any such action would force Lender to take measures, and incur expenses, to protect its security, and would detract from the value of the Premises, and impair the rights of Lender granted hereunder.

C. Any consent by Lender to, or any waiver of any event which is prohibited under this Paragraph 14, shall not constitute a consent to, or waiver of, any right, remedy or power of Lender upon a subsequent event of default.

15. **Foreclosure.** When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such indebtedness or part thereof. 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 Lender for 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) for procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and similar data and assurances with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to 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 in this Paragraph mentioned, and such expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Note or said 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 Borrower, with interest from the date of disbursement at the Default Rate stated in the Note and shall be secured by this Mortgage.

The proceeds of any foreclosure sale of the premises shall be distributed and applied in the order set forth in the Note; and the overplus (if any) to Borrower, Borrower's heirs, legal representatives or assigns, as their rights may appear.

16. **Appointment of Receiver.** Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower 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 Lender hereunder or any 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 during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, 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. The court from time to time may authorize the receiver to apply the net income in his hands after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of any obligation secured hereby, including without limitation the following, in such order of application as Lender may elect: (i) amounts due upon the Note, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Premises; (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises; (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same, provided that such application is made prior to foreclosure sale, and (vi) the deficiency in case of a sale and a deficiency.
17. **Application of Funds Upon Default.** In the event of a default in any of the provisions contained in this Mortgage or in the Note secured hereby, Lender may at its option, without being required to do so, apply any monies at the time on deposit pursuant to Paragraph 4 hereof, or any of Borrower's obligations herein or in the Note contained in such order and manner as Lender may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Borrower. So long as any amount is unpaid under the Note or this Mortgage, the funds on deposit pursuant to Paragraph 4 hereof shall be applied for the purposes for which made hereunder and shall not be subject to the direction or control of the Borrower, and Lender shall not be liable for any failure to apply to the payment of taxes, assessments or insurance premiums unless Borrower, while not in default hereunder, shall have requested in writing to make application of such funds to the payment of the particular taxes, assessments or insurance premiums for payment of which they were deposited, accompanied by bills for such taxes, assessments or insurance premiums.
18. **Lender's Right to Exercise Remedies.** The rights and remedies of Lender as provided in the Note, in this Mortgage, in any other Loan Document or available under applicable law, shall be cumulative and concurrent and may be pursued separately, successively or together against Borrower or against any obligors, if any, or against the Premises, or against any one or more of them, at the sole discretion of Lender, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. No delay or omission of Lender to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Mortgage to Lender may be exercised from time to time as often as may be deemed expedient by Lender. Nothing in this Mortgage or in the Note shall affect the obligation of Borrower to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.
19. **Rights of Lender.** In case of default herein, Lender may, but need not, make any payment or perform any act herein required of Borrower in any form and manner deemed expedient 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 thereof, or redeem from any tax sale or forfeiture affecting said premises or correct any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Lender to protect the Premises and the Lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon from the date of the disbursement at the rate stated in the Note; provided that the aggregate amount of the indebtedness secured hereby together with all such additional sums advanced shall not exceed five hundred (500%) percent of the amount of the original indebtedness secured hereby. Inaction of Lender shall never be considered as a waiver of any right accruing to it on account of any default on the part of Borrower.
20. **Forbearance.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage or to demand repayment for amounts so paid, with interest, as provided herein or in the Note.
- ~~21. **Borrower's Right to Reinstatement.** If Borrower cures certain conditions, Borrower shall have the right to have enforcement of this Mortgage discontinued at any time prior to the earlier of (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Premises pursuant to any power of sale contained in this Mortgage, or (b) entry of a judgment enforcing this Mortgage. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Mortgage and the Note had no acceleration occurred; (b) cures any default of any other covenants or agreements, including all expenses incurred in enforcing this Mortgage, including, but not limited to, reasonable attorneys' fees; and (c) takes such actions as Lender may reasonably require to assure that the lien of this Mortgage, Lender's rights in the Premises and Borrower's obligation to pay the sums secured by this Mortgage shall continue unchanged. Upon reinstatement by Borrower, this Mortgage and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration due to a violation of or event of Default as set forth in Paragraph 14.~~
22. **Waivers by Borrower.** Borrower waives the benefit and agrees not to invoke any appraisement, valuation, stay, extension or exemption laws, or any so-called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage. Borrower for Borrower and all who may claim through or under Borrower waives any and all rights to have the property and estates comprising the mortgaged Premises marshalled upon any foreclosure of the Note hereof and agrees that any court having jurisdiction to foreclose such lien may order the mortgaged Premises sold as an entirety. Borrower hereby waives and releases all rights and benefits under and by virtue of the homestead exemption laws of the State of Illinois.
23. **Binding.** This Mortgage and all provisions hereof shall extend to and be binding upon Borrower and all persons claiming under or through Borrower, and the word "Borrower" when used herein shall include all such persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage, and shall include the singular or plural as the context may require. All obligations of Borrower hereunder shall be joint and several, if more than one party comprise the Borrower. The word "Lender" when used herein shall include the successors and assigns of Lender named herein, and the holder or holders, from time to time, of the Note secured hereby.
24. **No Merger.** It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Lender acquire any additional interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender, as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.
25. **Release.** Lender shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Lender for the preparation and execution of such release.
26. **Borrower not a Joint Venturer or Partner.** Borrower acknowledges and agrees that in no event shall Lender be deemed to be a partner or joint venturer with Borrower or any beneficiary of Borrower. Without limitation of the foregoing, Lender 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 secured hereby, or otherwise.
27. **Notice.** Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof by certified mail addressed to the Borrower or Lender at the address set forth above, or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder.
28. **Severability.** In the event any of the provisions contained in this Mortgage or in any other Loan Documents (as defined in the Note) shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Lender, not affect any other provision of this Mortgage, the obligations secured hereby or any other Loan Document and same shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and therein. This Mortgage has been executed and delivered at Chicago, Illinois and shall be construed in accordance therewith and governed by the laws of the State of Illinois.
29. **Captions.** The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting in any way the scope or intent of the provisions hereof. Wherever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders.

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30. **Assignment of Rents and Leases** A. To further secure the indebtedness secured hereby, Borrower does hereby sell, assign and transfer unto Lender all the rents, issues and profits now due with respect to the Premises and does hereby sell, assign and transfer onto Lender all Borrower's right, title and interest as lessor under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Borrower or its agents or beneficiaries under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all of such leases and agreements, and all the avails thereunder, unto Lender, and Borrower does hereby appoint irrevocably Lender its true and lawful attorney in its name and stead (with or without taking possession of the Premises) to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as Lender shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter exist on the Premises.

B. Borrower represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the Premises has been or will be, without Lender's consent, waived, released, reduced, discounted, or otherwise discharged or compromised by Borrower. Borrower shall not grant any rights of set off or permit any set off to rent by any person in possession of any portion of the Premises. Borrower agrees that it will not assign any lease or any rents or profits of the Premises, except to Lender or with the prior written consent of Lender.

C. Nothing herein contained shall be construed as constituting Lender as a mortgagee in possession in the absence of the taking of actual possession of the Premises by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

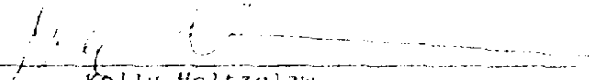
D. Borrower further agrees to assign and transfer to Lender all future leases upon all or any part of the Premises and to execute and deliver, at the request of Lender, all such further assurances and assignments in the Premises as Lender shall from time to time require.


E. Borrower expressly covenants and agrees that if Borrower, as lessor under any lease for all or any part of the Premises, shall fail to perform and fulfill any term, covenant, condition or provision in said lease or leases, or any of them on its part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Borrower shall suffer or permit to occur any breach or default under the provisions of any assignment of any lease or leases given as additional security for the payment of the indebtedness secured hereby, such breach or default shall constitute a default hereunder and entitle Lender to all rights available to it in such event.

F. At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in eminent domain), to any one or more leases affecting any part of the Premises, upon the execution by Lender and recording or registration thereof, at any time hereafter, in the office wherein this Mortgage was registered or filed for record, of a unilateral declaration to that effect.

~~EXCLUDED BY EXHIBITATION CLAUSE HERE~~

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

  
Kelly Holtzelaw

  
Vanessa Macadar

DOCUMENT PREPARED BY:

Kevin P. Breslin  
Katz Randall & Weinberg  
200 North LaSalle Street  
Suite 2300  
Chicago, Illinois 60601

RETURN TO RECORDER'S BOX 340



# UNOFFICIAL COPY

## EXHIBIT A

LOT 9 IN BLOCK 2 IN S. DE LAMATER'S SUBDIVISION OF THE EAST 128 FEET OF THE WEST 19 ACRES OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as 1841 N. Albany, Chicago, IL

P.I.N.: 13-36-310-009

Property of Cook County Clerk's Office

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