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SATIN FINE FOODS INC. and SATIN REALTY ASSOCIATES, LLC  
(collectively the "Borrower")

and

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
(the "Mortgagor")

to

PROVIDENT BANK  
(the "Mortgagee")

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**MORTGAGE**

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Dated: June 14, 2011

Section: 129  
Block: 1  
Lot: 1.-1  
Village: Chester  
Town: Chester  
County: Orange  
State: New York

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**RECORD AND RETURN TO:**

Marianna R. Kennedy, Esq.  
Drake, Loeb, Heller, Kennedy,  
Gogerty Gaba & Rodd PLLC  
555 Hudson Valley Avenue, Suite 100  
New Windsor, New York 12553

**This mortgage does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having their own separate cooking facilities.**

## MORTGAGE

**THIS MORTGAGE**, made the 14<sup>th</sup> day of June, 2011, between **SATIN FINE FOODS INC.**, a New York State corporation with its principal place of business at 37 Elkay Drive, Suite 41, Chester, New York 10918 and **SATIN REALTY ASSOCIATES, LLC**, a New York State limited liability company with its principal place of business at 37 Elkay Drive, Suite 41, Chester, New York 10918, collectively as the "Borrower", the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 255-275 Main Street, Goshen, New York 10924, the "Mortgagor" and **PROVIDENT BANK**, a savings association duly organized and existing under and pursuant to the laws of the United States of America, and having its principal place of business at 400 Rella Boulevard, P.O. Box 600, Montebello, New York 10901, as the "Mortgagee".

### DEFINITION OF TERMS:

- (a) **"Mortgage"** shall mean this commercial mortgage and security agreement from Borrower to Mortgagee.
- (b) **"Note"** shall mean the Promissory Note dated June 14, 2011 from Borrower to Mortgagee in the amount of **TWO MILLION FIVE HUNDRED SEVENTY SIX THOUSAND AND NO/100 (\$2,576,000.00) DOLLARS** together with all extensions, renewals, or modifications thereof, and secured by this Mortgage.
- (c) **"Guarantor"** shall mean collectively August Thomsen Corp., f/k/a Thomsen, August Corp., Kevin O'Reilly, Douglas J. Schneider and Jeffrey G. Schneider.
- (d) **"Guaranty"** shall mean that certain Guaranty dated June 14, 2011 from Guarantor to Mortgagee.
- (e) **"Loan Documents"** shall mean this Mortgage, the Note, the Guaranty and any other loan document signed by the Borrower in connection with this loan of being made by the Mortgagee to Borrower and secured by this Mortgage.
- (f) **The "Debt"** shall mean said indebtedness, interest and all other sums due hereunder and under the Note.
- (g) **The "Premises"** shall mean the real property described in Schedule A.
- (h) **The "Improvements"** shall mean buildings, structures, units, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter thereon.
- (i) **The "Mortgaged Property"** shall mean the Premises and the Improvements together with the property, rights and interests stated herein.

**WITNESSETH:** To secure the payment of an indebtedness in the principal sum of **TWO MILLION FIVE HUNDRED SEVENTY SIX THOUSAND AND NO/100 (\$2,576,000.00) DOLLARS**, lawful money of the United States of America, which is the maximum principal amount which is or under any contingency may be secured at the date of execution hereof or at anytime thereafter, to be paid with interest in accordance with the terms of the Note (said indebtedness, interest and all other sums due hereunder and under the Note being collectively called the "Debt"), Mortgagor and Borrower have mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated and by these presents does mortgage, give, grant, bargain, sell, alien, convey, confirm, pledge, assign and hypothecate unto Mortgagee the real property described in Schedule A attached hereto (the "Premises") and the buildings, structures, units, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements"):

- (a) (the "Premises") and (the "Improvements") and all right, title and interest of the Mortgagor and Borrower in and to all easements, rights of way, privileges, liberties, tenements, hereditaments, strips, gores, streets, alleys, passages, ways, waters, water-course, covenants, rights and appurtenances thereunto belonging or appertaining and all of the estate, right, title, interest, claim or demand whatsoever of Mortgagor and Borrower therein and in the streets and ways adjacent thereto, either in law or in equity, in possession or expectancy (collectively with the Premises, "Realty");
- (b) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) permits, licenses, and other property of every kind and nature whatsoever owned by Mortgagor and Borrower, or in which Mortgagor or Borrower has or shall have an interest, now hereafter located upon the Mortgaged Premises and improvements on the Mortgaged Property (the "Equipment"), and the right, title and interest of Mortgagor and Borrower in and to any of the equipment which may be subject to any security agreements (as defined in Subdivision (I)(L) of Section 9-105 of the Uniform Commercial Code of New York), superior in lien to the lien of this Mortgage. This Mortgage shall not cover fixtures that under the law are "consumer goods" and which the Mortgagor and Borrower acquires more than ten (10) days after the date hereof, nor does it cover replacement of, or additions to, fixtures that under the law are "consumer goods" made more than ten (10) days after the date hereof;
- (c) all awards or payments, including interest thereon, which may be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Mortgaged Property;
- (d) all leases and other agreements affecting the use or occupancy of the Mortgaged Property now or hereafter entered into (the "Leases") and the right to receive and apply the rents, issues and profits of the Mortgaged Property (the "rents") to the payment of the Debt;
- (e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;
- (f) the right, in the name and on behalf of Mortgagor and Borrower, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property.
- (g) all cash or other property to be received or held by Mortgagee under this mortgage for payment of taxes, insurance premiums or expenses of Restoration (as defined below) or as proceeds of insurance policies required by this mortgage, condemnation or the exercise of eminent domain; and
- (h) all contract rights, general intangibles, actions and rights of action now existing or hereafter arising pertaining to the Mortgaged Property, including all Mortgagor's and Borrower's rights and interests in agreements now or in the future in existence providing for or relating to the construction, maintenance, operation or management of the Premises or any part hereof, including rights in the plans and specifications therefore; to the extent permitted by the relevant authorities all licenses, permits and approvals for the ownership, construction maintenance, operation, use and occupancy of the Premises; all Mortgagor's and Borrower's rights and interests in all warranties, guaranties, performance bonds, or surety bonds covering the obligation of contractors, subcontractors suppliers and manufacturers relating to Realty or any Improvement or equipment; and all insurance policies covering or affecting the Mortgaged Property or any part thereof.

AND Borrower covenants and warrants with Mortgagee that:

**1. PAYMENT OF DEBT**

Borrower will pay the Debt as hereinabove provided and timely comply with all terms and conditions contained herein and in the other Loan Documents. The Prepayment Provision in the Promissory Note provides the terms and conditions under which the Borrower may prepay Principal, including any applicable prepayment premium or fee, to the Mortgagee.

**2. MARKETABLE TITLE**

Borrower warrants good, marketable and insurable title in fee simple to the Premises, the Improvements and the Equipment, free and clear of all liens, claims and encumbrances; except such as are listed as exceptions to title in the title policy insuring the lien of the Mortgage; that it will own the Mortgaged Property free and clear of liens and claims except as otherwise provided in this Mortgage and the Note; and that this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property subject only to the exceptions referred to above. Borrower will preserve such title and will forever warrant and defend the same to the Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Unless expressly provided otherwise, in the event the ownership of this Mortgage and title to the fee in the Mortgaged Property covered by this Mortgage are vested in the same person or entity, neither this Mortgage nor the Debt shall merge in said title, but shall continue to be and remain a valid first lien on the Mortgaged Property for the amount of the Debt.

**3. INSURANCE**

Borrower will keep the Improvements and the Equipment insured against loss or damage by fire with extended coverage, flood insurance, and such other hazards as Mortgagee shall from time to time require in amounts approved by Mortgagee, not exceeding in the aggregate 100% of the full insurable value of the Improvements and the Equipment, including coverage for loss of rents or business interruption, and naming Bank, its successors and assigns as their interests may appear, as the first mortgagee under a standard mortgagee endorsement clause. All such policies shall be "All Risk" property insurance policies which shall be issued and all policies of insurance (the "Policies") shall be issued by an insurer acceptable to Mortgagee and shall contain the standard New York mortgagee clause endorsement naming Mortgagee as the person to which all payments made by such insurance company shall be paid. Borrower will assign and deliver the Policies to Mortgagee. Borrower will deliver to Mortgagee satisfactory evidence of the renewal of each of the Policies not later than fifteen (15) days prior to the expiration date of each of the policies. Sums paid to Mortgagee by any insurer may be retained and applied by Mortgagee toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper, or at the discretion of Mortgagee, the same may be paid, either in whole or in part, to Borrower for such purposes as Mortgagee shall designate. If Mortgagee shall receive and retain such insurance money, the lien of this Mortgage shall be reduced only by the amount thereof received after expenses of collection and retained by Mortgagee and actually applied by Mortgagee in reduction of the Debt. The provisions of Subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to the terms of this Mortgage. Without limiting the foregoing, all such policies shall have endorsed thereon, in form acceptable to Mortgagee, the standard non-contributing mortgagee

clause, in the name of Mortgagee, and a waiver of subrogation endorsement. Each policy shall provide that it will not be canceled, amended or materially altered (including by reduction in the scope or limits or coverage) without at least thirty (30) days' prior written notice to Mortgagee. Duplicate original policies evidencing the insurance required by this Mortgage and any additional insurance which shall be taken out on the Mortgaged Property by or on behalf of Borrower shall be deposited with and held by Mortgagee. Borrower will deliver to Mortgagee (i) promptly upon receipt, receipts evidencing payment of all premiums thereon and (ii) at least thirty (30) days prior to the expiration of each such policy, original certificates evidencing renewals of all such policies for not less than one year, with evidence satisfactory to Mortgagee of payment of all premiums thereon.

In addition, Borrower shall maintain (a) comprehensive general public liability insurance covering injury and damage to persons and property with limits acceptable to Mortgagee and naming Mortgagee, its successors and assigns as their interests may appear, as an additional insured; (b) insurance which complies with the workers' compensation and employers' liability laws of all states in which Borrower shall be required to maintain such insurance; (c) boiler insurance provided any of the buildings contain a boiler, and insurance against loss or damage from leakage of sprinkler systems in such amounts a Mortgagee shall from time to time reasonably require; and (d) such other insurance as Mortgagee may require from time to time in amounts and with carriers reasonably satisfactory to Mortgagee. If required, Borrower shall pay the premiums for such insurance as same become due and payable.

#### **4. TAXES**

Borrower shall pay all taxes, assessments, water rates, sewer rents and other charges, now or hereafter levied or assessed against the Mortgaged Property (the "Taxes") as same become due and payable. Borrower will deliver to Mortgagee, upon request, evidence satisfactory to Mortgagee that the Taxes are not delinquent.

#### **5. ESCROW ACCOUNT**

Borrower, in addition to the payments of principal and/or interest payable pursuant to the Note (the "Installments"), will pay to Mortgagee on each date and in the manner specified in the Note for payment of an Installment, an amount (the "Escrow Fund") (a) which would be sufficient to pay the Taxes payable, or estimated by Mortgagee to be payable, during the ensuing twelve (12) months, divided by the number of Installments due during such twelve (12) month period, and (b) an amount which, when divided by the number of Installments due from the date of any calculation hereunder until the expiration of the Policies, would be sufficient to pay the premiums due for the renewal of the coverage afforded by the policies upon the expiration thereof. Mortgagee will apply the Escrow Fund to payments required to be made by Borrower pursuant to paragraphs 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due pursuant to paragraphs 3 and 4 hereof, Mortgagee shall, in its discretion, (1) return any excess to Borrower (2) credit such excess against the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper, or (3) credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall pay to Mortgagee, upon request, an amount which Mortgagee shall estimate as sufficient to make up the deficiency. Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional collateral security for the Debt and shall not bear interest. The Borrower shall pay for any fee incurred by the Mortgagee, should the Mortgagee engage a third party provider to service the tax and insurance escrow account.

## **6. LATE CHARGES**

If the Mortgagee has not received the full amount of any monthly payment by the date it is due, Borrower will pay a late charge to the Mortgagee. The amount of the charge will be three (3%) percent of the Borrower's overdue payment on the first such occurrence and five (5%) percent of the Borrower's overdue payment on any such payment thereafter.

## **7. CONDEMNATION**

Notwithstanding any taking by any public or quasipublic authority through eminent domain or otherwise, the Debt shall not be reduced until any award or payment therefore shall have been actually received after expenses of collection and applied by Mortgagee to the discharge of the Debt. Mortgagee may apply any such award or payment to the discharge of the Debt whether or not then due and payable. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt, whichever is less. Borrower shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Borrower or otherwise to collect and receipt for any such award or payment and to file and prosecute such claim or claims, and although it is hereby expressly agreed that the same shall not be necessary in any event, Borrower shall, upon demand of Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient to assign to Mortgagee any such award or payment free and clear of any encumbrance of any kind or nature whatsoever.

## **8. RIGHT TO RENTAL PAYMENTS AND POSSESSION**

Mortgagee has the right to enter the Mortgaged Property for the purpose of enforcing its interest set forth in this Mortgage. Nevertheless, subject to the terms of this Paragraph 8, Mortgagee waives the right to enter the Mortgaged Property for the purpose of collecting the Rents, and grants Borrower the right to collect the Rents. Borrower shall hold the Rents, or an amount sufficient to discharge all current sums due on the Debt, in trust for use in the payment of the Debt. The right of Borrower to collect the Rents may be revoked by Mortgagee upon any default by Borrower under the terms of this Mortgage by giving notice of such revocation to Borrower.

Following such notice Mortgagee may enter upon the Mortgaged Property, collect, retain and apply the Rents toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. Borrower shall not, without the consent of Mortgagee, make, or suffer to be made, any Leases or cancel or modify any Leases or accept prepayments of Installments of Rent for a period of more than one (1) month in advance or further assign the whole or any part of the Rents without the consent of Mortgagee. No lease covering all or any part of the Mortgaged Property shall be valid or effective without prior written approval of Mortgagee. Mortgagee shall have all of the rights against Lessees of the Mortgaged Property as set forth in Section 291-F of the Real Property Law of New York. In respect of any Lease, Borrower will (a) fulfill or perform each and every provision thereof on its part to be fulfilled or performed; (b) promptly send copies of all notices of default which it shall send or receive thereunder to Mortgagee, and (c) enforce, short of termination thereof, the performance or observance of the provisions thereof. In addition to the rights which Mortgagee may have herein, in the event of any default under this Mortgage, Mortgagee, at its option, may require

Borrower to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Borrower. Upon default in any such payment, Borrower will vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be deemed to impose on Mortgagee any of the obligations of the lessor under the Leases. Any lease (including any or all of the terms and conditions thereof) covering all or any part of the Mortgaged Property, shall be subject and subordinate to the lien of this Mortgage.

#### **9. MAINTENANCE OF PROPERTY**

Borrower shall cause the Mortgaged Property to be maintained in good condition and repair. In the event of the failure of the Borrower to maintain the Mortgaged Property within a period of 30 days after notice from the Mortgagee, and if the Borrower fails to proceed promptly after such notice to cure or remedy the same with due diligence, then, in any such case, the Mortgagee, in addition to any other remedies provided herein, at the expense of the Borrower, may, from time to time, at its option, cure or remedy any such default of the Borrower and the Borrower hereby authorizes the Mortgagee to enter upon the Mortgaged Property as may be necessary for such purposes, and any costs thereof, including reasonable counsel fees, shall be secured by this Mortgage and shall be immediately due and payable to the Mortgagee.

The Improvements and the Equipment shall not be removed, demolished or materially altered except for normal replacement of the Equipment), without the consent of Mortgagee, except that the Borrower shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such Equipment as from time to time may become worn out or obsolete provided that either (a) simultaneously with or prior to such removal, any such Equipment shall be replaced with other Equipment of a value at least equal to that of the replaced Equipment and free from any security agreement, and by such removal and replacement the Borrower shall be deemed to have subjected the Equipment to the lien of this Mortgage; or (b) any net cash proceeds received from such disposition shall be paid over promptly to the Mortgagee to be applied to the last installments due on the Debt secured, without any charge for prepayment. The Borrower will not permit any waste to the Mortgaged Property.

Borrower shall promptly comply with all laws, orders and ordinances affecting the Mortgaged property, or the use thereof, and shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be damaged or destroyed by any casualty or which may be affected by any proceeding of the character referred to in paragraph 7 hereof and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. If such casualty shall be covered by the Policies, Borrower's obligation to repair, replace or rebuild such portion of the Mortgaged Property shall be contingent upon Mortgagee's paying Borrower the proceeds of the Policies, or such portion thereof as shall be sufficient to complete such repair, replacement or rebuilding, whichever is less. Borrower will not, without the prior consent of Mortgagee, initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof.

**10. INSPECTION**

Mortgagee and its agent shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

**11. MORTGAGEE'S RIGHTS IF PROPERTY IS SOLD OR TRANSFERRED**

The Debt shall, at the option of Mortgagee, become immediately due and payable in the event that Borrower shall, without the prior written approval of Mortgagee (a) further encumber the Mortgaged Property with any lien imposed in connection with any other financing, or (b) permit the Mortgaged Property or any part thereof or any interest therein to be sold, transferred or conveyed to any other person or entity, or (c) sell, transfer or convey the Mortgaged Property or any part thereof or any interest therein, which shall include but not be limited to, where Borrower is a corporation (i) the sale or transfer of more than forty-nine (49%) percent of the outstanding shares of the corporation, or (ii) the dilution of the present stockholding or corporate control by issuance of new or treasury stock or by conversion of any non-voting stock or other securities to voting stock, or, where Borrower is a partnership, the withdrawal, except by death, resignation or retirement, of any general partner, or the appointment of any new or other, or substitute general partners, or where Borrower is a Limited Liability Company, the withdrawal, resignation or retirement of any member, or the appointment of any new or other, or substitute members, or the transfer of any membership interest, except as expressly permitted in the Note. The provisions of this paragraph shall apply to each and every further encumbrance, sale, transfer or conveyance, regardless of whether or not Mortgagee has consented to, or waived by its action or inaction hereunder, any previous encumbrance, sale, transfer or conveyance.

**12. ENVIRONMENTAL COVENANTS**

- (a) The subject property and the proposed use thereof complies with all federal, state and other laws and regulations concerning environmental hazards, and the Borrower agrees to comply with all such laws and regulations as they may be amended from time to time.
- (b) The property is free of environmental liens and that there are no pending investigations, injunctions, clean-up orders, consent decrees, litigation, enforcement proceedings or other contingent liabilities affecting the property and the Borrower agrees to immediately comply with any of the foregoing should they arise in the future.
- (c) The property is free of hazardous contamination or releases of "hazardous substances" (as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601). Should any such hazardous contamination or release of hazardous substances be discovered in the future, the Borrower agrees to immediately remove them or cure any violation in connection therewith so that the property complies with all such laws and regulations as amended from time to time.
- (d) The Borrower shall give immediate notice to the Mortgagee of any environmental liens, pending investigations, injunctions, clean-up orders, consent decrees, litigation, enforcement proceedings or other proceedings concerning the property, and the Borrower hereby agrees to indemnify and hold the Mortgagee harmless from any loss or liability, including reasonable attorneys' fees, in connection with the foregoing.
- (e) A violation of any of the provisions contained in this covenant shall also be deemed to be a default in the terms of this Mortgage.



- (f) In the event that a violation occurs, the Mortgagee shall have the option (but not the obligation) to cure the violation, and the Borrower agrees to reimburse all costs thereof, together with interest at the rate set forth in the Note to the Mortgagee and secured by the Mortgage. If this is a building loan Mortgage, the parties agree that unexpended funds maybe used to pay the costs enumerated above.
- (g) The Borrower hereby understands and agrees that compliance with the Borrower with the covenants contained in this provision is of the highest priority to all who are or may be concerned with property, and the Borrower agrees to strict compliance with the provisions hereof.
- (h) Within ten (10) days after an environmental lien is filed, Borrower shall furnish a surety bond to the Mortgagee in an amount satisfactory to the Mortgagee to guarantee first lien status to the Mortgagee. Failure to furnish such surety bond within said time shall, at the option of the Mortgagee, be a default in the terms of this Mortgage.

### 13. SECURITY AGREEMENT

This Mortgage is both a Real Property Mortgage and a Security Agreement. The Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of Borrower in the Mortgaged Property as set forth herein. Borrower and Mortgagor shall, at the request of Mortgagee, deliver to Mortgagee any and all further instruments which Mortgagee shall require in order to further secure and perfect the lien of this Mortgage. Mortgagee is authorized to file financing statements, as required by the Uniform Commercial Code, to perfect its lien against the foregoing types of personal property without first obtaining the signature of Borrower or Mortgagor on the financing statements. Mortgagee is further empowered to file such financing statements without such signature of Borrower or Mortgagor. (Said portion of the Mortgaged Property subject to the Uniform Commercial Code being called herein in the "Collateral".) If a default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Borrower shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Borrower shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorney's fees, incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

### 14. FINANCING STATEMENTS

Mortgagee may file without Borrower's or Mortgagor's signature any financing or continuation statement covering Mortgaged Property.

**15. PRESERVATION OF LIEN**

Borrower shall preserve its title to the Mortgaged Property and the validity, enforceability and first priority of the lien and security interest granted hereby in the Mortgaged Property, and Borrower shall forever warrant and defend the same to Mortgagee against the claims of all persons and parties whomsoever. Borrower shall do the following in furtherance of such obligation:

- (a) Borrower (i) shall cause the lien of this Mortgage to remain a valid first mortgage lien upon the Mortgaged Property; (ii) shall cause the security interests created by this Mortgage to remain first priority security interests; (iii) shall not at any time create or allow to accrue or exist any Debt, lien, security interest or charge which would be prior to or on a par with the lien of this Mortgage or a security interest created by it upon any part of the Mortgaged Property; and (iv) shall not cause or permit the lien of this Mortgage to be diminished or impaired in any way. If any lien or security interest becomes attached to any Mortgaged Property, Borrower will cause it to be discharged and released as soon as practicable, and in any event within thirty (30) days.
- (b) Borrower will pay, bond or otherwise discharge, from time to time when they shall become due, all lawful claims and demands of mechanics, material-men, laborers and others which, if unpaid, might result in, or permit the creation of, a lien.
- (c) If the validity or priority of the lien or a security interest, created by this Mortgage or if the title or any of the rights of Borrower or Mortgagee in or to the Mortgaged Property, shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against Borrower or Mortgagee with respect thereto, Borrower will promptly notify Mortgagee thereof and will diligently endeavor to cure any defect which may develop or be claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of litigation and, subject to Mortgagee's approval, the compromise, release or discharge of any and all adverse claims.
- (d) To the extent, in the manner and places and within such times required by law or deemed appropriate by Mortgagee in order to perfect and maintain the validity, effectiveness and priority of the liens, security interests and assignments intended to be created by the Loan Documents or to subject after-acquired property of Borrower or proceeds thereof to such liens, security interests and assignments, or to otherwise carry out the intent of the Loan Documents, Borrower will, at the request of Mortgagee do the following: (i) promptly record and re-record, file and re-file and register and re-register appropriate Loan documents, any financing or continuation statement or amendment and every other instrument in addition or supplemental to any thereof, and promptly furnish to Mortgagee evidence satisfactory to it of every such recording, filing or registration; and (ii) promptly do, execute, acknowledge and deliver any further acts, deeds, conveyances, mortgages, deeds of trust, assignments, estoppel certificates, notices of assignment, transfers, certificates, assurances and other instruments and correct any defect, error or omission which may be discovered in the contents of any of the Loan Documents or in the execution, acknowledgment or recordation thereof.

**16. NEW YORK LIEN LAW**

Pursuant to Section 13 of the Lien Law of New York, Borrower shall receive the advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvement and shall apply such advances first to the payment of such costs of any such improvements on the Mortgaged Property before using any part of the total of the same

for any other purpose. The Borrower will indemnify and hold Mortgagee harmless against any loss or liability, cost of expense, including, without limitation, any judgments, attorney's fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by Mortgagee of any applicable lien law, including, without limitation, any section of Article 3-A of the New York Lien Law.

**17. PRESERVATION OF LEGAL STATUS**

Borrower will not, without Mortgagee's consent:

- (a) initiate or support any zoning reclassification of the Mortgaged Property, seek any variance under existing zoning ordinances applicable to the Mortgaged Property or use or permit the use of the Mortgaged Property in a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances;
- (b) impose, or permit to be imposed, any restrictive covenants or encumbrances upon the Mortgaged Property, execute or file any subdivision plat affecting the Mortgaged Property or consent to the annexation of the Mortgaged Property to any municipality; or
- (c) permit or suffer the Mortgaged Property to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement.

**18. USE OF MORTGAGED PROPERTY**

- (a) Borrower will observe and comply with, and cause the Mortgaged Property to be maintained, used and operated, in accordance with: (i) all laws, regulations, ordinances, rules, and orders (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, health, safety, morals, equal opportunity, minimum wages, and employment practices) of any governmental authority applicable to the Mortgaged Property or to Borrower as owner of that property; (ii) applicable orders, rules and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization or other body exercising similar functions; and (iii) all duties or obligations of any kind imposed in connection with any Permitted Encumbrance.
- (b) Mortgaged Property shall be kept free of hazardous substances, and shall not be used in any manner to generate hazardous substances.
- (c) Borrower will not use or occupy or permit the Mortgaged Property to be used or occupied in any manner which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Borrower shall not permit any portion of the Mortgaged Property to be used by any person or entity having diplomatic immunity, without the prior written consent of Mortgagee which may be withheld in its sole and absolute discretion.

**19. PROTECTION OF LIEN**

If any of the events described in paragraph 17(c) above shall occur, Mortgagee (whether or not named as a party to such actions or proceedings) is hereby authorized and empowered to take such steps, in addition to those taken by Borrower, as it may deem necessary or proper for the defense of any such action or proceeding or the protection of the lien, security interest, validity or priority of the Mortgage or Assignments or of such title or rights, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, the purchase of any tax title and the removal of prior liens and security interests.

**20. RIGHTS OF MORTGAGEE**

Mortgagee shall have the right to appear and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor or Borrower, which Mortgagee, in its discretion, feels should be brought to protect its interest in the Mortgaged Property.

**21. BOOKS AND RECORDS**

Borrower and Guarantors will keep adequate books and records of accounts in accordance with generally accepted accounting practices consistently applied, and furnish Mortgagee with financial statements and other information concerning the affairs of Borrower, or any affiliate of Borrower, or any Guarantors hereof, as Mortgagee may reasonably request including a fully itemized statement of profit and loss and of surplus and a balance sheet. The Borrower will furnish to the Mortgagee, within fifteen (15) days after mailing to the Mortgagee of a written request therefore, a detailed statement in writing, duly sworn, and covering the period of time specified in such request, showing all income derived from the operation of the Mortgaged Property and all disbursements made in connection therewith, and containing a list of the names of all tenants of the Mortgaged Property and occupants other than those claiming possession through such tenants, the portion or portions of the Mortgaged Property occupied by such tenant and occupant, the rent and other charges payable under the terms of their leases or other agreements, and the periods covered by such leases or other agreements.

**22. STRICT PERFORMANCE**

Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

**23. DEBT BECOMES DUE**

The Debt shall become due at the option of Mortgagee upon any one or more of the following events ("Events of Default"):

- (a) if any installment is not paid on the date it is due;
- (b) if any of the Taxes are not paid when the same is due and payable;
- (c) if the Policies are not kept in full force and effect, or if the Policies are not assigned and delivered to Mortgagee upon request;
- (d) if Borrower does not furnish a statement, in the manner provided herein, of the amount of the Debt and the offsets or defenses thereto, if any;
- (e) if without the consent of Mortgagee the Mortgaged Property is in any manner transferred, except by operation of law, or further encumbered or if any Improvement or the Equipment (except for normal replacement of the Equipment) is removed, demolished or materially altered, or if the Mortgaged Property is not kept in good condition and repair;
- (f) if any Leases are made, canceled or modified in any material respect, or if any of the Rents is prepaid for a period of more than one (1) month in advance, or if any of the Rents is assigned, or any new lease made, without the consent of Mortgagee;

- (g) if any representation, covenant or warranty of Borrower, or of a Guarantor guaranteeing payment of the Note or any portion thereof or performance by Borrower of any of the terms of this Mortgage made herein or in any such guaranty, or in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note, this Mortgage, or any such guaranty, shall prove false or misleading in any material respect;
- (h) if Borrower or any Guarantor shall make an assignment for the benefit of creditors;
- (i) if a receiver, liquidator or trustee of Borrower or of any Guarantor shall be appointed or if Borrower or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Act, or any similar Federal or State statute, shall be filed by or against Borrower or any Guarantor or if any proceeding for the dissolution or liquidation of Borrower or of any Guarantor shall be instituted and, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days.
- (j) if Borrower does not reimburse Mortgagee upon demand for all expenses incurred by Mortgagee in remedying any default of Borrower hereunder or in appearing in, defending, or bringing any action or proceeding to protect Mortgagee's interest in the Mortgaged Property, including reasonable attorney's fees, with interest as provided herein;
- (k) if, after a default thereunder, Mortgagee shall elect to enforce its rights under the (Note or any instrument which may be held by Mortgagee as additional security for the Debt;
- (l) if Borrower shall be in default under any mortgage covering any part of the Mortgaged Property whether it be superior or inferior in lien to this Mortgage;
- (m) if the Mortgaged Property shall become subject (i) to any tax lien which is superior to the lien of this Mortgage, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any mechanic's materialman's or other lien which is or is asserted to be superior to the lien of this Mortgage and such lien shall remain undischarged for thirty (30) days;
- (n) in the event there is a judgment outstanding against the Borrower and the same remains unsatisfied for a period of thirty (30) days, if same is not appealed, bonded or otherwise contested by Borrower;
- (o) upon the death of the Borrower, and/or any of the individual Guarantors of any of the obligations, if applicable;
- (p) in the event the Borrower fails to keep any promise or covenant contained in this Mortgage, or in the Note which accompanies this Mortgage;
- (q) if Borrower fails to establish and/or maintain an operating account with the Mortgagee from which monthly payments may be deducted;
- (r) if Borrower fails to comply with any rule, regulation or requirement of any governmental body, agency, board or other authority which licenses, regulates or otherwise oversees the business activities of the Borrower, or
- (s) if the Borrower shall fail to provide the Mortgagee with a copy of any written notice from any such governmental body, agency, board or other authority which licenses, regulates or otherwise oversees the business activities of the Borrower, of the Borrower's failure to comply with any rule, regulation or requirement, within 48 hours of Borrower's receipt of such notice.

**24. INTEREST RATE INCREASE IN THE EVENT OF DEFAULT**

In the event of a default with respect to any of the terms and conditions of this Mortgage, or the Note which accompanies it, the interest rate of the obligation which shall be in effect at the time of the default, shall be increased by five (5%) percent per annum from the date of default without the mortgagee being obligated to give any notice of said increase. In the event that the Borrower shall not pay the entire obligation by the maturity date, the interest rate in effect on the maturity date shall be increased to the greater of the following:

- (a) the interest rate shall be increased by five (5%) percent per annum, or
- (b) the interest rate shall be increased to Provident Bank's Prime Rate, plus two (2%) percent per annum; said prime rate to be subject to change on a monthly basis.

PROVIDENT BANK "Prime Rate" is the rate established from time to time by the lender at its main office as the Prime Lending Rate for domestic commercial loans, and which rate shall change when and as said Prime Lending Rate shall change, such interest to be payable on the first day of each month. The Prime Lending Rate in effect upon the date of this Mortgage and accompanying Note is three and a quarter (3.25%) percent per annum. In the event that the term "Prime Rate" should cease to be used as a relevant term with respect to interest rates, the Mortgagee shall select a comparable index which shall be determined solely at the option of the Mortgagee. The Prime Rate is merely a pricing index. It is not intended, and the Borrower should not consider it to represent the lowest or the best interest rate that the Mortgagee charges to any Borrower. It is understood that the increase in the rate cannot exceed the highest rate allowable by law. This charge shall be reduced to comply and be in accordance with the maximum rate allowed by law to be charged by the Mortgagee for each payment if it exceeds such rate at any time. Such increase in the interest rate shall not be deemed an extension of any due date hereunder or a waiver by the Mortgagee of its right to enforce collection or pursue its remedies. The Borrower acknowledges that (i) such additional rate is a material inducement to the Mortgagee to make the loan; (ii) the Mortgagee would not have made the loan in the absence of the agreement of the Borrower to pay such additional rate; (iii) such additional rate represents compensation for increased risk to the Mortgagee that the loan will not be repaid; and (iv) such rate is not a penalty and represents a reasonable estimate of the cost to the Mortgagee in allocating resources (both personal and financial) to the on-going review, monitoring, administration and collection of the loan and compensation to the Mortgagee for losses that are difficult to ascertain.

**25. CURE OF DEFAULTS**

If Borrower shall default in any of its obligations hereunder to pay any amount or to perform any action, including, but not limited to, its obligation to pay Taxes and to procure, maintain and pay premiums on, the Policies referred to herein, then Mortgagee shall have the right, but not the obligation, in Borrower's name or in its own name, and without notice to Borrower, to advance all or any part of such amounts or to perform any or all such actions. In furtherance thereof, Mortgagee may, without prejudice to its other rights hereunder, enter upon and take possession of the Mortgaged Property to such extent and as often as Mortgagee may deem necessary or desirable to prevent or remedy any such default. Mortgagee, upon making any payment that Borrower was required by this Mortgage to make, shall be subrogated to all of the rights of the person receiving such advance payment. No such advance or performance shall be deemed to have cured such default by Borrower or any Event of Default with respect thereto.

**26. MORTGAGEE'S RIGHTS**

If Borrower should fail to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, the cost and expense thereof (including reasonable attorney's fees to the extent permitted by law), with interest as provided in this paragraph, shall be due upon demand from Mortgagee to Borrower. All such costs and expenses incurred by Mortgagee in remedying such default or in appearing in, defending, or bringing any such action or proceeding shall be paid to Mortgagee upon demand, with interest as set forth in said Note which accompanies this Mortgage, but not more than the maximum interest rate which Borrower may by law pay, for the period after notice from Mortgagee that such costs or expenses were incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee pursuant to the terms of this Mortgage, with interest, shall be deemed to be secured by this Mortgage.

**27. FORECLOSURE**

If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may at the discretion of Mortgagee, be sold in one or more parcels or in several interests or portions and in any order or manner.

**28. APPOINTMENT OF RECEIVER**

The holder of this Mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver, custodian, trustee, liquidator or conservator without notice.

**29. CERTAIN RIGHTS PERTAINING TO SALES**

The following shall apply to any sale of any Mortgaged Property pursuant to Section 27 of the Mortgage.

- (a) Mortgagee may conduct any number of sales from time to time. A Power of sale shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale which is not completed or is defective in Mortgagee's opinion, until Debt shall have been paid in full.
- (b) Mortgagee may adjourn any sale from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at such adjourned time and place.
- (c) At any such sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefore may make settlement for the purchase price by crediting the Debt with the sales price less the expense of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

- (d) Under the completion of any such sale, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or instruments, conveying, assigning and transferring all estate, right title and interest in and to the property and rights sold and shall receive the proceeds of such sale or sales and apply the same as herein provided. Mortgagee is hereby appointed the true, lawful and irrevocable attorney-in-fact of Borrower, which appointment shall be deemed to be coupled with an interest and is irrevocable and shall survive the death or disability of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power. Borrower hereby ratifies and confirms all that such attorney-in-fact or such substitute or substitutes may lawfully do by virtue hereof. Nevertheless, Borrower agrees to execute, acknowledge and deliver to Mortgagee or to such purchaser or purchasers all such instruments as Mortgagee may deem appropriate to evidence, confirm and ratify such sale or sales.
- (e) Any such sale shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof by, through or under Borrower. Upon any such sale, all right, title and interest of Borrower in and to such insurance policies then in force with respect to the Mortgaged Property foreclosed upon or so transferred, and all proceeds payable thereunder and unearned premiums thereon shall immediately vest in the purchaser or other transferee of such Mortgaged Property.

**30. SUBROGATION**

To the extent that proceeds of the Debt are used to pay indebtedness secured by any then outstanding lien, security interest, charge or encumbrance against the Mortgaged Property, such proceeds shall be deemed to have been advanced by Mortgagee at Borrower's request and Mortgagee shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances shall have been released. In consideration of the payment of such indebtedness by Mortgagee, Borrower hereby waives and releases all demands and causes of action for offsets, payments and rentals to, upon and in connection with such indebtedness.

**31. STRICT PERFORMANCE OF TERMS**

The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) failure of Mortgagee to comply with any request of Borrower or the Guarantors to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note or this Mortgage. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any



portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

**32. STATEMENT OF AMOUNT DUE AND OF NO DEFENSE**

After request by Mortgagee, Borrower, within five (5) days and at its expense, will furnish Mortgagee with a statement, duly acknowledged and certified, setting forth the amount of the Debt, the offsets or defenses thereto, if any, and that the Note and this Mortgage have not been modified, or if modified, giving particulars of such modification.

**33. ADMINISTRATION, COLLECTION AND OTHER EXPENSES**

- (a) Borrower will on demand pay or reimburse Mortgagee for the payment of any reasonable costs or expenses (including attorneys fees and disbursements) which are incurred or expended in connection with or incidental to (i) the preparation, execution, delivery, filing, recording, amendment or modification of this Mortgage, the agreement to any waiver of any term under it, the release or substitution of any Mortgaged Property, or any other aspect of the administration of this Mortgage; (ii) any change in law affecting this Mortgage or the Mortgaged Property (iii) any default or Event of Default by Borrower under this Mortgage or any of the other Loan Documents (as defined in Loan Agreement), (iv) Mortgagees' exercising its right to cure any default of Borrower under this Mortgage, (v) Mortgagee's exercise of its right to act to protect the lien of this Mortgage, or (vi) the enforcement, defense or maintenance of any of its rights or remedies or Borrower's obligations under this Mortgage or any of the Loan Documents by litigation or otherwise.
- (b) All sums so advanced and all expenses incurred by Mortgagee hereunder or under applicable law shall be deemed obligations owing by Borrower to Mortgagee and shall bear interest, from the date paid or incurred until paid, at a rate which is five (5%) percent per annum higher than the interest rate of the obligation which is in effect at the time of the payment.
- (c) Any amounts advanced shall be secured by the Mortgage.

**34. INCIDENTAL EXPENSES AND TAXES**

Borrower will promptly pay all income, franchise and other taxes owing by Borrower, and any stamp taxes which may be required to be paid in connection with the Debt or this Mortgage together with any interest or penalties thereon, and Borrower will pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Mortgagee by reason of execution of this Mortgage or any Loan Document or ownership of this Mortgage or any Mortgage supplemental hereto, any security instrument with respect to any Mortgaged Property or any instrument of further assurance.

**35. LAW ENACTING NEW TAX**

If any law or ordinance is enacted or adopted which imposes a tax, either directly or indirectly, on the Note, the Debt or this Mortgage, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee be advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or unenforceable or provide the basis for a defense of usury then, and in that event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

**36. REVENUE STAMPS**

If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same Borrower will pay for the same, with interest and penalties thereon, if any.

**37. WAIVER OF RIGHTS AND DEFENSES**

To the full extent Borrower may do so, Borrower agrees for itself and as to its heirs, devisee, representatives, successors and assigns, and for any and all persons ever claiming an interest in the Mortgaged Property, to the following with respect to rights of Mortgagee under this Mortgage or any Loan Document:

- (a) Borrower will not at any time insist on, plead, claim or take the benefit or advantage of any statute or rule of law now or hereafter in force providing for any appraisalment, valuation, stay, extension, moratorium or redemption, or of any statute of limitations.
- (b) Borrower hereby waives and releases all rights of redemption, valuation, appraisalment, notice of intention to mature or declare due the whole of the Debt (except as otherwise provided herein), and all rights to a marshaling of the assets of Borrower, to a sale of the Mortgaged Property without any prior or different resort for collection, or to a sale in inverse order of alienation, or to the payment of the Debt out of the proceeds of sale of the Mortgaged Property in preference to any other person.
- (c) Borrower shall not have or assert any right under any statute or rule of law pertaining to any of the matters set forth in this paragraph, to the administration of estates of decedents or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Mortgagee hereunder.

**38. MONETARY DAMAGES RESTRICTED**

- (a) the event that a claim or adjudication is made that Mortgagee has acted unreasonably or unreasonably delayed acting in any case where by law or under this Mortgage or any of the other Loan Documents it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.
- (b) Mortgagee and its directors, officers, attorneys, agents and employees shall not be liable to Borrower for any loss or damage caused by any act or omission on the part of any of them unless such loss or damage shall have been caused by the gross negligence or willful misconduct of such person and unless such loss or damage shall have been the direct, immediate and necessary result of omission.

**39. LAW THAT GOVERNS**

The terms of the Note and this Mortgage shall be construed by the laws of the State of New York, except as herein expressly provided to the contrary.

**40. JURISDICTION AND VENUE**

Any dispute which may arise in connection with this Mortgage, any amendment of it, or any of the other Loan Documents, may be resolved by the courts of the State of New York located in Rockland County, or by the United States District court for the Southern district of New York. Borrower hereby irrevocably submits to, and gives up any objection to, the exercise of jurisdiction by

any of those courts. Borrower admits that any dispute with Mortgagee may be resolved at least as conveniently in such a court as in any other court. Borrower will not seek dismissal of a proceeding, or ask to move it to another court on the ground that resolution of the dispute in any of these courts is not convenient or in the interests of justice. Borrower shall not seek a jury trial in any action based upon or arising out of this Mortgage or any related document or agreement. Borrower will not seek to consolidate any such action with any other action in which trial by jury has not been waived.

**41. INVALID TERM OF MORTGAGE**

If any term, covenant or condition of this Mortgage or the Note shall be held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.

**42. OBLIGATION OF PERSONS**

If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

**43. EXECUTION OF MORTGAGE**

This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

**44. BORROWER'S POWER TO EXECUTE**

Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Mortgage, and to mortgage and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Borrower's part to be performed.

**45. AUTHORIZATION**

The execution and delivery of this Mortgage has been duly authorized by the Board of Directors of Borrower (if Borrower be a corporation) and there is no requirement under its certificate of incorporation or its by-laws for consent of shareholders to this transaction.

**46. NO ORAL CHANGES** - This Mortgage cannot be changed orally.

**47. WAIVER OF RIGHTS BY BORROWER**

Borrower hereby waives the right to assert a counterclaim in any action or proceeding brought against it by Mortgagee, and waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Mortgagee against Borrower, or in any matters whatsoever arising out of or in any way connected with this Mortgage or the Debt.

**48. MORTGAGEE'S DISCRETION TO EXERCISE CERTAIN RIGHTS**

Whenever pursuant to this Mortgage, Mortgagee exercises any right herein granted to Mortgagee to approve or disapprove or consent or refuse consent or to determine that any arrangement or term is satisfactory or unsatisfactory, it is expressly understood and agreed by Borrower that any such exercise or determination shall be in the sole and absolute discretion of Mortgagee and shall be binding and conclusive upon Borrower.

**49. MAILING OF NOTICES**

Any notice, request or demand given or made under this Mortgage shall be in writing and shall be hand delivered or sent Federal Express, United Parcel Services or other reputable nationally recognized overnight courier service by postage prepaid registered or certified mail, return receipt requested, and shall be deemed given (a) when received at the following addresses if hand delivered, (b) one (1) business day after delivery to a nationally recognized overnight courier service, and (c) three (3) business days after being postmarked and addressed as follows if sent by registered or certified mail, return receipt requested:

*If to Provident:*

Provident Bank  
400 Rella Blvd., P.O. Box 600  
Montebello, New York 10901  
Attention: Commercial Loan Dept.

*With a copy to:*

Marianna R. Kennedy, Esq.  
Drake, Loeb, Heller, Kennedy,  
Gogerty, Gaba & Rodd, PLLC  
555 Hudson Valley Avenue, Suite 100  
New Windsor, New York 12553

*If to the undersigned:*

Satin Fine Foods Inc.  
37 Elkay Drive, Suite 41  
Chester, NY 10918  
Attention: Kevin O'Reilly, President

Satin Realty Associates, LLC  
37 Elkay Drive, Suite 41  
Chester, NY 10918  
Attention: Kevin O'Reilly, Manager

*With a copy to:*

Ronald Cohen, Esq.  
40 Matthews Street  
Goshen, NY 10924

It being understood and agreed that each party will use reasonable efforts to send copies of any notices to the addresses marked "With a copy to" hereinabove set forth; provided; however, that failure to deliver such copy or copies shall have no consequence whatsoever to the effectiveness of any notice made to any of the undersigned or Provident. Each party to this Mortgage may designate a change of address by notice given, as herein provided, to the other party fifteen (15) days prior to the date such change of address is to become effective.

**IT IS EXPRESSLY UNDERSTOOD BY THE BORROWER THAT ALL REFERENCES IN THIS MORTGAGE TO ENFORCING MORTGAGEE'S RIGHTS ARE DEEMED TO INCLUDE, BUT ARE NOT LIMITED TO, MORTGAGEE'S RIGHT TO FORECLOSE BY POWER OF SALE, PURSUANT TO ARTICLE 14 OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, AS SAME MAY BE AMENDED FROM TIME TO TIME.**

**50. ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
SPECIAL OBLIGATIONS; RECORDING**

Notwithstanding any other term or condition contained in this Mortgage:

(a) This Mortgage is executed by the Mortgagor solely for the purpose of subjecting its fee ownership or leasehold interest in the Mortgaged Property to the lien of this Mortgage and for no other purpose. All representations, covenants and warranties of the Mortgagor herein are hereby deemed to have been made by the Borrower and not by the Mortgagor. It is hereby agreed and understood that the Mortgagor has not granted an interest in the Unassigned Rights as defined in Section 6.1 of that certain Leaseback Agreement dated as of April 1, 2011 by and between the Borrower and the Mortgagor (the "Leaseback Agreement").

(b) The obligations and agreements of the Mortgagor contained herein or therein shall not constitute or give rise to an obligation of the State of New York or Orange County, New York, and neither the State of New York nor Orange County, New York shall be liable hereon. All obligations of the Mortgagor hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Mortgaged Property, and neither the members of the Mortgagor nor any person executing this Mortgage on its behalf shall be liable personally under this Mortgage. No recourse shall be had for the payment of the principal of, or interest on the indebtedness which this Mortgage secures, or for any claim based hereon, or otherwise in respect hereof, or based upon or in respect of this Mortgage, or any mortgage supplemental hereto, against any past, present, or future member, officer, agent, servant, or employee, as such, of the Mortgagor or of any successor or political subdivision, either directly or through the Mortgagor or any such successor, all such liability of such members, officers, agents (except for the Borrower), servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Mortgage and the instruments evidencing the indebtedness it secures. Any judgment or decree shall be enforceable against the Mortgagor only to the extent of its interest in the Mortgaged Property and any such judgment shall not be subject to execution on or by a lien on assets of the Mortgagor other than its interest in the Mortgaged Property.

(d) No order or decree of specific performance with respect to any of the obligations of the Mortgagor hereunder shall be sought or enforced against the Mortgagor unless the party seeking such order or decree shall first have requested the Mortgagor in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Mortgagor shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period. If the Mortgagor refuses to comply with such request and the Mortgagor's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree may, at its option, place in an account with the Mortgagor an amount or undertaking sufficient to cover such reasonable fees and expenses

whereupon the Mortgagor shall agree to comply with such request. If the Mortgagor refuses to comply with such request and the Mortgagor's refusal to comply is based on its reasonable expectation that it or any of its members, officers, directors, servants, agents or employees shall be subject to potential liability, the party seeking such order or decree may, at its option, (1) agree to protect, defend, indemnify and hold harmless the Mortgagor and its members, officers, directors, servants, agents (other than the Borrower) and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Mortgagor, furnish to the Mortgagor reasonably satisfactory security to protect the Mortgagor and its members, officers, directors, servants, agents (other than the Borrower) and employees against all liability reasonably expected to be incurred as a result of compliance with such request whereupon the Mortgagor shall agree to comply with such request. The agreement on the part of the Mortgagee shall not be construed in any way so as to effect or impair the lien of this Mortgage or the Mortgagee's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagee in any foreclosure proceedings.

(d) The Mortgagor will record or cause this Mortgage to be recorded in the office of the Orange County Clerk and will pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Mortgage.

**IN WITNESS WHEREOF**, this Mortgage has been executed by Borrower and Mortgagor the day and year first above written.

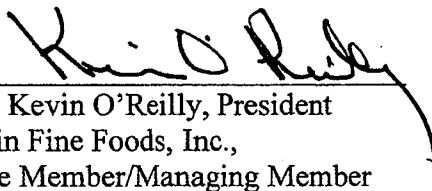
BORROWER:

SATIN FINE FOODS INC.

  
By: Kevin O'Reilly, President

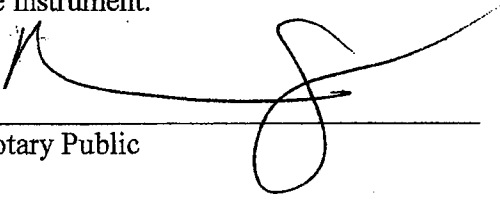
SATIN REALTY ASSOCIATES, LLC

  
By: Kevin O'Reilly, Manager

  
By: Kevin O'Reilly, President  
Satin Fine Foods, Inc.,  
Sole Member/Managing Member

STATE OF NEW YORK     )  
                                      ) SS.:  
COUNTY OF ROCKLAND    )

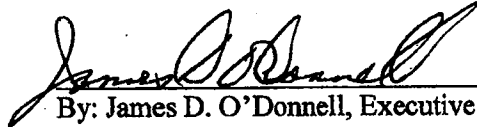
On the 14th day of June, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared **Kevin O'Reilly**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

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

**MARIANNA R. KENNEDY**  
Notary Public, State of New York  
No. 02KE5056588  
Qualified in Orange County  
Commission Expires March 4, 2014

MORTGAGOR:

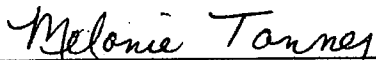
ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY



By: James D. O'Donnell, Executive Director

STATE OF NEW YORK     )  
                                  ) SS.:  
COUNTY OF ORANGE     )

On the 26<sup>th</sup> day of May, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared **James D. O'Donnell**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

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

MELANIE TANNER  
Notary Public, State of New York  
No. 4857059  
Qualified in Orange County  
Commission Expires October 10, 2013

\$2,576,000.00 Mortgage



## **Schedule A**

### **Description**

The Condominium Unit ("Unit") known as Unit 1 in the building ("Building") known as The Leone Lane Condominium ("Condominium") and by the street number 32 Leone Lane, County of Orange, Village and Town of Chester, State of New York, said Unit being designated and described as Unit 1 in a certain declaration dated May 10, 2011, made by Grantor pursuant to Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") establishing a plan of condominium ownership of the Building and the land ("Land") upon which the Building is situate (which Land is more particularly described in Exhibit "A" annexed hereto and by this reference made a part hereof), which declaration was recorded in the Orange County Clerk's Office (the "County Clerk's Office") on May 19, 2011 as File # 2011004836 in Book 13178 Page 0161 (hereinafter called the "Declaration") and also designated as Tax Lot 1.-1 in Block 1 of Section 129 on the tax map of the County Clerk's Office and on the Floor Plans of the Building and filed in the County Clerk's Office on May 19, 2011 as Map # 123-11;

TOGETHER with a combined 35.627% interest in the Common Elements (as such term is defined in the Declaration);



## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT, made June 14, 2011, by **SATIN FINE FOODS INC.**, a New York State corporation with its principal place of business at 37 Elkay Drive, Suite 41, Chester, New York 10918 and **SATIN REALTY ASSOCIATES, LLC**, a New York State limited liability company with its principal place of business at 37 Elkay Drive, Suite 41, Chester, New York 10918 (hereinafter collectively called "Borrower") and the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 255-275 Main Street, Goshen, New York 10924, (hereinafter called the "Agency", and collectively with the Borrower the "Assignor") to **PROVIDENT BANK**, a savings association duly organized and existing under and pursuant to the laws of the United States of America, and having its principal place of business at 400 Rella Boulevard, P.O. Box 600, Montebello, New York 10901 (hereinafter called "Bank").

WITNESSETH:

FOR VALUE RECEIVED, Assignor hereby grants, transfers and assigns to the Bank to supplement the Assignment of Rents set forth in that certain mortgage (the "Mortgage") bearing even date herewith the leases now existing or hereafter, if any, made (the "Leases") with respect to the premises more fully described in Schedule "A" attached hereto (hereinafter referred to as the "Premises") or any portion thereof, including, but not limited to, any and all rents, issues, income and profits now due or to become due under any lease, tenancy or agreement concerning the Premises, hereby warranting that Assignor is the owner of the entire lessor's interest therein and that said existing Leases are current and in full force and effect.

Together with all the right, power and authority of Assignor to alter, modify or change the terms of said Leases or any other existing or future Leases made, or to accept any surrender, or to cancel or terminate the same or to consent or to execute and deliver any consent to the tenant to do so or to refrain from doing any act or thing under any Leases, without prior written consent of the Assignor.

Together with all rents, income and profits arising from any Leases, and renewals thereof, if any, and together with all rents, income and profits due or to become due from the premises described therein, and from all Leases for the use and occupation of said premises which may be executed in the future during the term of this Assignment.

### **FOR THE PURPOSES OF SECURING**

1. Payment of indebtedness in the principal amount of **TWO MILLION FIVE HUNDRED SEVENTY SIX THOUSAND AND NO/100 (\$2,576,000.00) DOLLARS** and interest, including any extensions or renewals thereof, payable by the Assignor to the Bank and secured by the Mortgage.

2. Payment of all other sums with interest thereon becoming due and payable to the Bank under the provisions hereof or under the Mortgage or the other instruments and documents delivered in connection therewith.

3. The performance and discharge of each and every obligation, covenant and agreement of Assignor herein and in the Mortgage or the other instruments and documents delivered in connection therewith.

**TO PROTECT THE SECURITY OF THIS ASSIGNMENT, ASSIGNOR COVENANTS**

1. To observe and perform all of the obligations imposed upon the landlord in any Leases and not to do or permit to be done anything to impair the security thereof; that all of the said Leases are legal, valid and enforceable and none of the tenants are in default thereunder; that no rent reserved in said Leases has been anticipated or assigned; nor to collect any of the rent, income and profits arising or accruing from the premises under any Leases in advance of the time when the same becomes due under the terms thereof; not to discount any future accruing rents; not to execute any other Assignments of Leases or Rents of said premises; not to alter, modify or change the terms of any Leases or to cancel or terminate the same (except in the case of a material default thereunder by the tenant) or accept a surrender thereof, without prior written consent of the Bank, and without such prior written consent of the Bank not to permit the merger of any Leases in the fee title of the Premises.

2. To assign and transfer to the Bank any and all future Leases upon all or any part of the Premises (such assignment and transfer to be deemed to have occurred upon the entering into of any such future Lease), and to execute and deliver, at the request of the Bank all such further assurances and assignments in the Premises as the Bank shall from time to time require, at the cost and expense of the Assignor and to pay any recording charges or fees for instruments required by the Bank to be recorded.

3. That the rights of the Assignee to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to the Assignee shall, to the extent not prohibited by law, extend also to the period from and after the filing of any suit to foreclose the lien of the Mortgage including any period allowed by law for the redemption of the Premises, it being the intention of the parties that this Assignment survive any Judgment of Foreclosure and Sale and not merge into the Judgment.

**IT IS MUTUALLY AGREED THAT**

1. So long as there shall exist no default by Assignor in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant or agreement herein, or in the Mortgage or the other instruments and documents delivered in connection therewith, or in any of the Leases contained, Assignor shall have the right to collect, upon but not prior to accrual, all rents, issues and profits from said Premises and to retain, use and enjoy the same.

2. Upon or at any time after default in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant or agreement herein, or in the Mortgage or the other instruments and documents delivered in connection therewith, or of landlord in any Leases contained, the Bank, without in any way waiving such default, may at its option take possession of the Premises, and have, hold, manage, lease and operate the same on such terms and

for such period of time as the Bank may deem proper; and may collect and receive all rents, issues and profits of the Premises, with full power to make from time to time all alterations, renovations, repairs or replacements thereto as may seem proper to the Bank, and to apply such rents, issues and profits to the payment of (a) the cost of all such alterations, renovations, repairs and replacements and expenses incident to taking and retaining possession of the Premises and the management and operation thereof; and keeping the same properly insured, and (b) all taxes, charges, claims, assessments, water rents, sewer rents and any other lien or payment to the mortgage debt, and premiums for insurance, with interest on all of such items, and (c) the indebtedness and the interest thereon secured hereby together with all costs and reasonable attorneys' fees, in such order of priority as to any of such items, as the Bank in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding.

By accepting this Assignment, the Bank agrees that if it shall upon any default or breach exercise its option herein and pursuant to section 13 of the Mortgage and if such default or breach shall be remedied and all necessary charges and expenses incurred by reason thereof paid, other than by reason of a foreclosure of the Mortgage, the parties hereto shall each be restored to and reinstated in their respective rights and estates as if a default or breach had not occurred. Assignor shall thereupon hold said Premises subject to this Assignment as if the Bank had not exercised any option hereunder, but nothing hereinabove contained shall impair any right of the Bank upon any subsequent breach.

3. The Bank shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify the Bank for and to hold the Bank harmless of and from all liability, loss or damage which it may or might incur under any Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Leases. Should the Bank incur any such liability, loss or damage under any Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse the Bank therefor immediately upon demand, and upon the failure of Assignor so to do the Bank may declare all sums secured hereby immediately due and payable.

4. Upon payment in full of all indebtedness secured hereby, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer, supervisor or attorney of the Bank stating that the indebtedness is not fully paid shall be and constitute evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon. A demand of any tenant of the Premises by the Bank for the payment of the rent or any default claimed by the Bank, shall be sufficient warrant to the tenant to make future payments of rent to the Bank without the necessity for further consent by the Assignor.

5. The Bank may take or release other security, may release any party primarily or secondarily liable for an indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by it to the satisfaction of such indebtedness without prejudice to any of its rights hereunder.

6. Nothing herein contained and no act done or omitted by the Bank pursuant to the power and rights granted it here shall be deemed to be a waiver by the Bank of its rights and remedies under the Mortgage or the note secured thereby; but, the Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Bank under the terms thereof. The right of the Bank to collect said indebtedness and to enforce any other security therefor owned by it may be exercised by the Bank either prior to, simultaneously with, or subsequent of any action taken by it hereunder.

7. It is further understood that the Bank assumes no liability for any rent security deposits, if such security may have been deposited by a tenant with the Assignor under the terms of any Leases or any modification thereof.

8. This Assignment is binding upon and inures to the benefit of the Bank and any holder of the Mortgage, and is binding upon the inures to the benefit of the Assignor and any owner of the Premises, and may not be changed orally but only upon an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9. Notwithstanding any other terms or condition contained in this Assignment:

(a) This Assignment is executed by the Agency solely for the purpose of subjecting its rights under the Leases to the rights of the Bank and for no other purpose. All representations, covenants, and warranties of the Agency and Borrower herein are hereby deemed to have been made by the Borrower and not by the Agency. It is hereby agreed and understood that the Agency has not granted an interest in the Unassigned Rights as defined in Section 6.1 of that certain Leaseback Agreement, dated as of April 1, 2011, by and between the Agency and the Borrower.

(b) The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State of New York or Orange County, New York, and neither the State of New York nor Orange County, New York shall be liable hereon. All obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Premises by means of this Assignment or any other loan documents. Neither the members of the Agency, nor any person executing this Assignment on its behalf shall be liable personally under this Assignment. No recourse shall be had for the payment of the principal or interest on the indebtedness or for any claim based on the Mortgage, or otherwise in respect hereof, or based upon or in respect of this Assignment, or any modification of or supplemental hereto, against any past, present, or future member, officer, agent, servant, or employee, as such, of the Agency or of any successor or political subdivision, either

directly or through the Agency or any such successor, all such liability of such members, officers, agents (except for the Borrower), servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Assignment. Any judgment or decree shall be enforceable against the Agency only to the extent of its interest in the Premises and any such judgment shall not be subject to execution on or by a lien on assets of the Agency other than its interest in the Premises.

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period. If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree may, at its option, place in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses whereupon the Agency shall agree to comply with such request. If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, directors, servants, agents or employees shall be subject to potential liability, the party seeking such order or decree may, at its option, (1) agree to protect, defend, indemnify and hold harmless the Agency and its members, officers, directors, servants, agents (other than the Borrower) and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Agency, furnish to the Agency reasonably satisfactory security to protect the Agency and its members, officers, directors, servants, agents (other than the Borrower) and employees against all liability reasonably expected to be incurred as a result of compliance with such request whereupon the Agency shall agree to comply with such request. The agreement on the part of the Bank shall not be construed in any way so as to effect or impair the lien of this Assignment or the Bank's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Bank in any foreclosure proceedings.

(d) The Agency will record or cause this Assignment to be recorded in the office of the Orange County Clerk and will pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Assignment.


IN WITNESS WHEREOF, this Assignment has been duly signed, acknowledged and delivered by the Assignor the day and year first written above.

SATIN FINE FOODS INC.

  
By: Kevin O'Reilly, President


SATIN REALTY ASSOCIATES, LLC

  
By: Kevin O'Reilly, Manager

  
By: Kevin O'Reilly, President  
Satin Fine Foods, Inc.,  
Sole Member/Managing Member

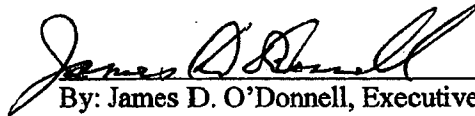
STATE OF NEW YORK     )  
                                      ) SS.:  
COUNTY OF ROCKLAND )

On the 14<sup>th</sup> day of June, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared **Kevin O'Reilly**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
**MARIANNA R. KENNEDY**  
Notary Public, State of New York  
No. 02KE5056588  
Qualified in Orange County  
Commission Expires March 4, 2014

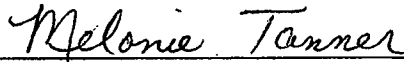


ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

  
By: James D. O'Donnell, Executive Director

STATE OF NEW YORK     )  
                                      ) SS.:  
COUNTY OF ORANGE     )

On the 26<sup>th</sup> day of May, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared **James D. O'Donnell**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

  
Notary Public

MELANIE TANNER  
Notary Public, State of New York  
No. 4957059  
Qualified in Orange County  
Commission Expires October 10, 2013

\$2,576,000.00 Assignment of Leases & Rents

**RECORD AND RETURN TO:**

**Marianna R. Kennedy, Esq.**

**Drake, Loeb, Heller, Kennedy**

**Gogerty, Gaba & Rodd PLLC**

**555 Hudson Valley Ave, Suite 100**

**New Windsor, New York 12553**

**V/Chester; T/Chester; C/Orange; S/New York**

**Section 129; Block 1; Lot 1.-1**

## **Schedule A**

### **Description**

The Condominium Unit ("Unit") known as Unit 1 in the building ("Building") known as The Leone Lane Condominium ("Condominium") and by the street number 32 Leone Lane, County of Orange, Village and Town of Chester, State of New York, said Unit being designated and described as Unit 1 in a certain declaration dated May 10, 2011, made by Grantor pursuant to Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") establishing a plan of condominium ownership of the Building and the land ("Land") upon which the Building is situate (which Land is more particularly described in Exhibit "A" annexed hereto and by this reference made a part hereof), which declaration was recorded in the Orange County Clerk's Office (the "County Clerk's Office") on May 19, 2011 as File # 2011004836 in Book 13178 Page 0161 (hereinafter called the "Declaration") and also designated as Tax Lot 1.-1 in Block 1 of Section 129 on the tax map of the County Clerk's Office and on the Floor Plans of the Building and filed in the County Clerk's Office on May 19, 2011 as Map # 123-11;

TOGETHER with a combined 35.627% interest in the Common Elements (as such term is defined in the Declaration);

---

SATIN FINE FOODS INC. and SATIN REALTY ASSOCIATES, LLC  
(collectively the "Borrower")

and

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
(the "Mortgagor")

to

PROVIDENT BANK  
(the "Mortgagee")

---

**MORTGAGE**

---

Dated: June 14, 2011

Section: 129  
Block: 1  
Lot: 1.-1  
Village: Chester  
Town: Chester  
County: Orange  
State: New York

---

RECORD AND RETURN TO:  
Marianna R. Kennedy, Esq.  
Drake, Loeb, Heller, Kennedy,  
Gogerty Gaba & Rodd PLLC  
555 Hudson Valley Avenue, Suite 100  
New Windsor, New York 12553

**This mortgage does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having their own separate cooking facilities.**

## MORTGAGE

**THIS MORTGAGE**, made the 14<sup>th</sup> day of June, 2011, between **SATIN FINE FOODS INC.**, a New York State corporation with its principal place of business at 37 Elkay Drive, Suite 41, Chester, New York 10918 and **SATIN REALTY ASSOCIATES, LLC**, a New York State limited liability company with its principal place of business at 37 Elkay Drive, Suite 41, Chester, New York 10918, collectively as the "Borrower", the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 255-275 Main Street, Goshen, New York 10924, the "Mortgagor" and **PROVIDENT BANK**, a savings association duly organized and existing under and pursuant to the laws of the United States of America, and having its principal place of business at 400 Rella Boulevard, P.O. Box 600, Montebello, New York 10901, as the "Mortgagee".

### DEFINITION OF TERMS:

- (a) **"Mortgage"** shall mean this commercial mortgage and security agreement from Borrower to Mortgagee.
- (b) **"Note"** shall mean the Promissory Note dated June 14, 2011 from Borrower to Mortgagee in the amount of \$2,995,000.00 together with all extensions, renewals, or modifications thereof, and secured by this Mortgage.
- (c) **"Guarantor"** shall mean collectively August Thomsen Corp., f/k/a Thomsen, August Corp., Kevin O'Reilly, Douglas J. Schneider and Jeffrey G. Schneider.
- (d) **"Guaranty"** shall mean that certain Guaranty dated June 14, 2011 from Guarantor to Mortgagee.
- (e) **"Loan Documents"** shall mean this Mortgage, the Note, the Guaranty, the Building Loan Agreement and any other loan document signed by the Borrower in connection with this facility being made by the Mortgagee to Borrower and secured by this Mortgage.
- (f) **The "Debt"** shall mean said indebtedness, interest and all other sums due hereunder and under the Note.
- (g) **The "Premises"** shall mean the real property described in Schedule A.
- (h) **The "Improvements"** shall mean buildings, structures, units, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter thereon.
- (i) **The "Mortgaged Property"** shall mean the Premises and the Improvements together with the property, rights and interests stated herein.
- (j) **"Building Loan Agreement"** shall mean the Building Loan Agreement dated the date hereof with respect to the Improvements to be constructed on the Premises.

**WITNESSETH:** To secure the payment of an indebtedness in the principal sum of **TWO MILLION NINE HUNDRED NINETY FIVE THOUSAND AND NO/100 (\$2,995,000.00) DOLLARS** lawful money of the United States of America, which is the maximum principal amount, which is or under any contingency may be secured at the date of execution hereof or at anytime thereafter, to be paid with interest in accordance with the terms of the Note (said indebtedness, interest and all other sums due hereunder and under the Note being collectively called the "Debt"), Mortgagor and Borrower have mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated and by these presents does mortgage, give, grant, bargain, sell, alien, convey, confirm, pledge, assign and hypothecate unto Mortgagee the real property described in Schedule A attached hereto (the "Premises") and the buildings, structures, units, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements"):

- (a) (the "Premises") and (the "Improvements") and all right, title and interest of the Mortgagor and Borrower in and to all easements, rights of way, privileges, liberties, tenements, hereditaments, strips, gores, streets, alleys, passages, ways, waters, water-course, covenants, rights and appurtenances thereunto belonging or appertaining and all of the estate, right, title, interest, claim or demand whatsoever of Mortgagor and Borrower therein and in the streets and ways adjacent thereto, either in law or in equity, in possession or expectancy (collectively with the Premises, "Realty");
- (b) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) permits, licenses, and other property of every kind and nature whatsoever owned by Mortgagor and Borrower, or in which Mortgagor or Borrower has or shall have an interest, now hereafter located upon the Mortgaged Premises and improvements on the Mortgaged Property (the "Equipment"), and the right, title and interest of Mortgagor and Borrower in and to any of the equipment which may be subject to any security agreements (as defined in Subdivision (I)(L) of Section 9-105 of the Uniform Commercial Code of New York), superior in lien to the lien of this Mortgage. This Mortgage shall not cover fixtures that under the law are "consumer goods" and which the Mortgagor and Borrower acquires more than ten (10) days after the date hereof, nor does it cover replacement of, or additions to, fixtures that under the law are "consumer goods" made more than ten (10) days after the date hereof;
- (c) all awards or payments, including interest thereon, which may be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Mortgaged Property;
- (d) all leases and other agreements affecting the use or occupancy of the Mortgaged Property now or hereafter entered into (the "Leases") and the right to receive and apply the rents, issues and profits of the Mortgaged Property (the "rents") to the payment of the Debt;
- (e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;
- (f) the right, in the name and on behalf of Mortgagor and Borrower, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property.
- (g) all cash or other property to be received or held by Mortgagee under this mortgage for payment of taxes, insurance premiums or expenses of Restoration (as defined below) or as proceeds of insurance policies required by this mortgage, condemnation or the exercise of eminent domain; and
- (h) all contract rights, general intangibles, actions and rights of action now existing or hereafter arising pertaining to the Mortgaged Property, including all Mortgagor's and Borrower's rights and interests in agreements now or in the future in existence providing for or relating to the construction, maintenance, operation or management of the Premises or any part hereof, including rights in the plans and specifications therefore; to the extent permitted by the relevant authorities all licenses, permits and approvals for the ownership, construction maintenance, operation, use and occupancy of the Premises; all Mortgagor's and Borrower's rights and interests in all warranties, guaranties, performance bonds, or surety bonds covering the obligation of contractors, subcontractors suppliers and manufacturers relating to Realty or any Improvement or equipment; and all insurance policies covering or affecting the Mortgaged Property or any part thereof.

**Reference is hereby made to the Building Loan Agreement, the terms of which are incorporated herein by this reference.**

AND Borrower covenants and warrants with Mortgagee that:

**1. PAYMENT OF DEBT**

Borrower will pay the Debt as hereinabove provided and timely comply with all terms and conditions contained herein and in the other Loan Documents.

**2. MARKETABLE TITLE**

Borrower warrants good, marketable and insurable title in fee simple to the Premises, the Improvements and the Equipment, free and clear of all liens, claims and encumbrances; except such as are listed as exceptions to title in the title policy insuring the lien of the Mortgage; that it will own the Mortgaged Property free and clear of liens and claims except as otherwise provided in this Mortgage and the Note; and that this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property subject only to the exceptions referred to above. Borrower will preserve such title and will forever warrant and defend the same to the Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Unless expressly provided otherwise, in the event the ownership of this Mortgage and title to the fee in the Mortgaged Property covered by this Mortgage are vested in the same person or entity, neither this Mortgage nor the Debt shall merge in said title, but shall continue to be and remain a valid second lien on the Mortgaged Property for the amount of the Debt.

**3. INSURANCE**

Borrower will keep the Improvements and the Equipment insured against loss or damage by fire with extended coverage, flood insurance, and such other hazards as Mortgagee shall from time to time require in amounts approved by Mortgagee, not exceeding in the aggregate 100% of the full insurable value of the Improvements and the Equipment, including coverage for loss of rents or business interruption, and naming Bank, its successors and assigns as their interests may appear, as the first mortgagee under a standard mortgagee endorsement clause. All such policies shall be "All Risk" property insurance policies and Builders' Risk insurance policies, which shall be issued and all policies of insurance (the "Policies") shall be issued by an insurer acceptable to Mortgagee and shall contain the standard New York mortgagee clause endorsement naming Mortgagee as the person to which all payments made by such insurance company shall be paid. Borrower will assign and deliver the Policies to Mortgagee. Borrower will deliver to Mortgagee satisfactory evidence of the renewal of each of the Policies not later than fifteen (15) days prior to the expiration date of each of the policies. Sums paid to Mortgagee by any insurer may be retained and applied by Mortgagee toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper, or at the discretion of Mortgagee, the same may be paid, either in whole or in part, to Borrower for such purposes as Mortgagee shall designate. If Mortgagee shall receive and retain such insurance money, the lien of this Mortgage shall be reduced only by the amount thereof received after expenses of collection and retained by Mortgagee and actually applied by Mortgagee in reduction of the Debt. The provisions of Subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to the terms of this Mortgage. Without limiting the foregoing, all such policies shall have endorsed thereon, in form acceptable to Mortgagee, the standard non-contributing mortgagee clause, in the name of Mortgagee, and a waiver of

subrogation endorsement. Each policy shall provide that it will not be canceled, amended or materially altered (including by reduction in the scope or limits or coverage) without at least thirty (30) days' prior written notice to Mortgagee. Duplicate original policies evidencing the insurance required by this Mortgage and any additional insurance which shall be taken out on the Mortgaged Property by or on behalf of Borrower shall be deposited with and held by Mortgagee. Borrower will deliver to Mortgagee (i) promptly upon receipt, receipts evidencing payment of all premiums thereon and (ii) at least thirty (30) days prior to the expiration of each such policy, original certificates evidencing renewals of all such policies for not less than one year, with evidence satisfactory to Mortgagee of payment of all premiums thereon.

In addition, Borrower shall maintain (a) comprehensive general public liability insurance covering injury and damage to persons and property with limits acceptable to Mortgagee and naming Mortgagee, its successors and assigns as their interests may appear, as an additional insured; (b) insurance which complies with the workers' compensation and employers' liability laws of all states in which Borrower shall be required to maintain such insurance; (c) boiler insurance provided any of the buildings contain a boiler, and insurance against loss or damage from leakage of sprinkler systems in such amounts a Mortgagee shall from time to time reasonably require; and (d) such other insurance as Mortgagee may require from time to time in amounts and with carriers reasonably satisfactory to Mortgagee. If required, the Borrower shall pay the premiums for such insurance as same shall become due and payable.

#### **4. TAXES**

Borrower shall pay all taxes, assessments, water rates, sewer rents and other charges, now or hereafter levied or assessed against the Mortgaged Property (the "Taxes") as same become due and payable. Borrower will deliver to Mortgagee, upon request, evidence satisfactory to Mortgagee that the Taxes are not delinquent.

#### **5. ESCROW ACCOUNT**

In addition to the payments of principal and/or interest payable pursuant to the Note (the "Installments"), Mortgagee may require Borrower to pay on each date and in the manner specified in the Note for payment of an Installment, an amount (the "Escrow Fund") (a) which would be sufficient to pay the Taxes payable, or estimated by Mortgagee to be payable, during the ensuing twelve (12) months, divided by the number of Installments due during such twelve (12) month period, and (b) an amount which, when divided by the number of Installments due from the date of any calculation hereunder until the expiration of the Policies, would be sufficient to pay the premiums due for the renewal of the coverage afforded by the policies upon the expiration thereof. Mortgagee will apply the Escrow Fund to payments required to be made by Borrower pursuant to paragraphs 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due pursuant to paragraphs 3 and 4 hereof, Mortgagee shall, in its discretion, (1) return any excess to Borrower (2) credit such excess against the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper, or (3) credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall pay to Mortgagee, upon request, an amount which Mortgagee shall estimate as sufficient to make up the deficiency. Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional collateral security for the Debt and shall not bear interest. The Borrower shall pay for any fee incurred by the Mortgagee, should the Mortgagee engage a third party provider to service the tax and insurance escrow account.



**6. LATE CHARGES**

If the Mortgagee has not received the full amount of any monthly payment by the date it is due, Borrower will pay a late charge to the Mortgagor. The amount of the charge will be three (3%) percent of the Borrower's overdue payment on the first such occurrence and five (5%) percent of the Borrower's overdue payment on any such payment thereafter.

**7. CONDEMNATION**

Notwithstanding any taking by any public or quasipublic authority through eminent domain or otherwise, the Debt shall not be reduced until any award or payment therefore shall have been actually received after expenses of collection and applied by Mortgagee to the discharge of the Debt. Mortgagee may apply any such award or payment to the discharge of the Debt whether or not then due and payable. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt, whichever is less. Borrower shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Borrower or otherwise to collect and receipt for any such award or payment and to file and prosecute such claim or claims, and although it is hereby expressly agreed that the same shall not be necessary in any event, Borrower shall, upon demand of Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient to assign to Mortgagee any such award or payment free and clear of any encumbrance of any kind or nature whatsoever.

**8. RIGHT TO RENTAL PAYMENTS AND POSSESSION**

Mortgagee has the right to enter the Mortgaged Property for the purpose of enforcing its interest set forth in this Mortgage. Nevertheless, subject to the terms of this Paragraph 8, Mortgagee waives the right to enter the Mortgaged Property for the purpose of collecting the Rents, and grants Borrower the right to collect the Rents. Borrower shall hold the Rents, or an amount sufficient to discharge all current sums due on the Debt, in trust for use in the payment of the Debt. The right of Borrower to collect the Rents may be revoked by Mortgagee upon any default by Borrower under the terms of this Mortgage by giving notice of such revocation to Borrower.

Following such notice Mortgagee may enter upon the Mortgaged Property, collect, retain and apply the Rents toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. Borrower shall not, without the consent of Mortgagee, make, or suffer to be made, any Leases or cancel or modify any Leases or accept prepayments of Installments of Rent for a period of more than one (1) month in advance or further assign the whole or any part of the Rents without the consent of Mortgagee. No lease covering all or any part of the Mortgaged Property shall be valid or effective without prior written approval of Mortgagee. Mortgagee shall have all of the rights against Lessees of the Mortgaged Property as set forth in Section 291-F of the Real Property Law of New York. In respect of any Lease, Borrower will (a) fulfill or perform each and every provision thereof on its part to be fulfilled or performed; (b) promptly send copies of all notices of default which it shall send or receive thereunder to Mortgagee, and (c) enforce, short of termination thereof, the performance or observance of the provisions thereof. In addition to the rights which Mortgagee may have herein, in the event of any default under this Mortgage, Mortgagee, at its option, may require

Borrower to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Borrower. Upon default in any such payment, Borrower will vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be deemed to impose on Mortgagee any of the obligations of the lessor under the Leases. Any lease (including any or all of the terms and conditions thereof) covering all or any part of the Mortgaged Property, shall be subject and subordinate to the lien of this Mortgage.

#### **9. MAINTENANCE OF PROPERTY**

Borrower shall cause the Mortgaged Property to be maintained in good condition and repair. In the event of the failure of the Borrower to maintain the Mortgaged Property within a period of 30 days after notice from the Mortgagee, and if the Borrower fails to proceed promptly after such notice to cure or remedy the same with due diligence, then, in any such case, the Mortgagee, in addition to any other remedies provided herein, at the expense of the Borrower, may, from time to time, at its option, cure or remedy any such default of the Borrower and the Borrower hereby authorizes the Mortgagee to enter upon the Mortgaged Property as may be necessary for such purposes, and any costs thereof, including reasonable counsel fees, shall be secured by this Mortgage and shall be immediately due and payable to the Mortgagee.

The Improvements and the Equipment shall not be removed, demolished or materially altered except for normal replacement of the Equipment), without the consent of Mortgagee, except that the Borrower shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such Equipment as from time to time may become worn out or obsolete provided that either (a) simultaneously with or prior to such removal, any such Equipment shall be replaced with other Equipment of a value at least equal to that of the replaced Equipment and free from any security agreement, and by such removal and replacement the Borrower shall be deemed to have subjected the Equipment to the lien of this Mortgage, or (b) any net cash proceeds received from such disposition shall be paid over promptly to the Mortgagee to be applied to the last installments due on the Debt secured, without any charge for prepayment. The Borrower will not permit any waste to the Mortgaged Property.

Borrower shall promptly comply with all laws, orders and ordinances affecting the Mortgaged property, or the use thereof, and shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be damaged or destroyed by any casualty or which may be affected by any proceeding of the character referred to in paragraph 7 hereof and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. If such casualty shall be covered by the Policies, Borrower's obligation to repair, replace or rebuild such portion of the Mortgaged Property shall be contingent upon Mortgagee's paying Borrower the proceeds of the Policies, or such portion thereof as shall be sufficient to complete such repair, replacement or rebuilding, whichever is less. Borrower will not, without the prior consent of Mortgagee, initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof.

**10. INSPECTION**

Mortgagee and its agent shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

**11. MORTGAGEE'S RIGHTS IF PROPERTY IS SOLD OR TRANSFERRED**

The Debt shall, at the option of Mortgagee, become immediately due and payable in the event that Borrower shall, without the prior written approval of Mortgagee (a) further encumber the Mortgaged Property with any lien imposed in connection with any other financing, or (b) permit the Mortgaged Property or any part thereof or any interest therein to be sold, transferred or conveyed to any other person or entity, or (c) sell, transfer or convey the Mortgaged Property or any part thereof or any interest therein, which shall include but not be limited to, where Borrower is a corporation (i) the sale or transfer of more than forty-nine (49%) percent of the outstanding shares of the corporation, or (ii) the dilution of the present stockholding or corporate control by issuance of new or treasury stock or by conversion of any non-voting stock or other securities to voting stock, or, where Borrower is a partnership, the withdrawal, except by death, resignation or retirement, of any general partner, or the appointment of any new or other, or substitute general partners, or where Borrower is a Limited Liability Company, the withdrawal, resignation or retirement of any member, or the appointment of any new or other, or substitute members, or the transfer of any membership interest, except as expressly permitted in the Note. The provisions of this paragraph shall apply to each and every further encumbrance, sale, transfer or conveyance, regardless of whether or not Mortgagee has consented to, or waived by its action or inaction hereunder, any previous encumbrance, sale, transfer or conveyance.

**12. ENVIRONMENTAL COVENANTS**

- (a) The subject property and the proposed use thereof complies with all federal, state and other laws and regulations concerning environmental hazards, and the Borrower agrees to comply with all such laws and regulations as they may be amended from time to time.
- (b) The property is free of environmental liens and that there are no pending investigations, injunctions, clean-up orders, consent decrees, litigation, enforcement proceedings or other contingent liabilities affecting the property and the Borrower agrees to immediately comply with any of the foregoing should they arise in the future.
- (c) The property is free of hazardous contamination or releases of "hazardous substances" (as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601). Should any such hazardous contamination or release of hazardous substances be discovered in the future, the Borrower agrees to immediately remove them or cure any violation in connection therewith so that the property complies with all such laws and regulations as amended from time to time.
- (d) The Borrower shall give immediate notice to the Mortgagee of any environmental liens, pending investigations, injunctions, clean-up orders, consent decrees, litigation, enforcement proceedings or other proceedings concerning the property, and the Borrower hereby agrees to indemnify and hold the Mortgagee harmless from any loss or liability, including reasonable attorneys' fees, in connection with the foregoing.
- (e) A violation of any of the provisions contained in this covenant shall also be deemed to be a default in the terms of this Mortgage.

- (f) In the event that a violation occurs, the Mortgagee shall have the option (but not the obligation) to cure the violation, and the Borrower agrees to reimburse all costs thereof, together with interest at the rate set forth in the Note to the Mortgagee and secured by the Mortgage. If this is a building loan Mortgage, the parties agree that unexpended funds maybe used to pay the costs enumerated above.
- (g) The Borrower hereby understands and agrees that compliance with the Borrower with the covenants contained in this provision is of the highest priority to all who are or may be concerned with property, and the Borrower agrees to strict compliance with the provisions hereof.
- (h) Within ten (10) days after an environmental lien is filed, Borrower shall furnish a surety bond to the Mortgagee in an amount satisfactory to the Mortgagee to guarantee second lien status to the Mortgagee. Failure to furnish such surety bond within said time shall, at the option of the Mortgagee, be a default in the terms of this Mortgage.

### **13. SECURITY AGREEMENT**

This Mortgage is both a Real Property Mortgage and a Security Agreement. The Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of Borrower in the Mortgaged Property as set forth herein. Borrower and Mortgagor shall, at the request of Mortgagee, deliver to Mortgagee any and all further instruments which Mortgagee shall require in order to further secure and perfect the lien of this Mortgage. Mortgagee is authorized to file financing statements, as required by the Uniform Commercial Code, to perfect its lien against the foregoing types of personal property without first obtaining the signature of Borrower or Mortgagor on the financing statements. Mortgagee is further empowered to file such financing statements without such signature of Borrower or Mortgagor. (Said portion of the Mortgaged Property subject to the Uniform Commercial Code being called herein in the "Collateral".) If a default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Borrower shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Borrower shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorney's fees, incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

### **14. FINANCING STATEMENTS**

Mortgagee may file without Borrower's or Mortgagor's signature any financing or continuation statement covering Mortgaged Property.

**15. PRESERVATION OF LIEN**

Borrower shall preserve its title to the Mortgaged Property and the validity, enforceability and second priority of the lien and security interest granted hereby in the Mortgaged Property, and Borrower shall forever warrant and defend the same to Mortgagee against the claims of all persons and parties whomsoever. Borrower shall do the following in furtherance of such obligation:

- (a) Borrower (i) shall cause the lien of this Mortgage to remain a valid second mortgage lien upon the Mortgaged Property; (ii) shall cause the security interests created by this Mortgage to remain second priority security interests; (iii) shall not at any time create or allow to accrue or exist any Debt, lien, security interest or charge which would be prior to or on a par with the lien of this Mortgage or a security interest created by it upon any part of the Mortgaged Property; and (iv) shall not cause or permit the lien of this Mortgage to be diminished or impaired in any way. If any lien or security interest becomes attached to any Mortgaged Property, Borrower will cause it to be discharged and released as soon as practicable, and in any event within thirty (30) days.
- (b) Borrower will pay, bond or otherwise discharge, from time to time when they shall become due, all lawful claims and demands of mechanics, material-men, laborers and others which, if unpaid, might result in, or permit the creation of, a lien.
- (c) If the validity or priority of the lien or a security interest, created by this Mortgage or if the title or any of the rights of Borrower or Mortgagee in or to the Mortgaged Property, shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against Borrower or Mortgagee with respect thereto, Borrower will promptly notify Mortgagee thereof and will diligently endeavor to cure any defect which may develop or be claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of litigation and, subject to Mortgagee's approval, the compromise, release or discharge of any and all adverse claims.
- (d) To the extent, in the manner and places and within such times required by law or deemed appropriate by Mortgagee in order to perfect and maintain the validity, effectiveness and priority of the liens, security interests and assignments intended to be created by the Loan Documents or to subject after-acquired property of Borrower or proceeds thereof to such liens, security interests and assignments, or to otherwise carry out the intent of the Loan Documents, Borrower will, at the request of Mortgagee do the following: (i) promptly record and re-record, file and re-file and register and re-register appropriate Loan documents, any financing or continuation statement or amendment and every other instrument in addition or supplemental to any thereof, and promptly furnish to Mortgagee evidence satisfactory to it of every such recording, filing or registration; and (ii) promptly do, execute, acknowledge and deliver any further acts, deeds, conveyances, mortgages, deeds of trust, assignments, estoppel certificates, notices of assignment, transfers, certificates, assurances and other instruments and correct any defect, error or omission which may be discovered in the contents of any of the Loan Documents or in the execution, acknowledgment or recordation thereof.

**16. NEW YORK LIEN LAW**

Pursuant to Section 13 of the Lien Law of New York, Borrower shall receive the advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvement and shall apply such advances first to the payment of such costs of any such improvements on the Mortgaged Property before using any part of the total of the same

for any other purpose. The Borrower will indemnify and hold Mortgagee harmless against any loss or liability, cost of expense, including, without limitation, any judgments, attorney's fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by Mortgagee of any applicable lien law, including, without limitation, any section of Article 3-A of the New York Lien Law.

**17. PRESERVATION OF LEGAL STATUS**

Borrower will not, without Mortgagee's consent:

- (a) initiate or support any zoning reclassification of the Mortgaged Property, seek any variance under existing zoning ordinances applicable to the Mortgaged Property or use or permit the use of the Mortgaged Property in a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances;
- (b) impose, or permit to be imposed, any restrictive covenants or encumbrances upon the Mortgaged Property, execute or file any subdivision plat affecting the Mortgaged Property or consent to the annexation of the Mortgaged Property to any municipality; or
- (c) permit or suffer the Mortgaged Property to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement.

**18. USE OF MORTGAGED PROPERTY**

- (a) Borrower will observe and comply with, and cause the Mortgaged Property to be maintained, used and operated, in accordance with: (i) all laws, regulations, ordinances, rules, and orders (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, health, safety, morals, equal opportunity, minimum wages, and employment practices) of any governmental authority applicable to the Mortgaged Property or to Borrower as owner of that property; (ii) applicable orders, rules and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization or other body exercising similar functions; and (iii) all duties or obligations of any kind imposed in connection with any Permitted Encumbrance.
- (b) Mortgaged Property shall be kept free of hazardous substances, and shall not be used in any manner to generate hazardous substances.
- (c) Borrower will not use or occupy or permit the Mortgaged Property to be used or occupied in any manner which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Borrower shall not permit any portion of the Mortgaged Property to be used by any person or entity having diplomatic immunity, without the prior written consent of Mortgagee which may be withheld in its sole and absolute discretion.

**19. PROTECTION OF LIEN**

If any of the events described in paragraph 17(c) above shall occur, Mortgagee (whether or not named as a party to such actions or proceedings) is hereby authorized and empowered to take such steps, in addition to those taken by Borrower, as it may deem necessary or proper for the defense of any such action or proceeding or the protection of the lien, security interest, validity or priority of the Mortgage or Assignments or of such title or rights, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, the purchase of any tax title and the removal of prior liens and security interests.

**20. RIGHTS OF MORTGAGEE**

Mortgagee shall have the right to appear and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor or Borrower, which Mortgagee, in its discretion, feels should be brought to protect its interest in the Mortgaged Property.

**21. BOOKS AND RECORDS**

Borrower and Guarantors will keep adequate books and records of accounts in accordance with generally accepted accounting practices consistently applied, and furnish Mortgagee with financial statements and other information concerning the affairs of Borrower, or any affiliate of Borrower, or any Guarantors hereof, as Mortgagee may reasonably request including a fully itemized statement of profit and loss and of surplus and a balance sheet. The Borrower will furnish to the Mortgagee, within fifteen (15) days after mailing to the Mortgagee of a written request therefore, a detailed statement in writing, duly sworn, and covering the period of time specified in such request, showing all income derived from the operation of the Mortgaged Property and all disbursements made in connection therewith, and containing a list of the names of all tenants of the Mortgaged Property and occupants other than those claiming possession through such tenants, the portion or portions of the Mortgaged Property occupied by such tenant and occupant, the rent and other charges payable under the terms of their leases or other agreements, and the periods covered by such leases or other agreements.

**22. STRICT PERFORMANCE**

Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

**23. DEBT BECOMES DUE**

The Debt shall become due at the option of Mortgagee upon any one or more of the following events ("Events of Default"):

- (a) if any installment is not paid on the date it is due;
- (b) if any of the Taxes are not paid when the same is due and payable;
- (c) if the Policies are not kept in full force and effect, or if the Policies are not assigned and delivered to Mortgagee upon request;
- (d) if Borrower does not furnish a statement, in the manner provided herein, of the amount of the Debt and the offsets or defenses thereto, if any;
- (e) if without the consent of Mortgagee the Mortgaged Property is in any manner transferred, except by operation of law, or further encumbered or if any Improvement or the Equipment (except for normal replacement of the Equipment) is removed, demolished or materially altered, or if the Mortgaged Property is not kept in good condition and repair;
- (f) if any Leases are made, canceled or modified in any material respect, or if any of the Rents is prepaid for a period of more than one (1) month in advance, or if any of the Rents is assigned, or any new lease made, without the consent of Mortgagee;
- (g) if any representation, covenant or warranty of Borrower, or of a Guarantor guaranteeing payment of the Note or any portion thereof or performance by Borrower of any of the terms of this Mortgage made herein or in any such guaranty, or in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note, this Mortgage, or any such guaranty, shall prove false or misleading in any material respect;

- (h) if Borrower or any Guarantor shall make an assignment for the benefit of creditors;
- (i) if a receiver, liquidator or trustee of Borrower or of any Guarantor shall be appointed or if Borrower or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Act, or any similar Federal or State statute, shall be filed by or against Borrower or any Guarantor or if any proceeding for the dissolution or liquidation of Borrower or of any Guarantor shall be instituted and, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days.
- (j) if Borrower does not reimburse Mortgagee upon demand for all expenses incurred by Mortgagee in remedying any default of Borrower hereunder or in appearing in, defending, or bringing any action or proceeding to protect Mortgagee's interest in the Mortgaged Property, including reasonable attorney's fees, with interest as provided herein;
- (k) if, after a default thereunder, Mortgagee shall elect to enforce its rights under the (Note or any instrument which may be held by Mortgagee as additional security for the Debt;
- (l) if Borrower shall be in default under any mortgage covering any part of the Mortgaged Property whether it be superior or inferior in lien to this Mortgage;
- (m) if the Mortgaged Property shall become subject (i) to any tax lien which is superior to the lien of this Mortgage, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any mechanic's materialman's or other lien which is or is asserted to be superior to the lien of this Mortgage and such lien shall remain undischarged for thirty (30) days;
- (n) in the event there is a judgment outstanding against the Borrower and the same remains unsatisfied for a period of thirty (30) days, if same is not appealed, bonded or otherwise contested by Borrower;
- (o) upon the death of the Borrower, and/or any of the individual Guarantors of any of the obligations, if applicable;
- (p) in the event the Borrower fails to keep any promise or covenant contained in this Mortgage, or in the Note which accompanies this Mortgage;
- (q) if Borrower fails to establish and/or maintain an operating account with the Mortgagee from which monthly payments may be deducted;
- (r) if Borrower fails to comply with any rule, regulation or requirement of any governmental body, agency, board or other authority which licenses, regulates or otherwise oversees the business activities of the Borrower, or
- (s) if the Borrower shall fail to provide the Mortgagee with a copy of any written notice from any such governmental body, agency, board or other authority which licenses, regulates or otherwise oversees the business activities of the Borrower, of the Borrower's failure to comply with any rule, regulation or requirement, within 48 hours of Borrower's receipt of such notice.

#### **24. INTEREST RATE INCREASE IN THE EVENT OF DEFAULT**

In the event of a default with respect to any of the terms and conditions of this Mortgage, or the Note which accompanies it, including a default resulting from the Borrower not paying the entire obligation by the maturity date, the interest rate of the obligation which shall be in effect at the time of the default, shall be increased to the greater of:



- (a) the interest rate shall be increased by five (5%) percent per annum from the date of default, or
- (b) the interest rate shall be increased to Provident Bank's Prime Rate, plus two (2%) percent per annum; said prime rate to be subject to change on a monthly basis.

The Mortgagee is not obligated to give any notice of said increase.

PROVIDENT BANK "Prime Rate" is the rate established from time to time by the lender at its main office as the Prime Lending Rate for domestic commercial loans, and which rate shall change when and as said Prime Lending Rate shall change, such interest to be payable on the first day of each month. The Prime Lending Rate in effect upon the date of this Mortgage and accompanying Note is three and a quarter (3.25%) percent per annum. In the event that the term "Prime Rate" should cease to be used as a relevant term with respect to interest rates, the Mortgagee shall select a comparable index which shall be determined solely at the option of the Mortgagee. The Prime Rate is merely a pricing index. It is not intended, and the Borrower should not consider it to represent the lowest or the best interest rate that the Mortgagee charges to any Borrower. It is understood that the increase in the rate cannot exceed the highest rate allowable by law. This charge shall be reduced to comply and be in accordance with the maximum rate allowed by law to be charged by the Mortgagee for each payment if it exceeds such rate at any time. Such increase in the interest rate shall not be deemed an extension of any due date hereunder or a waiver by the Mortgagee of its right to enforce collection or pursue its remedies. The Borrower acknowledges that (i) such additional rate is a material inducement to the Mortgagee to make the loan; (ii) the Mortgagee would not have made the loan in the absence of the agreement of the Borrower to pay such additional rate; (iii) such additional rate represents compensation for increased risk to the Mortgagee that the loan will not be repaid; and (iv) such rate is not a penalty and represents a reasonable estimate of the cost to the Mortgagee in allocating resources (both personal and financial) to the on-going review, monitoring, administration and collection of the loan and compensation to the Mortgagee for losses that are difficult to ascertain.

## **25. CURE OF DEFAULTS**

If Borrower shall default in any of its obligations hereunder to pay any amount or to perform any action, including, but not limited to, its obligation to pay Taxes and to procure, maintain and pay premiums on, the Policies referred to herein, then Mortgagee shall have the right, but not the obligation, in Borrower's name or in its own name, and without notice to Borrower, to advance all or any part of such amounts or to perform any or all such actions. In furtherance thereof, Mortgagee may, without prejudice to its other rights hereunder, enter upon and take possession of the Mortgaged Property to such extent and as often as Mortgagee may deem necessary or desirable to prevent or remedy any such default. Mortgagee, upon making any payment that Borrower was required by this Mortgage to make, shall be subrogated to all of the rights of the person receiving such advance payment. No such advance or performance shall be deemed to have cured such default by Borrower or any Event of Default with respect thereto.

**26. MORTGAGEE'S RIGHTS**

If Borrower should fail to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, the cost and expense thereof (including reasonable attorney's fees to the extent permitted by law), with interest as provided in this paragraph, shall be due upon demand from Mortgagee to Borrower. All such costs and expenses incurred by Mortgagee in remedying such default or in appearing in, defending, or bringing any such action or proceeding shall be paid to Mortgagee upon demand, with interest as set forth in said Note which accompanies this Mortgage, but not more than the maximum interest rate which Borrower may by law pay, for the period after notice from Mortgagee that such costs or expenses were incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee pursuant to the terms of this Mortgage, with interest, shall be deemed to be secured by this Mortgage.

**27. FORECLOSURE**

If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may at the discretion of Mortgagee, be sold in one or more parcels or in several interests or portions and in any order or manner.

**28. APPOINTMENT OF RECEIVER**

The holder of this Mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver, custodian, trustee, liquidator or conservator without notice.

**29. CERTAIN RIGHTS PERTAINING TO SALES**

The following shall apply to any sale of any Mortgaged Property pursuant to Section 27 of the Mortgage.

- (a) Mortgagee may conduct any number of sales from time to time. A Power of sale shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale which is not completed or is defective in Mortgagee's opinion, until Debt shall have been paid in full.
- (b) Mortgagee may adjourn any sale from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at such adjourned time and place.
- (c) At any such sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefore may make settlement for the purchase price by crediting the Debt with the sales price less the expense of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.
- (d) Under the completion of any such sale, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or instruments, conveying, assigning and transferring all estate, right title and interest in and to the property and rights sold and shall receive the proceeds of such sale or sales and apply the same as herein provided. Mortgagee is hereby appointed the true, lawful and irrevocable attorney-in-fact of

Borrower, which appointment shall be deemed to be coupled with an interest and is irrevocable and shall survive the death or disability of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power. Borrower hereby ratifies and confirms all that such attorney-in-fact or such substitute or substitutes may lawfully do by virtue hereof. Nevertheless, Borrower agrees to execute, acknowledge and deliver to Mortgagee or to such purchaser or purchasers all such instruments as Mortgagee may deem appropriate to evidence, confirm and ratify such sale or sales.

- (e) Any such sale shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof by, through or under Borrower. Upon any such sale, all right, title and interest of Borrower in and to such insurance policies then in force with respect to the Mortgaged Property foreclosed upon or so transferred, and all proceeds payable thereunder and unearned premiums thereon shall immediately vest in the purchaser or other transferee of such Mortgaged Property.

### **30. SUBROGATION**

To the extent that proceeds of the Debt are used to pay indebtedness secured by any then outstanding lien, security interest, charge or encumbrance against the Mortgaged Property, such proceeds shall be deemed to have been advanced by Mortgagee at Borrower's request and Mortgagee shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances shall have been released. In consideration of the payment of such indebtedness by Mortgagee, Borrower hereby waives and releases all demands and causes of action for offsets, payments and rentals to, upon and in connection with such indebtedness.

### **31. STRICT PERFORMANCE OF TERMS**

The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) failure of Mortgagee to comply with any request of Borrower or the Guarantors to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note or this Mortgage. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

**32. STATEMENT OF AMOUNT DUE AND OF NO DEFENSE**

After request by Mortgagee, Borrower, within five (5) days and at its expense, will furnish Mortgagee with a statement, duly acknowledged and certified, setting forth the amount of the Debt, the offsets or defenses thereto, if any, and that the Note and this Mortgage have not been modified, or if modified, giving particulars of such modification.

**33. ADMINISTRATION, COLLECTION AND OTHER EXPENSES**

- (a) Borrower will on demand pay or reimburse Mortgagee for the payment of any reasonable costs or expenses (including attorneys fees and disbursements) which are incurred or expended in connection with or incidental to (i) the preparation, execution, delivery, filing, recording, amendment or modification of this Mortgage, the agreement to any waiver of any term under it, the release or substitution of any Mortgaged Property, or any other aspect of the administration of this Mortgage; (ii) any change in law affecting this Mortgage or the Mortgaged Property (iii) any default or Event of Default by Borrower under this Mortgage or any of the other Loan Documents (as defined in Loan Agreement), (iv) Mortgagees' exercising its right to cure any default of Borrower under this Mortgage, (v) Mortgagee's exercise of its right to act to protect the lien of this Mortgage, or (vi) the enforcement, defense or maintenance of any of its rights or remedies or Borrower's obligations under this Mortgage or any of the Loan Documents by litigation or otherwise.
- (b) All sums so advanced and all expenses incurred by Mortgagee hereunder or under applicable law shall be deemed obligations owing by Borrower to Mortgagee and shall bear interest, from the date paid or incurred until paid, at a rate which is five (5%) percent per annum higher than the interest rate of the obligation which is in effect at the time of the payment.
- (c) Any amounts advanced shall be secured by the Mortgage.

**34. INCIDENTAL EXPENSES AND TAXES**

Borrower will promptly pay all income, franchise and other taxes owing by Borrower, and any stamp taxes which may be required to be paid in connection with the Debt or this Mortgage together with any interest or penalties thereon, and Borrower will pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Mortgagee by reason of execution of this Mortgage or any Loan Document or ownership of this Mortgage or any Mortgage supplemental hereto, any security instrument with respect to any Mortgaged Property or any instrument of further assurance.

**35. LAW ENACTING NEW TAX**

If any law or ordinance is enacted or adopted which imposes a tax, either directly or indirectly, on the Note, the Debt or this Mortgage, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee be advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or unenforceable or provide the basis for a defense of usury then, and in that event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

**36. REVENUE STAMPS**

If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same Borrower will pay for the same, with interest and penalties thereon, if any.

**37. WAIVER OF RIGHTS AND DEFENSES**

To the full extent Borrower may do so, Borrower agrees for itself and as to its heirs, devisee, representatives, successors and assigns, and for any and all persons ever claiming an interest in the Mortgaged Property, to the following with respect to rights of Mortgagee under this Mortgage or any Loan Document:

- (a) Borrower will not at any time insist on, plead, claim or take the benefit or advantage of any statute or rule of law now or hereafter in force providing for any appraisal, valuation, stay, extension, moratorium or redemption, or of any statute of limitations.
- (b) Borrower hereby waives and releases all rights of redemption, valuation, appraisal, notice of intention to mature or declare due the whole of the Debt (except as otherwise provided herein), and all rights to a marshaling of the assets of Borrower, to a sale of the Mortgaged Property without any prior or different resort for collection, or to a sale in inverse order of alienation, or to the payment of the Debt out of the proceeds of sale of the Mortgaged Property in preference to any other person.
- (c) Borrower shall not have or assert any right under any statute or rule of law pertaining to any of the matters set forth in this paragraph, to the administration of estates of decedents or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Mortgagee hereunder.

**38. MONETARY DAMAGES RESTRICTED**

- (a) the event that a claim or adjudication is made that Mortgagee has acted unreasonably or unreasonably delayed acting in any case where by law or under this Mortgage or any of the other Loan Documents it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.
- (b) Mortgagee and its directors, officers, attorneys, agents and employees shall not be liable to Borrower for any loss or damage caused by any act or omission on the part of any of them unless such loss or damage shall have been caused by the gross negligence or willful misconduct of such person and unless such loss or damage shall have been the direct, immediate and necessary result of omission.

**39. LAW THAT GOVERNS**

The terms of the Note and this Mortgage shall be construed by the laws of the State of New York, except as herein expressly provided to the contrary.

**40. JURISDICTION AND VENUE**

Any dispute which may arise in connection with this Mortgage, any amendment of it, or any of the other Loan Documents, may be resolved by the courts of the State of New York located in Rockland County, or by the United States District court for the Southern district of New York. Borrower hereby irrevocably submits to, and gives up any objection to, the exercise of jurisdiction by any of those courts. Borrower admits that any dispute with Mortgagee may be resolved at least as conveniently in such a court as in any other court. Borrower will not seek dismissal of a proceeding, or ask to move it to another court on the ground that resolution of the dispute in any of these courts is not convenient or in the interests of justice. Borrower shall not seek a jury trial in any action based upon or arising out of this Mortgage or any related document or agreement. Borrower will not seek to consolidate any such action with any other action in which trial by jury has not been waived.

41. **INVALID TERM OF MORTGAGE**  
If any term, covenant or condition of this Mortgage or the Note shall be held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.
42. **OBLIGATION OF PERSONS**  
If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.
43. **EXECUTION OF MORTGAGE**  
This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.
44. **BORROWER'S POWER TO EXECUTE**  
Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Mortgage, and to mortgage and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Borrower's part to be performed.
45. **AUTHORIZATION**  
The execution and delivery of this Mortgage has been duly authorized by the Board of Directors of Borrower (if Borrower be a corporation) and there is no requirement under its certificate of incorporation or its by-laws for consent of shareholders to this transaction.
46. **NO ORAL CHANGES** - This Mortgage cannot be changed orally.
47. **WAIVER OF RIGHTS BY BORROWER**  
Borrower hereby waives the right to assert a counterclaim in any action or proceeding brought against it by Mortgagee, and waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Mortgagee against Borrower, or in any matters whatsoever arising out of or in any way connected with this Mortgage or the Debt.
48. **MORTGAGEE'S DISCRETION TO EXERCISE CERTAIN RIGHTS**  
Whenever pursuant to this Mortgage, Mortgagee exercises any right herein granted to Mortgagee to approve or disapprove or consent or refuse consent or to determine that any arrangement or term is satisfactory or unsatisfactory, it is expressly understood and agreed by Borrower that any such exercise or determination shall be in the sole and absolute discretion of Mortgagee and shall be binding and conclusive upon Borrower.
49. **MAILING OF NOTICES**  
Any notice, request or demand given or made under this Mortgage shall be in writing and shall be hand delivered or sent Federal Express, United Parcel Services or other reputable nationally recognized overnight courier service by postage prepaid registered or certified mail, return receipt requested, and shall be deemed given (a) when received at the following addresses if hand delivered, (b) one (1) business day after delivery to a nationally recognized overnight courier service, and (c) three (3) business days after being postmarked and addressed as follows if sent by registered or certified mail, return receipt requested:

*If to Provident:*

Provident Bank  
400 Rella Blvd., P.O. Box 600  
Montebello, New York 10901  
Attention: Commercial Loan Dept.

*With a copy to:*

Marianna R. Kennedy, Esq.  
Drake, Loeb, Heller, Kennedy,  
Gogerty, Gaba & Rodd, PLLC  
555 Hudson Valley Avenue, Suite 100  
New Windsor, New York 12553

*If to the undersigned:*

Satin Fine Foods Inc.  
37 Elkay Drive, Suite 41  
Chester, NY 10918  
Attention: Kevin O'Reilly, President

Satin Realty Associates, LLC  
37 Elkay Drive, Suite 41  
Chester, NY 10918  
Attention: Kevin O'Reilly, Manager

*With a copy to:*

Ronald Cohen, Esq.  
40 Matthews Street  
Goshen, NY 10924

It being understood and agreed that each party will use reasonable efforts to send copies of any notices to the addresses marked "With a copy to" hereinabove set forth; provided; however, that failure to deliver such copy or copies shall have no consequence whatsoever to the effectiveness of any notice made to any of the undersigned or Provident. Each party to this Mortgage may designate a change of address by notice given, as herein provided, to the other party fifteen (15) days prior to the date such change of address is to become effective.

**50. PRIORITY**

Notwithstanding anything herein to the contrary, this Mortgage is intended to be a second mortgage subordinate in priority ONLY to Mortgagee's first lien in the amount of \$2,576,000.00.

**IT IS EXPRESSLY UNDERSTOOD BY THE BORROWER THAT ALL REFERENCES IN THIS MORTGAGE TO ENFORCING MORTGAGEE'S RIGHTS ARE DEEMED TO INCLUDE, BUT ARE NOT LIMITED TO, MORTGAGEE'S RIGHT TO FORECLOSE BY POWER OF SALE, PURSUANT TO ARTICLE 14 OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, AS SAME MAY BE AMENDED FROM TIME TO TIME.**

51. **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
SPECIAL OBLIGATIONS; RECORDING**

Notwithstanding any other term or condition contained in this Mortgage:

(a) This Mortgage is executed by the Mortgagor solely for the purpose of subjecting its fee ownership or leasehold interest in the Mortgaged Property to the lien of this Mortgage and for no other purpose. All representations, covenants and warranties of the Mortgagor herein are hereby deemed to have been made by the Borrower and not by the Mortgagor. It is hereby agreed and understood that the Mortgagor has not granted an interest in the Unassigned Rights as defined in Section 6.1 of that certain Leaseback Agreement dated as of April 1, 2011 by and between the Borrower and the Mortgagor (the "Leaseback Agreement").

(b) The obligations and agreements of the Mortgagor contained herein or therein shall not constitute or give rise to an obligation of the State of New York or Orange County, New York, and neither the State of New York nor Orange County, New York shall be liable hereon. All obligations of the Mortgagor hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Mortgaged Property, and neither the members of the Mortgagor nor any person executing this Mortgage on its behalf shall be liable personally under this Mortgage. No recourse shall be had for the payment of the principal of, or interest on the indebtedness which this Mortgage secures, or for any claim based hereon, or otherwise in respect hereof, or based upon or in respect of this Mortgage, or any mortgage supplemental hereto, against any past, present, or future member, officer, agent, servant, or employee, as such, of the Mortgagor or of any successor or political subdivision, either directly or through the Mortgagor or any such successor, all such liability of such members, officers, agents (except for the Borrower), servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Mortgage and the instruments evidencing the indebtedness it secures. Any judgment or decree shall be enforceable against the Mortgagor only to the extent of its interest in the Mortgaged Property and any such judgment shall not be subject to execution on or by a lien on assets of the Mortgagor other than its interest in the Mortgaged Property.

(c) No order or decree of specific performance with respect to any of the obligations of the Mortgagor hereunder shall be sought or enforced against the Mortgagor unless the party seeking such order or decree shall first have requested the Mortgagor in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Mortgagor shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period. If the Mortgagor refuses to comply with such request and the Mortgagor's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree may, at its option, place in an account with the Mortgagor an amount or undertaking sufficient to cover such reasonable fees and expenses whereupon the Mortgagor shall agree to comply with such request. If the Mortgagor refuses to comply with such request and the Mortgagor's refusal to comply is based on its reasonable expectation that it or any of its members, officers, directors, servants, agents or employees shall be subject to potential liability, the party seeking such order or decree may, at its option, (1) agree to protect, defend, indemnify and hold harmless the Mortgagor and its members, officers, directors, servants, agents (other than the Borrower) and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Mortgagor, furnish to the Mortgagor reasonably satisfactory security to protect the Mortgagor and its



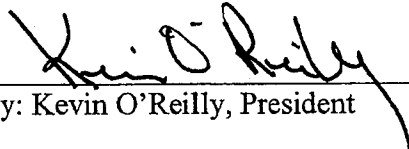
members, officers, directors, servants, agents (other than the Borrower) and employees against all liability reasonably expected to be incurred as a result of compliance with such request whereupon the Mortgagor shall agree to comply with such request. The agreement on the part of the Mortgagor shall not be construed in any way so as to effect or impair the lien of this Mortgage or the Mortgagor's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagor in any foreclosure proceedings.

(d) The Mortgagor will record or cause this Mortgage to be recorded in the office of the Orange County Clerk and will pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Mortgage.

**IN WITNESS WHEREOF**, this Mortgage has been executed by Borrower and Mortgagor the day and year first above written.

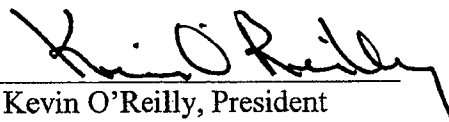
BORROWER:

SATIN FINE FOODS INC.

  
By: Kevin O'Reilly, President

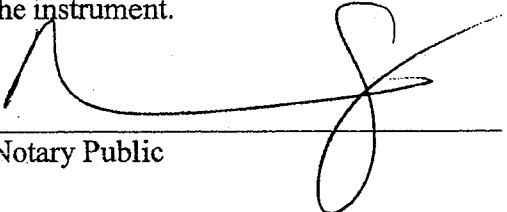
SATIN REALTY ASSOCIATES, LLC

  
By: Kevin O'Reilly, Manager

  
By: Kevin O'Reilly, President  
Satin Fine Foods, Inc.,  
Sole Member/Managing Member

STATE OF NEW YORK     )  
                                      ) SS.:  
COUNTY OF ROCKLAND )

On the 14<sup>th</sup> day of June, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared **Kevin O'Reilly**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

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

**MARIANNA R. KENNEDY**  
Notary Public, State of New York  
No. 02KE5056588  
Qualified in Orange County  
Commission Expires March 4, 2014

MORTGAGOR:


ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY



By: James D. O'Donnell, Executive Director

STATE OF NEW YORK     )  
                                  ) SS.:  
COUNTY OF ORANGE     )

On the 26<sup>th</sup> day of May, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared **James D. O'Donnell**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

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

MELANIE TANNER  
Notary Public, State of New York  
No. 4957059  
Qualified in Orange County  
Commission Expires October 10, 2013

\$2,995,000.00 Mortgage

## **Schedule A**

### **Description**

The Condominium Unit ("Unit") known as Unit 1 in the building ("Building") known as The Leone Lane Condominium ("Condominium") and by the street number 32 Leone Lane, County of Orange, Village and Town of Chester, State of New York, said Unit being designated and described as Unit 1 in a certain declaration dated May 10, 2011, made by Grantor pursuant to Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") establishing a plan of condominium ownership of the Building and the land ("Land") upon which the Building is situate (which Land is more particularly described in Exhibit "A" annexed hereto and by this reference made a part hereof), which declaration was recorded in the Orange County Clerk's Office (the "County Clerk's Office") on May 19, 2011 as File # 2011004836 in Book 13178 Page 0161 (hereinafter called the "Declaration") and also designated as Tax Lot 1.-1 in Block 1 of Section 129 on the tax map of the County Clerk's Office and on the Floor Plans of the Building and filed in the County Clerk's Office on May 19, 2011 as Map # 123-11;

TOGETHER with a combined 35.627% interest in the Common Elements (as such term is defined in the Declaration);



## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT, made June 14, 2011, by **SATIN FINE FOODS INC.**, a New York State corporation with its principal place of business at 37 Elkay Drive, Suite 41, Chester, New York 10918 and **SATIN REALTY ASSOCIATES, LLC**, a New York State limited liability company with its principal place of business at 37 Elkay Drive, Suite 41, Chester, New York 10918 (hereinafter collectively called "Borrower") and the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 255-275 Main Street, Goshen, New York 10924, (hereinafter called the "Agency", and collectively with the Borrower the "Assignor") to **PROVIDENT BANK**, a savings association duly organized and existing under and pursuant to the laws of the United States of America, and having its principal place of business at 400 Rella Boulevard, P.O. Box 600, Montebello, New York 10901 (hereinafter called "Bank").

— WITNESSETH:

FOR VALUE RECEIVED, Assignor hereby grants, transfers and assigns to the Bank to supplement the Assignment of Rents set forth in that certain mortgage (the "Mortgage") bearing even date herewith the leases now existing or hereafter, if any, made (the "Leases") with respect to the premises more fully described in Schedule "A" attached hereto (hereinafter referred to as the "Premises") or any portion thereof, including, but not limited to, any and all rents, issues, income and profits now due or to become due under any lease, tenancy or agreement concerning the Premises, hereby warranting that Assignor is the owner of the entire lessor's interest therein and that said existing Leases are current and in full force and effect.

Together with all the right, power and authority of Assignor to alter, modify or change the terms of said Leases or any other existing or future Leases made, or to accept any surrender, or to cancel or terminate the same or to consent or to execute and deliver any consent to the tenant to do so or to refrain from doing any act or thing under any Leases, without prior written consent of the Assignor.

Together with all rents, income and profits arising from any Leases, and renewals thereof, if any, and together with all rents, income and profits due or to become due from the premises described therein, and from all Leases for the use and occupation of said premises which may be executed in the future during the term of this Assignment.

### **FOR THE PURPOSES OF SECURING**

1. Payment of indebtedness in the principal amount of **TWO MILLION NINE HUNDRED NINETY FIVE THOUSAND AND NO/100 (\$2,995,000.00) DOLLARS** and interest, including any extensions or renewals thereof, payable by the Assignor to the Bank and secured by the Mortgage.

2. Payment of all other sums with interest thereon becoming due and payable to the Bank under the provisions hereof or under the Mortgage or the other instruments and documents delivered in connection therewith.

3. The performance and discharge of each and every obligation, covenant and agreement of Assignor herein and in the Mortgage or the other instruments and documents delivered in connection therewith.

**TO PROTECT THE SECURITY OF THIS ASSIGNMENT, ASSIGNOR COVENANTS**

1. To observe and perform all of the obligations imposed upon the landlord in any Leases and not to do or permit to be done anything to impair the security thereof; that all of the said Leases are legal, valid and enforceable and none of the tenants are in default thereunder; that no rent reserved in said Leases has been anticipated or assigned; nor to collect any of the rent, income and profits arising or accruing from the premises under any Leases in advance of the time when the same becomes due under the terms thereof; not to discount any future accruing rents; not to execute any other Assignments of Leases or Rents of said premises; not to alter, modify or change the terms of any Leases or to cancel or terminate the same (except in the case of a material default thereunder by the tenant) or accept a surrender thereof, without prior written consent of the Bank, and without such prior written consent of the Bank not to permit the merger of any Leases in the fee title of the Premises.

2. To assign and transfer to the Bank any and all future Leases upon all or any part of the Premises (such assignment and transfer to be deemed to have occurred upon the entering into of any such future Lease), and to execute and deliver, at the request of the Bank all such further assurances and assignments in the Premises as the Bank shall from time to time require, at the cost and expense of the Assignor and to pay any recording charges or fees for instruments required by the Bank to be recorded.

3. That the rights of the Assignee to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to the Assignee shall, to the extent not prohibited by law, extend also to the period from and after the filing of any suit to foreclose the lien of the Mortgage including any period allowed by law for the redemption of the Premises, it being the intention of the parties that this Assignment survive any Judgment of Foreclosure and Sale and not merge into the Judgment.

**IT IS MUTUALLY AGREED THAT**

1. So long as there shall exist no default by Assignor in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant or agreement herein, or in the Mortgage or the other instruments and documents delivered in connection therewith, or in any of the Leases contained, Assignor shall have the right to collect, upon but not prior to accrual, all rents, issues and profits from said Premises and to retain, use and enjoy the same.

2. Upon or at any time after default in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant or agreement herein, or in the Mortgage or the other instruments and documents delivered in connection therewith, or of landlord in any Leases contained, the Bank, without in any way waiving such default, may at its option take possession of the Premises, and have, hold, manage, lease and operate the same on

such terms and for such period of time as the Bank may deem proper; and may collect and receive all rents, issues and profits of the Premises, with full power to make from time to time all alterations, renovations, repairs or replacements thereto as may seem proper to the Bank, and to apply such rents, issues and profits to the payment of (a) the cost of all such alterations, renovations, repairs and replacements and expenses incident to taking and retaining possession of the Premises and the management and operation thereof; and keeping the same properly insured, and (b) all taxes, charges, claims, assessments, water rents, sewer rents and any other lien or payment to the mortgage debt, and premiums for insurance, with interest on all of such items, and (c) the indebtedness and the interest thereon secured hereby together with all costs and reasonable attorneys' fees, in such order of priority as to any of such items, as the Bank in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding.

By accepting this Assignment, the Bank agrees that if it shall upon any default or breach exercise its option herein and pursuant to section 13 of the Mortgages and if such default or breach shall be remedied and all necessary charges and expenses incurred by reason thereof paid, other than by reason of a foreclosure of the Mortgage, the parties hereto shall each be restored to and reinstated in their respective rights and estates as if a default or breach had not occurred. Assignor shall thereupon hold said Premises subject to this Assignment as if the Bank had not exercised any option hereunder, but nothing hereinabove contained shall impair any right of the Bank upon any subsequent breach.

3. The Bank shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify the Bank for and to hold the Bank harmless of and from all liability, loss or damage which it may or might incur under any Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Leases. Should the Bank incur any such liability, loss or damage under any Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse the Bank therefor immediately upon demand, and upon the failure of Assignor so to do the Bank may declare all sums secured hereby immediately due and payable.

4. Upon payment in full of all indebtedness secured hereby, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer, supervisor or attorney of the Bank stating that the indebtedness is not fully paid shall be and constitute evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon. A demand of any tenant of the Premises by the Bank for the payment of the rent or any default claimed by the Bank, shall be sufficient warrant to the tenant to make future payments of rent to the Bank without the necessity for further consent by the Assignor.



5. The Bank may take or release other security, may release any party primarily or secondarily liable for an indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by it to the satisfaction of such indebtedness without prejudice to any of its rights hereunder.

6. Nothing herein contained and no act done or omitted by the Bank pursuant to the power and rights granted it here shall be deemed to be a waiver by the Bank of its rights and remedies under the Mortgage or the note secured thereby; but, the Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Bank under the terms thereof. The right of the Bank to collect said indebtedness and to enforce any other security therefor owned by it may be exercised by the Bank either prior to, simultaneously with, or subsequent of any action taken by it hereunder.

7. It is further understood that the Bank assumes no liability for any rent security deposits, if such security may have been deposited by a tenant with the Assignor under the terms of any Leases or any modification thereof.

8. This Assignment is binding upon and inures to the benefit of the Bank and any holder of the Mortgage, and is binding upon the inures to the benefit of the Assignor and any owner of the Premises, and may not be changed orally but only upon an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9. Notwithstanding any other terms or condition contained in this Assignment:

(a) This Assignment is executed by the Agency solely for the purpose of subjecting its rights under the Leases to the rights of the Bank and for no other purpose. All representations, covenants, and warranties of the Agency and Borrower herein are hereby deemed to have been made by the Borrower and not by the Agency. It is hereby agreed and understood that the Agency has not granted an interest in the Unassigned Rights as defined in Section 6.1 of that certain Leaseback Agreement, dated as of April 1, 2011, by and between the Agency and the Assignor.

(b) The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State of New York or Orange County, New York, and neither the State of New York nor Orange County, New York shall be liable hereon. All obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Premises by means of this Assignment or any other loan documents. Neither the members of the Agency, nor any person executing this Assignment on its behalf shall be liable personally under this Assignment. No recourse shall be had for the payment of the principal or interest on the indebtedness or for any claim based on the Mortgage, or otherwise in respect hereof, or based upon or in respect of this Assignment, or any modification of or supplemental hereto, against any past, present, or future


member, officer, agent, servant, or employee, as such, of the Agency or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officers, agents (except for the Borrower), servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Assignment. Any judgment or decree shall be enforceable against the Agency only to the extent of its interest in the Premises and any such judgment shall not be subject to execution on or by a lien on assets of the Agency other than its interest in the Premises.

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period. If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree may, at its option, place in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses whereupon the Agency shall agree to comply with such request. If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, directors, servants, agents or employees shall be subject to potential liability, the party seeking such order or decree may, at its option, (1) agree to protect, defend, indemnify and hold harmless the Agency and its members, officers, directors, servants, agents (other than the Borrower) and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Agency, furnish to the Agency reasonably satisfactory security to protect the Agency and its members, officers, directors, servants, agents (other than the Borrower) and employees against all liability reasonably expected to be incurred as a result of compliance with such request whereupon the Agency shall agree to comply with such request. The agreement on the part of the Bank shall not be construed in any way so as to effect or impair the lien of this Assignment or the Bank's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Bank in any foreclosure proceedings.

(d) The Agency will record or cause this Assignment to be recorded in the office of the Orange County Clerk and will pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Assignment.

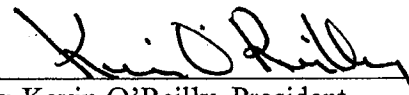
IN WITNESS WHEREOF, this Assignment has been duly signed, acknowledged and delivered by the Assignor the day and year first written above.

SATIN FINE FOODS INC.

  
By: Kevin O'Reilly, President

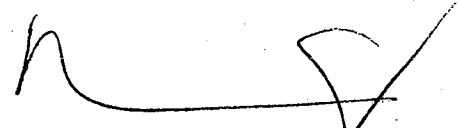
SATIN REALTY ASSOCIATES, LLC

  
By: Kevin O'Reilly, Manager

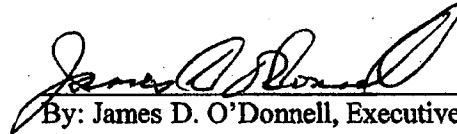
  
By: Kevin O'Reilly, President  
Satin Fine Foods, Inc.,  
Sole Member/Managing Member

STATE OF NEW YORK     )  
                                      ) SS.:  
COUNTY OF ROCKLAND    )

On the 14<sup>th</sup> day of June, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared **Kevin O'Reilly**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.


  
Notary Public  
MARIANNA R. KENNEDY  
Notary Public, State of New York  
No. 02KE5056588  
Qualified in Orange County  
Commission Expires March 4, 2014

ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

  
By: James D. O'Donnell, Executive Director

STATE OF NEW YORK     )  
                                  ) SS.:  
COUNTY OF ORANGE     )

On the 26<sup>th</sup> day of May, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared **James D. O'Donnell**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**MELANIE TANNER**  
Notary Public, State of New York  
No. 4957059  
Qualified in Orange County  
Commission Expires October 10, 2013

\$2,995,000.00 Assignment of Leases & Rents

**RECORD AND RETURN TO:**

**Marianna R. Kennedy, Esq.**

**Drake, Loeb, Heller, Kennedy**

**Gogerty, Gaba & Rodd PLLC**

**555 Hudson Valley Ave, Suite 100**

**New Windsor, New York 12553**

**V/Chester; T/Chester; C/Orange; S/New York**

**Section 129; Block 1; Lot 1.-1**

## **Schedule A**

### **Description**

The Condominium Unit ("Unit") known as Unit 1 in the building ("Building") known as The Leone Lane Condominium ("Condominium") and by the street number 32 Leone Lane, County of Orange, Village and Town of Chester, State of New York, said Unit being designated and described as Unit 1 in a certain declaration dated May 10, 2011, made by Grantor pursuant to Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") establishing a plan of condominium ownership of the Building and the land ("Land") upon which the Building is situate (which Land is more particularly described in Exhibit "A" annexed hereto and by this reference made a part hereof), which declaration was recorded in the Orange County Clerk's Office (the "County Clerk's Office") on May 19, 2011 as File # 2011004836 in Book 13178 Page 0161 (hereinafter called the "Declaration") and also designated as Tax Lot 1.-1 in Block 1 of Section 129 on the tax map of the County Clerk's Office and on the Floor Plans of the Building and filed in the County Clerk's Office on May 19, 2011 as Map # 123-11;

TOGETHER with a combined 35.627% interest in the Common Elements (as such term is defined in the Declaration);