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③ GNT #05-0327



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Cook County Recorder of Deeds  
Date: 07/14/2005 11:40 AM Pg: 1 of 9

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## ASSIGNMENT OF RENTS AND LEASES

**THIS AGREEMENT** is made as of July 1, 2005, by and between 473 W. SUPERIOR BUILDERS, LLC, an Illinois limited liability company ("**Assignor**") to HERITAGE COMMUNITY BANK, an Illinois banking corporation ("**Assignee**").

### WITNESSETH

Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby bargain, sell, transfer, assign, convey, set over and deliver unto Assignee all right, title and interest of Assignor in, to and under all present leases of the premises described in Exhibit A attached hereto and made a part hereof ("**Premises**") (including those leases described on the Schedule of Leases attached hereto and made a part hereof as Exhibit B) together with all future leases hereinafter entered into by any lessor affecting the Premises, and all guaranties, amendments, extensions and renewals of said leases and each of them (all of which are hereinafter collectively called the "**Leases**") and all rents, income and profits which may now or hereafter be or become due or owing under the Leases and each of them, or on account of the use of the Premises.

This Assignment is made for the purposes of securing:

A. The payment of the indebtedness evidenced by (a) the Promissory Note dated July 1, 2005, made by Assignor payable to Assignee in the principal amount of ONE MILLION ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,150,000.00) ("**Note A**"), and (b) the Promissory Note dated July 28, 2005, made by Assignor payable to Assignee in the principal amount of ONE MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,400,000.00) ("**Note B**") (Note A and Note B are jointly referred to herein as the "**Notes**");

B. The payment of all other sums with interest thereon becoming due and payable to Assignee under the provisions of a certain Mortgage, Security Agreement and Financing Statement given by Assignor to Assignee under even date herewith (the "**Mortgage**") (the terms of which Notes and which Mortgage are hereby incorporated by reference) and all other instruments constituting security for the Notes; and

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7. Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of any landlord and any tenant under any of the Leases.

6. Assignor shall give prompt notice to Assignee of each notice received by Assignor or any of them claiming that a default has occurred under any of the Leases on the part of the landlord, together with a complete copy of each such notice.

5. There is no default now existing under any of the Leases in the payment of rent, and, to the best of Assignor's knowledge, there is no other default now existing under any of the Leases, and to the best of Assignor's knowledge, there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases; and that Assignor will fulfill and perform each and every covenant and condition of each of the Leases by the landlord thereunder to be fulfilled or performed and, at the sole cost and expense of Assignor, notice (short of termination of any of the Leases) the performance and observance of each and every covenant and condition of all such Leases by the tenants thereunder to be performed and observed.

4. None of the Leases shall be materially altered, materially modified, materially amended, terminated, cancelled or surrendered, without the prior written approval of Assignee, which consent shall not be unreasonably withheld, except in the ordinary course of business and only in the event such action does not have a material adverse effect on the operation of, or the rental income from, the Premises, nor shall any term or condition thereof be waived.

3. Each of the Leases listed on the Schedule of Leases is valid and enforceable in accordance with its terms and none has been altered, modified, amended, terminated, cancelled, renewed or surrendered nor has any term or condition thereof been waived in any manner whatsoever, except as heretofore approved in writing by Assignee.

2. The sole ownership of the entire landlords' interest in the Leases is vested in Assignor. Assignor has not, and shall not: (a) perform any act or execute any other instrument which might prevent Assignee from fully exercising his rights under any term, covenant or condition of this Assignment; (b) execute any assignment or pledge of rents, income, profits or any of the Leases except an assignment or pledge securing the Indebtedness secured hereby; (c) accept any payment of any installment of rent more than thirty (30) days before the due date thereof; or (d) make any lease of the Premises except for actual occupancy by the tenant thereunder.

1. There is no present lease of the Premises not listed on the Schedule of Leases.

Assignor covenants and agrees with Assignee as follows:

D. The payment of any and all other indebtedness from Assignor to Assignee, however and whenever arising or created, including, without limitation, indebtedness evidenced by that certain Promissory Note dated November 19, 2004, made by Assignor to Assignee in the original principal amount of \$2,100,000.00, and any and all extensions, renewals, substitutions or replacements thereof or herefor.

C. The performance and discharge of each and every term, covenant and condition of Assignor contained in the Notes, Mortgage and in all other instruments constituting security for the Notes.

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3

12. After the occurrence of an Event of Default and service of a Notice, Assignee is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of Assignee or its designee to enter upon the Premises, or any part thereof, and take possession of all or any part of the Premises together with all personal property, fixtures, documents, books, records, papers and accounts of Assignor and each of them relating thereto, and may exclude Assignor and its agents and servants wholly therefrom. Assignor hereby grants full power and authority to Assignee to exercise all rights, privileges and powers herein granted at any and all times (after an Event of Default and service of a Notice) without further notice to Assignor, with full power to use and apply all of the rents and other income herein assigned to payment of the costs of managing and operating the Premises and to payment of all indebtedness and liability of Assignor to Assignee, including but not limited to: (a) the payment of taxes, special assessments,

11. Upon the occurrence of an Event of Default, Assignor hereby irrevocably appoints Assignee its true and lawful attorney-in-fact, with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor (from and after an Event of Default and the service of a Notice) to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Premises, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in its own name or in the name of Assignor or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits. All present and future tenants of the Premises are hereby expressly authorized and directed (from and after an Event of Default and service of a Notice) to pay to Assignee, or to such nominee as Assignee may designate in a writing delivered to and received by such tenants, all amounts due Assignor or any of them pursuant to the Leases, all present and future tenants are further expressly authorized and directed to rely on notices from Assignee and shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing, all present and future tenants are expressly relieved of all duty, liability or obligation to Assignor and each of them in respect of all payments so made to Assignee or such nominee.

9. This Assignment is absolute and is effective immediately; however, until notice is sent by Assignor in writing that an event of default has occurred under the Notes or under any other instrument at any time constituting security for the Notes and has not been cured within the applicable cure periods (an "Event of Default") (each such notice is hereafter called a "Notice"), Assignor may receive, collect and enjoy the rents, income and profits from the Premises. If any Event of Default occurs or exists at any time, Assignee may (at its option after service of a Notice) receive and collect when due all such rents, income and profits from the Premises and under any and all Leases of all or any part of the Premises. Assignee shall thereafter continue to receive and collect all such rents, income and profits until such event of default is cured and during the pendency of any foreclosure proceedings, and (if there is a deficiency) during the redemption period (if any).

8. Assignor will not suffer or permit any of the leases to become subordinate to any lien other than the lien of the Mortgage, this Assignment and general real estate taxes not delinquent without Assignee's prior written consent in each case, which consent shall not be unreasonably withheld or denied.

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4

- insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Premises or of making the same rentable, attorneys' fees incurred in connection with the enforcement of this Assignment; and (b) principal and interest payments due from Assignor to Assignee on the Notes and the Mortgage; all in such order and for such time as Assignee may determine.
13. Assignee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of any landlord under any of the Leases. Assignee does not hereby assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Assignor or any of them under any of the Leases.
14. Assignor hereby agrees to indemnify Assignee and to hold Assignee harmless from any liability, loss or damage including, without limitation, reasonable attorneys' fees which may or might be incurred by Assignee under the Leases or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to perform or discharge any term, covenant or agreement contained in any of the Leases, except any liability, loss or damage or claims or demands resulting from Assignee's own actions, inactions or gross negligence.
15. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises, or parts thereof, upon Assignee, nor shall it operate to make Assignee liable for the performance or observance of any term, condition, covenant or agreement contained in any of the Leases, or for any waste of the Premises by any tenant under any of the Leases or any other person, or for any danger, or defective condition of the Premises or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger, other than as a result of Assignee's own actions.
16. Assignee may: (a) take or release other security; (b) release any party primarily or secondarily liable for any of the Indebtedness (as defined in the Mortgage) secured hereby; (c) grant extensions, renewals or indulgence with respect to such Indebtedness; and (d) apply any other security thereto held by Assignee to the satisfaction of such Indebtedness; in each case without prejudice to any of Assignee's other rights hereunder or under any other security given to secure the Indebtedness secured hereby.
17. Assignee may, at its option after reasonable notice to Assignor, although it shall not be obligated to do so, perform any Lease covenant for and on behalf of Assignor and each of them, and all monies expended in so doing shall be chargeable to Assignor, with interest thereon at the rates set forth in the Notes applicable to a period when a default exists under the Notes, and shall be added to the Indebtedness secured hereby, and shall be immediately due and payable.
18. Waiver of, or acquiescence by Assignee in, any default by Assignor, or failure of Assignee to insist upon strict performance by Assignor of any covenant, condition or agreement in this Assignment or otherwise, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

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By: Calvin H. Gullion  
Manager

*Calvin H. Gullion*

By: Jeffrey Chad Smith a/k/a Chad Smith  
Manager

*Jeffrey Chad Smith*

473 W. SUPERIOR BUILDERS, LLC, an Illinois limited liability company

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed and acknowledged as of the date first above written.

This Assignment may not be amended, modified or changed nor shall any waiver of any provisions hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

The terms "Assignor" and "Assignee" shall be construed to include the heirs, personal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender corporate or other form, and the singular shall likewise include the plural.

Each Notice given pursuant to this Assignment shall be sufficient and shall be deemed served upon personal delivery or upon the third day after being deposited in United States certified mail, return receipt requested, postage prepaid, or upon delivery by Federal Express or other similar nationally recognized overnight courier service, to the addresses provided in the Notes, or to such other address as a party may indicate in writing by a notice in accordance herewith.

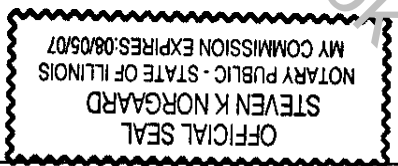
If any provision contained in this Assignment, or its application to any person or circumstances, is to any extent invalid or unenforceable, the remainder of this Assignment and the application of such provisions to persons or circumstances (other than those as to which it is invalid or unenforceable) shall not be affected, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

19. The rights, remedies and powers of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to, all other rights, remedies and powers which Assignee has under the Notes and all instruments constituting security for the Notes, and at law and in equity.

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My Commission Expires:

NOTARY PUBLIC

*[Signature]*

15<sup>th</sup> day of July, 2005

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JEFFREY CHAD SMITH a/k/a CHAD SMITH, as Manager of 473 W. SUPERIOR BUILDERS, LLC, an Illinois limited liability company, and the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged to me that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said LLC, for the uses and purposes therein set forth.

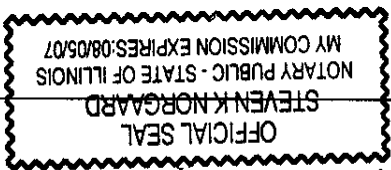
GIVEN under my hand and Notarial Seal this

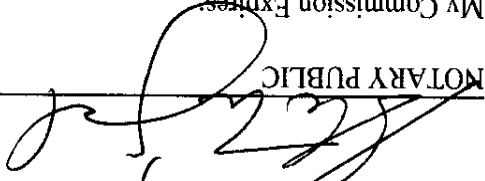
STATE OF ILLINOIS )  
) SS )  
) COUNTY OF Cook )

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My Commission Expires:  
NOTARY PUBLIC  
  
 1st day of July, 2009

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that CALVIN H. GULLION, as Manager of 473 W. SUPERIOR BUILDERS, LLC, an Illinois limited liability company, and the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged to me that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said LLC, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this

STATE OF ILLINOIS )  
 ) SS )  
 ) COUNTY OF Cook )

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PIN: 17-09-110-031-0000 (UNDERLYING)

INGRESS AND EGRESS EASEMENT FOR PRIVATE ALLEY AS CREATED BY DECLARATION RECORDED AS DOCUMENT 0010070706, AND BY DECLARATION OF PRIVATE ALLEY EASEMENT RECORDED AS DOCUMENT 0010070707, OVER AND UPON THAT PART OF THE EAST-WEST VACATED ALLEY [SAID ALLEY VACATED BY ORDINANCE PASSED JANUARY 19, 1970 AND RECORDED AS DOCUMENT 21137712] WHICH LIES 8.0 FEET ON EITHER SIDE OF THE CENTER LINE OF SAID VACATED ALLEY [EXCEPT THE WEST 2.0 FEET THEREOF] IN BLOCK 6 IN HIGGINS, LAW AND COMPANY'S ADDITION TO CHICAGO, IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. SAID EASEMENT IS SUBJECT TO, AMONG OTHER THINGS, THE RIGHTS RESERVED TO GRANTOR/DECLARANT TO INSTALL UTILITIES AND GRANT UTILITY EASEMENTS IN THE FUTURE OVER, UNDER AND ALONG SAID EASEMENT PARCEL.

TOGETHER WITH:

COMMONLY KNOWN AS: 441 WEST SUPERIOR STREET, CHICAGO, ILLINOIS 60610

PARCEL 10:  
THE EAST 34.25 FEET OF THE NORTH 1/2 OF THE FOLLOWING DESCRIBED PROPERTY TAKEN AS A SINGLE TRACT OF LAND: LOTS 1 TO 28 BOTH INCLUSIVE, TOGETHER WITH ALL OF THE EAST WEST VACATED ALLEY IN BLOCK 6 IN HIGGINS, LAW AND COMPANY'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 445 WEST SUPERIOR STREET, CHICAGO, ILLINOIS 60610

PARCEL 9:  
THE WEST 33.83 FEET OF THE EAST 68.08 FEET OF THE NORTH 1/2 OF THE FOLLOWING DESCRIBED PROPERTY TAKEN AS A SINGLE TRACT OF LAND: LOTS 1 TO 28 BOTH INCLUSIVE, TOGETHER WITH ALL OF THE EAST-WEST VACATED ALLEY IN BLOCK 6 IN HIGGINS, LAW AND COMPANY'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**LEGAL DESCRIPTION**

**EXHIBIT A**



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## EXHIBIT B

### SCHEDULE OF LEASES

None.

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