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Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 10/06/2005 01:39 PM Pg: 1 of 20

**RECORDATION REQUESTED BY:**

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603  
Attention: Thomas F. Karaba

**WHEN RECORDED MAIL TO:**

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603  
Attention: Thomas F. Karaba

**THIS INSTRUMENT PREPARED BY:**

0507-16770  
Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603  
Attention: Thomas F. Karaba

**CONSTRUCTION MORTGAGE AND ASSIGNMENT OF RENTS**

THIS CONSTRUCTION MORTGAGE is dated as of September 27, 2005, between JSG DEVELOPMENT LLC, an Illinois limited liability company ("Borrower") and FIFTH THIRD BANK (Chicago), a Michigan banking corporation ("Lender").

**SECTION 1: GRANT OF MORTGAGE AND ASSIGNMENT OF RENTS**

**1.1 Grant of Mortgage.** For valuable consideration, Borrower mortgages, warrants, and conveys to Lender all of Borrower's right, title, and interest in and to the real property commonly known as 1903 - 1907 Wolf Road, Hillside, Cook County, Illinois and described on the attached Exhibit A, together with all Improvements; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters (collectively, the "Real Property"). The Real Property tax identification numbers are as shown on the attached Exhibit A.

**1.2 Leases and Rents.** Borrower absolutely and presently assigns to Lender all of Borrower's right, title, and interest in and to all leases of the Property and all Rents from the Property, (subject to Borrower's right to collect the Rents set forth in Section 3.3(a)). In addition, Borrower grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.



PRAIRIE TITLE  
6821 W. NORTH AVE.  
OAK PARK, IL 60302

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**1.3 SCOPE. THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE PERSONAL PROPERTY AND RENTS, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ALL OBLIGATIONS UNDER THIS MORTGAGE, THE LOAN AGREEMENT AND THE RELATED DOCUMENTS. THIS MORTGAGE IS INTENDED TO AND SHALL BE VALID AND HAVE PRIORITY OVER ALL SUBSEQUENT LIENS AND ENCUMBRANCES, INCLUDING STATUTORY LIENS, TO THE EXTENT OF THE MAXIMUM AMOUNT SECURED HEREBY. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE TERMS SET FORTH HEREIN.**

**1.4 Construction Mortgage.** To the fullest extent possible, this Mortgage shall be deemed a "construction mortgage" for the purposes of Article 9 of the Illinois Uniform Commercial Code, 810 ILCS 5/9101 et seq.

## SECTION 2: BORROWER'S REPRESENTATIONS AND WARRANTIES

**2.1 Representations and Warranties as to Property.** With respect to the Property, Borrower represents and warrants to Lender that:

(a) **Title.** (i) Borrower holds good and marketable title of record to the Property in fee simple, free and clear of all liens, security interests and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (ii) Borrower has the full right, power, and authority to execute and deliver this Mortgage to Lender.

(b) **Compliance with Laws.** Borrower represents and warrants, to the best of its knowledge, that the Property and Borrower's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**2.2 Representations and Warranties as to Rents.** With respect to the Rents, Borrower represents and warrants to Lender that:

(a) **Ownership.** Borrower is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

(b) **Right to Assign.** Borrower has the full right, power, and authority to enter into this Mortgage and to assign and convey the Rents to Lender.

(c) **No Prior Assignment.** Borrower has not previously assigned or conveyed the Rents to any other Person by any instrument now in force.

**2.3 Survival of Representations and Warranties.** Borrower understands and agrees that Lender is relying upon the above representations and warranties in making the loans under the Loan Agreement and Note. Borrower agrees that the foregoing representations and warranties shall

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be continuing in nature and shall remain in full force and effect until, unless otherwise specified herein, such time as the Indebtedness shall be paid in full, or until this Mortgage shall be released, whichever is the last to occur.

## SECTION 3: AGREEMENTS AND COVENANTS

**3.1 Payment and Performance.** Except as otherwise provided in this Mortgage, Borrower shall pay to Lender all amounts secured by this Mortgage as they become due, and shall strictly perform all of their respective obligations under this Mortgage.

**3.2 Possession and Maintenance of the Property.** Borrower agrees that the following provisions shall govern its possession and use of the Property:

**(a) Possession and Use.** Until the occurrence of an Event of Default, Borrower may: (i) remain in possession and control of the Property; (ii) use, operate or manage the Property; and (iii) collect any Rents from the Property, subject to the terms of Section 3.3.

**(b) Duty to Maintain.** Borrower shall maintain, and cause its lessees to maintain, the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**(c) Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Borrower represents and warrants to Lender that: (i) during the period of Borrower's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any Person on, under, or about the Property; (ii) there has not been, to the best of Borrower's knowledge, (A) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any Person on or under the Property or (B) any actual or threatened litigation or claims of any kind by any Person relating to such matters; and (iii) neither Borrower nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Property except in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Borrower authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at their expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only

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and shall not be construed to create any responsibility or liability on the part of Lender to any other Person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Property for hazardous waste. Borrower hereby (x) releases and waives any present and future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (y) Borrower agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Borrower's ownership or interest in the Property, whether or not the same was or should have been known to Borrower. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**(d) Nuisance, Waste.** Borrower shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Borrower will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender, which consent shall not unreasonably be withheld.

**(e) Removal of Improvements.** Borrower shall not demolish or remove any Improvements from the Real Property without the prior written consent of Lender, which consent shall not unreasonably be withheld. As a condition to the removal of any Improvements, Lender may require Borrower to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

**(f) Lender's Right to Enter.** Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Borrower's compliance with the terms and conditions of this Mortgage.

**(g) Compliance with Governmental Requirements.** Borrower shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans with Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's opinion, Lender's interests in the Property are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**(h) Duty to Protect.** Borrower agrees to neither abandon nor leave the Property unattended. Borrower shall do all other acts, in addition to those acts set forth above in this

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section, which from the character and use of the Property are necessary to protect and preserve the Property.

(i) **Property Manager.** To the extent that Borrower has employed a manager or agent to manage the property or collect the Rents, Borrower shall immediately inform such manager or agent of this Mortgage and such manager or agent shall attorn to the rights of Lender hereunder.

(j) **No Transfer of Rents.** Borrower will not sell, assign, encumber, or otherwise dispose of any of their rights in the Rents.

(k) **Future Leases.** Borrower agrees to assign and transfer to Lender all future leases upon all or any part of the Property and to execute and deliver, at the request of Lender, all such further assurances and assignments in the Property, as Lender shall from time to time require.

**3.3 Lender's Rights as to Rents.** Lender is hereby given and granted the following rights, powers and authority:

(a) **Lender May Collect Rents.** Lender shall have the right at any time, and even though no Event of Default shall have occurred under this Mortgage, to collect and receive the Rents, including amounts past due and unpaid. If Lender collects the Rents, then Borrower irrevocably designates Lender as its attorney-in-fact to endorse instruments received in payment thereof in the name of Borrower and to negotiate the same and collect the proceeds. Lender may exercise its rights under this subsection in Person, either by agent, or through a receiver. Unless and until Lender exercises its right to collect the Rents, Borrower may collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

(b) **Notice to Tenants.** Lender may send notices to any and all tenants of the Property advising them of this Mortgage and directing all Rents to be paid directly to Lender or Lender's agent. Payments by tenants or other lessors to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed.

(c) **Lender's Right to Enter.** Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other Persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property and give proper receipts, releases and acquittances thereof, including such proceedings as may be necessary to recover possession of the Property; and remove any tenant or tenants or other Persons from the Property.

(d) **Maintain the Property.** Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of

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maintaining the Property in proper repair and condition; and to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

(e) **Compliance with Laws.** Lender may do any and all things to execute and comply with the laws of the State of Illinois and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

(f) **Lease the Property.** Lender may rent or lease the whole or any part of the Property to any Person for such term or terms and on such conditions as Lender may deem appropriate.

(g) **Employ Agents.** Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Borrower's name, to rent and manage the Property, including the collection and application of Rents.

(h) **Other Acts.** Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Borrower and to have all of the powers of Borrower for the purposes stated above.

(i) **Application of Rents.** Lender shall determine the application of any and all Rents received by it; however, any Rents received by Lender which are not applied to costs and expenses as set forth in Section 3.7, shall be applied to the Indebtedness, notwithstanding the fact that such portion of the Indebtedness may not be due and payable or that such portion of the Indebtedness is otherwise adequately secured.

**3.4 Taxes and Liens.** Borrower agrees to comply with the following provisions regarding taxes and liens:

(a) **Payment.** Borrower shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay, and cause any lessee to pay (as appropriate), when due all claims for work done on or for services rendered or material furnished to the Property. Borrower shall maintain the Property free of all liens, except for the lien of taxes and assessments not due, and except as otherwise provided in the following subsection (b).

(b) **Right to Contest.** Borrower will not be required to pay and discharge any such assessment, tax, charge, levy, lien or claim (collectively the "Charges") so long as: (A) the legality of the same shall be promptly contested in good faith by appropriate proceedings; (B) Borrower shall have deposited with Lender cash, a sufficient corporate surety bond or other security satisfactory in form and substance to Lender in an amount adequate to provide for the release of such Charge plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Property; (C) such contest operates to suspend collection of the Charge; and (D) none of the Property is subject to forfeiture or loss of any security interest (or the priority thereof) by reason of the institution

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or prosecution of such contest as determined by Lender in its reasonable discretion. Borrower, upon demand of Lender, will furnish to Lender evidence of payment of the indebtedness and obligations, including any assessments, taxes, charges, levies, liens and claims and will authorize the appropriate obligor or governmental official to deliver to Lender at any time a written statement of any indebtedness and obligations including any Charges. In any contest, Borrower shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Borrower shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**(c) Evidence of Payment.** Borrower shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**(d) Notice of Construction.** Borrower shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Borrower will upon request of Lender furnish to Lender advance assurance satisfactory to Lender that Borrower can and will pay the cost of such work, services, or materials.

**3.5 Property Damage Insurance and Proceeds.** Borrower agrees to comply with the provisions of the Loan Agreement relating to insurance and casualty proceeds.

**3.6 Tax and Insurance Reserves.** Borrower agrees to establish reserve accounts as provided for in the Loan Agreement.

**3.7 Expenditures by Lender.** If Borrower fails to comply with any provision of this Mortgage, or if any action or proceeding is commenced that would materially affect Lender's interests in the Property or Rents, Lender on behalf of Borrower may, but shall not be required to, take any action that Lender deems appropriate and the fact that Lender shall have performed one or more acts or things as permitted under this Mortgage shall not require Lender to do any other specific act or thing. All costs and expenses incurred by Lender in so doing shall be for Borrower's account and Lender may pay such costs and expenses from the Rents. Any expenditure under this Mortgage will bear interest at the Default Rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses not reimbursed from the Rents, at Lender's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Mortgage also will secure payment of these amounts. The rights provided for in this section shall be in addition to any other rights or any remedies to which Lender may be entitled on account of an Event of Default. Any such action by Lender shall not be construed as curing the Event of Default so as to bar Lender from any remedy that it otherwise would have had.

**3.8 Defense of Title.** Borrower agrees to defend forever the title to the Property and Rents against the lawful claims of all Persons. In the event any action or proceeding is commenced

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that questions Borrower's title or the interest of Lender under this Mortgage, Borrower shall defend the action at their expense. Borrower may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice (and at the expense of Borrower), and Borrower will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**3.9 Condemnation.** Borrower agrees to comply with the provisions of the Loan Agreement regarding condemnation of the Property.

**3.10 Imposition of Taxes, Fees, and Charges by Governmental Authorities.** Borrower agrees to comply with the following provisions regarding governmental taxes, fees, and charges:

(a) **Current Taxes, Fees, and Charges.** Upon request by Lender, Borrower shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Borrower shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

(b) **Taxes.** The following shall constitute taxes to which this section applies: (i) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (ii) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (iii) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (iv) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower.

(c) **Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Borrower either (i) pays the tax before it becomes delinquent, or (ii) contests the tax as provided in Section 3.4(b) and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

## SECTION 4: SECURITY AGREEMENT

**4.1 Security Agreement.** This Mortgage shall constitute a security agreement with respect to the Rents and to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**4.2 Security Interest.** Upon request by Lender, Borrower shall execute financing statements if so required and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this



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Mortgage in the real property records, Lender may, at any time and without further authorization from Borrower, file executed counterparts, copies or reproductions of this Mortgage as a financing statement and file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto. Borrower also ratifies its respective authorization for Lender to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof. Borrower shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon an Event of Default, Borrower shall assemble the Personal Property in a manner and at a place reasonably convenient to Lender and make it available to Lender within three (3) days after notice from Lender.

**4.3 Addresses.** The mailing addresses of Borrower (debtor) and Lender (secured party), from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code), are in Section 8.2(l) of this Mortgage.

## SECTION 5: FURTHER ASSURANCES; ATTORNEY-IN-FACT

**5.1 Further Assurances.** At any time, and from time to time, upon request of Lender, Borrower will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, control agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Borrower under the Note, this Mortgage, and the Related Documents, and (b) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Borrower. Unless prohibited by law or agreed to the contrary by Lender in writing, Borrower shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this Section.

**5.2 Attorney-in-Fact.** If Borrower fails to do any of the things referred to in this Mortgage, Lender may do so for, in the name of Borrower, and at its expense. For such purposes, Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full power and authority in the place and stead of Borrower, or in Lender's own name, for the purpose of carrying out the terms of this Mortgage, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Mortgage.

## SECTION 6: DUE ON SALE; FULL PERFORMANCE

**6.1 Due on Sale - Consent by Lender.** Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest not otherwise

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approved by Lender, lease option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest. If Borrower is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Borrower. However, Lender shall not exercise this option if such exercise is prohibited by federal law or by Illinois law.

**6.2 Full Performance.** If Borrower pays all the Indebtedness, including without limitation all future advances, when due, and otherwise performs all the obligations imposed upon Borrower under this Mortgage, the Loan Agreement and the Related Documents, Lender shall execute and deliver to Borrower a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Borrower will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

## SECTION 7: EVENTS OF DEFAULT; REMEDIES

**7.1 Events of Default.** A default in the performance of any obligation hereunder or any Event of Default under the Loan Agreement shall constitute an Event of Default hereunder.

**7.2 Rights and Remedies.** Upon the occurrence of any Event of Default and at any time thereafter, Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law or equity:

(a) **Accelerate Indebtedness.** Lender shall have the right, without notice to Borrower, to declare the entire Indebtedness immediately due and payable, including any prepayment fee which Borrower would be required to pay.

(b) **UCC Remedies.** With respect to all or any part of the Personal Property or Rents, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

(c) **Collect Rents.** Lender shall have the right, without notice to Borrower, to take possession of the Property, collect the Rents, and do such other things and acts with respect to the Property and the application of such Rents as set forth in Section 3.3.

(d) **Mortgagee in Possession or Receiver.** Lender shall have the right to be placed as mortgagee in possession or to have a receiver appointed without the requirement of the posting of any bond, to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The mortgagee in possession or receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a Person from serving as a receiver.

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Nothing contained in this mortgage shall be construed as constituting Lender a mortgagee in possession in the absence of taking of actual possession of the Property by Lender pursuant to this Mortgage.

**(e) Sale of Property and Judicial Foreclosure.** Lender shall be permitted to: (i) immediately judicially foreclose this Mortgage; or (ii) if allowed under Illinois law at the time of such Event of Default, immediately sell the any part of the Property either in whole or in separate parcels, as prescribed by Illinois law, under power of sale, which power is hereby granted to Lender to the full extent permitted by Illinois law, and thereupon, to make and execute to any purchaser(s) thereof deeds of conveyance pursuant to applicable law.

**(f) Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Mortgage.

**(g) Other Rights and Remedies.** Lender shall have all other rights and remedies provided in this Mortgage, the Loan Agreement, or the Note or available at law or in equity.

**7.3 Sale of the Property.** To the extent permitted by applicable law, Borrower hereby waives any and all right to have the Property marshaled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**7.4 Notice of Sale.** Lender shall give Borrower reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

**7.5 Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Borrower under this Mortgage after failure of Borrower to perform shall not affect Lender's right to declare an Event of Default and exercise its remedies under this Mortgage.

**7.6 Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover its reasonable attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all expenses incurred by Lender that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the Default Rate under the Note. Expenses covered by this Section include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's reasonable legal expenses whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports),

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surveyors' reports, and appraisal fees, and title insurance. Borrower also will pay any court costs, in addition to all other sums provided by law.

## SECTION 8: DEFINITIONS; MISCELLANEOUS PROVISIONS.

**8.1 Definitions.** The following words shall have the following meanings when used in this Mortgage. Terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Illinois Uniform Commercial Code (810 ILCS 1/1 et seq. as amended from time to time, the "Uniform Commercial Code"). All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Affiliate.** The word "Affiliate" means, with respect to any Person (the "subject"), any Person (i) which directly or indirectly controls or is controlled by, or is under common control with, the subject, (ii) which beneficially owns or holds 5% or more of the equity interest of the subject, or (iii) 5% or more of the equity interest of which is beneficially owned or held by the subject or its Affiliates. The term "control" means the possession, directly or indirectly, individually or in concert with others, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**Borrower.** The word "Borrower" means **JSG DEVELOPMENT LLC** and its successors and assigns. The Borrower is the mortgagor under this Mortgage.

**CERCLA.** The word "CERCLA" has the meaning set forth in Section 3.2(c).

**Event of Default.** The word "Event of Default" has the meaning set forth in Section 7.1.

**Improvements.** The word "Improvements" means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal and interest payable under the Loans and Note and any amounts expended or advanced by Lender to discharge obligations of Borrower or expenses incurred by Lender to enforce obligations of Borrower under this Mortgage, together with interest on such amounts as provided in this Mortgage. In addition to the Note, the word "Indebtedness" includes all obligations, debts and liabilities, plus interest thereon, of Borrower to Lender, including all claims by Lender against Borrower, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Loans or Note, whether voluntary or otherwise, whether due or not due, absolute or contingent, liquidated or unliquidated and whether Borrower may be liable individually or jointly with others, whether obligated as guarantor or otherwise, and whether recovery upon such Indebtedness may be or hereafter may become barred by any statute of limitations, and whether such Indebtedness may be or hereafter may become otherwise unenforceable. Specifically, without limitation, this Mortgage secures, in addition to the amounts specified in the Note, all future amounts Lender in its discretion may loan to Borrower, together with

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all interest thereon; however, in no event shall such future advances (excluding interest) exceed in the aggregate the Maximum Credit Amount. **At no time shall the principal amount of the Indebtedness secured by this Mortgage, not including sums advanced to protect the security of this Mortgage, exceed the Maximum Amount Secured.**

**Lender.** The word "Lender" means **FIFTH THIRD BANK (CHICAGO)**, a Michigan banking corporation, its successors and assigns. The Lender is the mortgagee under this Mortgage.

**Loan.** The word "Loan" or "Loans" means any and all loans and financial accommodations from Lender to Borrower related to or arising out of the loan transactions contemplated by the Loan Agreement, whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described on any exhibit or schedule attached to the Loan Agreement from time to time. "Loan" or "Loans" shall include, but not be limited to, the Non-Revolving Construction Loan.

**Loan Agreement.** The words "Loan Agreement" mean that certain Construction Loan Agreement of even date herewith, between Borrower and Lender, as it may be amended or modified from time to time, together with all exhibits and schedules attached thereto from time to time.

**Maturity Date.** The words "Maturity Date" mean **September 27, 2007**.

**Maximum Amount Secured.** The words "Maximum Amount Secured" mean the amount of Twenty Million Dollars (\$20,000,000.00).

**Maximum Credit Amount.** The words "Maximum Credit Amount" mean **Twelve Million Five Hundred Ten Thousand and No/100 Dollars (\$12,510,000.00)**.

**Mortgage.** The word "Mortgage" means this Construction Mortgage between Borrower and Lender, and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents.

**Non-Revolving Construction Loan.** The words "Non-Revolving Construction Loan" have the meaning set forth in Section 1.1(b) of the Loan Agreement.

**Note.** The word "Note" means the Non-Revolving Promissory Note from Borrower to Lender dated of even date herewith in the principal amount of **Twelve Million Five Hundred Ten Thousand and No/100 Dollars (\$12,510,000.00)**, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory note.

**Person.** The word "Person" means an individual or a corporation, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, limited liability company, government (or any instrumentality, division, agency, body or political subdivision thereof) or other entity of any kind.

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**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Borrower, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" have the meaning set forth in Section 1.1.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, financing statements, collateral assignments and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means absolutely and presently all rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property, whether due now or which may hereafter become due, including without limitation all Rents from all leases described on any exhibit attached to this Mortgage.

**SARA.** The word "SARA" has the meaning set forth in Section 3.2(c).

## 8.2 Miscellaneous Provisions.

**(a) Entire Agreement; Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of, or amendment to, this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**(b) Applicable Law.** This Mortgage and all acts, agreements, certificates, assignments, transfers and transactions hereunder, and all rights of the parties hereto, shall be governed as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws and decisions of the State of Illinois, including, but not limited to, laws regulating interest, loan charges, commitment fees and brokerage commissions (without regard to conflicts of law principles). It is acknowledged and agreed by Borrower and Lender that the loan transaction evidenced hereby, bears a reasonable relationship to the State of Illinois.

**(c) Consent to Jurisdiction.** To induce Lender to accept this Mortgage, Borrower irrevocably agrees that, subject to Lender's sole and absolute election, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED

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**TO THIS AGREEMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS.**

**(d) Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

**(e) Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**(f) Multiple Parties; Corporate Authority.** All obligations of Borrower under this Mortgage shall be joint and several, and all references to Borrower shall mean each Borrower. This means that each of the Persons signing below is responsible for all obligations in this Mortgage. To the extent that Borrower is a corporation, partnership or limited liability company, it hereby represents and warrants to Lender that the execution of this Mortgage has been authorized by all necessary corporate, partnership or limited liability company action, as the case may be.

**(g) Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be invalid or unenforceable as to any Person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other Persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity, however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Mortgage in all other respects shall remain valid and enforceable.

**(h) Successors and Assigns.** Subject to the limitations stated in this Mortgage on transfer of Borrower's interest in the Real Property or a change in ownership of Borrower, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a Person other than Borrower, Lender, without notice to Borrower, may deal with Borrower's successors with reference to this Mortgage and the Indebtedness by way of forbearance, extension or any other modification without releasing Borrower from the obligations of this Mortgage or liability under the Indebtedness.

**(i) Survival.** All warranties, representations, and covenants made by Borrower in this Mortgage or in any certificate or other instrument delivered by Borrower to Lender under this Mortgage shall be considered to have been relied upon by Lender and will survive the making of the loan secured hereby and delivery to Lender of the Related Documents, regardless of any investigation made by Lender or on Lender's behalf.

**(j) Time Is of the Essence.** Time is of the essence in the performance of this Mortgage.

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(k) **Agency.** Nothing in this Mortgage shall be construed to constitute the creation of a partnership or joint venture between Lender, Borrower or any contractor. Lender is not an agent or representative of Borrower. This Mortgage does not create a contractual relationship with and shall not be construed to benefit or bind Lender in any way with or create any contractual duties by Lender to any contractor, subcontractor, materialman, laborer, or any other Person.

(l) **Notices.** Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by another, or whenever any of the parties desires to give or serve upon another any communication with respect to this Mortgage, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be delivered in Person (by personal delivery, delivery service or reputable overnight courier service), or telecopied and confirmed immediately in writing by a copy mailed by United States mail, postage prepaid, addressed as hereafter set forth, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(i) If to Lender, at:

Fifth Third Bank (Chicago)  
849 S. Oak Park Avenue  
Oak Park, IL 60304  
Attn: Jody Falcone  
Tel: (708) 848-4043  
Fax: (708) 848-3251

With a copy to:

Crowley Barrett & Karaba, Ltd.  
20 South Clark Street  
Suite 2310  
Chicago, IL 60603  
Attn: Thomas F. Karaba  
Tel: (312) 726-2468  
Fax: (312) 726-2741

(ii) If to Borrower, at:

JSG Development LLC  
1045 Clarence  
Oak Park, IL 60304  
Attn: Richard C. Gloor  
Attn: Vicki Jones  
Attn: Kimberly Biercz-Stewart



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With a copy to:

Ms. Maria Cristiano  
Pellegrini & Cristiano  
6817 West North Avenue  
Oak Park, IL 60302  
Tel: (708) 524-3610  
Fax: (708) 524-3612  
[maria@pellegrini-cristiano.com](mailto:maria@pellegrini-cristiano.com)

or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Every notice, demand, request, consent, approval, declaration or other communication hereunder shall be deemed to have been duly given or served on the date on which (i) personally delivered (whether in person, by delivery service, or by reputable overnight courier service), (ii) the date of the telecopy transmission (provided the confirmation mailing was sent as provided herein), or (iii) on the date of receipt if sent by the United States mail. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the Persons designed above to receive copies, if any, shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

**(m) Waiver of Homestead Exemption.** Borrower hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Illinois as to all Indebtedness secured by this Mortgage.

**(n) Waiver of Right of Redemption.** NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS MORTGAGE, BORROWER HEREBY WAIVES, TO THE EXTENT PERMITTED UNDER 735 ILCS 5/15-1601 (b) OR ANY SIMILAR LAW EXISTING AFTER THE DATE OF THIS MORTGAGE, ANY AND ALL RIGHTS OF REDEMPTION ON BEHALF OF BORROWER AND ON BEHALF OF ANY OTHER PERSONS PERMITTED TO REDEEM THE PROPERTY.

**(o) Waivers and Consents.** Lender shall not be deemed to have waived any rights under this Mortgage (or under the Related Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender or any course of dealing between Lender and Borrower shall constitute a waiver of any of Lender's rights or any of the obligations of Borrower as to any future transactions.

**(p) Lender's Discretion.** Whenever this Mortgage requires either Lender's consent, election, approval or similar action or otherwise vests in Lender the authority to make

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decisions and/or determinations, such actions shall be made or withheld in Lender's sole and absolute discretion, unless specifically provided otherwise and the granting of any consent, election, approval or similar action by Lender in any instance shall not constitute continuing consent, election, approval or similar action in subsequent instances where such is required.

**(q) Waiver of Jury Trial. BORROWER AND LENDER EACH WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (i) UNDER THIS MORTGAGE OR ANY RELATED DOCUMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR ANY RELATED DOCUMENT OR (ii) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION HERewith, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.**

[SIGNATURE PAGE FOLLOWS]

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**BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND BORROWER AGREES TO ITS TERMS.**

**BORROWER:**

**JSG DEVELOPMENT LLC,  
an Illinois Limited Liability Company**

By: Richard C. Gloor  
**Richard C. Gloor, its Member**

By: Vicki Jones  
**Vicki Jones, its Member**

By: Kimberly Biercz-Stewart  
**Kimberly Biercz-Stewart, its Member**

### BORROWER'S ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that **RICHARD C. GLOOR, VICKI JONES and KIMBERLY BIERCZ-STEWART**, each personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Members of **JSG DEVELOPMENT, LLC**, whose name is subscribed to the foregoing instrument as Borrower appeared before me this day in person and acknowledged that they each signed and delivered this instrument as his/her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal on September 27, 2005.

Maria A. Cristiano  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

THE NORTH 150 FEET OF THE WEST 330 FEET (EXCEPT FOR THE WEST 50 FEET THEREOF) OF THE NORTH ½ OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ IN SECTION 20, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 1903 -1907 Wolf Road, Hillside, Illinois

PIN: 15-20-300-024-0000  
15-20-300-026-0000  
15-20-300-028-0000; and  
15-20-300-030-0000