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Doc#: 0603934059 Fee: \$50.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/08/2006 01:25 PM Pg: 1 of 14

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PREPARED BY AND MAIL TO: *20f2*
Marquita Barbieri
Sandberg, Phoenix & Von Gontard, P.C.
One City Centre, 15th Floor
St. Louis, MO 63101

Mortgage and Security Agreement with Assignment of Rents

PROPERTY OF COOK COUNTY CLERK'S OFFICE

UNOFFICIAL COPY*AMW***MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS
(Commercial)**

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made this as of January 26, 2006, by M & H Development Group, L.L.C., a Missouri limited liability company whose address is 800 South Vandeventer, St. Louis, Missouri 63110 (the "Grantor"), for the benefit of MIDWEST BANKCENTRE, a Missouri banking corporation whose address is 17050 Baxter Road, Chesterfield, Missouri 63005 ("Lender").

This Mortgage secures that certain promissory note, dated the date hereof, by Grantor in the original principal amounts of \$2,125,000.00, (such instruments, and all modifications, renewals and extensions thereof being called the "Debt Instrument"), payable to the order of Lender and originally maturing on June 1, 2011, and bearing interest as specified therein, with the entire unpaid principal balance and accrued and unpaid interest due and payable as specified therein.

FOR USE BY RECORDER:

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

Mariquita L. Barbieri, Esq.
Sandberg, Phoenix & von Gontard, P.C.
One City Centre, 15th Floor
St. Louis, Missouri 63101

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NOW, THEREFORE, to secure the payment of the indebtedness evidenced by the Debt Instrument and the hereinafter defined "Liabilities," and to secure the performance of the covenants and agreements of Grantor contained herein, and in consideration of the loan evidenced by the Debt Instrument, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

MORTGAGE OF REAL PROPERTY

Grantor does by these presents hereby MORTGAGE, GRANT, REMISE, RELEASE, AND CONVEY unto Lender, and to Lender's successors and assigns, all of Grantor's estate, right, title and interest, now owned or hereafter acquired, in the real estate situated, lying and being in the County of Cook, Illinois and being fully described as follows, together with all improvements, fixtures, buildings, tenements, hereditaments, appurtenances, gas, oil, minerals, easements located in, on, over or under the such property, and all hereafter-acquired right and interest therein as more particularly described on Exhibit A hereto (collectively called the "Premises").

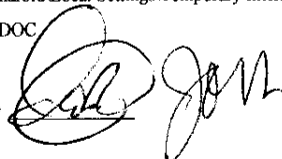
PLEDGE AND SECURITY INTEREST

GRANTOR DOES HEREBY PLEDGE, AND ASSIGN TO LENDER, AND GRANT TO LENDER a security interest in the following whether now owned or hereafter acquired (the "Personal Property"): (a) all present and future leases, written or verbal, rents, issues and profits of the Premises, including, without limitation, all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing, and all deposits of money as advance rent or for security, under any and all present and future leases of the Premises, together with the right, but not the obligation, to collect, receive, demand, sue for and recover the same when due or payable with or without taking possession of the Premises; (b) all property, furniture, machinery, equipment and fixtures now or hereafter forming a part of the Premises which are not deemed to be real property; (c) all articles of personal property and all materials delivered to the Premises for use and operation of the Premises or for use in any construction being conducted thereon and owned by Grantor; (d) all contract rights (but not obligations) and other intangible personal property (including, without limitation, all management and sales contracts), and all plans, specifications, drawings, plats and permits with respect to any actual or planned improvements to the Premises; (e) all accounts receivable, rights of action, prepaid expenses, permits and licenses associated with the Premises; (f) all trade names presently or hereafter used in connection with the Premises; (g) all proceeds arising from or by virtue of the sale, lease or other disposition of the Premises and any improvements thereon and any collateral described herein; (h) all proceeds (including, without limitation, premium refunds) of each policy of insurance relating to the Premises and the improvements thereon and with respect to any collateral described herein; (i) all proceeds from the taking of the Premises, or any rights appurtenant thereto, and any improvements thereto and any collateral described herein by right of eminent domain or by private or other purchase in lieu thereof; (j) all consumer goods located in or about the Premises or used in connection with the operation thereof; and (k) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing.

The Premises and the Personal Property are collectively called the "Mortgaged Property". Notwithstanding the foregoing, nothing herein shall cause Lender to be deemed a mortgagee in possession.

The term "Liabilities" means: (a) any and all liabilities, obligations and indebtedness of Grantor to Lender for payment of any and all amounts due under or pursuant to the Debt Instrument or this Mortgage; (b) all liabilities, obligations and indebtedness arising pursuant to any agreement now or hereafter given in connection with or as security for the Debt Instrument; (c) the payment of any sum or sums of money which may hereafter be

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payable by Grantor to Lender under any note or agreement or otherwise (including any notes or agreements that renew, extend or otherwise modify the obligations of Grantor to Lender or any guaranty of obligations of other parties given Lender by Grantor, or any one of them if more than one) hereinafter executed by Grantor; (d) attorneys' fees relating to Lender's rights, remedies and security interests hereunder, including fees and expenses incurred in any bankruptcy or insolvency proceedings. All of the aforesaid shall be Liabilities hereunder, whether heretofore, now owing or hereafter arising or owing, due or payable, howsoever created, arising or evidenced hereunder or under the Debt Instrument whether direct or indirect, absolute or contingent, primary or secondary, joint or several; whether existing or arising.

From time to time Lender may, at Lender's option, without giving notice to or obtaining the consent of Grantor, or the consent of any junior lien holder, guarantor or tenant, and notwithstanding Grantor's breach of any covenant, agreement or condition: (a) release anyone primarily or secondarily liable on the Debt Instrument or any other Liabilities; (b) accept a renewal or renewals of the Debt Instrument; (c) release from the lien of this Mortgage any part of the Mortgaged Property; (d) take or release other or additional security for the Liabilities; (e) consent to any plan, map or plat of Premises or Declaration of Condominium as to the Premises (in whole or in part); (f) consent to the granting of any easement with respect to the Premises; (g) join in any extension or subordination agreement; (h) agree in writing with Grantor to modify the rate of interest or period of amortization of the Debt Instrument or change the time of payment or the amount of the installments payable thereunder; (i) release, impair or fail to perfect any interest in the Property, or any other collateral or security for the Liabilities; and (j) waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the Debt Instrument or other Liabilities. Any such actions taken by Lender shall not impair or affect: (a) the obligation of Grantor or Grantor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the Debt Instrument or other Liabilities; or (c) the lien or priority of the lien hereof against the Mortgaged Property.

THE GRANTOR HEREBY FURTHER REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

1. TITLE OF GRANTOR AND AGREEMENT TO DEFEND. Grantor is lawfully seized of the Premises in fee simple absolute and has good right and lawful authority to convey the same subject only to encumbrances, easements, reservations and restrictions of record as of the date hereof. Grantor has good and marketable title to the Personal Property, free and clear of any liens, charges, encumbrances, security interests and adverse claims of any nature. Grantor shall, at Grantor's cost, keep the Mortgaged Property free from all other liens and claims of every kind and shall defend the title to such Mortgaged Property against the claims of any other persons. Grantor agrees to execute any further assurances of title. Grantor shall, at all times, indemnify, hold harmless and reimburse Lender for any and all loss, damage, expenses or cost arising out of or incurred in connection with any claims that are adverse to the rights and interest of Lender hereunder, which amounts shall be secured by this Mortgage and shall bear interest after demand at the highest post-maturity rate specified in the Debt Instruments.

2. TAXES AND ASSESSMENTS. Grantor shall pay, when due and before any penalty attaches, all taxes, assessments, water charges, utility charges, sewer or drainage service charges, and other charges against the Mortgaged Property. Grantor shall, upon written request, furnish to Lender duplicate paid receipts for such charges. If Grantor desires to contest any such charges, Grantor shall pay such amounts under protest or take such other actions as may be acceptable to Lender in their sole discretion to secure Grantor's obligations to make any such payments.

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3. INSURANCE. Grantor shall keep the Mortgaged Property constantly insured against loss or damage by fire, earthquake, extended coverage perils and such other hazards (including boiler insurance if applicable). Each insurance policy shall be in an amount not less than the full cost of replacing or repairing the Personal Property and the buildings and improvements on the Premises, and in no event less than the principal amount of the Liabilities, with no co-insurance clauses in the policies of insurance unless Lender shall consent thereto in writing. Grantor shall keep all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by flood if the Premises is located in a flood plain. In the event of loss, Grantor shall immediately give Lender written notice thereof. Each insurance company is hereby authorized to make payments directly to Lender instead of to Lender and Grantor jointly. Lender is hereby expressly authorized by Grantor to make proofs of loss and to collect and receive from any insurer issuing policies of any kind covering the Mortgaged Property, including, without limitation, all amounts as may be payable as a result of damage or destruction, or by way of unearned premiums on any policy of insurance that is canceled. Lender is expressly authorized and empowered by Grantor to endorse Grantor's name upon any checks or vouchers given in payment of said amounts so that the signature of the Lender shall be taken with the like effect as if the Grantor had individually signed or endorsed said checks or vouchers. Lender shall have the right, at its sole option, to apply all amounts as shall be thus collected and received by Lender toward the payment of the Liabilities or the cost of rebuilding or restoring the Mortgaged Property or the cost of procuring other insurance on the Mortgaged Property as Lender shall elect in its sole discretion. The Lender shall be named as additional loss payee under each policy. Grantor shall also at all times maintain comprehensive general liability insurance with respect to the Mortgaged Property, in amounts and with insurers acceptable to the Lender. Lender shall be named as an additional insured, mortgagee and lender's loss payee under each policy. All insurance shall be carried by companies authorized to insure in Illinois and which are acceptable to Lender. Grantor shall keep all such policies of insurance constantly assigned, pledged and delivered to Lender for further securing the Liabilities. All such policies of insurance shall be nonassessable and shall require a minimum of 30 days written notice to Lender of any cancellation thereof or any changes reducing Lender's coverage. In the event of foreclosure hereunder, Lender shall have full power to assign to the purchaser or purchasers at such foreclosure sale any and all policies of insurance which may then be in force and effect upon the Mortgaged Property for the full unexpired term of such policy or policies and Grantor shall not be entitled to have said insurance canceled nor receive the unearned premium thereon. All such policies shall include a standard lender's endorsement in favor of and in form acceptable to Lender. If any such insurance is maintained under a blanket policy of insurance, such policy shall specify the amount of the total insurance that is allocated exclusively to the Mortgaged Property.

4. RESERVE FOR TAXES AND INSURANCE. Lender shall have the right to require Grantor to pay to Lender, at such frequency as the Lender shall direct, a pro rata portion of the yearly premiums for the insurance which is required to be carried by Grantor hereunder, and the pro rata portion of the yearly taxes and assessments which are required to be paid by Grantor hereunder, as estimated by Lender. Lender shall be entitled to hold said funds without interest and without any obligation to segregate such funds. Grantor shall be required to make any payments of insurance premiums, or taxes or assessments, if the amount held by Lender is insufficient to make such payments in full.

5. IMPROVEMENTS AND CHANGES; TRANSFERS. Grantor shall not construct, remove, demolish or substantially or structurally alter any building, improvement or parking facility now or hereafter situated upon the Premises without the prior written consent of the Lender. Grantor shall not permit any waste on the Mortgaged Property, and shall keep the Personal Property and all buildings, improvements, appurtenances, fixtures, parking facilities and other property now or hereafter situated thereon in sound condition and in good and substantial repair and shall not take or permit any action whereby the Mortgaged Property shall become less

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valuable. No Personal Property shall be removed unless replaced with other substantially similar items having a value at least equal to that removed and free from any title retention or security agreement or other encumbrances. Notwithstanding any other provisions of this Mortgage, no sale, lease, mortgage, trust deed, grant by Grantor of an encumbrance of any kind, conveyance, transfer of occupancy or possession, contract to sell, or transfer of the Mortgaged Property, or any part thereof, shall be made without the prior written consent of Lender, which Lender may or may not grant in its sole and absolute discretion.

6. COMPLIANCE WITH LAWS; INSPECTION. Grantor shall comply at all times with all federal and state laws, all municipal ordinances and all rules and regulations of any governmental entity having jurisdiction over the Mortgaged Property. Lender and any persons authorized by Lender shall have the right to enter and inspect the Mortgaged Property at all reasonable times. Such inspection shall include, without limitation, the right to drill and make other invasive inspections for hazardous materials provided that any damage to the Mortgaged Property shall be repaired by Lender. If Lender reasonably believes that Grantor has permanently or temporarily abandoned the Pledged Property, then Lender may (but shall not be required to), through its representatives, enter upon the Pledged Property, change locks, make repairs, secure the Pledged Property and protect it against waste and damage without the necessity for appointment of a receiver, all without liability or obligation to the Grantor and without the need for prior notice to Grantor and without the obligation of having a receiver appointed.

7. ADVANCEMENTS BY LENDER. Upon any failure by Grantor to make any payment to a third party, or to take any action required hereunder, Lender may, but shall not be required to, make such payment, or take such action. All amounts paid for or in connection with any of the purposes herein authorized and all expenses incurred in connection therewith, including attorneys' fees and any other funds advanced on or behalf of Lender to protect the Mortgaged Property or the lien hereof, plus reasonable compensation to Lender for any action taken by Lender, shall be immediately due and payable without notice and with interest thereon at a per annum rate equivalent to the highest post-maturity rate set forth in the Debt Instruments and shall be deemed to be additional indebtedness secured hereby.

8. MECHANICS LIENS. Grantor shall promptly pay or cause to be paid all costs for labor and material incurred in connection with the construction, maintenance, repair and operation of the Mortgaged Property, and shall never permit a lien or encumbrance for such labor and material to remain against the Premises. Notwithstanding the foregoing, Grantor may contest any such liens provided that the Grantor deposits with the Lender a bond or other security reasonably acceptable to Lender securing full payment of such liens, and provided further that Grantor diligently proceeds with the defense of such lien claim.

9. LEASES AND RENTS. Without the prior written consent of Lender, Grantor shall not: (i) modify or in any way alter the terms of any leases of the Mortgaged Property; (ii) terminate or accept a surrender of any lease of the Mortgaged Property; (iii) accept any rents with respect to any lease of any Mortgaged Property more than 30 days prior to accrual thereof; (iv) enter into any new leases of the Mortgaged Property after the date hereof; (v) execute any assignment or pledge of any rents or any leases of the Mortgaged Property except in favor of Lender; or (vi) waive, excuse, condone or in any manner release or discharge any lessees from any obligations under any leases of the Mortgaged Property. Grantor shall, at its sole cost and expense: (a) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of the Mortgaged Property on the part of the lessor thereunder to be kept and performed; (b) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the tenants to be kept and performed; (c) appear in and defend any action or proceeding arising under, or connected with such leases or the obligations, duties or liabilities of the landlord or of any tenants thereunder; (d) transfer and assign or

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cause to be separately transferred and assigned by Lender, upon written request of Lender, any lease of the Mortgaged Property heretofore or hereafter entered into, and make, execute and deliver to Lender upon demand, any instruments required to effectuate said assignment; (e) furnish Lender, within ten days after a request by Lender, a written statement containing the names of all tenants and the terms of all leases of the Mortgaged Property and the rentals payable thereunder; and (f) exercise within five days after any demand therefor by Lender, any right to request from the tenant under any lease a certificate with respect to the status thereof. Nothing contained in the Mortgage or in any other documents relating to the Debt Instrument or the Liabilities shall be construed to obligate Lender, expressly or by implication, to perform any of the covenants of the landlord under any leases pledged to Lender herein, or to pay any sum of money or damages therein provided to be paid by the landlord, each of which covenants and payments Grantor agrees to perform and pay or cause to be performed and paid.

10. BUSINESS PURPOSE: USURY EXEMPTION. Grantor hereby represents, or if applicable, Grantor has been advised by its beneficiaries, that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Paragraph 6404 of Chapter 17 of the 1981 Illinois Revised Statutes (or any successor sections), and that the principal obligation secured hereby constitutes a "business loan" which comes with the purview and operation of said paragraph.

11. SUBROGATION. Lender before foreclosure hereunder, and the purchasers at any foreclosure sale held hereunder, shall be subrogated to the lien of any prior encumbrance or vendor's lien, if any, on the Mortgaged Property paid out of money secured by this Mortgage, whether or not said prior lien has been released.

12. TAXATION OF MORTGAGE. In the event of the passage, after the date hereof, of any law, ordinance or other regulation deducting from the value of the land for the purpose of taxation any liens thereon or changing in any way the laws for the taxation of deed, of trust or debts secured thereby, or the manner of the operation of any such taxes, so as to affect the interest of Lender under this Mortgage, Grantor, at its expense, shall pay such tax within 30 days after written notice from Lender.

13. EMINENT DOMAIN. If any part of the Mortgaged Property is taken by reason of the exercise by any authority of the right of eminent domain, the alteration or the grade of any street or any other injury to or decrease in the value of the Mortgaged Property, or if any part of the Mortgaged Property is conveyed in lieu of any such taking, alteration or injury, then all awards or payments made because of such taking, alteration, injury, sale or any conveyance shall, at the sole option of Lender be retained and applied by Lender either (a) towards restoring or rebuilding any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of any such taking or conveyance; or (b) towards the payment of the Liabilities or any part thereof (whether due or not) in such order of application as Lender shall elect in its sole discretion, and Grantor shall not be excused from making any further regularly scheduled payments under the Debt Instrument when and as due. Any such award received by Lender shall be deemed to be in substitution for, and in lieu of, that portion of the Mortgaged Property that is taken by eminent domain, condemnation, or similar proceeding, and shall not be deemed to be related to any change in value of the Mortgaged Property before and after such taking. Lender is hereby authorized in the name of Grantor to execute and deliver acquittance for any such award or payment and to collect the same. If any such award or payment has been paid into court and thereafter the Mortgaged Property shall have been sold by foreclosure of this Mortgage, but such foreclosure shall be prior to the receipt by Lender of any such award or repayment, Lender shall have the right to receive said award or payment to the extent any deficiency is due on such sale, with interest thereon. Lender shall be entitled to participate in any eminent domain or condemnation proceedings, and Lender shall be entitled to collect its costs and attorneys fees incurred in such proceedings from any award made in such proceedings.

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14. EVENTS OF DEFAULT; RIGHT TO ACCELERATE. The term "Default" as used herein, shall mean the occurrence of any of the following events: (a) The failure of maker thereof to pay the Liabilities as they become due or when accelerated; or (b) The failure by Grantor to punctually and fully perform each term contained in the Debt Instrument or in this Mortgage or in any other notes or instruments now or hereafter evidencing or securing any Liability, or in any lease or any other contract assigned or pledged to Lender hereunder including, without limitation, failure to pay all taxes and insurance on the Mortgaged Property; or (c) A default by Grantor hereunder or under any other notes, agreements, guarantees, mortgages, deeds of trust, security agreements, or any other obligations of Grantor to Lender; or (d) any warranty or representation made by Grantor to the Lender is untrue; or (e) Grantor makes or shall be subject to an assignment for the benefit of creditors, appointment of a receiver, or the filing of bankruptcy proceedings by or against Grantor (or any general partner if Grantor is a limited or general partnership); or (f) any act or event relating to any guarantor that would constitute a default under the Debt Instrument if it occurred with respect to, the maker of a Debt Instrument; or (g) if the Grantor is a limited liability company, the termination, dissolution, or forfeiture of Grantor or the failure of Grantor to conduct its ordinary business for a period of 90 consecutive days; or (h) any default by Grantor under any deed of trust, mortgage, security agreement or pledge of any of the Mortgaged Property that is senior or subordinate to this Mortgage and Security Agreement; or (i) any judgment is entered against Grantor or any of Grantor's property and is not dismissed or bonded within 30 days. Time and the exact performance of Grantor's obligations are material and of the essence hereof. On the happening of any one or more of such events of Default, or at any time during the continuation of such Default, Lender, at its sole option, and without notice, demand or presentment, which are hereby waived, shall have the right to declare the Debt Instrument and/or any other Liabilities or any part thereof immediately due and payable.

15. REMEDIES. Upon the occurrence of any event of Default hereunder, and without limiting any other remedies provided herein or available at law, Lender shall have the right to foreclose the lien hereof against the Premises for such indebtedness or part thereof secured hereby. This instrument constitutes both a real property Mortgage and a security agreement within the meaning of the Uniform Commercial Code. If a Default shall occur, the Lender, in addition to any other rights and remedies which the Lender 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 of the state of Illinois, including, without limiting the generality of the foregoing, the right to take possession of all Personal Property pledged to Lender hereunder, and to take such other measures as the Lender may deem necessary for the care, protection and preservation of such property. Upon request or demand of the Lender, the Grantor shall, at the expense of Grantor, assemble all Personal Property and make it available to the Lender at a convenient place acceptable to Lender. The Grantor shall pay to the Lender on demand any and all reasonable expenses, including reasonable attorney's fees, incurred or paid by the Lender in protecting Lender's interests in the Personal Property and in enforcing its rights hereunder with respect to the Personal Property. Any notice of sale, disposition or other intended action by the Lender with respect to the Personal Property sent to the Grantor at least five days prior to such action shall constitute reasonable notice to the Grantor. In addition to the right of sale granted herein, upon the occurrence of any Default, then the Lender may, but without obligation to do so and without notice to or demand on the Grantor, and without releasing the Grantor from any obligations herein, either in person or by agent, and without bringing any action or proceeding: (i) enter upon, take possession of, and rent, lease or operate the Premises and the Personal Property; (ii) make, enforce, modify and accept the surrender of any lease of the Mortgaged Property; (iii) obtain and evict any tenants of the Mortgaged Property; (iii) fix or modify any rents under any leases of the Mortgaged Property; (iv) do any acts which the Lender deems proper to protect the security interest of the Lender in any leases of the Mortgaged Property; (v) in Lender's name, or in the name of the Grantor, sue for or otherwise collect and receive all rents, issues and profits, including those past due and unpaid, under any leases of the

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Mortgaged Property. The proceeds of the sale or operation of any of the Mortgaged Property shall be applied to pay: first, the costs of executing this Mortgage, including compensation to any attorneys and legal assistants employed by Lender for their services, and the cost of procuring evidence of title; second, to Lender for all amounts paid for insurance, taxes, lien claims and other charge necessary or desirable for the protection or maintenance of the Mortgaged Property interest thereon as herein provided; third, to the outstanding Liabilities whether or not the same are due or accrued; fourth, to the holders of any lien on the Premises junior to this Mortgage and Security Agreement as their interest may appear; and, fifth the remainder of such proceeds, if any, to Grantor. No remedy or right of Lender hereunder shall be exclusive. Each right or remedy of Lender with respect to Liabilities, this Mortgage or the Mortgaged Property shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay by Lender in exercising, or omitting to exercise, any remedy or right accruing on Default shall impair any such remedy or right, or shall be construed to be a waiver of any such Default or acquiescence therein, or shall affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Lender.

16. COSTS OF ENFORCEMENT. Grantor agrees, to the extent permitted by law, to pay all costs, expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all abstracts of title, title searches and examination, title insurance policies, tax and lien searches, and similar data and assurances with respect to title as Lender may deem to be reasonably necessary either to prosecute the foreclosure or to evidence to bidders at any sale. All of the foregoing items, which may be expended after the foreclosure or sale, may be estimated by Lender. All such expenses shall become additional indebtedness secured hereby and shall be immediately due and payable, with interest thereon at a rate equivalent to the highest post-maturity interest rate set forth in the Debt Instruments.

17. APPOINTMENT OF RECEIVER. Upon the occurrence of a Default hereunder, the Lender shall be entitled to have a receiver appointed to manage the Mortgaged Property. The Lender, or any employee or affiliate of the Lender, shall be qualified to serve as receiver. The right to obtain a receiver shall not exclude any other rights that the Lender has hereunder.

18. WAIVER OF STATUTORY RIGHTS. Grantor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the lien of this Mortgage, but hereby waives the benefit of such law. Grantor, for itself and all who may claim through or under it, to the extent permitted by law waives any and all: right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety; and rights of reinstatement and redemption from sale. To the extent permitted by law, Grantor, for itself and all who may claim through or under it, waives any and all homestead rights and rights to redemption and reinstatement.

19. HAZARDOUS MATERIALS. There is not located on the Premises any substances ("Hazardous Substances") which are categorized or defined as hazardous or toxic under any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, cleanup or disclosure ("Environmental Laws"). The term "Hazardous Substances" shall also include asbestos and products containing asbestos. There is not located on the Premises any underground storage tanks or receptacles that are regulated by any local, state or federal law, rule or regulation ("Regulated Receptacles"). Grantor shall not permit any Hazardous Substance or Regulated Receptacle to be brought onto, or to be attached to or incorporated in, the Premises or on the

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Mortgaged Property, and if any Hazardous Substances or Regulated Receptacles are so brought on, or attached to, the Premises or the Mortgaged Property, Grantor shall promptly notify the Lender and shall promptly cause such Hazardous Substances or Regulated Receptacle to be removed. Whenever any consent of Lender is required under this Paragraph, Lender may grant or withhold such consent in its sole discretion, without liability to Grantor or any other person. Grantor shall abide by all Environmental Laws relating to the operation, use and maintenance of the Premises and the Personal Property. Grantor shall give to the Lender immediate notice of any violation or potential violation of the provisions of this Paragraph. Grantor shall defend, indemnify and hold harmless the Lender, and the Lender's officers, directors, agents, successors and assigns from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorney, engineer and consultant fees, court costs and litigation expenses) of every kind and nature, known or unknown, contingent or otherwise, arising out of or in any way related to the presence, disposal, removal, maintenance, release or threatened release of any Hazardous Substances or Regulated Receptacles or from the violation of any Environmental Law.

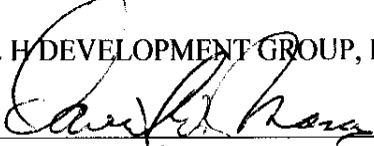
20. SEVERABILITY; SUCCESSORS AND ASSIGNS; GOVERNING LAW. All rights, powers and privileges herein granted to Lender shall become vested in any subsequent holder of the Liabilities. The rights and obligations of the parties hereto shall be construed and enforced according to the laws of the State of Illinois. If any provision of this Mortgage is prohibited by any applicable laws or regulations, such provision shall not be enforceable but the remainder of this Note shall remain fully enforceable and any unenforceable provision shall be deemed to be amended to the extent necessary to be enforceable.

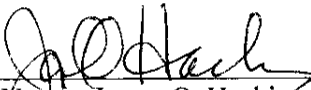
21. HEADINGS; GENDER; SINGULAR AND PLURAL. The paragraph headings of this Mortgage are for convenience only and shall not limit or define the meaning or content hereof. All pronouns and variations thereof shall be deemed to refer to masculine, feminine, neuter, singular or plural, as the identity of the person or persons may require.

22. AMENDMENTS AND MODIFICATIONS. The holder of this Mortgage may modify any terms of this Mortgage, or the terms of any indebtedness which this Mortgage secures, or take any actions with respect to the Mortgaged Property, in any manner (including, without limitation increasing the rate of interest applicable to any indebtedness, or increasing the length of time to pay any indebtedness, or modify any other agreements with the Grantor which may effect in any way this Mortgage and the rights of the holder hereof under this Mortgage) without the prior consent of, or notice to, any other person or entity who has any interest in the Property and no such modification shall in any way impair the priority of this Mortgage or the rights of the holder of this Mortgage, even if such modification is prejudicial to the rights or interests of any other person or entity.


IN WITNESS WHEREOF, the undersigned has (have) executed this Mortgage the day and year first above written.

M & H DEVELOPMENT GROUP, L.L.C.

By: 
Print Name: David W. Mason
Title: Managing Member

By: 
Print Name: James O. Hacking
Title: Managing Member

ATTEST:

Grantor's Initials 

UNOFFICIAL COPY

By: *Alan C Harold*
 Print Name: Alan C Harold
 Title: Vice President

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 27th JANUARY 2006, before me appeared DAVID M. HASEL, to me personally known, who, being by me duly sworn, did say that such person is the Manager of M & H Development Group, L.L.C., a Missouri limited liability company and that said instrument was signed on behalf of said organization by authority of its governing body, and said officer acknowledged said instrument to be the free act and deed of said entity. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in ST. LOUIS COUNTY on the day and year last above written.

Susan Lindemann
 Notary Public

November 23 2008
 My Commission Expires

SUSAN LINDEMANN
 NOTARY PUBLIC - NOTARY SEAL
 STATE OF MISSOURI, ST. LOUIS COUNTY
 MY COMMISSION EXPIRES NOVEMBER 23, 2008

Notary Seal of Cook County Clerk's Office

Grantor's Initials *AMH*

UNOFFICIAL COPY

EXHIBIT A Legal Description of Premises

PARCEL 1:

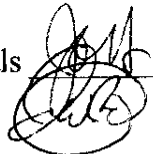
LOT 2 (EXCEPT THE EAST 0.08 FEET THEREOF) AND ALL OF LOTS 3 AND 4 IN BLOCK 74 IN RUSSELL, MATHER AND ROBERTS' ADDITION TO CHICAGO AFORESAID, ALSO LOT 6 IN MARY P. LEE'S SUBDIVISION OF PART OF LOTS 12, 13, 14, 15 AND 16 IN BLOCK 74, IN RUSSELL, MATHER AND ROBERTS' ADDITION TO CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 10, 11, 12, 13, 14, 15 AND 16 IN DILLION'S SUBDIVISION OF LOTS 5, 6, 7, 8, 11 AND 12 IN BLOCKS 72 AND 74 OF RUSSELL, MATHER AND ROBERT'S ADDITION TO CHICAGO AFORESAID ALSO ALL OF THE VACATED ALLEY BETWEEN NORTH MILWAUKEE AVENUE AND HUBBARD STREET IN BLOCK 74 IN RUSSELL, MATHER AND ROBERT'S ADDITION TO CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

Grantor's Initials



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UCC-1 Collateral Description

The collateral is all of the following, whether now owned or hereafter acquired and wherever located: (a) All present and future leases, written or verbal, rents, issues and profits of the Premises, including, without limitation, all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing, and all deposits of money as advance rent or for security, under any and all present and future leases of the Premises, together with the right, but not the obligation, to collect, receive, demand, sue for and recover the same when due or payable with or without taking possession of the Premises; (b) all property, furniture, machinery, equipment and fixtures now or hereafter forming a part of the Premises which are not deemed to be real property; (c) all articles of personal property and all materials delivered to the Premises for use and operation of the Premises or for use in any construction being conducted thereon and owned by Debtor; (d) all contract rights (but not obligations) and other intangible personal property (including, without limitation, all plans, specifications, drawings, plats and permits with respect to any actual or planned improvements to the Premises); (e) all accounts receivable, rights of action, prepaid expenses, permits and licenses associated with the Premises; (f) all trade names presently or hereafter used in connection with the Premises; (g) all proceeds arising from or by virtue of the sale, lease or other disposition of the Premises and any improvements thereon and any collateral described herein; (h) all proceeds (including, without limitation, premium refunds) of each policy of insurance relating to the Premises and the improvements thereon and with respect to any collateral described herein; (i) all proceeds from the taking of the Premises, or any rights appurtenant thereto, and any improvements thereto and any collateral described herein by right of eminent domain or by private or other purchase in lieu thereof; (j) all consumer goods located in or about the Premises or used in connection with the operation thereof; and (k) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing.

The term "Premises" means the real property described on Exhibit A, located in Cook County, Illinois.

Grantor's Initials



UNOFFICIAL COPY

EXHIBIT A to UCC-1 Collateral Description Legal Description of Premises

PARCEL 1:

LOT 2 (EXCEPT THE EAST 0.08 FEET THEREOF) AND ALL OF LOTS 3 AND 4 IN BLOCK 74 IN RUSSELL, MATHER AND ROBERTS' ADDITION TO CHICAGO AFORESAID, ALSO LOT 6 IN MARY F. LEE'S SUBDIVISION OF PART OF LOTS 12, 13, 14, 15 AND 16 IN BLOCK 74, IN RUSSELL, MATHER AND ROBERTS' ADDITION TO CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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17-09-105-016
17-09-105-017
17-09-105-028
17-09-105 030

464-470 N Milwaukee
Chicago IL

Grantor's Initials

