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Doc#: 0711733161 Fee: \$64.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 04/27/2007 01:47 PM Pg: 1 of 21

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## DOCUMENT COVER SHEET

### AGREEMENT OF ASSIGNMENT OF ASSUMPTION OF LOAN

After recording  
mail to:

Natalie L. Reed, Esq.  
Stites & Harbison, PLLC  
400 West Market Street  
Suite 1800  
Louisville, KY 40202

Box 400-CTCC

19/8

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PREPARED BY:

Natalie L. Reed, Esq.  
 STITES & HARBISON, PLLC  
 400 West Market Street  
 Suite 1800  
 Louisville, Kentucky 40202

Loan No. V\_63584

## AGREEMENT OF ASSIGNMENT AND ASSUMPTION OF LOAN

THIS AGREEMENT OF ASSIGNMENT AND ASSUMPTION OF LOAN ("Agreement") is made as of April 25, 2007, by and among ORCHARD PLACE RETAIL, L.L.C., an Illinois limited liability company and ORCHARD PLACE L.L.C., an Illinois limited liability company each with an address of 4801 Golf Road, Suite 200, Skokie, Illinois 60007 (collectively "Assignor"), 120 ORCHARD LLC, a Delaware limited liability company ("120"), 427 ORCHARD LLC, a Delaware limited liability company ("427"), and FT ORCHARD LLC, a Delaware limited liability company ("FT") (120, 427 and FT are hereinafter referred to as, individually, an "Assignee" and collectively, the "Assignee," as the context may require, provided, however, that the context shall always be one which affords Lender the broadest possible rights and remedies under the Loan Documents and which permits Lender, in its discretion, to enforce the obligations and liabilities hereunder against one or more of the entities comprising Assignee) each with an address of c/o Marc Realty, 55 E. Jackson Blvd., Suite 500, Chicago, Illinois 60604, Mitchell Saywitz ("Guarantor") and JPMORGAN CHASE BANK, N.A., a banking association chartered under the laws of the United States of America, with an address of 270 Park Avenue, New York, New York 10017 ("Lender").

### RECITALS:

A. Assignor is maker of that certain Fixed Rate Note ("Note") dated March 30, 2007 in favor of Lender, pursuant to which Lender loaned to Assignor the principal amount of \$35,000,000.00 (the "Loan"). The Loan was made for purpose of financing a shopping center commonly known as Orchard Place located in Skokie, Illinois (the "Property").

B. The Note is secured by, among other things, that certain Mortgage and Security Agreement, dated as of March 30, 2007, by and between Assignor, as mortgagor, and Lender, as mortgagee, and recorded in the Recorder's Office of Cook County, Illinois on April 6, 2007 as Document No. 0709602210 (the "Security Instrument") encumbering the Property described therein (the "Property"). Capitalized terms used herein without definition shall have the meaning given to them in the Security Instrument.

C. In connection with the Loan, Assignor has executed and delivered to Lender those documents listed on the attached Exhibit A, which, together with all other documents and instruments evidencing or securing the Loan or other otherwise executed in connection therewith, are hereinafter collectively referred to as the "Loan Documents."

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D. Assignor has now requested that Lender permit a transfer of the Property to Assignee, and in connection therewith, permit Assignee to assume all of Assignor's obligations under the Loan Documents, and thereafter releasing therefrom Assignor and Guarantor (as such terms are hereinafter defined); and

E. Assignor, Assignee, and Lender have agreed to permit the proposed transfer and the proposed assumption, on the terms and subject to the conditions hereinafter contained, and that this Agreement evidences the final agreement of the parties hereto with respect to the subject matter contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, Assignee, and Lender hereby agree as follows:

1. ASSIGNMENT AND ASSUMPTION. Assignor hereby conveys, grants and assigns to Assignee all of Assignor's rights and obligations in, to and under the Loan Documents, including, without limitation, the documents listed on Exhibit A attached hereto and incorporated herein by this reference. Assignee hereby accepts such conveyance, grant and assignment, and hereby assumes all of Assignor's obligations under the Loan Documents to the same extent as if Assignee had been an original party thereto, subject to the limitations set forth in Article 10 of the Note.

2. FIRST LIEN. The Property shall remain in all respects subject to the lien, charge and encumbrance of the Security Instrument as a valid first-priority lien against the Property. Nothing done pursuant hereto shall or shall be construed to affect the lien, charge, or encumbrance of the Security Instrument or the priority thereof over other liens, charges, or encumbrances. Assignor and Assignee each reaffirm and ratify Lender's first-priority lien and security interest in and to the Property and all other collateral for the Loan as more particularly described in the Loan Documents.

3. ASSUMPTION FEE. [INTENTIONALLY OMITTED]

4. RESERVES AND IMPOUNDS. Assignor shall and does hereby assign to Assignee, and its successors and assigns, all of Assignor's right, title, and interest in and to any and all reserve, impound, deposit and other accounts which may have been established with Lender (together with all funds held therein) for the payment of taxes, assessments, insurance, operating expenses, rents, debt service, repairs or other improvements to the Property and any other charges and expenses, and Lender is hereby released from any further responsibility or liability to Assignor in connection with any such reserves, impounds and deposit account(s).

5. COVENANTS OF ASSIGNEE. Assignee hereby covenants, promises, and agrees (a) to pay the Loan at the times, in the manner, and in all other respects as provided in the Loan Documents, as they may have been modified in writing between the obligor and Lender or its successors and assigns; (b) to perform each and all covenants, agreements, and obligations of Assignor under the Loan Documents, all at the time, in the manner, and in all other respects as provided in said document; and (c) to be bound by each and every term and provision in the Loan Documents, and such other documents and instruments executed by either Assignor and/or

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Assignee in connection with the Loan as though all such documents and instruments had originally been made, executed and delivered by Assignee.

## 6. NO RELEASE OF COLLATERAL.

(a) By its consent to the transfer of the Property, Lender is not "**authorizing**" Assignor or any other party to dispose of Lender's collateral free and clear of its security interests for the purposes of Uniform Commercial Code § 9-315. Accordingly, all of Lender's security interests under the Loan Documents shall continue in full force and effect notwithstanding any transfer of the Property or any other collateral for the Loan.

(b) Assignor and Assignee acknowledge and agree that Lender's consent to the transfer of the Property and Assignees' assumption of the Loan shall not be deemed or construed to affect, limit or impair Lender's full right and authority to pursue, exercise and enforce its rights and remedies under the Loan Documents and shall not be deemed or construed to affect, limit or impair in any way the enforceability, validity or priority of the lien and charge of the Security Instrument or any other security interest granted to Lender in connection with the Loan.

## 7. RELEASE OF ASSIGNOR; INDEMNITY.

(a) Lender agrees that if (but only if) (i) each of the conditions precedent in Section 9 below is satisfied or waived in writing by Lender in accordance with the terms of this Agreement, and (ii) the transaction contemplated in this Agreement is fully consummated (including, without limitation, Assignee's assumption of Assignor's obligations under the Loan Documents and the assumption or re-execution of the Guaranty [as such terms are defined below] by a guarantor acceptable to Lender), then Assignor and Guarantor shall thereafter be released and forever discharged from its obligations under the Loan Documents.

(b) Notwithstanding the provisions of Subsection 7(a) or any other provision of this Agreement to the contrary, neither Assignor nor the Guarantor shall be released or discharged from: (i) its obligations to Lender and Lender's Affiliates (as defined below) set forth in the Environmental Indemnity Agreement by Assignor for the benefit of Lender (the "**Indemnity**") which obligations are undertaken in the Guaranty, for occurrences, claims, liabilities, obligations, conditions or acts which occurred or existed on or before the date on which the transfer of the Property from Assignor to Assignee is effective (the "**Effective Date**"); (ii) any other obligations to guaranty the Loan (or any portion thereof or any loss to Lender arising in connection therewith) or to indemnify, defend or hold harmless Lender and Lender's Affiliates (as defined below) under the Loan Documents where the act, omission or occurrence giving rise to such obligations occurred on or prior to the Effective Date, or (iii) any obligation under the exceptions to the non-recourse provisions of the Note, where the act, omission or occurrence giving rise to such obligations occurred on or prior to the Effective Date.

(c) Assignor and Assignee each agree to indemnify and hold Lender harmless from and against any and all claims, demands, losses, damages or liability (including, without limitation, attorneys' fees and costs) arising from or relating to their respective obligations under this Agreement and their respective agreements, covenants, warranties and representations set

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forth herein; provided, however, Assignor and Assignee shall not be deemed or construed to have any obligation under this Subsection 7(c) to indemnify, defend or hold harmless Lender for the acts or omissions of the other.

8. CONDITIONS PRECEDENT. Lender's consent to the transfer of the Property and the assumption of the Loan by Assignee as provided herein is subject to and conditioned upon the satisfaction or waiver in writing by Lender of all of the following conditions precedent (such satisfaction to be determined by Lender in its sole and absolute discretion):

(a) There exists no default or "**Event of Default**" hereunder or under the Note, Security Instrument or any other Loan Document, nor shall have there occurred any event which would, with the giving of notice or passage of time, or both, constitute such a default or "**Event of Default**";

(b) Lender has received and approved duly executed originals of (i) this Agreement; (ii) a UCC-1 Financing Statement; (iii) a certified UCC search showing that Lender's security interest in the Property is a first-priority interest; (iv) an Amended and Restated Mortgage and Security Agreement; (v) an Amended and Restated Fixed Rate Note; (vi) opinions of counsel regarding the due formation of Assignee, Assignee's authority to execute and perform its obligations under the Loan Documents, the enforceability of the Loan Documents against Assignee and Guarantor, and such other matters as Lender may require; (vii) corporate or, if applicable, partnership or limited liability company resolutions authorizing the transaction herein contemplated; and (viii) such other documents, instruments and agreements required pursuant to this Agreement or which Lender or its counsel may request, all in form and content acceptable to Lender and its counsel;

(c) Lender has received from the title company that issued Lender's ALTA Lender's Title Policy for the Loan (the "**Policy**") a new title policy or such endorsements to the Policy as Lender shall require insuring, without limitation, that the Security Instrument is (and, following the transfer of the Property to Assignee, shall remain) a "**first-priority**" lien against the Property, subject only to encumbrances and other interests acceptable to Lender. Such endorsements shall include, without limitation, a CLTA Form 110.5 (or its equivalent in the state where the Property is located) and shall delete any creditor's rights or similar exception to the coverage afforded Lender by such Policy;

(d) All of the representations and warranties contained herein and otherwise contained in the Loan Documents shall be and remain true and correct in all material respects as if each were remade herein by each of Assignor and Assignee on the date hereof;

(e) No litigation or proceedings (including, without limitation, bankruptcy, moratorium, insolvency or reorganization proceedings) shall be pending or threatened against Assignor or Assignee which: (i) affect or relate to the Property or the Loan Documents; or (ii) in Lender's sole judgment, could or might materially and adversely affect (A) such parties' ability to perform their obligations under the Loan Documents and this Agreement, or (B) Lender's ability to exercise its rights and remedies hereunder and under the Loan Documents;

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(f) Delivery by Assignee to Lender of a certificate of insurance evidencing that Assignee has obtained insurance policies complying with the terms and conditions of the Loan Documents;

(g) If required by Lender, delivery to and approval by Lender of (i) an environmental assessment of the Property prepared not more than sixty (60) calendar days prior to the date of this Agreement, (ii) such financial statements regarding Assignee, Assignor and the Property as Lender may require, (iii) an appraisal of the Property, and (iv) such other information concerning Assignee, Assignor, the Loan and matters concerning the Property as Lender may require; and

(h) Execution and delivery to Lender by persons or entities acceptable to Lender of guaranties of the Loan in favor of Lender in forms acceptable to Lender.

9. ADDITIONAL COVENANTS, WARRANTIES AND REPRESENTATIONS OF ASSIGNEE. Assignee hereby covenants, represents and warrants that Assignee is properly organized, validly existing and in good standing under the laws of the State of Delaware and Illinois, respectively, and Assignee has all requisite power and authority to own and operate the Property, to assume and perform the obligations of Assignor under the Loan and the Loan Documents and to execute, acknowledge, deliver and perform its obligations under this Agreement and all documents executed (or to be executed) in connection herewith. All representations, warranties and covenants under the Loan Documents regarding Assignor, its authority, financial condition, business and other matters shall be applicable to Assignee as well as to Assignor, as if Assignee were the original signatory to each Loan Document.

10. ADDITIONAL COVENANTS, WARRANTIES AND REPRESENTATIONS OF ASSIGNEE AND ASSIGNOR. Assignee and Assignor each hereby severally covenant, represents and warrants for itself (and itself only) that:

(a) The unpaid principal balance of the Note as of April 25, 2007 is the sum of \$35,000,000.00, plus accrued interest;

(b) There are no defaults in the payment, performance or observance of any of the terms or provisions of the Note, Security Instrument or any other Loan Documents and there has occurred no event which would if uncured or uncorrected, constitute a default thereunder, either with the giving of notice, passage of time, or both;

(c) Except as expressly provided herein, the terms and conditions of the Note, Security Instrument and the other Loan Documents (including all representations, warranties and covenants contained therein) shall remain in full force and effect, are hereby restated, reaffirmed and ratified by Assignor, Guarantor and Assignee, and shall be binding upon such parties and their respective successors and assigns. Each of the Loan Documents are hereby incorporated herein by reference and made a part hereof;

(d) Assignor, Guarantor and Assignee acknowledge that they have thoroughly read and reviewed the terms and provisions of this Agreement and are familiar with same, that the terms and provisions contained herein are clearly understood and the parties fully and unconditionally consent hereto, and that the parties have had the full benefit and advice of

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counsel of their own selection, or the opportunity to obtain the benefit and advice of counsel of their own selection, in regard to understanding the terms, meaning and effect of this Agreement and the Loan Documents. The parties execution of this Agreement is done freely, voluntarily, with full knowledge, and without duress, and that in executing this Agreement the parties are relying on no representations of Lender or any of Lender's Affiliates, whether written or oral, express or implied, and that the consideration received by the parties hereunder has been actual, valuable and adequate;

(e) Assignor, Guarantor and Assignee hereby acknowledge and agree that: (i) Lender has fully complied with all of its obligations under the Note, the Security Instrument and the other Loan Documents; (ii) Assignor, Guarantor and Assignee have no knowledge of any past or existing act or omission on the part of Lender that constitutes a default by Lender thereunder (or that, with the giving of notice, the passage of time, or both, would constitute a default by Lender thereunder), (iii) Assignor, Guarantor and Assignee have no knowledge of any fact or circumstance that would prevent or prohibit Lender from enforcing the Note, the Security Instrument or the other Loan Documents; and (iv) Assignor, Guarantor and Assignee have no claims, demands, damages, suits, cross-complaints, causes of action or debts of any kind or nature whatsoever, whether now known or unknown and however arising, relating to or arising from the Loan, the Loan Documents or the Property that can be asserted to reduce or eliminate all or any portion of their respective obligations to repay the Note or perform their obligations under the Loan Documents, or to seek any affirmative relief against Lender;

(f) The Security Instrument and other applicable Loan Documents constitute a valid, enforceable and duly perfected first lien and security interest in, to and on the Property and the other collateral for the Loan. The Property is and shall remain free from all liens and security interests, except the lien and charge of the Security Instrument and the other Loan Documents;

(g) There are no mechanic's or materialmen's liens, lienable bills, or other claims constituting or that may constitute a lien on the Property, or any part thereof. All payments, accounts and other obligations of every nature whatsoever with respect to or relating to the Property are current and are not in default and there has occurred no event which would, if uncured or uncorrected, constitute a default with respect thereto with the giving of notice, passage of time or both;

(h) All reports, statements, information and other data, including, without limitation, all financial statements furnished by Assignor in connection with this Agreement and the Loan Documents, are true, accurate and complete in all material respects as of the date they were made and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading;

(i) All reports, statements, information and other data, including, without limitation, all financial statements furnished by Assignee and each proposed guarantor in connection with this Agreement and the Loan Documents, are true, accurate and complete in all material respects as of the date they were made and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading;

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(j) This Agreement, the Note, the Security Instrument and the other Loan Documents, constitute the valid and binding obligations of Assignee and Assignor enforceable in accordance with their respective terms; and

(k) Nothing herein contained shall in any manner whatsoever impair the Note, the Security Instrument or any of the other Loan Documents or the first liens created thereby, or alter, waive, vary, or effect any promise, agreement, covenant, or condition recited in any of the above-mentioned documents (except as herein expressly modified), nor affect or impair any rights, powers, or remedies of Lender under any of the above-mentioned documents.

## 11. RELEASE OF LENDER.

(a) Assignor, Guarantor and Assignee hereby release and forever discharge Lender and its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors, and assigns, together with all persons, firms, corporations, and organizations acting on Lender's behalf (collectively, "**Lender's Affiliates**"), of and from all damages, losses, claims, demands, liabilities, obligations, actions, and causes of action whatsoever that Assignor, Guarantor and Assignee may now have or claim to have against Lender or Lender's Affiliates as of the date of this Agreement, whether presently known or unknown, and of every nature and extent whatsoever, on account of or in any way concerning, arising out of, or founded upon the Property, the Loan, the Note, the Security Instrument or any of the other Loan Documents, including, but not limited to, any such loss or damage of any kind heretofore sustained or that may arise as a consequence of the dealings between the parties up to and including the date of this Agreement. The covenants in this Agreement on the part of Assignor and Assignee are contractual, and not a mere recital, and the parties hereto acknowledge and agree that no liability whatsoever is admitted on the part of any party, except Assignor and Assignee's indebtedness to Lender under the Note, the Security Instrument and each of the other Loan Documents and that all agreements and understandings between Assignor and Assignee and Lender are expressed and embodied in this Agreement and the Loan Documents; and

(b) Assignor and Assignee hereby agree and represent and warrant to Lender and Lender's Affiliates that they realize and acknowledge that factual matters now unknown to them may have given rise to or hereafter may give rise to claims that are presently unknown, unanticipated, and unsuspected, and they further agree and represent and warrant to Lender and Lender's Affiliates that the agreements and covenants in this Section 11 have been negotiated and agreed upon in light of that realization. Nevertheless, Assignor and Assignee specifically and expressly intend for their agreements and covenants in this Section 11 to extend to claims that Assignor and Assignee do not know or suspect to exist in their favor as of the date of this Agreement. Accordingly, as further consideration for this Agreement, Assignor and Assignee hereby agree and represent and warrant to Lender and Lender's Affiliates that the matters released in this Section 11 are not limited to matters that are known or disclosed. Assignor and Assignee hereby acknowledge that the foregoing waiver is made with the advice of counsel and with full knowledge and understanding of the consequences and effects of such waiver.

12. RELIANCE BY LENDER; CROSS-DEFAULT. Assignee and Assignor jointly and severally acknowledge and agree that Lender is relying upon the agreements, covenants,



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representations and warranties of each such party set forth in this Agreement, and upon the accuracy and completeness thereof, in entering into and delivering this Agreement. Assignee and Assignor acknowledge and agree that the breach or violation of any agreement set forth herein, or the inaccuracy of any statement, warranty or representation set forth herein shall constitute an "**Event of Default**" under the Loan Documents, and in such event Lender shall have all rights and remedies set forth therein.

13. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Agreement had executed the same counterpart.

14. SECTION HEADINGS. The headings preceding the sections of this Agreement are for convenience only and shall not be considered in the construction or interpretation of this Agreement. The Recitals and Exhibits are incorporated herein by this reference.

15. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written representations, statements, documents, understandings, and agreements with respect thereto.

16. AMENDMENT. This Agreement cannot be changed, modified or supplemented except in writing signed by the party against whom enforcement of such change, modification or supplement is sought.

17. ATTORNEYS' FEES. If any litigation is instituted by Lender, Assignor or Assignee to enforce or construe any provision of this Agreement, the prevailing party shall be entitled to have and recover from the other party all attorneys' fees, witness fees, court costs and other litigation expenses incurred by the prevailing party, as determined by the court (including, if Lender is the prevailing party, all attorneys fees, court costs and other expenses incurred by Lender in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Assignor and/or Assignee that in any way affects the exercise by Lender of its rights and remedies under this Agreement or the other Loan Documents).

18. GOVERNING LAW. This Agreement shall be governed by and construed and enforced under the internal laws of the State of Illinois without giving effect to the rules and principles governing the conflicts of laws.

19. ASSIGNMENT. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and Lender and the successors and assigns of each.

20. LENDER'S DISCRETION. In each and every case where Lender's approval, consent, satisfaction, determination, acceptance, judgment, waiver or requirements (collectively, "**Approval**") must be obtained or satisfied, Lender may grant, deny or withhold such Approval in its sole and absolute discretion without giving any explanation or reason therefor unless Lender expressly required herein to be reasonable in granting, denying or withholding such Approval.

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21. MODIFICATIONS TO ESCROW AGREEMENT FOR RESERVES AND IMPOUNDS. Lender and Assignee hereby agree (i) that the Immediate Repair Funds (as defined in the Escrow Agreement for Reserves and Impounds dated as of March 30, 2007 by and between Assignor and Lender (the "**Escrow Agreement**") shall bear interest at the 30 day money market rate offered by the bank used by Lender for escrow deposits, and shall be held and released by Lender, and used by Assignor, in accordance with the terms and conditions of the Escrow Agreement. Lender shall be entitled to a servicing fee in the amount of .50% per annum multiplied by the average daily balance on deposit, and Lender is hereby authorized to deduct such servicing fee from Immediate Repair Funds on deposit on a monthly basis. All interest or other income in connection with the deposit or placement of such funds, less the servicing fee, shall be reported under Assignee's tax identification number, and shall only be disbursed as set forth in Section 2.2(d) of the Escrow Agreement or clause 21(ii) below; and (ii) that, so long as no Event of Default has occurred under any of the Loan Documents (as defined in the Security Instrument), Lender shall release any remaining balance of the Immediate Repair Funds after Lender has received (a) evidence satisfactory to Lender that all Immediate Repairs (as defined in the Escrow Agreement) have been completed to Lender's satisfaction, and (b) a written request from Assignee requesting such balance.

[SIGNATURE PAGES FOLLOW]

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LENDER:

JPMORGAN CHASE BANK, N.A., a national banking association

By: Jennifer A. Loughrey  
Print Name: Jennifer Loughrey  
Title: Vice President

STATE OF NY )  
COUNTY OF NY )

BEFORE ME, a notary public, in and for said County and State, appeared Jennifer Loughrey, the Vice President of JPMORGAN CHASE BANK, N.A., national banking association, on behalf of said banking association, who acknowledged that he/she, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said national banking association, and his/her free act and deed, both individually and as such VP.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_  
as of the 20<sup>th</sup> day of April, 2007.  
Marc B. Ledesma  
Notary Public

[SEAL]

My commission expires: \_\_\_\_\_

MARC B. LEDESMA  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 02LE6074669  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MAY 20, 2010

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ASSIGNOR:

ORCHARD PLACE RETAIL, L.L.C., an Illinois limited liability company

By: ORCHARD PLACE RETAIL, INC., an Illinois corporation, its Managing Member

By: *Mitchell Saywitz*  
Mitchell Saywitz, President

ORCHARD PLACE L.L.C., an Illinois limited liability company

By: ORCHARD PLACE OUTLOT, INC., an Illinois corporation, its Managing Member

By: *Mitchell Saywitz*  
Mitchell Saywitz, President

STATE OF Illinois )  
 )  
COUNTY OF Cook )

BEFORE ME, a notary public, in and for said County and State, appeared Mitchell Saywitz, the President of ORCHARD PLACE RETAIL, INC., an Illinois corporation, on behalf of the corporation and as Managing Member of ORCHARD PLACE RETAIL, L.L.C., an Illinois limited liability company, who acknowledged that he/she, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said limited liability company, and his/her free act and deed, both individually and as such President.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Northbrook, Illinois as of the 23rd day of April, 2007.

Charles Alexander  
Notary Public



[SEAL]

My commission expires: 2/3/08

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STATE OF Illinois )  
 )  
COUNTY OF Cook )

BEFORE ME, a notary public, in and for said County and State, appeared Mitchell Saywitz, the president of ORCHARD PLACE OUTLOT, INC., an Illinois corporation, the manager of ORCHARD PLACE L.L.C., an Illinois limited liability company, who acknowledged that he/she, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said limited liability company, and his/her free act and deed, both individually and as such President.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Northbrook, Illinois as of the 23rd day of April, 2007.

Charles Alexander  
Notary Public



My commission expires: 2/3/08

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ASSIGNEE:

120 ORCHARD LLC, a Delaware limited liability company

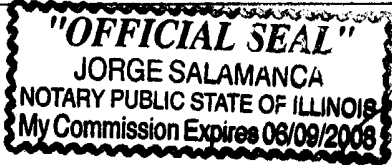
By: Gerald Lee Nudo  
Gerald L. Nudo, Manager

By: \_\_\_\_\_  
Laurence H. Weiner, Manager

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

BEFORE ME, a notary public, in and for said County and State, appeared GERALD L. NUDO, the Manager of 120 ORCHARD LLC, a Delaware limited liability company, who acknowledged that he, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said limited liability company, and his free act and deed, both individually and as such Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_ as of the 24 day of April, 2007.



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

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, a notary public, in and for said County and State, appeared LAURENCE H. WEINER, the Manager of 120 ORCHARD LLC, a Delaware limited liability company, who acknowledged that he, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said limited liability company, and his free act and deed, both individually and as such Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_ as of the \_\_\_\_\_ day of April, 2007.

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

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ASSIGNEE:

120 ORCHARD LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Gerald L. Nudo, Manager

By: \_\_\_\_\_  
Laurence H. Weiner, Manager

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

BEFORE ME, a notary public, in and for said County and State, appeared GERALD L. NUDO, the Manager of 120 ORCHARD LLC, a Delaware limited liability company, who acknowledged that he, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said limited liability company, and his free act and deed, both individually and as such Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_ as of the \_\_\_\_\_ day of April, 2007.

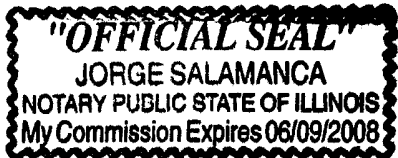
\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )

COUNTY OF COOK )

BEFORE ME, a notary public, in and for said County and State, appeared LAURENCE H. WEINER, the Manager of 120 ORCHARD LLC, a Delaware limited liability company, who acknowledged that he, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said limited liability company, and his free act and deed, both individually and as such Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_ as of the 24 day of April, 2007.



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

# UNOFFICIAL COPY

427 ORCHARD LLC, a Delaware limited liability company

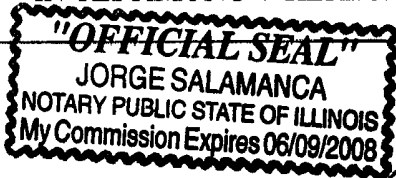
By: *Gerald L. Nudo*  
Gerald L. Nudo, Manager

By: \_\_\_\_\_  
Laurence H. Weiner, Manager

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

BEFORE ME, a notary public, in and for said County and State, appeared GERALD L. NUDO, the Manager of 427 ORCHARD LLC, a Delaware limited liability company, who acknowledged that he, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said limited liability company, and his free act and deed, both individually and as such Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_ as of the \_\_\_\_\_ day of April, 2007.



*Jorge Salamanca*  
Notary Public

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, a notary public, in and for said County and State, appeared LAURENCE H. WEIMER, the Manager of 427 ORCHARD LLC, a Delaware limited liability company, who acknowledged that he, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said limited liability company, and his free act and deed, both individually and as such Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_ as of the \_\_\_\_\_ day of April, 2007.

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



**UNOFFICIAL COPY**

427 ORCHARD LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Gerald L. Nudo, Manager

By: \_\_\_\_\_  
Laurence H. Weiner, Manager

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

BEFORE ME, a notary public, in and for said County and State, appeared GERALD L. NUDO, the Manager of 427 ORCHARD LLC, a Delaware limited liability company, who acknowledged that he, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said limited liability company, and his free act and deed, both individually and as such Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_ as of the \_\_\_\_\_ day of April, 2007.

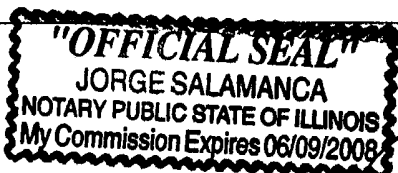
\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )

COUNTY OF COOK )

BEFORE ME, a notary public, in and for said County and State, appeared LAURENCE H. WEIMER, the Manager of 427 ORCHARD LLC, a Delaware limited liability company, who acknowledged that he, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said limited liability company, and his free act and deed, both individually and as such Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_ as of the 24 day of April, 2007.



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

# UNOFFICIAL COPY

FT ORCHARD LLC, a Delaware limited liability company

By: *Gregg Fox*  
Gregg Fox, Manager

STATE OF Georgia )  
COUNTY OF Fulton )

BEFORE ME, a notary public, in and for said County and State, appeared GREGG FOX, the Manager of FT ORCHARD LLC., a Delaware limited liability company, who acknowledged that he, being duly authorized, did execute the foregoing instrument for the purposes therein contained and that the same is the free act and deed of said limited liability company, and his free act and deed, both individually and as such Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at 3700 Mansell Rd., Alpharetta, GA 30022 as of the 20<sup>th</sup> day of April, 2007.

*Shirley Freund*  
Notary Public

[SEAL]

My commission expires: 5-17-10

# UNOFFICIAL COPY

GUARANTOR:

*Mitchell Saywitz*  
MITCHELL SAYWITZ

STATE OF Illinois )  
 )  
COUNTY OF Cook )

BEFORE ME, a notary public, in and for said County and State, appeared Mitchell Saywitz, who acknowledged that he did execute the foregoing instrument for the purposes therein contained and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Northbrook, Illinois as of the 23rd day of April, 2007.

*Charles Alexander*  
Notary Public



My commission expires: 2/3/08

[Add Appropriate Acknowledgments]

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## EXHIBIT A

### Loan Documents

1. Mortgage and Security Agreement
2. Assignment of Leases and Rents
3. Fixed Rate Note
4. Environmental Indemnity Agreement
5. Operations and Maintenance Agreement
6. Escrow Agreement for Reserves and Impounds

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STREET ADDRESS: 4801 AND 4849 GOLF ROAD

CITY: SKOKIE

COUNTY: COOK

TAX NUMBER: 10-16-206-048-0000 and 10-16-206-049-0000

**LEGAL DESCRIPTION:**

LOTS 1 AND 2 IN ORCHARD PLACE RESUBDIVISION, BEING A RESUBDIVISION IN THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office