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0719733145

Doc#: 0719733145 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/16/2007 01:21 PM Pg: 1 of 15

This instrument was prepared
by and, after recording,
return to:

Robert N. Sodikoff
Aronberg Goldgehn Davis & Garmisa
330 North Wabash - Suite 3000
Chicago, Illinois 60611

Location:
2100 South Indiana Avenue
Chicago, Illinois 60616

Permanent Real Estate Tax
Index No:
17-22-319-014-0000

Space above this Line for Recorder's Use Only

JUNIOR MORTGAGE AND SECURITY AGREEMENT

THIS JUNIOR MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") made as of the 6th day of July, 2007 by **AVALON DEVELOPMENT GROUP LLC**, an Illinois limited liability company, whose address is 1 East Wacker Drive, Suite 3100, Chicago, Illinois 60601 ("Mortgagor") and **FIRST DUPAGE BANK**, an Illinois state bank, whose address is 520 North Cass Avenue, Westmont, Illinois 60559 ("Mortgagee");

WITNESSETH THAT:

WHEREAS, 2100 S. Indiana Development Group LLC ("Borrower"), an affiliate of Mortgagor, has concurrently herewith executed and delivered to Mortgagee a Mortgage Note ("Note") bearing even date herewith in the principal sum of SIX MILLION SEVENTY FIVE THOUSAND AND 00/100 DOLLARS (\$6,075,000.00) with interest at a variable rate equal to the Prime Rate plus one percent (1%) per annum. The Note, as it may hereafter be modified, amended or extended, and together with any and all substitutions therefor and replacements thereof is sometimes referred to herein as the "Note" matures on July 6, 2008, if not sooner paid, unless extended.

WHEREAS, Mortgagor will directly or indirectly benefit from the Loan by Mortgagee to Borrower, as evidenced by the Note, and as an inducement to Mortgagee to make the Loan has agreed to grant Mortgagee a mortgage on Mortgagor's property;

NOW, THEREFORE, Mortgagor, in consideration of said debt and to secure the payment of both principal and interest, in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this Mortgage, and to secure the

Box 400-CTCC

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3-1-4 HAYES # 83-69-722-D1

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performance of the covenants and agreements herein and in the Note contained, to be performed by Mortgagor, does by these presents MORTGAGE, GRANT, BARGAIN, SELL and CONVEY unto Mortgagee, its successors and assigns, its estate in fee simple, forever, in the real estate situated in Chicago, Illinois ("Premises"), as more fully described on the attached Exhibit A, which is incorporated herein by this reference and made a part hereof.

TOGETHER with all buildings, improvements, tenements, easements, fixtures and appurtenances thereto pertaining or belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and including but not limited to Mortgagor's interest in all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, curtain fixtures, partitions, attached floor covering, now or hereafter therein or thereon and all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air cooling, air conditioning, water, light, power, sanitation, sprinkler protection, waste removal, articles used or useful in connection with the operation of said refrigeration (whether single units or centrally controlled) and ventilation including (without restricting the foregoing), all other fixtures, apparatus, equipment, furniture, furnishings, and articles used or useful in connection with the operation of said real estate now or hereafter located upon said Premises, it being understood that the enumeration of any specific articles of property shall in no way result in or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby. As to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as defined in the Uniform Commercial Code of Illinois ("Code")); this Mortgage is hereby deemed to also be a Security Agreement under the Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as Secured Party (as said term is defined in the Code).

Mortgagor represents and covenants that it is lawfully seized of the Premises and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said Premises and the quiet and peaceful possession of the same, subject to the rights of tenants, against the lawful claims of all persons whomsoever.

TO HAVE AND TO HOLD the Premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with the right to possession of the Premises, subject to the rights of tenants after the occurrence of an Event of Default (as defined in Paragraph 13 hereof).

THIS MORTGAGE IS GIVEN TO SECURE: (a) payment of the indebtedness evidenced by the Note (together with any and all amendments or supplements thereto, replacements or extensions thereof and Note which may be taken in whole or partial renewal, substitution or

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extension thereof, or, which may evidence any of the indebtedness secured hereby); (b) payment by Mortgagor to Mortgagee as herein provided of all sums expended or advanced by Mortgagee pursuant to any term or provision of this Mortgage; and (c) performance of each and every one of the covenants, conditions and agreements contained in this Mortgage and the Note.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Payment of Obligations. Mortgagor will promptly pay or cause Borrower to pay when due all obligations under the Note.
2. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, Etc. Mortgagor shall: (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof, except that Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim upon furnishing (i) to the title company which has issued the loan policy of title insurance to Mortgagee insuring the lien of this Mortgage such security or indemnity as it may require to issue an endorsement thereto insuring against loss or damage on account of any such lien; or (ii) to Mortgagee such other security with respect to such claims as may be reasonably acceptable to Mortgagee; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request, exhibit satisfactory evidence to Mortgagee of the discharge of such lien; and (d) comply with all applicable requirements of law, municipal ordinances or restrictions of record with respect to the Premises and the use thereof.
3. Payment of Taxes and Assessments. Mortgagor shall pay before any penalty or interest attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges or liens of any nature against the Premises when due, and shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Mortgagor shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Mortgagee, insuring over any exception created by such protest.
4. Insurance. The Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property, if any, now or hereafter situated on the Premises and owned by Mortgagor, insured against loss or damage by fire and such other hazards as may reasonably be requested by Mortgagee from time to time.

In the event of loss Mortgagor shall give immediate notice by mail to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is

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hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly. Provided, however, that if there is no Event of Default hereunder, then Mortgagee shall settle and adjust claims with the consent of Mortgagor (which consent shall not be unreasonably withheld) or allow Mortgagor to settle and adjust such claims. Any insurance proceeds so received by Mortgagee, or any part thereof, shall be applied by Mortgagee, after the payment of all of Mortgagee's reasonable expenses, including costs and reasonable attorneys' fees, to the payment of the indebtedness or at Mortgagee's election, to the restoration or repair of the property damaged. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. Mortgagor shall furnish Mortgagee, without cost to Mortgagee, at the request of Mortgagee, from time to time, evidence of the replacement value of the Premises.

5. Mortgagee's Interest In and Use of Deposits. Upon the occurrence of an Event of a Default in any of the provisions contained in this Mortgage or in the Note, Mortgagee may at its option, without being required to do so, apply any moneys at the time on deposit pursuant to any provision of this Mortgage, as any one or more of the same may be applicable, on any of Mortgagor's obligations herein or in the Note, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes, assessments or insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instructions of any party authorized to act on behalf of Mortgagor.

6. Condemnation. If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its reasonable expenses, including costs and reasonable attorneys' fees, to the restoration or repair of the property, if in the reasonable judgment of Mortgagee the property can be restored or repaired to the condition existing immediately prior to the taking.

7. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note or recording of this Mortgage, Mortgagor covenants and agrees to pay such tax

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in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note or recording of this Mortgage.

8. Release. Upon payment of all obligations evidenced by the Note, Mortgagee will release this Mortgage upon payment by Mortgagor of all costs and fees to release same, if any. Mortgagor will be responsible for recording the release, including all related costs of recordation.

9. Effect of Extensions of Time. If the payment of the debt secured hereby or any part thereof be extended or varied or if any part of the security granted to secure such indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, or having an interest in Mortgagor or in the beneficiary of Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

10. Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follow:

Unless the Mortgagor provides the Mortgagee with evidence of the insurance coverage required by this Mortgage or any of the other Loan Documents, Mortgagee may, upon no less than two (2) business days prior written notice to Mortgagor, purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Premises or any other collateral for the Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises or any other collateral for the Obligations. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Premises or any other collateral for the Obligations, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total Obligations. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

11. Reserved.

12. Reserved.

13. Acceleration of Indebtedness in Event of Default. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) The occurrence of any default under the Note or any Guaranty and the failure to cure within the applicable cure periods, if any, or if Mortgagor fails to pay any other

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amount due pursuant to this Mortgage within five (5) days after written notice to Mortgagor of such default or such due date; or

(b) Mortgagor fails to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under this Mortgage within thirty (30) days' written notice; provided, however, that in the event that such failure cannot be cured within said thirty (30) days, and Mortgagor has otherwise diligently commenced to cure the same within said thirty (30) days and thereafter continues to diligently pursue cure, then no Event of Default shall exist to Mortgagee during this period, not to exceed in any event sixty (60) days after Mortgagee's original notice, unless the value of the collateral securing the Note, or the safety of the Premises, would be materially impaired, threatened or jeopardized, in which event such period shall be unavailable to Mortgagor; or

(c) An occurrence of a default under any other mortgage or trust deed encumbering the Premises, unless cured within the applicable cure period, if any; or

(d) The commencement of any voluntary or involuntary petition in bankruptcy by or against Mortgagor or Borrower, or the institution against Mortgagor or Borrower any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor or Borrower; or

(e) The conveyance, sale, transfer, lease (other than in the ordinary course of Mortgagor's business) of the Premises or an assignment, lien or encumbrance is made against the Premises, without Mortgagee's consent.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the Obligations to be immediately due and payable without notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate.

14. Foreclosure; Expense of Litigation. When the Obligations shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to institute proceedings for the complete foreclosure of this Mortgage, in which case the Premises may be sold for cash or credit in one or more parcels. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such

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purchaser to be protected by any of the said insurance policies.

In any suit to foreclose this Mortgage, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

15. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 14 hereof; second, all other items which may under the terms hereof constitute secured indebtedness in addition to that evidenced by the Note, with interest thereon as herein provided and all principal and interest remaining unpaid on the Note; and third, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

16. Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Obligations, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

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17. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall forthwith and upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of the Premises or any part thereof personally, or by its agents or attorneys, as for condition broken. Mortgagee's rights and remedies under this Paragraph 17 shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due as provided hereunder, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the Premises, Mortgagee in its discretion may, with reasonable force or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, or its respective employees, agents or servants, wholly therefrom. In such case Mortgagee, under the powers herein granted, may hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions, in forcible detainer and actions in distress for rent, Mortgagee shall have full power:

- (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) to extend or modify any then existing leases and to enter new leases, which extensions, modifications and leases may provide for terms to expire, or for options to Lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) to make any repairs, decorating renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious;
- (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and

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(f) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease. To the extent provided by law, Mortgagor shall and does hereby agree to protect, indemnify, defend and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases except for such claims and demands as result directly from the negligent or willful actions of Mortgagee. Should Mortgagee incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest at the Default Rate.

18. Reserved.

19. Observance of Lease Assignment. In the event Mortgagor, as additional security for the payment of the indebtedness described in and secured hereby, has sold, transferred and assigned, or may hereafter sell, transfer and assign, to Mortgagee, its successors and assigns, any interest of Mortgagor as lessor in any lease or leases, Mortgagor expressly covenants and agrees that if Mortgagor, as lessor therein, shall fail to perform and fulfill any material term, covenant, condition or provision in said lease or leases, or any of them, on its part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Mortgagor shall suffer or permit to occur any material breach or default under the provisions of any assignment of any lease or leases of the Premises given as additional security for the payment of the indebtedness secured hereby, then and in any such event, such breach or default shall constitute a default hereunder unless cured within twenty-one (21) days after notice from Mortgagee, and at the option of the Mortgagee, and without notice to Mortgagor, all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable as in the case of other defaults; provided, however, that Mortgagor shall not be in default if corrective action is initiated by Mortgagor within such period and diligently pursued to completion, so long as the corrective action is completed within ninety (90) days from the date that Mortgagor receives notice of such default.

20. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

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(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and, if this is a leasehold mortgage, of all rents due or which may become hereafter due under the underlying lease;

(c) to the payment of all maintenance, repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises, and of placing the Premises in such condition as will, in the reasonable judgment of Mortgagee, make it readily rentable;

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

21. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

22. Additional Advances. This Mortgage is given, to secure not only presently existing Obligations under the Note, but also future advances, whether such advances are obligatory or to be made at the option of Mortgagee or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no Obligations secured hereby outstanding at the time any advance is made. The lien of this Mortgage will be valid as to the Obligations, including future advances, from the time of its filing for record in the recorder's office of the county in which the Premises is located. The total amount of Obligations secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that Mortgagee may, but is not obligated to, make under this Mortgage, the Note, or any other documents with respect thereto) at any one time outstanding may be substantially less but shall not exceed two times (2X) the principal amount of the Note, plus interest thereon, and any disbursements made for payment of taxes, special assessments, or insurance on the Premises and interest on such disbursements, and all disbursements by Mortgagee pursuant to 735 ILCS 5/15-1302(b)(5) (all such

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Obligations being hereinafter referred to as the maximum amount secured hereby). This Mortgage will be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Premises given priority by law.

23. Business Loan. Mortgagor hereby represents and warrants that the Loan constitutes "a business loan".

24. Reserved.

25. Waiver of Right of Redemption. To the full extent permitted by law, Mortgagor hereby covenants and agrees that Mortgagor will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption, on Mortgagor's own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such right of redemption of Mortgagor, and of all other persons, are and will be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that Mortgagor will not, by involving or utilizing any applicable laws or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof will be subject to any defense which would not be good and valid in an action at law upon the Note.

26. Reserved.

27. Indemnity. To the full extent provided by law, Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, except for liability arising from Mortgagee's gross negligence or willful misconduct, and Mortgagor hereby expressly waives and releases any such liability, except for liability arising from Mortgagee's gross negligence or willful misconduct. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and Court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: the making of the Loan evidenced by the

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Note and secured by this Mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; the offer for sale or sale of all or any portion of the Premises; and/or the ownership, leasing, use, operation or maintenance of the Premises. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

28. Mortgagor's Right to Reinstate. Notwithstanding Mortgagee's acceleration of all sums secured by this Mortgage, Mortgagor shall have the right of reinstatement to the extent provided by law upon compliance with all statutory requirements.

29. Invalidity of Provisions; Governing Law. In the event one or more of the provisions contained in this Mortgage or the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage and the Note it secures are to be construed and governed by the laws of the State of Illinois.

30. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law 735 ILCS 5/15-1101, et. seq. (herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

31. Waiver of Jury Trial. MORTGAGOR DOES HEREBY WAIVE ANY RIGHT TO A TRIAL JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS OF THE MORTGAGEE UNDER THIS MORTGAGE, THE NOTE, OR ANY OF THE LOAN DOCUMENTS, OR RELATING THERETO OR ARISING THEREFROM AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

32. Effective Date. This Mortgage shall be effective as of the date first above written upon execution by the parties hereto and thereupon is incorporated into the terms of the Loan Documents. The date or dates of the acknowledgements indicate the date(s) of execution of this Mortgage but execution is as of the above date, and for purposes of identification and reference the

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date of this Mortgage is the above date.

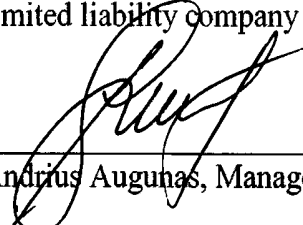
[Signature page follows.]

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IN WITNESS WHEREOF, Mortgagor has caused these presents to be executed as of the day and year first above written.

AVALON DEVELOPMENT GROUP LLC, an
Illinois limited liability company

By: 
Andrius Augunas, Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that Andrius Augunas, Manager of Avalon Development Group LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6th day of July, 2007.


Notary Public

441345.3



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EXHIBIT A

LEGAL DESCRIPTION

LOTS 1 AND 2 IN BLOCK 26 IN GURLEYS SUBDIVISION OF BLOCKS 24 TO 28 IN THE ASSESSOR'S DIVISION OF THE SOUTHWEST FRACTIONAL $\frac{1}{4}$ OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NO.: 17-22-319-014-0000

COMMONLY KNOWN AS: 2100 SOUTH INDIANA AVENUE
CHICAGO, ILLINOIS 60616

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