

# UNOFFICIAL COPY

## MORTGAGE (ILLINOIS)

THIS MORTGAGE, made this 25<sup>th</sup> day of July, 2007, between Schillaci/Birmingham Development, LLC, an Illinois corporation (hereinafter referred to as "Mortgagor"), and DDS Real Estate, LLC, an Illinois limited liability company (hereinafter referred to as "Mortgagee"), witnesseth:

THAT WHEREAS, Mortgagor is justly indebted to the Mortgagee in the principal amount of ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00), and interest at the rate of twenty percent (20%), with interest only payable monthly, and a final payment of principal and all accrued and unpaid interest due on the 24<sup>th</sup> day July, 2008, as evidenced by that certain Secured Promissory Note dated as of February 22, 2005, executed and delivered by Mortgagor to Mortgagee (as may be amended, renewed or restated from time to time, the "Note"), and desires to secure the obligations due by Mortgagor to Mortgagee with this Mortgage.

NOW THEREFORE, to secure the performance of the covenants and agreements of Mortgagor set forth in the Note and this Mortgage, and in consideration of the sum of One Dollar in hand paid, the receipt whereof is hereby acknowledged, the Mortgagor does by these presents WARRANT, GRANT, GIVE, BARGAIN, CONFIRM, ASSIGN, PLEDGE, SET OVER, TRANSFER, SELL, CONVEY, REMISE, RELEASE AND OTHERWISE MORTGAGE unto the Mortgagee, and the Mortgagee's successors and assigns, the following described Real Estate and all of its estate, right, title and interest therein, situated, lying and being in the CITY OF CHICAGO COUNTY OF COOK, STATE OF ILLINOIS, to wit:

LOT 16 IN BLOCK 8 IN BAXTER'S SUBDIVISION OF THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.  
which, with the property hereinafter described, is referred to herein as the "Premises".


Permanent Real Estate Index Number(s): 14-20-421-016-0000  
Address of Real Estate: 3221 N. Racine Ave., Chicago, Illinois 60657

TOGETHER with all improvements, tenements, easements, fixtures, and appurtenances thereto 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 all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, awnings, stoves and water heaters. All of the foregoing are declared to be a part of said real estate whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed in the Premises by Mortgagor or their successors or assigns shall be considered as constituting part of the real estate.



Doc#: 0721218065 Fee: \$32.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/31/2007 12:24 PM Pg: 1 of 5

Above Space for Recorder's Use Only

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TO HAVE AND TO HOLD the Premises unto the Mortgagee, and the Mortgagee's successors and assigns, forever, for the purposes, and upon the uses herein set forth, to the extent permitted by law, FREE FROM ALL RIGHTS AND BENEFITS UNDER AND BY VIRTUE OF THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ILLINOIS, WHICH SAID RIGHTS AND BENEFITS THE MORTGAGOR DOES HEREBY EXPRESSLY RELEASE AND WAIVE. THE MORTGAGOR HEREIN EXPRESSLY WAIVES AND RELEASES ANY AND ALL RIGHTS OF REDEMPTION. Mortgagee hereby covenants unto Mortgagee that no mortgage liens shall be filed against the Premises other than the lien granted in this Mortgage and prior mortgages in favor of (i) Washington Mutual, securing an original principal amount of \$867,000 (ii) Chicago Community Bank, securing an original principal amount of \$300,000 (the "Prior Mortgages").

The name of a record owner is: Schillaci/Birmingham Development, Inc., an Illinois corporation.

Mortgagor hereby represents, warrants and covenants unto Mortgagee as set forth below:

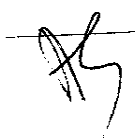
1. Mortgagor shall (1) promptly pay when due any and all payments due under the Note; (2) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (3) keep said Premises in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien thereof; (4) pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Mortgagee; (5) complete within a reasonable time any building or buildings now or at any time in process of erection upon said Premises, and (6) comply with all requirements of law or municipal ordinances with respect to the Premises and the use thereof.

2. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises when due, and shall, upon written request, furnish to the Mortgagee duplicate receipts therefor. To prevent default hereunder Mortgagee shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagee may desire to contest.

3. In the event of the enactment after this date of any law of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagee, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this mortgage or the debt secured hereby or the holder thereof, then and in any such event, the Mortgagee, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgagee to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Mortgagee may elect, by notice in writing given to Mortgagee, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

4. If, by the laws of the United States of America or of any state having jurisdiction in the Premises, any tax is due or becomes due in respect of the issuance of the indebtedness hereby secured, the Mortgagee covenants and agrees to pay such tax in the manner required by any such law. The Mortgagee further covenants to hold harmless and agrees to indemnify the Mortgagee, and the Mortgagee's successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the indebtedness secured hereby.

5. Mortgagor shall keep all buildings and improvements now or hereafter situated on said Premises insured against loss or damage by fire, lightning and windstorm under policies providing for payment by the insurance companies of moneys sufficient either to pay the cost of replacing or repairing the same or to pay in full the indebtedness secured hereby, all in companies satisfactory to the Mortgagee, under insurance policies payable, in case of loss or damage, to Mortgagee, subject to the Prior Mortgages

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holder's rights, such rights to be evidenced by the standard mortgagee clause to be attached to each policy, and shall deliver all policies, including additional and renewal policies, to the Mortgagee, and in case of insurance about to expire, shall deliver renewal policies not less than ten days prior to the respective dates of expiration.

6. In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other moneys advanced by Mortgagee to protect the mortgaged Premises and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the "Default Rate" (as defined in the Note). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to the Mortgagee on account of any default hereunder on the part of the Mortgagor.


7. The Mortgagee making any payment hereby authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale forfeiture, tax lien or title or claim thereof.

8. At the option of the Mortgagee and without notice to Mortgagor, all unpaid indebtedness secured by this mortgage shall, notwithstanding anything in the Agreement or in this mortgage to the contrary, become due and payable (a) immediately in the case of a default in making payment of any installment of principal or interest or any other amount secured by this Mortgage, or (b) upon the occurrence of an "Event of Default" (as defined in the Note).

9. When the indebtedness hereby secured shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness hereby secured in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's 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, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem to be 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 shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the Default Rate, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which the Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any actual or threatened suit or proceeding which might affect the Premises or the security hereof. Notwithstanding the foregoing, Mortgagee hereby agrees to forego its right to institute foreclosure proceedings until after sixty (60) days from the date hereof.

10. The proceeds of any foreclosure sale of the Premises shall, subject to the rights of holders of the Prior Mortgage, 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 the preceding paragraph hereof; second, all indebtedness secured hereby remaining unpaid; third, any overplus to Mortgagor, her heirs, legal representatives or assigns, as their rights may appear.

11. Upon or 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 said Premises. Such appointment may be made

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either before or after the 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 the Mortgagee may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said 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: (1) The indebtedness secured hereby, or by any decree foreclosing this mortgage, or any tax, special assessments 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 (2) the deficiency in case of a sale and deficiency.

12. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the indebtedness hereby secured.

13. The Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

14. After the occurrence of an Event of Default, the Mortgagor shall periodically deposit with the Mortgagee such sums as the Mortgagee may reasonably require for payment of taxes and assessments on the Premises if such deposits are not held by any holder of the Prior Mortgage. No such deposit shall bear any interest.


15. If the payment of the indebtedness secured hereby or any part thereof be extended or varied or if any part of the security is released, all persons now or at any time hereafter liable therefor, or interested in said Premises, 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 the Mortgagee, notwithstanding such extension, variation or release.

16. Mortgagee shall release this Mortgage and lien thereof by proper instrument upon the full payment and discharge of all indebtedness secured hereby.

17. This Mortgage and all provisions hereof, shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein and the holder or holders, from time to time, of the Note secured hereby.

18. This Mortgage shall secure not only presently existing indebtedness, but also future advances, whether such advances are obligatory, to be made at the option of Mortgagee, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The lien of this Mortgage shall be valid as to all indebtedness secured hereby, including future advances, and any disbursements made for payment of taxes, special assessments, or insurance on the Premises, and any other costs, fees, expenses or other indebtedness owed by Mortgagor to Mortgagee pursuant to this Mortgage or the Note from the time of the filing of this Mortgage for record in the Cook County, Illinois Recorder's Office. This Mortgage shall 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 and other matters given priority by operation of law.

19. Mortgagor hereby represents, warrants and covenants unto Mortgagee that this transaction is solely for a proper business purpose and consistent with all applicable laws, including, without limitation, Illinois Compiled Statutes, Chapter 815, Act 205, Section 4 (815 ILCS 205/4).

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Mortgagor further represents, warrants and covenants unto Mortgagee that there are no, nor shall there hereafter be any, encumbrances, liens or charges against the Premises other than (i) the Prior Mortgage, (ii) the mortgage in favor of Mortgagee created by this Mortgage, (iii) liens for general real estate taxes for the second installment of 2006, and general real estate taxes that are not yet due and payable, and (iv) minor imperfections to fee simple title which would not cause the Premises to be unmarketable and would not impede its use as a residential dwelling.

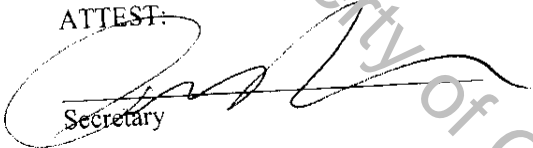
20. Mortgagor represents that this Mortgage is executed and delivered in furtherance of legitimate business purposes and is therefore not subject to regulation as a consumer transaction.

Witness the hand of Mortgagor the day and year first above written.

Schillaci/Birmingham Development, Inc.

BY:   
Its: President

ATTEST:

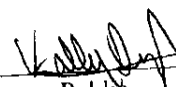
  
Secretary

STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Anthony Schillaci, President, and Peter Birmingham, personally known to me to be the President and Secretary, respectively, of the corporation and the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledge that they signed, sealed and delivered the said instrument as the free and voluntary act of the corporation and as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 15 day of June, 2007.


My Commission Expires on: 3/13/2008

  
Notary Public

This instrument was prepared by and after recording should be mailed to:

Steven L. Baerson  
Williams & Baerson, LLC  
One N. LaSalle Street, Suite 1350  
Chicago, IL 60602



 (initials)