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Doc#: 0828118062 Fee: \$78.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/07/2008 12:14 PM Pg: 1 of 22

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3093 (Space above this line for recording purposes)

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## JUNIOR MORTGAGE

### COVER SHEET

**Dated as of:** September 15, 2008

**Mortgagor:** Tamera L. Tolbert

**Mortgagee:** Kapan Investors, LLC an Illinois Limited Liability Company

**Mortgagor's Address:** 4444 W. Fullerton Avenue  
Chicago, Illinois 60639

**Mortgagee's Address:** 5698 N. New Hampshire Avenue  
Chicago, Illinois 60631

**Mortgage Amount:** \$130,000.00

**Property Address:** 4444 W. Fullerton Avenue  
Chicago, Illinois 60639

**P.I.N. #:** 13-27-327-045-0000

**State:** Illinois

**Record Owner of the Land (as defined herein):** Tamera L. Tolbert

**Legal Description:** Exhibit A hereto is incorporated herein by reference.

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## JUNIOR MORTGAGE

THIS JUNIOR MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Mortgage") is made as of the 15<sup>th</sup> day of September, 2008 by Tamera L. Tolbert, whose address is 4444 W. Fullerton Avenue, Chicago, Illinois ("Mortgagor") and KAPAN INVESTORS, LLC, an Illinois Limited Liability Company, whose address is 5698 N. New Hampshire Avenue, Chicago, Illinois ("Mortgagee").

### RECITALS

A. Mortgagee has agreed to comply with all of the terms and conditions of a certain Promissory Note ("Note") dated September 15, 2008.

B. To induce Mortgagee to enter into the Note Mortgagor has agreed to execute and deliver this Mortgage to secure and collateralize performance under the Note and Mortgagor's obligations hereunder and thereunder. It is a condition precedent to Mortgagee's funding obligations under the Note that, among other Mortgagee requirements, Mortgagor shall have executed and delivered to Mortgagee certain Security Documents.

D. This Mortgage is given by Mortgagor to secure to Mortgagee performance of all Guaranteed Obligations, including, but without limitation, payments due under the Note in the principal amount of ONE HUNDRED NINETY THOUSAND and no/100 (\$190,000.00) DOLLARS, subject and subordinate, however, to the terms, covenants and conditions of the prior recorded mortgage liens hereinafter identified (collectively the "Senior Encumbrance") held by Home Loan Investment Bank, FSB. In the event of a conflict in the terms and conditions of this Mortgage and the Senior Loan Documents, the terms and conditions in the Senior Loan Documents shall control. In the event of a conflict in the terms and conditions of this Mortgage and terms and conditions contained in the other Security documents, the other Security Documents shall control.

NOW, THEREFORE, IN CONSIDERATION OF MORTGAGEE ENTERING INTO THE NOTE AND TO SECURE TO MORTGAGEE, subject and subordinate to the terms and conditions of the Senior Encumbrances, the prompt and complete performance thereof and all Guaranteed Obligations,

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Mortgagor has executed this Mortgage and does hereby irrevocably mortgage, convey, assign and grant to Mortgagee, the right of entry and possession for the benefit and security of Mortgagee, the following described property and all proceeds thereof (which property is hereinafter sometimes collectively referred to as the "Property"):

A. The real estate described on Exhibit "A" hereto (the "Land");

B. All easements and appurtenances now or hereafter in any way relating to the Land or Improvements or any part thereof;

C. All agreements affecting the use, enjoyment or occupancy of the Land and/or Improvements now or hereafter entered into, including but not limited to any and all such agreements and/or leases by and between any of the parties comprising the Mortgagor (the "Real Property Leases") and the immediate and continuing right to collect all rents, income, receipts, royalties, profits, prepayments, payments made in termination of Real Property Leases, and other amounts due or to become due thereunder (the "Rents"), reserving to Mortgagor, however, so long as no "Event of Default" has occurred hereunder, a revocable license to receive and apply the Rents in repayment of the Guaranteed Obligations;

D. All claims, demands, judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from the taking of the Land and/or the Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking, by casualty or otherwise) to the Land or the Improvements or any part thereof;

E. To the extent assignable, all now or hereafter existing management contracts and all permits, certificates, licenses, approvals, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, operation and use of the Land, Improvements and/or Real Property Leases, including building permits, environmental certificates, licenses of operation, warranties or guarantees;

F. All of Mortgagor's rights in and to all trademarks, trade names, assumed names, and other rights

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and interests in and to the names and marks used by Mortgagor in connection with the Land or Improvements, including all rights in the name AVESHAM DEVELOPMENT, LLC.;

G. Any and all General Intangibles and Instruments, and any and all monies on deposit with or for the benefit of Mortgagee, including deposits for the payment of real estate taxes; and

H. Mortgagor's interests and rights, including, but not limited, those under any power of direction, beneficial interest, lease, ground lease, license, or other right(s) of occupancy and/or use of the Property (whether under the Trust or otherwise) are hereby expressly subordinated to and made subject to the Mortgage.

TO HAVE AND TO HOLD the property and all parts thereof, together with the rents, issues, profits and proceeds thereof, unto Mortgagee to its own personal use, benefit and advantage forever.

At no time shall the principal amount secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed ONE HUNDRED FIFTY PERCENT (150%) of the original principal amount of this Mortgage. The foregoing limitation upon the amount secured by this mortgage is not intended to limit nor shall it be construed as a limitation upon Obligations and/or amounts which may be secured under the other Security Documents.

Mortgagor covenants and agreed with Mortgagee as follows:

1. **Payment and Performance of Guaranteed Obligation.** Mortgagor shall promptly pay when due and shall promptly perform all Guaranteed Obligations and shall promptly perform all other Obligations.

2. **Taxes and other Obligations.** Mortgagor shall pay, when due, all taxes, assessments, fines, impositions, and other charges and obligations, which may become a lien on or charge against the Property, subject, however, to Mortgagor's right to contest such lien or charge upon the posting of security reasonably satisfactory to Mortgagee so long as such contest stays the enforcement or collection of such lien or charge. Upon Mortgagee's request, Mortgagor shall provide evidence of payment of any such charges. Mortgagor shall promptly notify

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Mortgagee of any lien on all or any part of the Property and shall promptly discharge any unpermitted lien or encumbrance.

3. **Use of Property.** Except as required by applicable law, Mortgagor shall not permit changes in the use of any part of the Property from the use existing at the time this Mortgage was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent.

4. **Insurance and Condemnation.**

(a) **Required Insurance.** Mortgagor shall at all times maintain or cause to be maintained on all Personal Property, the Subject Property itself, and on all other tangible Collateral, all insurance required at any time or from time to time by the other Loan Documents or as reasonably requested by Mortgagee and in any event the following:

(i) All risk/open perils special form property insurance against all risk of physical loss with respect to Improvements, without deduction for depreciation and for an amount not less than full replacement cost;

(ii) All-Risk Builder Insurance issued with respect to the Work (as defined in the Business Loan Agreement) in such amounts as may be reasonably required by Mortgagee, together with extended coverage, vandalism and malicious mischief coverage, and such other coverage as may be reasonably required by Mortgagee;

(iii) Comprehensive general public liability insurance with no less than \$1,000,000.00 combined single limit coverage per occurrence with a minimum aggregate limit of \$3,000,000.00;

(iv) Worker's compensation insurance and employer's liability insurance for all contractors and subcontractors in such amounts as may be required by law.

(v) Flood insurance if any Improvements are located in an area designated as a special flood hazard area according to the most current flood insurance rate map issued by the Federal emergency management Agency;

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(vi) Such other insurance coverages as Mortgagee may reasonably require.

(b) Terms of Policies. All insurance shall be in such amounts satisfactory to the Mortgagee, and all shall be maintained in such form and with such companies as shall be reasonably approved by the Mortgagee. Mortgagor shall deliver to and keep deposited with the Mortgagee ACORD-27 forms evidencing such insurance, together with original certificates and certified copies of all policies of such insurance and renewals thereof, with premiums prepaid, and with (i) standard non-contributory mortgagee and Mortgagee's loss payable clauses satisfactory to Mortgagee entitling Mortgagee to collect any and all proceeds payable under such insurance, (ii) clauses providing for not less than thirty (30) days' prior written notice to Mortgagee of cancellation or material modification of such policies, attached thereto in favor of the Mortgagee, and (iii) standard waiver of subrogation endorsements. Mortgagee shall be an additional named insured, mortgagee and loss-payee of all policies of insurance delivered by Mortgagor pursuant to this Mortgage (other than worker's compensation). All of the above-mentioned original ACORD-27 forms, certificates of insurance and certified copies of such policies, together with receipts for the payment of premiums thereon, shall be delivered to and held by Mortgagee, which delivery shall constitute assignment to Mortgagee of all return premiums, to be held as additional security hereunder. All renewal and replacement policies shall be delivered to Mortgagee at least thirty (30) days before the expiration of the expiring policies.

(c) Failure to Obtain Insurance. If Mortgagor shall fail to obtain or to maintain any of the policies required by this Mortgage or any other Loan Document or to pay any premium relating thereto or to renew any such policies and to deliver evidence of such renewal to Mortgagee no later than thirty (30) days prior to the expiration of the existing policy, then Mortgagee, without waiving or releasing any obligation or default by Mortgagor hereunder and whether or not such failure is an Event of Default hereunder, without notice to Mortgagor, may (but shall be under no obligation to do so) obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto which Mortgagee deems advisable. All sums so disbursed by Mortgagee pursuant to this Section, including costs relating thereto, shall be payable by Mortgagor to Mortgagee within five (5) days after demand therefore, plus interest thereon, at the Default Rate set forth in the Note, and shall be additional secured Obligations.

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(d) Blanket Policies. Any insurance provided for in this Section may be effected by a policy or policies of blanket insurance, provided, however, the amount of the total insurance allocated to the Mortgaged Property shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects, any such policy or policies shall comply with the other provisions of this Mortgage except that no such policy shall be submitted to Mortgagee less than thirty (30) days prior to expiration of an existing policy. In any such case, it shall not be necessary to deliver the original of any such blanket policy to Mortgagee, but the Mortgagee shall be furnished with a certificate or duplicate of such policy reasonably acceptable to Mortgagee. Each policy of insurance provided for in this Section shall contain the standard form of waiver of subrogation.

(e) Separate Insurance. Mortgagor shall not carry any separate insurance on the Improvements or other Collateral concurrent in kind or form with any insurance required hereunder or contributing in the event of loss thereunder, unless such policy contains a standard non-contributing mortgagee clause entitling Mortgagee to collect any and all proceeds thereunder, as well as a standard waiver of subrogation endorsement.

(f) Notice of Loss; Repair of Damages. If the Mortgaged Property shall be destroyed or damaged in whole or in part, by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Mortgagor shall give to Mortgagee and the insurance companies that have insured against such risks immediate notice of such loss. Mortgagor, at its own cost and expense, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose, shall promptly repair, alter, restore, replace and rebuild the same, at least to the extent of the value and as nearly as possible to the character of the Mortgaged Property existing immediately prior to such occurrence. Mortgagee shall in no event be called upon to repair, alter, replace, restore or rebuild such Mortgaged Property, or any portion thereof, nor to pay any of the costs or expenses thereof.

(g) Settlement of Loss. Mortgagee (or after entry of a decree of foreclosure, purchaser at the sale, or the decree

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creditor, as applicable) is authorized to settle and adjust any claim under such insurance policies which insure against such risk and Mortgagee shall act in its sole and absolute discretion without notice to or consent of Mortgagor. Mortgagee may elect to permit Mortgagor to settle, adjust or compromise any claims for loss with the insurance companies on the amounts to be paid with respect to such loss in its sole discretion, by providing Mortgagor with written notice of such permission. Notwithstanding the foregoing, Mortgagor shall have the right to settle, adjust or compromise any claims for loss with the insurance companies on the amounts to be paid with respect to such loss if Mortgagor estimates, in good faith, that the amount of any settlement shall not exceed \$100,000. Any expenses incurred by Mortgagee in the adjustment, collection or determination of the application of insurance proceeds shall be additional indebtedness secured hereby, payable on demand or deducted from insurance proceeds in accordance with this Section. Nothing contained in this Mortgage shall create any responsibility or obligation on Mortgagee to collect any amount owing on any insurance policy.

(h) Application of Insurance Proceeds. In all events, Mortgagee is authorized to collect and receipt for any such insurance proceeds and such insurance proceeds may, at the option of Mortgagee, be: (i) applied in reduction of the Secured Obligations, whether due or not; or (ii) held by the Mortgagee and applied to pay for the cost of repair, rebuilding or restoration of the buildings and other improvements on the Mortgaged Property.

In the event, in Mortgagor's sole and absolute discretion, the proceeds are to be made available to Mortgagor for the cost of repair, Mortgagee shall be entitled to reimburse itself to the extent of the reasonably necessary and proper expenses paid or incurred by Mortgagee in the collection and administration of such monies, including reasonable attorney's fees. Any funds received by Mortgagee from insurance provided by Mortgagor, less any funds Mortgagee is entitled to reimburse itself, shall be defined herein as "Net Insurance Proceeds". If, in Mortgagee's sole and absolute discretion, the Net Insurance Proceeds are to be made available to the Mortgagor for the cost of repair, rebuilding, and restoration, any surplus which may remain out of said proceeds after payment of such cost of repair, rebuilding and restoration and the reasonable charges of disbursing such funds, if applicable, shall, at the option of the Mortgagee, be applied on account of the Secured Obligations or paid to any party entitled thereto as the same appear on the



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records of the Mortgage. In the event the Net Insurance Proceeds are to be made available to Mortgagor for the cost of repair, such proceeds shall be disbursed to Mortgagor pursuant to such terms and conditions as Mortgagee may in its sole discretion require.

Notwithstanding the foregoing, in case of any loss after foreclosure proceedings have been instituted, all insurance proceeds shall, at Mortgagee's option, be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if said owner shall then be entitled to the same, or as the court may otherwise direct. In the case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor. Any foreclosure decree may further provide that in the case of any one or more redemptions made under said decree, each successive redelector may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redelector. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

(b) Condemnation.

Mortgagor shall within three (3) business days of its receipt of notice thereof, notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor shall, after providing such notice to Mortgagee, appear in and prosecute any such action or proceeding. Upon Mortgagor's failure to act, Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor (such appointment as attorney-in-fact is coupled with an interest), to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. The

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proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation, are hereby assigned to and shall be paid to Mortgagee and applied in accordance with the Security Documents. Mortgagee is authorized (such appointment as attorney-in-fact is coupled with an interest), but is under no obligation, to collect and receive any such proceeds, but Mortgagee shall not be liable for failure to collect any such proceeds.

5. **Preservation and Maintenance of the Property.** Mortgagor shall (a) not commit waste, permit deterioration of the Property or abandon the Property; (b) keep the Property in good repair and restore or repair promptly, in a good and workmanlike manner, all or any part of the Property to the equivalent of its original condition, ordinary wear and tear expected; (c) not demolish or significantly or materially alter the Improvements (unless previously approved in writing by Mortgagee); (d) comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property; (e) maintain all material permits, approvals and certificates, including certificates of completion and occupancy permits, required by law or regulation; and (f) give notice in writing to Mortgagee of and, unless otherwise directed in writing by Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security granted by the Security Documents or the rights or powers of Mortgagee.

6. **Protection of Mortgagee's Security.** If Mortgagor fails to pay or perform the Guaranteed Obligations or any of the other Obligations, or if any action or proceeding is commenced which affects the Property or Mortgagee's interest therein, then Mortgagee, at Mortgagee's option, may make such appearances, disburse such sums and take such action as Mortgagee deems necessary, in its sole discretion, to protect the Property or Mortgagee's interest therein, including entry upon the Property to make repairs and perform environmental tests and studies. Any amounts disbursed by Mortgagee pursuant to this Paragraph 6 (including attorney's costs and expenses), with interest thereon at any "default rate" set forth in the Security Documents from the date of disbursement, shall become additional Guaranteed Obligations of Mortgagor secured by this Mortgage and shall be due and payable on demand. Nothing contained in this Paragraph 6 shall require Mortgagee to incur any expense or take any action hereunder.

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7. **Inspection.** Mortgagee and its agents and designees may make or cause to be made reasonable entries upon and inspections of the Property.

8. **Hazardous Materials.** Mortgagor covenants and agrees that it (a) shall not use, generate, store or allow to be generated, stored or used, any "Hazardous Materials" on the Property, except in the ordinary course of Mortgagor's business and in accordance with all "Environmental Laws", (b) shall at all times maintain the Property in full compliance with all applicable Environmental Laws, including timely remediating the Property if and when required, and (c) shall cause compliance by all tenants and sub-tenants, if any, on the Property with Mortgagor's covenants and agreements contained in this Paragraph 8. Mortgagor shall immediately notify MORTGAGEE of any investigation, demand or claim affecting the Property made by a third party.

The term "Environmental Laws" shall include any federal, state or local laws or regulations relating to health, safety or protection of the environment. The term "Hazardous Materials" shall include Hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. §9601 et seq., any petroleum or petroleum products (excluding a small quantity of gasoline and oil used in maintenance equipment on the property), asbestos or asbestos containing material, or any other hazardous substances, hazardous wastes or hazardous materials as defined by other Environmental Laws.

Mortgagor hereby agrees, jointly and severally if more than one Mortgagor, to indemnify, defend and hold Mortgagee harmless from all claims, demands, liability, loss, cost and expense in any way arising out of Mortgagor's violation of the provision of this paragraph.

9. **Foreign Ownership.** None of Mortgagor or any other holder of a direct or indirect legal or beneficial interest in Mortgagor is or will be held, directly or indirectly, by a "foreign corporation," "foreign partnership," "foreign trust," "foreign estate," "foreign person," "affiliate" of a "foreign person" or a "United States intermediary" of a "foreign person" within the meaning of IRC Sections 897 and 1445, the Foreign Investments in Real Property Tax Act of 1980, the International Foreign Investment Survey Act of 1976, the Agricultural Foreign Investment Disclosure Act of 1978, the regulations promulgated pursuant to such acts or any amendments to such acts.

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10. **No Further Assignment.** Mortgagor covenants that Mortgagor shall not allow or consent to any assignments of beneficial interest in the trust or any transfer of the power of direction over said Trust, other than to the Mortgagee, or at the Mortgagee's specific written direction.

11. **Real Property Leases; Assignment of Rents.** The parties intend that this Mortgage grants a present, absolute, and unconditional assignment of the Rents and shall, immediately upon execution, give Mortgagee the right to collect the Rents and apply them in payment of the Guaranteed Obligation, until paid in full. Subject to the provisions set forth herein and provided that there is no Event of Default, Mortgagee grants to Mortgagor a revocable license to enforce the Real Property Leases and collect the Rents as they become due (excluding, however, any Real Property Lease termination, cancellation or similar payments which Mortgagor agrees shall be held in trust and turned over to Mortgagee for credit to the Guaranteed Obligations) and Mortgagor shall hold the same, in trust, to be applied first to the payment of all impositions, levies, taxes, assessments and other charges upon the Property, second to maintenance of insurance policies upon the Property required hereby, third to the expenses of Property operations, including maintenance and repairs required hereby, fourth to the payment of that portion of the Guaranteed Obligations then due and payable, and fifth, the balance, if any, to or as directed by Mortgagor.

This Mortgage shall not be deemed to impose upon Mortgagee and Mortgagee has not assumed any of the obligations or duties of Mortgagor provided in any Real Property Lease.

12. **Transfers/Liens Prohibited.** Mortgagor covenants not to sell, transfer, encumber, mortgage or grant any lien on or security or other interest in the Property to any third party until full and final payment to Mortgagee of all obligations hereby secured.

13. **Mortgagor and Lien not Released.** Without affecting the liability of Mortgagor or the lien of this Mortgage, Mortgagee may, from time to time and without notice to any junior lien holder or holder of any right or other interest in and to the Property: (a) release any person so liable, (b) waive or modify any provision of this Mortgage or the other Security Documents or grant other indulgences, (c) release all or any part of the Property, (d) take additional security for any obligation herein

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mentioned, (e) subordinate the lien or charge of this Mortgage, (f) consent to the granting of any easement, or (g) consent to any map or plan of the Property.

14. **Uniform Commercial Code Security Agreement.** This Mortgage shall constitute a security agreement pursuant to the Uniform Commercial Code in effect from time to time for any of the items specified herein as part of the Property which, under applicable law, may be subject to a security instrument pursuant to the Uniform Commercial Code ("Collateral"), including, but not limited to, general intangibles. Any reproduction of this Mortgage or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Mortgagor agrees to execute and deliver to Mortgagee any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Mortgagee may require at any time and from time to time to perfect a security interest with respect to said items. Mortgagor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Mortgagee may reasonably require. Mortgagor shall, at Mortgagee's request, at any time and from time to time, execute and deliver to Mortgagee such financing statements, amendments and other documents and do such acts as Mortgagee deems necessary in order to establish and maintain valid, attached and perfected first security interest in the Collateral in favor of Mortgagee, free and clear of all liens, claims and rights of third parties whatsoever. Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to execute and file in any jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset included in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (ii) as being an equal or lesser scope or within greater detail, and (b) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financial statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and (ii) in the case of a financing statement filed as a fixture filing or indicating

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Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statement and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Mortgage. If an Event of Default shall occur, Mortgagee, in addition to any other of this Mortgage. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limitation, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall, at its expense, assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses including legal expenses and attorney's fees, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee, with respect to the Collateral, sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor.

## **15. Events of Default; Acceleration of Guaranteed Obligations; Remedies.**

The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(a) the failure of Mortgagor to pay any Guaranteed Obligations when due;

(b) failure of Mortgagor to strictly comply with Sections 4(a) (Insurance) and 12 (Transfers/Liens Prohibited) of this Mortgage; or

(c) failure of Mortgagor, within 30 days after notice and demand, to satisfy each and every obligation set forth in this Mortgage, (other than those set forth in subparagraphs (a) and (b) above); or

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(d) the failure of Mortgagor to satisfy any obligation, covenant, representation or warranty under the Guaranty or other Security Documents after the expiration of any applicable grace or cure period related thereto, if any; or

(e) the failure of Mortgagor to pay when due any monetary obligation or to timely perform any other obligation and/or covenant under the Senior Loan Documents.

Upon the occurrence of an Event of Default:

(i) Mortgagor shall, upon demand, forthwith, surrender possession to Mortgagee or to the extent permitted by law, Mortgagee may enter and take possession of all or any part of the Property, and exclude Mortgagor wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor. Upon every such entering upon or taking possession, Mortgagee may hold, store, use, operate, manage and control the Property and conduct the business thereof. Mortgagee shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission by it or its representatives which was taken or omitted in good faith.

(ii) The Guaranteed Obligations, at the option of the Mortgagee, shall become immediately due and payable without notice to Mortgagor and Mortgagee shall be entitled to all of the rights and remedies provided herein, or in the other Security Documents or at law or in equity and may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at or by any other appropriate proceeding or remedy to (A) enforce payment of the Guaranteed Obligations due under the Security Documents or the performance of any term, covenant, condition or agreement of Mortgagor under any of the Security Documents including this Mortgage, (B) foreclose the lien hereof for the Obligations or party thereof and sell the Property as an entirety or otherwise, as Mortgagee may determine, (C) apply the Rent after payment of Property expenses as determined by Mortgagee to Mortgagor's Guaranteed Obligations under the Security Documents and/or (D) pursue any other right or remedy available to it under or by the law and decisions of the State in which the Land is located. The failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not

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be asserted by Mortgagor as a defense in any civil action instituted to collect the Guaranteed Obligations, or any part thereof, any statute or rule of law at any time existing to the contrary notwithstanding.

Each remedy is distinct and cumulative and may be exercised concurrently, independently, or successively, in any order whatsoever.

Upon any foreclosure sale, Mortgagee may bid for and purchase the Property and shall be entitled to apply for all or any part of the Guaranteed Obligations as a credit to the purchase price.

16. **Expenditures and Expenses.** In any action to foreclose the lien hereof, or otherwise enforce Mortgagee's rights, there shall be allowed and included as additional Obligations, all costs, expenses and fees as may be incurred by Mortgagee at any time hereafter in the protection of the Property, in enforcing the Obligations, and the maintenance the lien of this Mortgage or any of the other Security Documents, including consultants, accountants' and attorneys' fees, costs and expenses in any litigation or proceeding affecting this Mortgage, the other Security Documents, or the Property, whether instituted by Mortgagee, Mortgagor or any other party, or in preparation for the commencement or defense of any action or proceeding or threatened action or proceeding, all of which costs, expenses and fees shall be immediately due and payable to Mortgagee by Mortgagor, with interest thereon at the default rate set forth in the Security Documents shall be secured by this Mortgage.

17. **Appointment of Receiver or Mortgagee in Possession.** If an event of Default is continuing, or if Mortgagee shall have accelerated the Obligations, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the Obligations or the insolvency of any party bound for its payment, to the appointment of a receiver or the appointment of Mortgagee to take possession of and to operate the Property, and to collect and apply the rents, issues, profits and revenues thereof.

18. **Forbearance by Mortgagee not a Waiver.** Any forbearance by Mortgagee in exercising any right or remedy under any of the Security Documents, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. Mortgagee's acceptance of payment of any sum secured



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by any of the Security Documents after the due date of such payment shall not be a waiver of Mortgagee's right to either require prompt payment when due all other sums so secured or to declare a default for failure to make prompt payment.

19. **Waiver of Homestead and Redemption.** Mortgagor hereby waives all right of homestead exemption in the property. Mortgagor hereby waives all right of redemption on behalf of Mortgagor and on behalf of all other persons acquiring any interest or title in the Property subsequent to the date of this Mortgage, except decree or judgment creditors of Mortgagor.

20. **Venue.** MORTGAGOR HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF DUPAGE, STATE OF ILLINOIS AND IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY, OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO OR FROM THIS MORTGAGE OR THE OTHER SECURITY DOCUMENTS, SHALL BE LITIGATED IN SUCH COURTS. MORTGAGOR EXPRESSLY CONSENTS AND SUBMITS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. MORTGAGOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON MORTGAGOR BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO MORTGAGOR AT THE ADDRESS SET FORTH IN THIS AGREEMENT, AND SERVICE SE MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

21. **Jury Trial Waiver.** MORTGAGOR AND MORTGAGEE BY THEIR ACCEPTANCE OF THIS MORTGAGE, HEREBY WAIVE THEIR RESPECTIVE RIGHT TO A JURY TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THE SECURITY DOCUMENTS AND THE BUSINESS RELATIONSHIP THAT IS BEING ESTABLISHED. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY MORTGAGOR AND BY MORTGAGEE AND MORTGAGOR ACKNOWLEDGES THAT NEITHER MORTGAGEE NOR ANY PERSON ACTING ON BEHALF OF MORTGAGEE HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRAIL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. MORTGAGOR AND MORTGAGEE ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT MORTGAGOR AND MORTGAGEE HAVE ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THE SECURITY DOCUMENTS AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. MORTGAGOR AND MORTGAGEE FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THE SECURITY

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DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL.

22. **Notice.** Unless otherwise specified in the other Security Documents, and except for any notice required under applicable law to be given in another manner, any notice to be provided hereunder shall be given by mailing such notice by Federal Express or any other overnight carrier addressed to such party at its address stated above or at such other address as such party may hereafter designate by notice to the other.

23. **Successors and Assigns Bound; Joint and Several Liability.** The covenants and agreements contained in the Security Documents shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor. All covenants and agreements of Mortgagor shall be joint and several. In exercising any rights under the Security Documents or taking any actions provided for therein, Mortgagee may act through its employees, agents, attorneys or independent contractors as authorized by Mortgagee.

24. **Governing Law; SEVERABILITY.** This Mortgage shall be governed, interpreted and construed in accordance with the internal laws of the State of Illinois, provided, however, that to the extent the mandatory provisions of the laws of another jurisdiction relating to (i) the perfection or the effect of perfection or non-perfection of the security interests in any of the Property, (ii) the lien, encumbrance or other interest in the Property granted or conveyed by this Mortgage, or (iii) the availability of and procedures relating to any remedy hereunder or related to this Mortgage are required to be governed by such other jurisdiction's laws, such other laws shall be deemed to govern and control. The invalidity, illegality or unenforceability of any provision of this Mortgage shall not affect or impair the validity, legality or enforceability of the remainder of this Mortgage, and to this end, the provisions of this Mortgage are declared to be severable.

25. **Release.** Upon Thirty (30) days after the final payment of all payments under the loan documents required to be made to Mortgagee, provided that there are no defaults then existing under the Senior Loan, this Mortgage, or any of the Security Documents and that no circumstances then exist, which with the passage of time would constitute such a default or defaults, then Mortgagee shall release this Mortgage. Mortgagor shall pay Mortgagee's reasonable costs incurred in releasing this Mortgage and any financing statements related hereto.

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26. Conflict. In the event of a conflict in the terms and conditions of this Mortgage and the Senior Encumbrances, terms and conditions contained in the Senior Encumbrances shall control. In the event of a conflict in the terms and conditions of this Mortgage and terms and conditions contained in the other Security Documents, the other Security Documents shall control.

27. Exhibits and Riders. The following Exhibits and Riders (which may contain additional representations, warranties, and covenants), are attached to this Mortgage and hereby made a part of this Mortgage: Exhibit A (legal description of the land).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage or has caused the same to be executed by its representatives thereunto duly authorized.



TAMERA L. TOLBERT

Property of Cook County Clerk's Office



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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 24, 25 AND 26 IN BLOCK 25 IN SAMUEL S. HAYES'S KELVIN GROVE ADDITION TO CHICAGO IN THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. #13-27-327-045-0000

PROPERTY ADDRESS. 4444 W. Fullerton Avenue  
Chicago, Illinois 60639

Property of Cook County Clerk's Office