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Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Doc#: 0834039058 Fee: \$106.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/05/2008 02:15 PM Pg: 1 of 36

The property identified as: PIN: 19-24-114-001-0000

Address:

Street: 7705-11 SOUTH LAFLIN

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60620

Lender: EVER FINANCIAL LLC, A TX LLC

Borrower: G&S HOLDINGS GROUP, LLC

Loan / Mortgage Amount: \$350,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 777.0 et seq. because it is commercial property.

Certificate number: FA95757C-4197-415E-BF73-97903C48F5A6

Execution date: 12/01/2008

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This instrument was prepared by and should be mailed to:

Mike Whitaker  
Ever Financial  
2819 N. Fitzhugh  
Suite 2127  
Dallas, TX 75204

## JUNIOR MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND UCC FIXTURE FILING

This Junior Mortgage and Assignment of Leases and Rents, Security Agreement and UCC Fixture Filing (the "Mortgage") is made the 1st day of December 2008 between **G&S Holdings Group, LLC**, an Illinois limited liability company ("Mortgagor"), whose address is set forth below, and **EVER FINANCIAL, LLC**, a Texas limited liability company, whose address is set forth below as Mortgagee.

### RECITALS:

(A) Mortgagee has agreed to loan to Mortgagor the principal amount of Three Hundred Fifty Thousand and no/100 Dollars (\$350,000.00) ("Loan"). The Loan shall be evidenced by a certain Promissory Note of even date herewith (as amended, restated or replaced from time to time, "Note") made by Mortgagor payable to Mortgagee in the principal amount of the Loan and due on December 1, 2009 ("Maturity Date"), except as may be accelerated pursuant to the terms hereof or of the Note or any other Loan Document (as defined in the Note).

(B) A condition precedent to Mortgagee's extension of the Loan to Mortgagor is the execution and delivery by Mortgagor of this Mortgage.

### Article 1

### DEFINITIONS

#### 1.1 Definitions

As used herein, the following terms shall have the following meanings:

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Assignment: The assignment, contained in Article 3 of this Mortgage, from Mortgagor to Mortgagee, of all of Mortgagor's right, title and interest in and to the Leases and the Rents.

Membership Pledge: The Membership Interest Pledge Agreement from Guarantor, to the extent allowed by law, in favor of Mortgagee pledging to Mortgagee all of Guarantor's right, title and interest in and to the membership interests in Mortgagor pursuant to the terms thereof.

Awards: All awards and payments made or hereafter to be made by any municipal, township, county, state, Federal or other governmental agencies, authorities or boards or any other entity having the power of eminent domain to Mortgagor, including, but not limited to, any awards and payments for any taking of all or a portion of the Mortgaged Property, as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain, or for any change or changes of grade of streets affecting the Mortgaged Property.

Borrower. G&S Holdings Group, LLC, an Illinois limited liability company.

Buildings: All buildings, improvements, alterations or appurtenances now, or at any time hereafter, constructed or located upon the Land or any part thereof.

Default Rate: As defined in the Note.

Environmental Indemnity: The Environmental Indemnity Agreement executed by Mortgagor and Guarantor, to the limit allowed by law, in favor of Mortgagee of even date herewith.

Event(s) of Default: The happenings and occurrences described in Article 5 of this Mortgage.

Fixtures: All fixtures located upon or within the Land or Buildings or now or hereafter attached to, or installed in, or used in connection with, any of the Land or Building whether or not permanently affixed to the Mortgaged Property.

Guarantor: Gregory Perkins, on the condition that he is no longer in a chapter 11 case or that the Guaranty is approved by the court on application by Perkins.

Guaranty: The Guaranty of even date executed by Guarantor conditionally guaranteeing the Indebtedness and the Obligations under this Mortgage, the Note, and all of the other Loan Documents.

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Hazardous Materials: Any flammable explosives, radioactive materials, oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable rule, regulation, ordinance or law.

Impositions: All: (i) real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Mortgaged Property which at any time prior to or after the execution of the other Loan Documents may be assessed, levied, or imposed upon the Mortgaged Property or the rent or income received therefrom or any use or occupancy thereof, and (ii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against Mortgagor or any of its properties.

Indebtedness: The principal amount of the Note, the Interest Payment and any and all other amounts payments and premiums due under the Note, the Guaranty, and all other indebtedness of Borrower to Mortgagee under and/or secured by this Mortgage and by any of the other Loan Documents, or any amendments, modifications, renewals and extensions of any of the foregoing.

Land: The real estate legally described in Exhibit A attached hereto and commonly known as MGP Auburn Gresham I, MGP Auburn Gresham II, MGP Kedzie/Mozart (21 buildings) located in Chicago, Illinois.

Leases: Any and all leases, subleases, licenses, concessions or grants of other possessory interests now or hereafter in force, oral or written, covering or affecting the Mortgaged Property, or any part thereof, together with all rights, powers, privileges, options and other benefits of Mortgagor thereunder.

Loan Documents: The Note, this Mortgage, the Membership Pledge, the Environmental Indemnity and any and all other documents executed by the Borrower, Guarantor or others, including, but not limited to the Guaranty executed by the Guarantor now or hereafter securing the payment of the Indebtedness or the observance or performance of the Obligations.

Mortgaged Property: The Land, the Building, the Fixtures, the Leases and the Rents together with:

(i) all rights, privileges, permits, licenses, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of the Buildings belonging or in any way appertaining thereto and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;

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(ii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Land, the Buildings, the Fixtures, the Leases and the Rents; and

(iii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Awards, or payments with respect to casualties.

Mortgagee: Ever Financial, a Texas limited liability company, and its successors and assigns and the holders, from time to time, of the Note.

Mortgagee's Address: 2819 Fitzhugh Ave, Dallas, Texas 75204.

Mortgagor: G&S Holdings Group LLC, an Illinois limited liability company, its successors and assigns and any successors in interest.

Mortgagor's Address: 13723 Legend Trail, Orland Park, IL 60462..

Note: Promissory Note made by Mortgagor to the order of Mortgagee Lender in the principal amount of THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00) together with any and all extensions, renewals, modifications and amendments thereto (the "Note"); and

Obligations: Any and all of the covenants, promises and other obligations (other than the Indebtedness) made or owing by Mortgagor to or due to Mortgagee under and/or as set forth in the Note and/or any of the other Loan Documents, and any and all extensions, renewals, modifications and amendments of any of the foregoing.

Permitted Encumbrances: The encumbrances described in Exhibit C attached hereto.

Personalty: All furniture, furnishings, equipment, machinery, trade fixtures and all other personal property (other than the Fixtures) owned by Mortgagor now or hereafter located in, upon or about the Land, the Building, together with all accessions, replacements and substitutions thereto or therefor and the proceeds and products thereof.

Rents: All of the rents, revenues, income, profits, deposits, tenders and other benefits payable under the Leases and/or arising from the use and enjoyment of all or any portion of the Mortgaged Property to the extent that such Rents are to be paid to Mortgagor.

Security Agreement: The Security Agreement, contained in this Mortgage, wherein and whereby Mortgagor grants its security interest in the Personalty and the Fixtures to Mortgagee.

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Security Agreement: The Security Agreement, contained in this Mortgage, wherein and whereby Mortgagor grants its security interest in the Personalty and the Fixtures to Mortgagee.

Senior Lenders: Wells Fargo, Bank of America, American Chartered Bank & Puritan Finance.

Senior Loans: The loans made by Senior Lenders to MGP I, MGP II, and Kedzie Mozart in the aggregate principal amount of Twenty Nine Million Eight Hundred Thousand and no/100 Dollars (\$29,800,000.00).

## Article 2

### GRANT

2.1 Grant. To secure the payment of the Indebtedness and the performance and discharge of the Obligations, Mortgagor by these presents and to the extent allowed by law hereby grants, bargains, sells, assigns, mortgages, conveys and warrants unto Mortgagee any and all of its interests in the Mortgaged Property, subject, however, to the Permitted Encumbrances, to have and to hold by Mortgagee, its successors and assigns forever.

2.2 Condition of Grant. Provided always, that if Mortgagor promptly shall pay the entire Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations, then the other Loan Documents and the estate and rights hereby granted shall cease, terminate and become void, and shall be released by Mortgagee, at the cost and expense of Mortgagor, and, in case of failure of the Mortgagee to so release this Mortgage, all claims for statutory penalties are hereby waived.

2.3 Doctrine of Merger. Upon the foreclosure of this Mortgage, no assigned Lease shall be destroyed or terminated by application of the doctrine of merger or as a matter of law unless Mortgagee or any purchaser at such foreclosure sale so elects. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any assigned Lease unless Mortgagee or such purchaser gives written notice thereof to the applicable tenant or subtenant.

## Article 3

### SECURITY INTEREST AND ASSIGNMENT OF LEASES AND RENTS

3.1 Security Agreement and Fixture Filing. This Mortgage shall be construed as a mortgage of secured interest in Mortgaged Property and it shall also constitute a "Security Agreement" and a Uniform Commercial Code financing statement pursuant to the Uniform Commercial Code adopted in the state in which the Mortgaged Property is located (the "UCC") and shall create a security interest under the UCC.

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3.2 Security Interest. Mortgagor hereby grants to Mortgagee a security interest under the UCC of all its rights in and to the Personalty and Fixtures, and Mortgagee shall have all of said rights with respect thereto afforded to it by the UCC, in addition to, but not in limitation of, the other rights afforded to Mortgagee by the other Loan Documents.

3.3 Financing Statements. Mortgagor authorizes and, upon the request of Mortgagee, agrees to and shall execute and deliver to Mortgagee, in form satisfactory to Mortgagee, such "Financing Statements", if any, and such further assurances as Mortgagee may, from time to time, consider reasonably necessary to create, perfect and preserve Mortgagee's liens upon any rights of the Mortgagor in the Personalty, and Mortgagee, at the expense of Mortgagor, may or shall cause such statements and assurances to be recorded and re-recorded, filed and re-filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such liens.

3.4 Assignment of Leases and Rents. In order to further secure payment of the Indebtedness and the observance, performance and discharge of the Obligations, Mortgagor hereby absolutely and irrevocably assigns and transfers to Mortgagee, all of Mortgagor's right, title and interest in and to the Leases and the Rents, subject only to the Permitted Encumbrances. Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact, to exercise any rights of the Mortgagor, including, to the extent allowed by law, the right to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in Mortgagor's or Mortgagee's name, for all Rents. Notwithstanding the foregoing assignment of Leases and Rents, so long as no Event of Default has occurred which remains uncured, Mortgagor shall have a license (such license to be deemed revoked upon the occurrence of an Event of Default) provided that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any subsequent assignment by Mortgagor shall be subject to the rights of the Mortgagee hereunder. This Assignment shall not be deemed or construed to constitute Mortgagee as a mortgagee in possession nor obligate Mortgagee to take any action or to incur expenses or perform or discharge any obligation, duty or liability. Exercise of any rights under this Section 3.4 and the application of the Rents to the Indebtedness or the Obligations shall not cure or waive any Event of Default.

## Article 4

### COVENANTS

#### 4. Covenants

Until the entire Indebtedness shall have been paid in full, Mortgagor and Mortgagee hereby covenant and agree as follows:

4.1 Compliance with Laws. Mortgagor and Mortgagee will promptly and faithfully comply with, conform to and obey all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency and of every Board of Fire

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Underwriters having jurisdiction, or similar body exercising similar functions, which may be applicable to it or to the Mortgaged Property, or any part thereof, or to the use or manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Mortgaged Property, or any part thereof, whether or not such law, ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

4.2 Payment of Impositions. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions, such Impositions or installments thereof to be paid prior to the day before any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof; provided, however, that if, by law, any Imposition may be paid in installments, Mortgagor may pay the same in such installments.

4.3 Repair. Mortgagor will keep the Mortgaged Property in good order and condition, or cause others to do so, as well as make all necessary or appropriate repairs, replacements and renewals thereof and will use its best efforts to prevent any act or thing which might impair the value or usefulness of the Mortgaged Property, and Mortgagor will obtain the written consent of Mortgagee prior to (i) making any alterations or additions to the Mortgaged Property or (ii) removing all or any portion of the Building or Fixtures, unless such Fixtures are promptly replaced by Mortgagor with Fixtures of equal or greater value.

4.4 Insurance. Mortgagor will maintain or cause others to maintain insurance upon the Mortgaged Property against loss by fire and such other hazards, casualties and contingencies as are normally and usually covered by extended coverage policies in effect in the locality where the Mortgaged Property is situated and such other risks as may be specified by Mortgagee, from time to time, in amounts and with insurers reasonably acceptable to Mortgagee but not less than the lesser of (a) the amount of the Indebtedness, or (b) one hundred percent (100%) of the replacement value of the Buildings, Fixtures and Personalty. Mortgagor shall cause each insurance policy issued in connection therewith to provide (and the insurer issuing such policy to certify to Mortgagee) that (i) loss payments will be payable to Mortgagee as its interests may appear, and in the priority of its interests. Such payments are to be applied to the restoration, repair or replacement of the Mortgaged Property; provided, however, that if an Event of Default has occurred and is continuing or an event has occurred and is continuing which with the passage of time or the giving of notice would constitute an Event of Default, then such payments shall be applied to the payment of the Indebtedness; (ii) if possible, the interest of Mortgagee shall be insured regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy; (iii) if any such insurance policy be subject to cancellation or be endorsed or sought to be endorsed to effect a change in coverage for any reason whatsoever, such insurer will promptly notify Mortgagee and such cancellation or change shall not be effective as to Mortgagee until thirty (30) days after receipt by Mortgagee of such notice; and (iv) Mortgagee may, but shall not be obligated to, make premium payments to prevent such cancellation, and that such payments shall be accepted by the insurer. For purposes of this Section, replacement value of the Buildings, Fixtures and Personalty shall be equal to the cost of replacing the Buildings, Fixtures and Personalty, exclusive of the cost of excavation, foundations and footings below the lowest basement floor and shall be determined from time to

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time during the term of the Note (but no more frequently than once in any twelve (12) calendar months) at the written request of Mortgagee by an engineer, appraiser, architect or contractor designated by Mortgagee, approved in writing by Mortgagor, and paid by Mortgagor. In addition, Mortgagor shall furnish to Mortgagee duplicate executed copies of each such policy at the time of execution hereof, and copies of each renewal policy not less than thirty (30) days prior to the expiration of the original policy or the preceding renewal policy (as the case may be), together with receipts or other evidence that the premiums thereon have been paid; and furnish to Mortgagee on or before fifteen (15) days after the close of each fiscal year of Mortgagor a statement of Mortgagor of the amounts of insurance maintained in compliance with this Subsection, of the risks covered by such insurance and of the insurance company or companies which carry such insurance.

#### 4.5 Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Mortgaged Property, whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, which approval will not unreasonably be withheld, conditioned or delayed.

(b) Prior to each payment or application of any insurance proceeds by the Mortgagor or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Mortgaged Property to the extent permitted herein (which payment or application may be made, at Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be entitled (upon request) to be satisfied as to the following:

(i) An Event of Default has not occurred and not been cured in the applicable grace period;

(ii) Either (A) such improvements have been fully restored, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Mortgaged Property, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and of the Senior Lenders and the Permitted Exceptions, or, in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore and rebuild the Mortgaged Property, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Mortgaged Property; and

(iii) Prior to each disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 4.5 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of an

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architect selected by Mortgagee (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Mortgaged Property; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Mortgaged Property, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Mortgaged Property to the extent permitted herein, there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer with respect to Mortgagor or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substances, as are required by Mortgagee.

(d) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Mortgaged Property to the extent allowed by applicable law, within a time reasonably deemed satisfactory by Mortgagee, then Mortgagee, at its option, may commence and perform, subject all necessary acts to restore, repair or rebuild the said improvements for or on behalf of Mortgagor. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Mortgaged Property, such excess shall be applied on account of the unpaid principal balance of the Loan irrespective of whether such balance is then due and payable.

(e) In the event Mortgagor commences the repair or rebuilding of any improvements located on the Mortgaged Property, but negligently fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 4.5 or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Mortgaged Property to the extent allowed by law and within a time deemed satisfactory by Mortgagee, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above, then such failure shall constitute an Event of Default.

4.6 Performance of Leases and Other Agreements. Mortgagor will duly and punctually perform all covenants and agreements expressed as binding upon it under the Lease or Leases and other agreements to which it is a party with respect to the Mortgaged Property or any part thereof.

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Mortgagor will immediately notify Mortgagee in writing of any notice of any material default received by Mortgagor from the Lessee thereunder.

4.7 Inspection. Mortgagor will permit Mortgagee, at all reasonable times, to inspect the Mortgaged Property. Mortgagee shall have the right to enter onto the Mortgaged Property, at all times, upon reasonable notice, to inspect the Mortgaged Property for the existence of Hazardous Materials on the Mortgaged Property and to determine the compliance of the Mortgaged Property and its use with any law, rule or regulation relating to industrial hygiene or environmental conditions, including soil and ground water conditions and the compliance of the Mortgagor and the Mortgaged Property with the conditions and covenants set forth herein with respect to Hazardous Materials.

4.8 Hold Harmless. Mortgagor will employ legal counsel acceptable to the Mortgagee and who is not also representing the Mortgagee in any other matter, and will hold Mortgagee harmless from any action, proceeding or claim affecting the Mortgaged Property. Mortgagor shall appear in and defend (or pay the reasonable expenses of Mortgagee to defend, if Mortgagor elects to allow Mortgagee to handle such defense) any action or proceeding purporting to affect the security interest granted under this Mortgage and/or the rights and/or powers of Mortgagee hereunder, and Mortgagor shall pay all costs and expenses (including costs of evidence of title and attorneys' fees) in any action or proceeding in which Mortgagee may so appear and/or any suit brought by Mortgagee to foreclose this Mortgage, to enforce any obligations secured by this Mortgage, and/or to prevent the breach hereof. Mortgagor's obligations under this Section 4.8 shall survive payment of the Indebtedness.

4.9 Books and Records. Mortgagor will maintain full and complete books of account and other records reflecting the results of its operations, in accordance with generally accepted accounting principles, and furnish or cause to be furnished to Mortgagee such financial data and other information, to which Mortgagee shall have the right, at reasonable times and upon reasonable notice, to audit Mortgagor's books of account and records.

4.10 Awards. Mortgagor will file and prosecute its claim or claims for any Awards in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee in accordance with its priority, and hereby irrevocably authorizes and empowers Mortgagee, if it so desires, to file such claim and collect any Awards in accordance with its priority, and agrees that the proceeds of any Awards will be applied by Mortgagee in reduction of any portion of the Indebtedness as Mortgagee may determine in accordance with Article 7 hereof, to the extent provided for by applicable law.

4.11 Licenses. Mortgagor shall inform Mortgagee whenever it obtains any information affecting licenses, permits and other governmental approvals which are necessary for the operation of the Mortgaged Property and related facilities, and furnish evidence satisfactory to Mortgagee that the Mortgaged Property and the use thereof comply with all applicable zoning and building laws, regulations, ordinances and other applicable laws, to the extent that Mortgagor has such information.

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4.12 Junior Financing Mortgagor shall not, without the prior written consent of Mortgagee, which, if no Event of Default has occurred, will not be unreasonably withheld, incur any additional indebtedness or create or permit to be created or to remain, any mortgage, pledge, lien, lease, encumbrance or charge on, or conditional sale or other title retention agreement, with respect to the Mortgaged Property or any part thereof or income therefrom, other than the other Senior Loan, the Loan Documents and the Permitted Encumbrances.

4.13 Representations and Covenants of Mortgagor. Mortgagor hereby represents and covenants to Mortgagee that:

(a) Mortgagor is qualified to do business in every jurisdiction in which the nature of its business or properties makes such qualification necessary, and to the best of its knowledge is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to Mortgagor.

(b) This Mortgage and all of the other Loan Documents, will not violate, to the best of Mortgagor's knowledge, any provision of existing law (including, but not limited to, any law relating to usury), any order of any court or other agency or government, or any indenture, agreement or other instrument to which Mortgagor is a party or by which Mortgagor or any of their property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or violate the operating agreement of the Mortgagor or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Mortgagor, except as contemplated by this Mortgage and the other Loan Documents, and no action with respect thereto by Mortgagor is required.

(c) No consent or approval of any regulatory body to the execution, delivery and performance by Borrower of this Mortgage and all of the other Loan Documents, the Guaranty, or the transactions contemplated thereby is required by law.

(d) There are no suits, proceedings or investigations pending or to their knowledge, threatened against or affecting Mortgagor, at law or in equity, or before or by any governmental or administrative agency or instrumentality which, if adversely determined, would have a material adverse effect on the business or condition of Mortgagor.

(e) No judgment, decree or order of any court or governmental or administrative agency or instrumentality has been issued against Mortgagor which has or to Mortgagor's knowledge may have any material adverse effect on the business or financial condition of Mortgagor.

(f) All information, reports, papers and data given to Mortgagee with respect to Mortgagor and the Guarantors or others obligated under the terms of the other Loan Documents are accurate and correct in all material respects and complete insofar as

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completeness may be necessary to give Mortgagee a true and accurate knowledge of the subject matter thereof.

(g) Mortgagor has disclosed to Mortgagee that, at this time, Mortgagor does not have good and marketable title in fee simple to the Mortgaged Property and good and marketable title to the Fixtures, free and clear of any prior assignment, liens, charges, encumbrances, security interests and adverse claims. Mortgagor's ability to provide good and marketable title is subject to an assignment of interest by Southview Management, LLC, consent to filing chapter 11 cases for the LLCs, and a ruling by the Bankruptcy Court for the respective debtors-in-possession to transfer the subject real estate.

(h) Mortgagor has disclosed that it is not the Lessor of the Leased Properties. Mortgagor agrees to provide to Mortgagee such copies of Leases, together with amendments, supplements and other modifications, which Mortgagor is able to obtain.

(i) Mortgagor does not reasonably foresee any material interference arising from the Permitted Encumbrances during the term of the Note.

(j) The Mortgaged Property are currently being used for commercial purposes, and Mortgagor expects that they will continue to be so used.

(k) To the best of Mortgagor's knowledge, upon due inquiry, no release (a "Release") of Hazardous Material has occurred on the Mortgaged Property. Mortgagor has not received any notice from any governmental agency or from any tenant under a Lease or from any other party with respect to any such Release.

Breach of such representations and covenants shall constitute an Event of Default under Section 5.5 hereof. Mortgagor shall promptly give written notice to Mortgagee of any breach under this Section 4.13.

4.14 Mechanics Lien. Mortgagor, to the extent of its control over the Properties, shall not permit or suffer any mechanics lien claims to be filed or otherwise asserted against the Mortgaged Property.

4.15 Hazardous Materials.

(a) Without limiting the generality of Section 4.1 hereof, to the extent Mortgagor has control over the Property, Mortgagor shall not cause or permit the violation of any law relating to industrial hygiene or environmental conditions in connection with the Mortgaged Property, including soil and ground water conditions, or use, generate, manufacture, store or dispose of any Hazardous Materials on, under or about the Mortgaged Property.

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(b) To the extent Mortgagor has control over the Property, Mortgagor shall indemnify and hold Mortgagee harmless from any loss, liability, cost, expense and/or claim (including without limitation the cost of any fines, remedial action, damage to the environment and cleanup and the fees of attorneys and other experts) arising from the use, Release or disposal any Hazardous Materials on, under or about the Mortgaged Property or the transport of any Hazardous Materials to or from the Mortgaged Property; and the violation of any law relating to industrial hygiene or environmental conditions in connection with the Mortgaged Property, including soil and ground water conditions; and the breach of any of the representations, warranties and covenants of Mortgagor with respect to Hazardous Materials set forth in this Section 4.15 and Section 4.13 hereof, provided, however, the foregoing indemnification is not applicable to Hazardous Materials placed on the Mortgaged Property (by parties other than Mortgagor or any agents of Mortgagor) after Mortgagee has taken possession of the Mortgaged Property pursuant to its rights under the Loan Documents.

## Article 5

### EVENTS OF DEFAULT

#### 5. Events of Default

The term "Event(s) of Default", as used in the other Loan Documents and in the Note, shall mean the occurrence or happening, from time to time, of any one or more of the following:

5.1 Failure to Pay Indebtedness. Failure by Mortgagor or any other obligor to pay any installment of principal or interest or any other amount payable pursuant to the Note as set forth therein, or pursuant to this Mortgage, or any of the other Loan Documents, within five (5) days of the date such amount is due.

5.2 Failure to Perform Obligations. Failure by Mortgagor promptly to 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 the Mortgage, the Note, the Loan Agreement or any other Loan Document or by Guarantor under the Guaranty; provided, however, that unless the continued operation or safety of the Mortgaged Property, or the priority, validity or enforceability of the lien created by the Mortgage or any of the other Loan Documents or the value of the Mortgaged Property is immediately impaired, threatened or jeopardized, Mortgagor shall have a period of thirty (30) days after written notice of any such failure of performance to cure the same, except that if such failure cannot by its nature be cured within thirty (30) days, and if Mortgagor commences to cure such failure promptly after receipt of notice thereof and in all events diligently pursues the cure of such failure, and Event of Default shall not be deemed to exist during said period of diligent curing, provided that the cure period shall in all events end if cure has not occurred within 120 days of the failure by

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Mortgagor. Cure periods shall not apply to defaults under other clauses of this Section except as expressly set forth in such other clauses.

5.3 [Deleted]

5.4 Laws Affecting Obligations and Indebtedness. If subsequent to the date of this Mortgage, any governmental entity in which the Mortgaged Property is located passes any law (i) which renders payment of the Indebtedness and/or performance of the Obligations by Mortgagor unlawful, or (ii) which prohibits Mortgagee from exercising any of its material rights and remedies under this Mortgage or any of the Loan Documents.

5.5 False Representation. If any representation or warranty made by Mortgagor or others in, under or pursuant to this Mortgage or the other Loan Documents, shall prove to have been false or misleading in any material respect as of the date on which such representation or warranty was made.

5.6 Destruction of Improvements. If all or any material portion of the Building or other improvements are demolished or removed or demolition or removal thereof is imminent (eminent domain proceedings excepted) in violation of the terms of this Mortgage.

5.7 [Deleted].

5.8 Loan Documents. If a default shall occur under any of the other Loan Documents, including, but not limited to, an Event of Default under the Guaranty.

5.9 Due On Sale. If, without the prior written consent of Mortgagee, there is (i) sale, transfer, agreement for deed, conveyance, assignment, hypothecation or encumbrance, except a foreclosure sale, of all or part of the Mortgaged Property or any interest therein, (ii) any sale, assignment, pledge, encumbrance or transfer to a third party of all or any part of the membership interests in the Mortgagor.

## Article 6

### DEFAULT AND FORECLOSURE

6.1 Remedies. If an Event of Default shall occur Mortgagee may, at its option, exercise one or more or all of the following remedies:

6.1.1 Acceleration. Declare the unpaid portion of the Indebtedness to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

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6.1.2 Entry on Mortgaged Property. To the extent allowed by applicable law, enter upon the Mortgaged Property, take possession thereof and of all books, records, and accounts relating thereto, and exercise any and all remedies set forth in this Mortgage or any of the other Loan Documents.

6.1.3 Operation of Mortgaged Property. To the extent allowed by applicable law, hold, lease, operate or otherwise use or permit the use of the Mortgaged Property, or any portion thereof, in such manner, for such time and upon such terms as Mortgagee may deem to be in its best interest (making such repairs, alterations, additions and improvements thereon, from time to time, as Mortgagee shall deem necessary or desirable) and collect and retain all earnings, rents, profits or other amounts payable in connection therewith all in accordance with commercially reasonable standards for properties of substantially similar type and character as the Mortgaged Property.

6.1.4 Enforcement of Mortgage. Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable may: (a) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, to the extent permitted by and pursuant to the procedures provided by law, at one or more sales, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; (b) institute proceedings for the complete or partial foreclosure of this Mortgage; or (c) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, (without being required to foreclose this Mortgage) or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

6.1.5 Foreclosure and Private Sale. Sell the Mortgaged Property, in whole or in part, (a) under the judgment or decree of a court of competent jurisdiction, or (b) at public auction (if permitted by the laws of the jurisdiction in which the Mortgaged Property is situated) in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law; and/or sell the Personalty and/or the Fixtures, in whole or in part, at one or more public or private sales, in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law.

6.1.6 Receiver. Mortgagee shall be entitled, as a matter of strict right, and without regard to the value or occupancy of the security, or the solvency of the Mortgagor or of any Guarantor, or the adequacy of the Mortgaged Property as security for the Note, to have a receiver appointed to enter upon and take possession of the Mortgaged Property, subject to the rights of Senior Lenders, collect the Rents and profits therefrom and apply the same as the court may direct. Such receiver shall have all the rights and powers permitted under the laws of the State where the Mortgaged Property is located. Mortgagor hereby waives any requirements it might assert on the receiver or Mortgagee to post any surety or other bond. Mortgagee or the receiver, subject to the rights of Senior Lenders, may also take possession

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of, and for these purposes use, any and all Personalty which is a part of the Mortgaged Property and used by Mortgagor in the rental or leasing thereof or any part thereof. The expense (including the receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured by this Mortgage. Mortgagee shall (after payment of all costs and expenses incurred) apply such Rents, issues and profits, subject to the rights of Senior Lenders, that it received toward the Indebtedness in the order set forth in Section 6.8 hereof. The right to enter and take possession of the Mortgaged Property, to manage and operate the same, and to collect the Rents, issues and profits thereof, whether by receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such Rents, issues and profits actually received by Mortgagee.

6.1.7 Additional Rights and Remedies. With notice, and without releasing Mortgagor from any Indebtedness or Obligations, and without becoming a mortgagee in possession, Mortgagee shall have the right to cure any breach or default of Mortgagor and, in connection therewith, subject to approval by the Senior Lenders, to enter upon the Mortgaged Property and to do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof including, but without limitation to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of Mortgagee, is prior or superior hereto, the judgment of Mortgagee being conclusive as between the parties hereto; to obtain insurance to pay any premiums or charges with respect to insurance required to be carried hereunder; and to employ counsel, accountants, contractors and other appropriate persons to assist them.

6.1.8 Other. Exercise any other remedy specifically granted under the other Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise, including the rights described below.

6.2 Separate Sales. Any real estate or any interest or estate therein sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Note, this Mortgage or the other Loan Documents, or pursuant to any other judicial proceedings under this Mortgage or the other Loan Documents, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect.

6.3 Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in the Note, this Mortgage and in the other Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or any Guarantor or against other obligors or against the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release

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thereof, nor shall the choice of one remedy be deemed an election of remedies to the exclusion of other remedies.

6.4 No Cure or Waiver. Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Mortgaged Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Indebtedness and Obligations, nor the exercise of any other right or remedy by Mortgagee or any receiver shall impair the status of the security, or cure or waive any default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of this Mortgage.

6.5 Payment of Costs, Expenses and Attorneys' Fees. Mortgagor agrees to pay to Mortgagee within ten (10) days of written demand all costs and expenses incurred by Mortgagee in exercising the remedies under the Note this Mortgage, the Loan Agreement and any of the other Loan Documents (including but without limit, court costs and reasonable attorneys' fees, whether incurred in litigation or not) with interest at the Loan Rate from the date of expenditure until said sums have been paid. Mortgagee shall be entitled to bid, at the sale of the Mortgaged Property held pursuant to the power of sale granted herein or pursuant to any judicial foreclosure of this instrument, the amount of said costs, expenses and interest in addition to the amount of the other Indebtedness and Obligations as a credit bid, the equivalent of cash.

6.6 Waiver of Redemption, Notice and Marshaling. Mortgagor hereby waives and releases (a) any and all statutory or equitable rights of redemption whether arising before or after the entry of a Judgment for Foreclosure and Sale, (b) all benefit that might accrue to Mortgagor and each Guarantor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, moratorium, redemption or extension of time for payment; (c) [deleted]; (d) any right to have the liens against Mortgaged Property marshaled; and (e) the right to plead or assert any statute of limitations as a defense or bar to the enforcement of the Note or the other Loan Documents.

6.7 Power of Sale. Mortgagee acknowledges that a power of sale provision is not currently enforceable under the Illinois Mortgage Foreclosure Act (the "Foreclosure Act"). Mortgagor acknowledges that in the event the Foreclosure Act is hereafter amended to permit the enforcement of a power of sale provision (the "Amendment"), such Amendment, to the extent permitted by law, will be enforceable against the Mortgagor and allow Mortgagee to proceed under the Amendment, so long as the Event of Default under which Mortgagee is proceeding occurs on or after the effective date of the Amendment. Whereupon, Mortgagee may elect to sell the Mortgaged Property by power of sale and, upon such election, such notice of Event of Default and election to sell shall be given as shall be required by the Amendment. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, at the time and place specified in the notice of sale, Mortgagee, or such selling officer as required or allowed by the

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Amendment, shall sell such property, or any portion thereof specified by Mortgagee, at public auction to the highest bidder for cash in lawful money of the United States. Mortgagee may postpone the sale by public announcement thereof at the time and place noticed therefor. If the Mortgaged Property consists of several lots, parcels or interests, Mortgagee may designate the order in which the same shall be offered for sale or sold.

6.8 Application of Proceeds. The proceeds of any sale of all or any portion of the Mortgaged Property and the amounts generated by any holding, leasing, operation or other use of the Mortgaged Property shall be applied by Mortgagee in the following order:

(a) First, to the payment of reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same (including, without limitation, payment of any Impositions or other taxes);

(b) Second, to the extent allowed by law, to the payment of reasonable attorneys' fees and other legal expenses, including expenses and fees incurred on appeals and legal expenses and fees of a receiver;

(c) Third, to the payment of accrued and unpaid interest on the Indebtedness; and

(d) Fourth, to the payment of the balance of the Indebtedness. The balance, if any, shall be paid to the parties entitled to receive it.

6.9 Strict Performance. Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of this Mortgage or of the other Loan Documents or of the Note shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage or of the other Loan Documents or the Note, and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor or the Guarantors or any and all of them.

6.10 No Conditions Precedent to Exercise of Remedies. Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the Indebtedness shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage and/or the other Loan Documents, or by reason of the release, regardless of consideration, of all or any part of the security held for the Indebtedness, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of this Mortgage and/or the other Loan Documents without first having obtained the consent of Mortgagor or such other person; and in the latter event Mortgagor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

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6.11 Release of Collateral. Mortgagee may release, regardless of consideration, any part of the security held for the Indebtedness or Obligations without, as to the remainder of the security, in any way impairing or affecting the liens of the other Loan Documents or their priority over any subordinate lien. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any Indebtedness secured hereby or for performance of any Obligations contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after maturity of the Mortgage Note, and with notice but without consent: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any Obligations; (b) make any agreement extending the time or otherwise altering terms of payment of all or any part of the Indebtedness, or modifying or waiving any Obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right Mortgagee may have; (d) accept additional security of any kind; (e) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Mortgaged Property.

6.12 Other Collateral. For payment of the Indebtedness, Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

6.13 Discontinuance of Proceedings. In the event Mortgagee shall have proceeded to enforce any rights under this Mortgage or the other Loan Documents and such proceedings shall have been discontinued or abandoned for any reason, then in every such case Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been taken.

## Article 7

### CONDEMNATION

7.1 Condemnation. To the extent of the outstanding Indebtedness, Mortgagor hereby assigns, transfers and sets over to Mortgagee all rights of Mortgagor to any award or payment in respect of (a) any taking of all or a portion of the Mortgaged Property as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain; (b) any such taking of any appurtenances to the Mortgaged Property or of vaults, areas or projections outside the boundaries of the Mortgaged Property, or rights in, under or above the alleys, streets or avenues adjoining the Mortgaged Property, or rights and benefits of light, air, view or access to said alleys, streets, or avenues or for the taking of space or rights therein, below the level of, or above the Mortgaged Property; and (c) any damage to the Mortgaged Property or any part thereof due to governmental action, but not resulting in, a taking of any portion of the Mortgaged Property, such as, without limitation, the changing of the grade of any street adjacent to the Mortgaged Property. Mortgagor hereby agrees to file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Mortgagor or

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otherwise, to collect and receipt for any such award or payment and, in the event Mortgagor fails to act, or in the event that an Event of Default has occurred and is continuing, to file and prosecute such claim or claims.

7.2 Application of Proceeds. All proceeds received by Mortgagee with respect to a taking of all or any part of the Mortgaged Property or with respect to damage to all or any part of the Mortgaged Property from governmental action not resulting in a taking of the Mortgaged Property, shall be applied as follows, in the order of priority indicated:

- (a) To reimburse Mortgagee for all reasonable costs and expenses, including reasonable attorneys' fees incurred in connection with collecting the said proceeds;
  - (b) To the payment of the Interest Payment due under the Note;
  - (c) To the prepayment of the unpaid principal of the Note, without premium;
- and
- (d) To the payment of the balance of the Indebtedness. The balance, if any, will be paid to Mortgagor.

## Article 8

### MISCELLANEOUS

8.1 Further Assurances. Mortgagor, upon the reasonable request of Mortgagee, will execute, acknowledge and deliver such further instruments (including, without limitation, financing statements, estoppel certificates and declarations of no set-off, if such be the case) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of the Loan Documents, to facilitate the assignment or transfer of the Note and the other Loan Documents, and to subject to the liens of the other Loan Documents, any property intended by the terms thereof to be covered thereby, and any renewals, additions, substitutions, replacements or betterments thereto. Upon any failure by Mortgagor to execute and deliver such instruments, certificates and other documents (which are reasonably requested by Mortgagee and are consistent with the terms of the Loan Documents) on or before seven (7) days after a written request therefor is given to Mortgagor, Mortgagee may make, execute and record any and all such instruments, certificates and Mortgagor irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

8.2 Recording and Filing. Mortgagor, at its expense, will cause the other Loan Documents, all supplements thereto and any financing statements at all times to be recorded and filed and re-recorded and re-filed in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

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8.3 Notice. Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case to the party for whom it is intended at the Mortgagor's Address or the Mortgagee's Address, as the case may be or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received. Any party may designate a change of address by written notice to the other, given at least ten (10) days before such change of address is to become effective.

8.4 Mortgagee's Right to Perform the Obligations. If Mortgagor shall fail to make any payment or perform any act required by this Mortgage or the other Loan Documents, then, at any time thereafter, upon reasonable prior notice to or demand upon Mortgagor and without waiving or releasing any obligation or default, Mortgagee may make such payment or perform such act for the account of and at the expense of Mortgagor, and, with the agreement of Senior Lenders, shall have the right to enter the Mortgaged Property for such purpose and to take all such action thereon and with respect to the Mortgaged Property as may be necessary or appropriate for such purpose. All sums so paid by Mortgagee, and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses so incurred together with interest thereon at the Default Rate, from the date of payment or incurring, shall constitute additions to the Indebtedness secured by the other Loan Documents, and shall be paid by Mortgagor to Mortgagee, on demand. If Mortgagee shall elect to pay any Imposition, Mortgagee may do so in reliance on any bill, statement or assessment procured from the appropriate public office, without inquiring into the accuracy thereof or into the validity of such Imposition. Mortgagor shall indemnify Mortgagee for all losses and expenses, including reasonable attorneys' fees, incurred by reason of any acts performed by Mortgagee pursuant to the provisions of this Subsection 8.4 or by reason of the other Loan Documents, and any funds expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the Loan Rate from the date of such expenditures, shall constitute additions to the Indebtedness and shall be secured by the other Loan Documents and shall be paid by Mortgagor to Mortgagee upon demand.

8.5 Covenants Running with the Land. All covenants contained in this Mortgage and in the other Loan Documents shall run with the Mortgaged Property.

8.6 Severability. In case any one or more of the Obligations shall be invalid, illegal or unenforceable in any respect, the validity of the Note, this Mortgage, and the other Loan Documents and remaining Obligations shall be in no way affected, prejudiced or disturbed thereby.

8.7 Modification. This Mortgage and the other Loan Documents and the terms of each of them may not be changed, waived, discharged or terminated orally, but only by an instrument or

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instruments in writing signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

8.8 Assumption. The Loan evidenced by the Note and secured by this Mortgage and the other Loan Documents is personal to Mortgagor, and Mortgagee made such Loan to Mortgagor based upon the credit of Mortgagor and the Guarantors and Mortgagee's judgment of the ability of Mortgagor or Guarantors to repay the entire Indebtedness and therefore this Mortgage may not be assumed by any subsequent holder of an interest in the Mortgaged Property without Mortgagee's prior written consent. This Section 8.8 does not limit the effect and generality of Section 5.9 hereof. Mortgagor shall notify Mortgagee promptly in writing of any transaction or event described in Section 5.9 hereof.

8.9 Tax on Indebtedness or Mortgage. In the event of the passage, after the date of this Mortgage, of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon Mortgagee the obligation to pay the whole, or any part, of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts as to affect the Mortgage or the Indebtedness, the entire unpaid balance of the Indebtedness shall, at the option of Mortgagee, after ten (10) days written notice to Mortgagor, become due and payable; provided, however, that if, in the opinion of Mortgagee's counsel, it shall be lawful for Mortgagor to pay such taxes, assessments, or charges, or to reimburse Mortgagee therefor, then there shall be no such acceleration of the time for payment of the unpaid balance of the Indebtedness if a mutually satisfactory agreement for reimbursement, in writing, is executed by Mortgagor and delivered to Mortgagee within the aforesaid period.

8.10 Maximum Rate of Interest. Notwithstanding any provision in this Mortgage, or in any instrument now or hereafter relating to or securing the Indebtedness evidenced by the Note, this Mortgage or the other Loan Documents the total liability for payments of interest and payments in the nature of interest, including, without limitation, all charges, fees, exactions, or other sums which may at any time be deemed to be interest, shall not exceed the limit imposed by applicable usury laws. In the event the total liability for payments of interest and payments in the nature of interest, including without limitation, all charges, fees, exactions or other sums which may at any time be deemed to be interest, shall, for any reason whatsoever, result in an effective rate of interest, which for any month or other interest payment period exceeds the limit imposed by the applicable usury laws, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice by, between, or to any party hereto, be applied to the reduction of the Indebtedness immediately upon receipt of such sums by Mortgagee, with the same force and effect as though Mortgagor had specifically designated such excess sums to be so applied to the reduction of the Indebtedness and Mortgagee had agreed to accept such sums as a premium-free payment of the Indebtedness, provided, however, that Mortgagee may, at any time and from time to time, elect, by notice in writing to Mortgagor, to waive, reduce, or limit the collection of any sums (or refund to Mortgagor any sums collected) in excess of those lawfully collectible as interest rather than accept such sums as a prepayment of the Indebtedness.

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8.11 Survival of Warranties and Covenants. The warranties, representations, covenants and agreements set forth in this Mortgage and the other Loan Documents and Note shall survive the making of the Loan and the execution and delivery of the Note, and shall continue in full force and effect until the Indebtedness shall have been paid in full, except such obligations as specified in Section 4.10 hereof which shall survive in accordance with that provision.

8.12 Applicable Law. This Mortgage and the other Loan Documents shall be governed by and construed according to the laws of the State of Illinois.

8.13 Loan Expenses. Mortgagor shall pay all costs and expenses in connection with the preparation, execution, delivery and performance of this Mortgage and the other Loan Documents, including (but not limited to) reasonable fees and disbursements of its and Mortgagee's counsel, recording costs and expenses, conveyance fee, documentary stamp, intangible and other taxes, surveys, appraisals and policies of title insurance, physical damage insurance, and liability insurance.

8.14 Tax and Insurance Escrow. Mortgagor shall pay to Mortgagee on each of the monthly due dates of payments, as set forth in the Note, an amount equal to one-twelfth of the annual Impositions ("Escrow Payments"). Mortgagor shall also pay into such account such additional amounts, to be determined by Mortgagee from time to time, as will provide a sufficient fund, at least thirty (30) days prior to the due dates of the next installment of such Impositions, for payment of such Impositions so as to realize the maximum discounts permitted by law, if any. Amounts held hereunder by Mortgagee shall be non-interest bearing and may be commingled with Mortgagee's other funds. Upon assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of such amounts then in its possession to the assignee and Mortgagee shall thereupon be completely released from all liability with respect to such amounts. Upon full payment of the Indebtedness, or, at the election of Mortgagee at any prior time, the balance of such amounts shall be paid over to Mortgagor and no other party shall have any right or claim thereto. Amounts held by Mortgagee pursuant to this Section 8.14 shall be made available to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations under this Mortgage and the other Loan Documents to pay Impositions. Notwithstanding the foregoing provided each of the following conditions have been fully satisfied: (a) the undisbursed balance of the Note is equal to or greater than one half of the total annual real estate taxes due for the most recently ascertainable total annual Impositions for the Premises, and (b) there is no uncured Event of Default, then Mortgagor shall not be required to make such Escrow Payments. In any event, the Mortgagor shall be responsible for and hereby covenants that all Impositions shall be paid in full on or prior to their respective due dates.

8.15 No Representations by Mortgagee. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee, pursuant to this Mortgage or the other Loan Documents, including (but not limited to) any officer's certificate, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and



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such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

8.16 Headings. The article headings and the section and subsection captions are inserted for convenience or reference only and shall in no way alter or modify the text of such articles, sections and subsections.

8.17 Additional Advances. This Mortgage is given, to secure not only presently existing Indebtedness under the Loan Documents, but also future advances, whether such advances are obligatory or to be made at the option of the 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 indebtedness secured hereby outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of the county in which the Mortgaged Property is located. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that the Mortgagee, may, but shall not be obligated to, make under this Mortgage, the Loan Documents, or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed ONE MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,350,000.00), and any disbursements made for payment of taxes, special assessments, or insurance on the Mortgaged Property and interest on such disbursements, and all disbursements by Mortgagee pursuant to 735 ILCS 5/15-1302(b)(5) (all such Indebtedness being hereinafter referred to as the maximum amount secured hereby). 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 Mortgaged Property given priority by law.

8.18 Jurisdiction and Venue. Mortgagor hereby agrees that all actions or proceedings initiated by Mortgagor and arising directly or indirectly of this Mortgage or the other Loan Documents shall be litigated in the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois or, if Mortgagee initiates such action, any court in which Mortgagee shall initiate such action and which has jurisdiction. Mortgagor hereby expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced by Mortgagee in any of such courts. Mortgagor waives any claim that Cook County Illinois, or the Federal District Court for the Northern District of Illinois is an inconvenient forum or an improper forum based on lack of venue. Should Mortgagor after being so served, fail to appear or answer to any summons, complaint, process or papers served within the number of days prescribed by law after the service thereof, Mortgagor shall be deemed in default and an order and/or judgment may be entered by the court against Mortgagor as demanded or prayed for in such summons, complaint, process or papers. Mortgagor hereby waives the right, if any, to collaterally attack any such judgment or action..

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8.19 Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows: Unless the Mortgagor provides the Mortgagee with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property or any other collateral for the Indebtedness or Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage the Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the Indebtedness or 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, the Loan Agreement or any of the other Loan Documents. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the indebtedness or 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 outstanding indebtedness. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

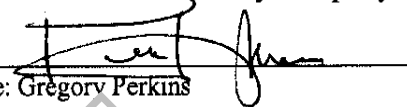
8.20 Subordination. The indebtedness secured hereby, as well as all rights and remedies set forth herein, are subordinated to those loans made by Senior Lenders and secured by the Mortgaged Properties during August through December, 2006 and recorded in the Office of the Recorder of Deeds, Cook County, Illinois.

[SIGNATURE PAGE FOLLOWS]

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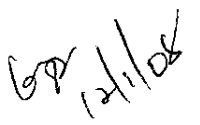
IN WITNESS WHEREOF, Mortgagor has executed this Junior Mortgage and Assignment of Leases and Rents, Security Agreement and UCC Fixture Filing as of the date first above written.

**G&S Holdings Group, LLC,**  
an Illinois limited liability company

By:   
Name: Gregory Perkins  
Title: Member-Manager

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Exhibit A

Legal Descriptions

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See Attached



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## MGP Kedzie Mozart, LLC

9217 South Kedzie Avenue, Evergreen Park, IL 60805-1616.

The Real Property tax identification number is 24-01-307-006-0000; 24-01-307-007-0000; 24-01-307-008-0000; 24-01-307-009-0000 and 24-01-307-010-0000.

LOTS 39, 40, 41, 42 AND 43 IN BLOCK 4 IN CAINES ADDITION TO EVERGREEN PARK, BEING A SUBDIVISION OF THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

The Real Property is commonly known as 6250 South Mozart Street, Chicago, IL 60629.  
The Real Property tax identification number is 19-13-330-038-0000

LOTS 16 AND 17 IN BLOCK 151N COBE AND MCKINNON'S 63RD STREET AND SACRAMENTO AVENUE SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 SECTION 13, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## MGP AUBURN GRESHAM II, LLC

### LEGAL DESCRIPTION:

#### PARCEL 1:

THE NORTH 18 FEET OF LOT 18, LOT 19, LOT 20, LOT 21, LOT 22, LOT 23, AND LOT 24 IN BLOCK 61N AUBURN PARK, BEING A SUBDIVISION OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

ALL OF LOT 17, LOT 18 (EXCEPT THE NORTH 18 FEET THEREOF) IN BLOCK 61N AUBURN PARK, BEING A SUBDIVISION IN SECTION 28, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

LOT 8 AND THE SOUTH 1 FOOT OF LOT 9, IN BLOCK 6 IN EGGLESTON'S SUBDIVISION OF THAT PART LYING EAST OF THE CHICAGO ROCK ISLAND AND PACIFIC RAILROAD OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 28. TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 4:

LOTS 24, 25, AND 26 IN BLOCK 116 IN CORNELL, BEING A SUBDIVISION OF SECTION 26 AND SECTION 35, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 16, 1872 AS DOCUMENT 13547 IN BOOK 2 PAGES 2 TO 5, IN COOK COUNTY, ILLINOIS.

#### PARCELS:

LOTS 83, 84, 85, 86 AND 87 IN SHOGREN AND COMPANY'S AVALON HIGHLANDS SUBDIVISION BEING A RESUBDIVISION OF CERTAIN LOTS IN CERTAIN BLOCKS IN CORNELL IN THE NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AS PER PLAT RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS, IN BOOK 158, PAGE 34 AS DOCUMENT NUMBER 6751064 IN COOK COUNTY, ILLINOIS.

#### PARCEL 6:

LOTS 38 AND 39 IN FOWLER'S SUBDIVISION OF BLOCK 4 IN THE CIRCUIT COURT COMMISSIONERS PARTITION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 38 NORTH, RANGE 15. EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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PARCEL 7:

THE WEST 8.09 FEET OF LOT 23 AND ALL OF LOTS 24, 25, 26, 27 AND 28 IN BLOCK 16 IN CAMPBELL'S EAST CHICAGO LAWN SUBDIVISION OF THE SOUTH 1/2 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

PARCEL 8:

LOTS 19 THROUGH 22, BOTH INCLUSIVE, AND LOT 23 (EXCEPT THE WEST 8.09 FEET) IN BLOCK 16 IN CAMPBELL'S EAST CHICAGO LAWN SUBDIVISION OF THE SOUTH 1/2 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PINS:

20-35-109-027-0000  
20-35-107-015-0000  
20-28-201-012-0000  
19-24-127-027-0000  
19-24-127-028-0000  
20-28-313-030-0000  
20-28-313-031-0000  
20-28-313-032-0000

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12/1/08



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## MGP AUBURN GRESHAM, LLC

**PARCEL 1:**

LOTS 39 AND 40 IN BLOCK 3 IN JOHN BAIN'S SUBDNISION OF THE EAST 1/2 OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

**PARCEL 2:**

LOTS 1 AND 2 AND THE NORTH 11 FEET OF LOT 3 IN AVONDALE, A SUBDNISION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

LOTS 29, 30 AND 31 IN BLOCK 34 IN THE SUBDIVISION OF THAT PART OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD, IN COOK COUNTY, ILLINOIS.

**PARCEL 4:**

LOTS 15 AND 16 IN BLOCK 5 IN AUBURN PARK, A SUBDNISION IN SECTION 28, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 5:**

LOTS 15, 16 AND 17 IN BLOCK 139 IN CORNELL IN SECTION 35, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 6:**

LOTS 30, 31 AND 32 IN BLOCK 12 IN FRANK N. GAGE'S ADDITION TO ENGLEWOOD HEIGHTS, BEING A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 (EXCEPT THE WEST 20 ACRES THEREOF) OF SECTION 31, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 7:**

LOTS 11 AND 12 IN WILLIAM AND FRED ESCH'S SUBDIVISION OF LOTS 7 TO 18, BOTH INCLUSIVE IN THE SUBDIVISION OF BLOCK 27 IN JONES SUBDIVISION IN THE WEST 1/2 OF SECTION 29, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 8:**

LOTS 11, 12 AND 13 IN REVEREND HERBERT J. BRODT'S RESUBDIVISION OF

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12/1/03

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BLOCK 30 OF JONES SUBDIVISION IN WEST 112 OF SECTION 29, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 9:**

LOTS 4 AND 5 IN THE SUBDIVISION OF BLOCK 35 IN JONES SUBDIVISION OF THE WEST 1/2 (EXCEPT 80 ACRES) OF SECTION 29, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

**PARCEL 10:**

LOTS 35 AND 36 IN BLOCK 25 IN 4TH ADDITION TO AUBURN HIGHLANDS BEING HART'S SUBDIVISION OF BLOCKS 13, 14, 15 AND 16 IN THE CIRCUIT COURT PARTITION OF THE NORTHWEST 1/4 OF SECTION 32, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 11:**

THE SOUTH 10.54 FEET OF LOT 27 AND ALL OF LOTS 28 AND 29 IN BLOCK 16 IN AVONDALE, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PINS:**

19-24-114-001-0000  
19-24-200-016-0000  
19-24-208-015-0000  
20-28-306-026-0000  
20-29-312-002-0000  
20-29-315-018-0000  
20-29-320-017-0000  
20-31-428-016-0000  
20-32-129-001-0000  
20-35-124-003-0000  
20-35-124-004-0000  
20-35-124-005-0000  
25-05-324-001-0000

**Common Addresses:**

7705-11 South Laflin, 8201 South Ada, Chicago, Illinois  
6401-05 South Francisco, Chicago, Illinois  
8215 South Ellis, Chicago, Illinois  
7542-48 South Stewart Chicago, Illinois  
8600-04 South Paulina, Chicago, Illinois  
6355-57 South California, Chicago, Illinois  
7808-10 South Ada, Chicago, Illinois

*12/1/02*

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9401-07 South Ashland, Chicago, Illinois  
6400-02 South Fairfield, Chicago, Illinois  
7755-57 South Ada, Chicago, Illinois.



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## EXHIBIT B

### PERSONALTY

(a) All apparatus, machinery, devices, fixtures, communication devices, systems and equipment, fittings, appurtenances, equipment, appliances, furniture, furnishings, appointments, accessories, landscaping, plants and all other items of personal property now or hereafter acquired by Mortgagor or in which Mortgagor may now or hereafter have any interest whatsoever, and used in the operation or maintenance of the Mortgaged Property and any other real property hereafter subject to the lien of the Mortgage or any business or operation conducted thereon. All fixtures and equipment now or hereafter installed for use in the operation of the buildings, structures and improvements now or hereafter on the Property and any other real Mortgaged Property hereafter subject to the lien of the Mortgage, and the machinery, appliances, fixtures and equipment pertaining thereto.

(b) Any and all goods, tangible and intangible, personal property of any kind, nature or description (including without limitation, any and all contract rights, franchises, licenses, permits, documents, instruments and general intangibles) of Mortgagor whether now owned or hereafter acquired, or in which Mortgagor now has or shall hereafter acquire any right, title or interest whatsoever and any and all replacements and substitutions thereof or therefor, arising from or out of the Mortgaged Property and any other real property hereafter subject to the lien of the Mortgage;

(c) Any and all additions and accessories to all of the foregoing and any and all proceeds, renewals, replacements and substitutions of all of the foregoing.