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1001233172

Doc#: 1001233172 Fee: \$92.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/12/2010 02:47 PM Pg: 1 of 14

ILLINOIS

Permanent Tax Index Numbers and  
Property Addresses:

4227 W. West End (16-10-419-015-0000)  
5647 S. Justine (20-17-109-018-0000)  
5717 S. Loomis (20-17-120-007-0000)  
10231 S. Perry (25-09-419-011-0000),  
5611 S. Bishop St. (20-17-111-005)  
10615 S. Bensley Ave. (25-13-201-010-0000)  
4830 W. Cortez St. (16 04 412 023 0000)  
3423 W. Fulton St. (16 11 407 016 0000)  
Chicago, Illinois

FIRST MODIFICATION OF LOAN DOCUMENTS

by

DWA GROUP 1, LLC, an Illinois limited liability company

to and for the benefit of

AMERICAN ENTERPRISE BANK,  
an Illinois state chartered bank

<b>THIS DOCUMENT PREPARED BY AND AFTER RECORDING RETURN TO:</b>  Aaron B. Zarkowsky Deutsch, Levy & Engel, Chartered 225 W. Washington Street, Suite 1700 Chicago, Illinois 60606	<b>THIS MODIFICATION AMENDS THE FOLLOWING DOCUMENT:</b>
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306708-1

12/6/2009 10:01 PM

BOX 333-CT

140B  
15 AD [signature]

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## FIRST MODIFICATION OF LOAN DOCUMENTS

**THIS FIRST MODIFICATION OF LOAN DOCUMENTS** (this "Modification") is made as of the 23<sup>rd</sup> day of December, 2009, by and among **DWA GROUP 1, LLC**, an Illinois limited liability company (the "Borrower") Uri Adler, Hershie Weingarten and Mark DeAngelis (collectively, the "Guarantor,"), and **AMERICAN ENTERPRISE BANK**, an Illinois state chartered bank, its successors and assigns ("Lender").

### RECITALS:

A. The Lender made a credit facility available to the Borrower that is to be evidenced by separate promissory notes, and secured by all properties acquired by the Borrower or the Mortgagor, as the case may be.

B. Lender made its first loan to the Borrower in the original principal amount of \$561,265.87 (the "Loan A") evidenced by a Promissory Note dated as of May 12, 2009, in the principal amount of Loan A made payable by Borrower to the order of Lender ("Loan A Note").

C. Loan A Note is secured by, among other things, certain documents dated as of May 12, 2009, including (i) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing from the Mortgagor to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on May 19, 2009, 2009, as Document No. 0913955011 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Environmental Certificate and Indemnification Agreement from the Borrower and the Guarantors to Lender (the "Indemnity Agreement"); (iii) that certain Collateral Assignment Under Land Trust and Security Agreement ("Collateral ABI") from the Borrower to the Lender; (iv) a Guaranty from the Guarantors to Lender (the "Guaranty"), and (v) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

D. The Lender agreed from time to time to provide loans to DWA Group 2, LLC, an Illinois limited liability company, an affiliate of the Borrower, sharing substantially the same ownership and management interests as the Borrower (the "Affiliate"). The date, maximum principal amount, and maturity date of such loans made by the Lender to the Affiliate are identified on Schedule 1 attached hereto and made a part hereof, which may be amended from time to time as the Lender makes future advances to the Affiliate. Each loan to be made by the Lender to the Affiliate may be identified individually as an "Affiliate Loan" and collectively as the "Affiliate Loan." Each Affiliate Loan is evidenced by a Promissory Note executed by the Affiliate and payable to the Lender (each an "Affiliate Note" and sometimes collectively, the "Affiliate Note").

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E. The Borrower acknowledges that the Lender has required cross-collateralization and cross default provisions to be included in the Loan Documents, and without same, the Lender would not be willing to extend individual credit facilities to the Borrower or the Affiliate on an individual basis on the terms set forth in the Note or the Affiliate Note.

F. The Borrower has requested that the Loan Documents be modified to incorporate cross-collateralization and cross default provisions with the Affiliate Loan and the documents evidencing and/or securing the Affiliate Loan.

## **AGREEMENTS:**

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove, (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation and Definitions.** The foregoing recitals and all exhibits and schedules attached hereto are hereby made a part of this Modification. The capitalized terms not otherwise defined herein shall have the meanings provided in the Loan Documents.

2. **Modifications to the Mortgage.**

(a) The Recitals set forth in the Mortgage are hereby amended by adding the following recitals:

“WHEREAS, Mortgagee also agreed from time to time to provide loans to an affiliate of the Mortgagor sharing substantially the same ownership interests as the Mortgagor (the “Affiliate”). The date, maximum principal amount, and maturity date of each such loans made by the Mortgagee to the Affiliate are identified on Schedule 1 attached hereto and made a part hereof, which may be amended from time to time as the Mortgagee makes future advances to the Affiliate. Each loan to be made by the Mortgagee to the Affiliate may be identified in this Mortgage individually as an “Affiliate Loan” and collectively as the “Affiliate Loan.” Each Affiliate Loan is evidenced by a Promissory Note executed by the Affiliate and payable to the Mortgagee (each an “Affiliate Note” and sometimes collectively, the “Affiliate Note”).

WHEREAS, the Mortgagor acknowledges that the cross-collateralization and cross default provisions with the Affiliate Loan are required by the Mortgagee, and without same, the Mortgagee would not be willing to extend individual credit facilities to the Mortgagor or the Affiliate on an individual basis on the terms set forth in the Note or the Affiliate Note.”

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(b) The definition of "Indebtedness" in the Mortgage is hereby amended by adding the following new subpart:

"(d) any and all sums due or owing under the Affiliate Note executed by the Affiliate to the Mortgagee;"

(c) Section 27(a) of the Mortgage is hereby amended and restated in its entirety to read as follows:

"(a) The Mortgagor fails to pay (i) any installment of principal or interest payable pursuant to the terms of any Note or any Affiliate Note, or (ii) any other amount payable to Mortgagee under any Note, any Affiliate Note, this Mortgage or any of the other Loan Documents within ten (10) days after the date when any such payment is due in accordance with the terms hereof or thereof;"

(d) The Mortgage is hereby amended by adding and incorporating a new Schedule 1 thereto in the form attached hereto as Schedule 1.

3. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Modification, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this

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Modification and to perform the Loan Documents as modified herein. The execution and delivery of this Modification and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Modification has been duly executed and delivered on behalf of Borrower.

4. **Conditions Precedent.** The agreement of Lender to amend the Note and Loan Documents is subject to the following conditions precedent:

(a) Lender shall have received this Modification duly executed by an authorized individual for each entity that is a party hereto.

(b) Lender shall have received resolutions of Borrower approving the execution of this Modification in form and content acceptable to Lender.

(c) Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Modification, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

(d) Lender shall have received such other documents as may be reasonably requested by Lender or its counsel.

5. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Modification. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

6. **Miscellaneous.**

(a) This Modification shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Modification shall not be construed more strictly against Lender than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Modification, and Borrower and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Modification. Each of the parties to this Modification represents that it has been advised by its respective counsel of the legal and practical effect of this Modification, and recognizes that it is executing and delivering this Modification, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The

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signatories hereto state that they have read and understand this Modification, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Modification by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Modification, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Modification. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Modification shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Modification may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Modification.

(h) Time is of the essence of each of Borrower's obligations under this Modification.

(i) Trustee's Exculpation. This Mortgage is executed by Chicago Title Land Trust Company (the "Trustee"), not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by the Trustee solely in its capacity as trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the Premises and has no agents, employees or control over the management of the Premises and no knowledge or of other factual matters



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except as represented to the Trustee by the Borrower. No personal liability or personal responsibility is assumed by or shall at any time by asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this Mortgage, all such liability being expressly waived by the Mortgagee and by every person now or hereafter claiming any right or security hereunder; and the owner of any of the Indebtedness or cause of action for breach of any warranty, indemnity, representation, covenant, undertaking or agreement accruing hereunder shall look solely to the Trust estate or the Premises conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Note provided or by action to enforce the personal liability of any guarantor.

(Signature Page Follows)

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IN WITNESS WHEREOF, the parties hereto have executed this Modification dated as of the day and year first above written.

**BORROWER:**

**DWA GROUP 1, LLC**, an Illinois limited liability company

**By: DWA CAPITAL GROUP, LLC**, an Illinois limited liability company, its sole member

By: DWA Adler Membership, LP, an Illinois limited partnership, a member

By: \_\_\_\_\_

Uri Adler, General Partner

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

SS: \_\_\_\_\_

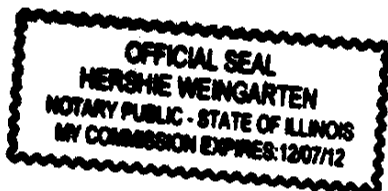
COUNTY OF Cook \_\_\_\_\_ )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Uri Adler, General Partner of DWA Adler Membership, LP, an Illinois limited partnership, a member of DWA Capital Group, LLC, an Illinois limited liability company, the sole member of DWA GROUP 2, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal, as of the 21 day of Dec, 2009.

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

My Commission Expires: \_\_\_\_\_





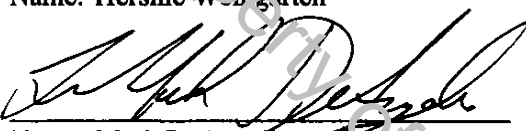
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**IN WITNESS WHEREOF**, the parties hereto have executed this Modification dated as of the day and year first above written.

**GUARANTOR:**

  
Name: Uri Adler

  
Name: Hershie Weingarten

  
Name: Mark DeAngelis

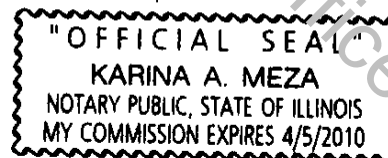
STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF Cook     )

I Karina A Meza, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Uri Adler, Hershie Weingarten and Mark DeAngelis, individually are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21 day of September, 2009.

  
Notary Public

My Commission Expires: 4/5/10



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IN WITNESS WHEREOF, the parties hereto have executed this Modification dated as of the day and year first above written.

**LENDER:**

**AMERICAN ENTERPRISE BANK**

By: \_\_\_\_\_

Name: Stanford D. Gertz

Title: President – Highland Park

STATE OF ILLINOIS )

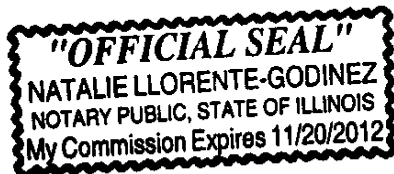
) .ss

COUNTY OF COOK )

I \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Stanford D. Gertz, President – Highland Park, of American Enterprise Bank, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009

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



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## EXHIBIT A

### THE PROPERTY

4227 W. West End (16-10-419-015-0000)  
5647 S. Justine (20-17-109-018-0000)  
5717 S. Loomis (20-17-120-007-0000)  
10231 S. Perry (25-09-429-011-0000),  
5611 S. Bishop St. (20-17-111-005)  
10615 S. Bensley Ave. (25-13-201-010-0000)  
4830 W. Cortez St. (16 04 412 023 0000)  
3423 W. Fulton St. (16 11 407 016 0000)  
Chicago, Illinois

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## EXHIBIT A LEGAL DESCRIPTION

### PARCEL 1:

THE NORTH 1/2 OF LOT 15 IN BLOCK 11 IN SNOWDON'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 17, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

LOT 12 AND THE NORTH 6.5 FEET OF LOT 13 IN BLOCK 3 IN IRONDALE, A SUBDIVISION OF THE EAST 1/2 (SOUTH OF THE INDIAN BOUNDARY LINE) IN SECTION 13, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 3:

LOT 12 IN BLOCK 2 IN WARD'S SUBDIVISION OF THAT PART OF THE EAST 1/4 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF LAKE STREET (EXCEPT THE EAST 33 FEET AND THE NORTH 395 FEET LYING SOUTH OF THE RAILROAD RIGHT OF WAY) IN COOK COUNTY, ILLINOIS.

### PARCEL 4:

LOT 74 IN CENTRAL AVENUE ADDITION, A SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 17, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 5:

THE SOUTH 10 FEET OF LOT 12 AND THE NORTH 20 FEET OF LOT 13 IN BLOCK 4 IN COTTAGE ADDITION TO ROSELAND, BEING A SUBDIVISION OF BLOCK 16, THE EAST 1/2 OF BLOCK 17 AND LOT 1 AND THE EAST 1/2 OF LOT 3 OF BLOCK 26 IN FERNWOOD BEING A RESUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 6:

LOT 18 IN BLOCK 1 IN M.D. BIRGE AND COMPANY'S SECOND SUBDIVISION OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 7:

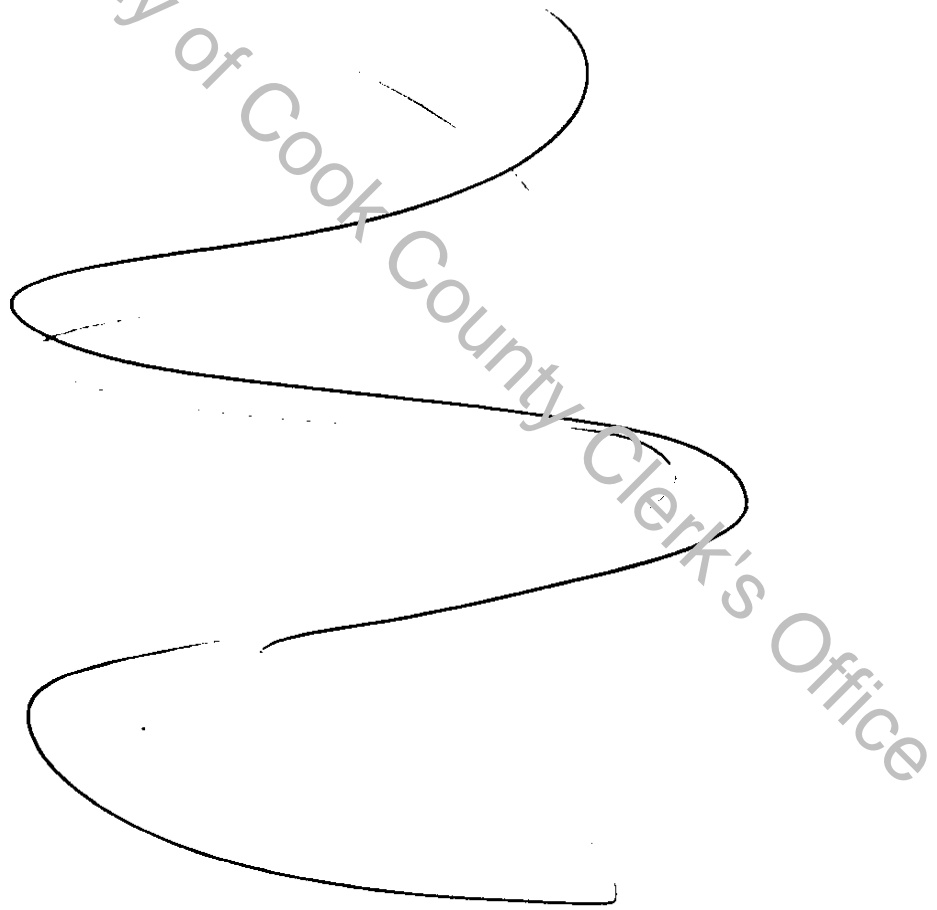
LOT 44 IN BLOCK 4 IN SNOW AND DICKINSON'S GARFIELD BOULEVARD ADDITION TO CHICAGO, A RE-SUBDIVISION OF BLOCKS 1 AND 2 AND BLOCK 7 (EXCEPT LOTS 6, 7, 18 AND 19) AND BLOCKS 9, 10, 15 AND 16 IN SNOWDON'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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**PARCEL 8:**

LOT 11 IN REUBDIVISION OF THE NORTH 1/2 OF BLOCK 30 IN THE SUBDIVISION OF THE SOUTH 1/2 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.



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## Schedule 1

Date of Loan	Maximum Principal Amount of the Loan	Maturity Date of the Loan
December 23, 2009	\$932,250.00	December 23, 2014

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