

# UNOFFICIAL COPY



Doc#: 1035010100 Fee: \$52.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/16/2010 03:53 PM Pg: 1 of 9

8823078  
D-1 JTR

## RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Susman, Duffy & Segaloff P.C.  
59 Elm Street  
P.O. Box 1684  
New Haven, CT 06510  
Attn: Matthew C. Susman

## DOCUMENT PREPARED BY:

Susman, Duffy & Segaloff P.C.  
59 Elm Street  
P.O. Box 1684  
New Haven, CT 06510  
Attn: Matthew C. Susman

(Space Above For Recorder's Use)

**WELLS  
FARGO**

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made as of this <sup>December</sup> 10, 2010 day of \_\_\_\_\_, 2010 by LANSING PARTNERS I, LLC, an Illinois limited liability company (the "Assignor"), in favor of **WELLS FARGO BANK, NATIONAL ASSOCIATION** ("Assignee").

## RECITALS

A. Pursuant to the terms of a Loan Agreement between Assignor and Assignee of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), Assignee has agreed to loan to Assignor the principal sum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) (the "Loan") for the purposes specified in the

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Loan Agreement, said purposes relating to the real property and improvements described in the Loan Agreement. Defined terms used in this Assignment have the meanings attributed to them in the Loan Agreement or the Note, unless expressly provided otherwise in this Assignment.

**B.** The Loan Agreement provides that the Loan shall be evidenced by a promissory note (as amended, restated, supplemented or otherwise modified from time to time, the “**Note**”) executed by Assignor payable to the order of Assignee in the principal amount of the Loan.

**C.** The Loan is secured by, among other things, the Mortgage With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the “**Mortgage**”) by Assignor in favor Assignee encumbering Assignor’s fee simple estate, right and interest in certain real property and the buildings and improvements located thereon as more fully described therein and legally described in Exhibit A attached hereto (“**Property**”), as well as other security instruments described in the Loan Documents.

**D.** To induce Assignee to make the Loan and to enter into the Loan Documents, which Assignor acknowledges Assignee is doing in reliance on this Assignment, and as a condition precedent to performance by Assignee under the Loan Documents, Assignor has agreed to execute and deliver this Assignment.

## AGREEMENT

**NOW, THEREFORE**, for and in consideration of the foregoing Recitals, which are incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor agrees as follows:

**1.** For the purpose of securing the Loan Agreement, the Note and the obligations due and owing under the Loan Documents, Assignor hereby sells, assigns and transfers unto Assignee any and all leases and subleases, whether written or oral, and any and all lettings and agreements for the use or occupancy of the Property, or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Assignee under the powers herein granted (collectively, “**Leases**”), together with any and all: (a) rents, issues and profits now due and which may hereafter become due under or by virtue of any Lease, (b) guaranties of any and all covenants, agreements and obligations of the lessee under each Lease, (c) sums which may be due and payable under any guaranty of any Lease, including all such rents, issues and profits which are or may become due and payable, including those which are or may be paid after the filing of any petition by or against Assignor under the United States Bankruptcy Code, as amended (11 U.S.C. § 101 *et seq.*) (“**Bankruptcy Code**”), or any successor statute or code or any similar federal or state statute, code or law, (d) security and other deposits made pursuant to or contemplated by the terms and provisions of each Lease and (e) all proceeds of the foregoing, it being the intention hereby to establish an absolute transfer and assignment of all Leases and all the rents, issues, profits and avails thereunder, to Assignee. Assignor hereby irrevocably appoints Assignee its true and lawful attorney in its name and stead (with or without entry upon or taking possession of the Property as provided in **Section 3** hereof) to rent, lease or let all or any portion of the Property to any party or parties at such rental and upon such terms as Assignee shall determine, in its sole discretion, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, which is now due or may hereafter become due under each and every of the Leases with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Assignee would have upon taking possession pursuant to the provisions of **Section 3** below. This power of attorney is coupled with an interest. This is a present and absolute assignment, not an assignment for security purposes only, and Assignee’s right to the Leases is not contingent, upon and may be exercised without, possession of the Property.

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2. Assignor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Property for more than one month in advance and that the payment of none of the rents to accrue for any portion of the Property has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Assignor. Effective after an Event of Default (as defined herein), Assignor waives any rights of setoff against any person or entity ("**Person**") in possession of any portion of the Property. Without the prior written consent of Assignee, which shall not be unreasonably withheld, conditioned or delayed, Assignor shall not enter into or agree to (a) any amendment or modification of any Lease, (b) cancel, terminate, or surrender (or permit the surrender of) any Lease, unless pursuant to legal process resulting from a default by tenant under such Lease, (c) waive any default under any Lease, (d) enter into any agreement which grants any concession with respect to any Lease or which compromises, discounts or otherwise reduces the rent called for under any Lease, (e) alter, modify or change the terms of any Lease guaranty, or any security of any Lease, or cancel or terminate any such guaranty, or release or reduce any such security, unless expressly required by the terms of such Lease, or (f) consent to any assignment of or subleasing under any Lease. No Lease shall contain any option to purchase any portion of the Property. Notwithstanding the foregoing, Assignor may exercise such remedies as to any tenant in default of its Lease as may be reasonably required to preserve and/or enforce such tenant's leasehold obligations. Assignor further agrees that it will not without Assignee's prior written consent, (a) assign any of the rents or profits of the Property, except to a purchaser or grantee of the Property as permitted under the Mortgage, or (b) subordinate any Lease to any mortgage (other than the Mortgage) or other encumbrance, or permit, consent or agree to any such subordination. Assignor further agrees to perform (or cause to be performed) fully and faithfully all covenants, agreements and obligations of landlord or lessor under each of the Leases. Assignor further agrees that if Assignor as landlord or lessor defaults under any Lease, Assignee shall have the right (but not the obligation) to cure such default within the cure period afforded to Assignor under the terms of such Lease, as such cure period may be modified by agreement, or under applicable law, regardless of whether any notice or cure period granted to Assignor under the Loan Documents has then expired. To the extent Assignee has made any advances or payments or incurred any expenses, fees or costs in connection with the cure of such default, all such amounts shall be repaid to Assignee by Assignor immediately upon demand with interest on all such amounts at the default rate specified in the Note. In the event any lessee under any of the Leases should be the subject of any proceeding under the Bankruptcy Code, or any other federal, state or local statute which provides for the possible termination or rejection of the applicable Lease assigned hereby, Assignor agrees that if the applicable Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for such termination or rejection will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee, and further covenants and agrees that upon the request of Assignee, Assignor will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to the indebtedness secured by this Assignment. Assignor hereby irrevocably appoints Assignee as its attorney-in-fact to so endorse any such checks if Assignor does not do so. This Assignment and grant shall continue in effect until Assignor's obligations under the Loan Documents are fully performed and satisfied, and the Loan, together with all other indebtedness secured hereby, is repaid in full.

3. Upon the occurrence of a "Default" as defined in the Note (the foregoing being hereinafter called an "**Event of Default**"), Assignor shall, forthwith, upon demand by Assignee, surrender to Assignee, and Assignee shall be entitled, but not obligated, to revoke the right and license granted to Assignor pursuant to **Section 5** and take actual possession of the Property or any part thereof, personally or by its agent or attorneys, or by a receiver appointed by a court. In such event, Assignee in its sole discretion may, in accordance with law, enter upon and take and maintain possession of all or any part of the Property together with all documents, books, records, papers and accounts of Assignor or the then owner or party in possession of the Property relating thereto and may exclude Assignor or the then owner

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or party in possession of the Property relating thereto and may exclude Assignor's or said owner's or party's respective agents or servants wholly therefrom and Assignee may, as attorney-in-fact, as agent for Assignor or in its own name as Assignee, and under the powers herein granted, hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the avails, rents, issues and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power to: (i) authorize and direct the lessees under Leases to pay to Assignee all rents, income and profits arising or accruing under the Leases and to continue to do so until otherwise notified in writing by Assignee, and Assignor agrees that each such lessee shall have the right to rely upon such authorization and direction given by Assignee, that such lessee shall pay such rents to Assignee without any obligation or right to inquire as to any existing Event of Default and that Assignor shall have no right or claim against any such lessee for any such rent so paid by such lessee to Assignee, (ii) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Assignor to cancel the same, (iii) subject to the terms of any subordination, non-disturbance and attornment agreement agreed to by Assignee, elect to disaffirm any Lease or sublease which is then subordinate to this Assignment, (iv) extend or modify any then existing Leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity of the Loan pursuant to the Loan Documents or as described hereinabove, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Assignor and all Persons whose interests in the Property are subject to this Assignment, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as Assignee may seem judicious, (vi) insure and reinsure the same and all risks incidental to its possession, operation and management thereof and (vii) receive all of such avails, rents, issues and profits, Assignor hereby granting Assignee full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Assignor.

Assignor shall be deemed to have constituted and appointed Assignee its true and lawful attorney-in-fact with full power of substitution, either in the name of Assignor or in its own name, to exercise any of the powers granted to Assignee pursuant to this **Section 3**. Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Leases. Assignor shall and does hereby agree to indemnify and hold Assignee harmless of and from any and all liability, loss or damage, including reasonable attorney's fees and expenses related thereto, which Assignee might incur by reason of its performance or omission of any action authorized under this **Section 3** and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Assignor, except to the extent caused by Assignee's gross negligence or willful misconduct. Nothing herein contained shall be construed as constituting Assignee in possession in the absence of the taking of actual possession of the Property by Assignee pursuant to this **Section 3**. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor, its successors and assigns.

4. Assignee, in the exercise of the rights and powers hereinabove conferred upon it by **Sections 1** and **3** hereof, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as Assignee may determine in its sole discretion:

- (a) to the payment of the operating expenses of the Property, including the cost of the management and leasing thereof (which shall include compensation to Assignee and its agent

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or agents, if management be delegated to an agent or agents, and shall include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Property;

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

(d) to the repayment of principal and interest on the Loan and to the payment of all other sums which Assignor is obligated to pay under the Loan Documents.

5. Although it is the intention of Assignor and Assignee that the assignment contained herein shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that until an Event of Default shall occur or arise, Assignee shall not exercise any of the rights or powers conferred upon it hereby and Assignor shall have the right and license to manage and operate the Property and to collect, subject to the terms and provisions of this Assignment, all rents, income and profits owing under the Leases and, subject to the terms and provisions of the Loan Documents, to retain, use and enjoy the same. Any avails, rents, issues and profits collected and received by Assignor after the occurrence of an Event of Default shall be deemed collected and received by Assignor in trust for Assignee and Assignor shall account to Assignee for the full amount of such collections and receipts.

6. Without diminishing the effectiveness or validity of the assignment made in **Section 1** hereinabove, Assignor further agrees to assign and transfer to Assignee all future Leases upon all or any part of the Property and to execute and deliver, at the request of Assignee, all such further assurances and assignments in the Property as Assignee shall from time to time require. Assignor shall furnish to Assignee true and complete copies of all such future Leases. Assignor shall pay Assignee the expenses incurred by Assignee in connection with the preparation, execution and recording of any such assignment or agreement.

7. This Assignment is given as collateral security for the indebtedness and obligations described herein and the execution and delivery hereof shall not in any way impair or diminish the obligations of Assignor or any other Person under any of the Loan Documents, nor shall this Assignment impose any obligation on Assignee to perform any provision of any Lease or any responsibility for the nonperformance thereof by Assignor or any other person. This Assignment is given as a primary assignment of the rights described herein and such assignment shall not be deemed secondary to any other collateral securing the performance of Assignor's obligations under any of the Loan Documents. Assignee shall have the right to exercise any rights under this Assignment before, together with or after exercising any other rights under any of the Loan Documents.

8. Each and all of the covenants, obligations and agreements (together with related definitions and related provisions) made by Assignor in the Loan Documents are hereby incorporated by reference as if they were expressly set forth and made herein by Assignor. Each and all of the covenants and obligations of this Assignment shall be binding upon and inure to the benefit of the parties hereto, and except as herein otherwise specifically provided, their respective successors and assigns, subject at all times nevertheless to all agreements and restrictions contained in the Loan Documents.

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9. All notices, demands, requests, deliveries and other communications required under this Assignment or desired by the parties hereto shall be given in the manner provided, and to the addresses specified, in the Mortgage.

10. In the event of any conflict or inconsistency between the terms and provisions of this Assignment and the Loan Agreement, the terms and conditions of the Loan Agreement shall in each instance govern and control to the extent of such inconsistency or conflict.

11. No modification, waiver, amendment, discharge or change of this Assignment shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

12. The captions and headings of various Sections of this Assignment pertaining hereto are for convenience only and are not to be considered as defining or limiting in any way, the scope or intent of the provisions of this Assignment.

13. This Assignment shall be construed and interpreted with, and governed by, the laws of the State of Illinois.

14. Assignor and Assignee intend and believe that each provision in this Assignment comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Assignment is found by a court of competent jurisdiction to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decisions, or public policy, and if such court should declare such portion, provision or provisions of this Assignment to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of Assignor and Assignee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interests of Assignor and Assignee under the remainder of this Assignment shall continue in full force and effect.

15. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

[signature page follows]


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IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment of Leases and Rents as of the date written above.

**ASSIGNOR:**

LANSING PARTNERS I, LLC, an Illinois limited liability company

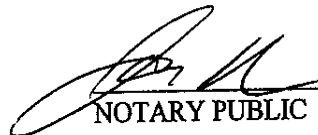
By: HY-CHAB OF MARYLAND, INC., a Maryland corporation, its Manager

By:   
Morris Chabbott, its President

STATE OF New York )  
COUNTY OF New York ) ss.

I, Jack Braha, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MORRIS CHABBOTT, a President of HY-CHAB OF MARYLAND, INC., a Maryland corporation ("Hy-Chab"), acting in its capacity as the Manager of LANSING PARTNERS I, LLC, an Illinois limited liability company ("Assignor"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President of Hy-Chab, acting in its capacity as the Manager of Assignor, appeared before me this day in person and acknowledged that he signed and delivered said instrument as such President of Hy-Chab, acting in its capacity as the Manager of Assignor, as his own free and voluntary act and as the free and voluntary act of Hy-Chab, acting in its capacity as the Manager of Assignor, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22nd day of November, 2010.

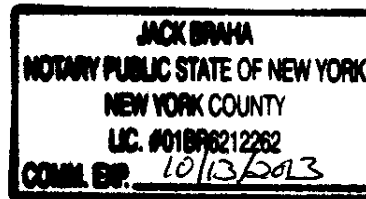
  
NOTARY PUBLIC

My Commission Expires:

10/13/2013

Drafted By:

Susman, Duffy & Segaloff P.C.  
59 Elm Street  
P.O. Box 1684  
New Haven, CT 06510  
Attn: Matthew C. Susman



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## EXHIBIT A

### Legal Description

All that certain real property located in the County of Cook, State of Illinois, described as follows:

PARCEL 1:

LOT 8 (EXCEPT THAT PART DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 10, THENCE NORTH 0 DEGREES 15 MINUTES 50 SECONDS EAST ON THE EAST LINE OF LOT 10 EXTENDED NORTH A DISTANCE OF 6.5 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 10 SECONDS WEST A DISTANCE OF 15.0 FEET TO THE WEST LINE OF LOT 8; THENCE SOUTH 0 DEGREES 15 MINUTES 50 SECONDS WEST A DISTANCE OF 6.5 FEET TO THE NORTH LINE OF LOT 10; THENCE SOUTH 89 DEGREES 44 MINUTES 10 SECONDS EAST A DISTANCE OF 15.0 FEET TO THE POINT OF BEGINNING)

ALSO

THE SOUTH 8.5 FEET OF THE EAST 18.25 FEET OF THE WEST 33.0 FEET OF LOT 9; ALSO THE SOUTH 1.00 FOOT OF THE EAST 241 FEET OF LOT 9;

ALSO

THAT PART OF OUTLOT A DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHWESTERLY CORNER OF LOT 9, THENCE SOUTH 89 DEGREES 44 MINUTES 10 SECONDS EAST ON THE SOUTH LINE OF LOT 9 A DISTANCE OF 14.75 FEET TO THE POINT OF BEGINNING, THENCE CONTINUING SOUTH 89 DEGREES 44 MINUTES 10 SECONDS EAST A DISTANCE OF 3.25 FEET TO THE WEST LINE OF LOT 8; THENCE SOUTH 0 DEGREES 15 MINUTES 50 SECONDS WEST A DISTANCE OF 168.5 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 10 SECONDS WEST A DISTANCE OF 3.25 FEET; THENCE NORTH 0 DEGREES 15 MINUTES 50 SECONDS EAST A DISTANCE OF 168.5 FEET TO THE POINT OF BEGINNING, ALL IN THE LANDINGS PLANNED UNIT DEVELOPMENT, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

PERPETUAL, NON-EXCLUSIVE EASEMENTS FOR THE PURPOSE OF PARKING, INGRESS AND EGRESS, AND COMMON UTILITY FACILITIES AS SET FORTH IN DECLARATION OF RECIPROCAL EASEMENTS AND OPERATING COVENANTS RECORDED AUGUST 16, 1985 AS DOCUMENT NUMBER 85149087 AND AS CREATED BY DEED FROM AMALGAMATED TRUST & SAVINGS BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 21, 1984 AND KNOWN AS TRUST NUMBER 4951, TO SERVICE MERCHANDISE COMPANY, INC., RECORDED OCTOBER 15, 1985 AS DOCUMENT 85235395 AND AS AMENDED BY FIRST



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AMENDMENT TO SAID DECLARATION RECORDED DECEMBER 18, 1985 AS DOCUMENT 85329731 AND AS FURTHER AMENDED BY SECOND AMENDMENT TO SAID DECLARATION RECORDED MARCH 11, 1988 AS DOCUMENT 88103519, AND AS FURTHER AMENDED BY THIRD AMENDMENT TO DECLARATION OF RECIPROCAL EASEMENTS AND OPERATING AGREEMENT RECORDED MAY 10, 2000 AS DOCUMENT 00331108, OVER AND ACROSS "COMMON AREA" AS SUCH IS DEFINED AND LIMITED THEREIN, AND ASSIGNED BY VIRTUE OF QUITCLAIM, ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENT MADE BY AND BETWEEN SERVICE MERCHANDISE COMPANY INC. AND SM LTCB LANSING, LLC DATED DECEMBER 3, 2002 RECORDED ON DECEMBER 24, 2002 AS DOCUMENT NUMBER 0021433426

## PARCEL 5:

PERPETUAL, NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS AND UTILITY FACILITIES AS SET FORTH IN ROAD AND UTILITY RECIPROCAL EASEMENT AGREEMENT DATED JULY 31, 1985 RECORDED AUGUST 16, 1985 AS DOCUMENT 85149084 AND AMENDMENT THERETO DATED JANUARY 15, 1986 RECORDED SEPTEMBER 30, 1986 AS DOCUMENT 86446672, OVER THAT PORTION OF NORTH EDGE ROAD RIGHT OF WAY AS DEFINED AND LIMITED THEREIN, AND ASSIGNED BY VIRTUE OF QUITCLAIM, ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENT MADE BY AND BETWEEN SERVICE MERCHANDISE COMPANY INC. AND SM LTCB LANSING, LLC DATED DECEMBER 3, 2002 RECORDED ON DECEMBER 24, 2002 AS DOCUMENT NUMBER 0021433426.

Parcel Identification Numbers: 30-19-300-019-0000;  
30-19-300-038-0000; and  
30-19-300-039-0000

Property Address: 16795 Torrence Avenue, Lansing, Illinois 60438

Property of Cook County Clerk's Office