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Document prepared by and
after recording return to:

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Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
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Property Address:

1237, 1243, and 1251 State Street, 1217 State Street,
and 15454 West State Street, Lemont Illinois

PIN Numbers:

22-32-200-034-0000, 22-32-200-048-0000,
22-32-200-018-0000, 22-32-200-008-0000
22-32-200-029-0000

AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

This Document Serves as a Fixture Filing under the Illinois Uniform Commercial Code, Chapter 810 ILCS 5/9-502(b) *et seq.* Mortgagor's Organizational Identification Number: 01130048.

THIS AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made as of May 24, 2011, with an effective date of December 1, 2010, by **OS LEMONT DEVELOPMENT COMPANY, LLC**, an Illinois limited liability company, with a mailing address at 2617 Beacon Hill Drive, Auburn Hills, Michigan 48326 ("Mortgagor") to **RBS CITIZENS, N.A. d/b/a CHARTER ONE, successor by merger with CHARTER ONE BANK, N.A.**, a national banking association ("Lender"), having an address at 71 South Wacker Drive, Suite 2900, Chicago, Illinois 60606, and pertains to the real estate described in Exhibit A attached hereto and made a part hereof (the "Premises").

I RECITALS

WHEREAS, Mortgagor is the owner of the Premises.

WHEREAS, Lender made a loan (the "Original Loan") to Mortgagor pursuant to that certain Construction Loan Agreement and Construction Completion Guaranty dated as of August 1, 2007 by and between Mortgagor and Lender (as amended, the "Original Loan Agreement");

WHEREAS, Mortgagor made that certain Open-End Mortgage, Security Agreement, and UCC Fixture Filing for the benefit of Lender and dated as of November 15, 2005 and recorded on November 23, 2005 with the Cook County Recorder of Deeds (the "Recorder of Deeds") as Document No. 0532719064, as amended by that certain Amended and Restated Open-End Mortgage, Security Agreement, and UCC Fixture Filing made by Mortgagor for the benefit of Lender and dated as of August 1, 2007 and recorded on September 12, 2007 with the Recorder of Deeds as Document No. 0725560065, as amended by that certain First Modification of Mortgage

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and Loan Documents made by and among the Mortgagor, Guarantor and the Lender dated as of August 18, 2008 and recorded on August 29, 2008 with the Recorder of Deeds as Document No. 0824229053, as amended by that certain Second Modification of Mortgage and Loan Documents made by and among the Mortgagor, Guarantor and the Lender dated as of February 26, 2009 and recorded on April 16, 2009 with the Recorder of Deeds as Document No. 0910656038, and that certain Third Modification of Mortgage and Loan Documents made by and among Mortgagor, Guarantor and Lender dated as of June 1, 2009 and recorded on August 25, 2009 with the Recorder of Deeds as Document No. 0923716033 (collectively, the "Original Mortgage");

WHEREAS, pursuant to that certain Amended and Restated Loan Agreement (as amended, modified and restated from time to time, the "Loan Agreement") dated as of even date herewith by and between Mortgagor and Lender, Lender is amending and restating the Original Loan (hereinafter, the "Loan"), which Loan is evidenced by that certain Amended and Restated Promissory Note dated as of even date herewith executed by Mortgagor, and payable to the order of Lender in the maximum principal amount of Nine Million Six Hundred Seventy-One Thousand Eight Hundred Sixty Dollars (\$9,671,860.00) (as amended, modified and restated from time to time, the "Note"), which Loan is secured by the liens and security interests of that certain (i) Amended and Restated Assignment of Leases and Rents dated as of even date herewith given by Mortgagor for the benefit of Lender (as amended, modified or restated from time to time, individually and collectively, the "Assignment of Leases and Rents"); (ii) a certain Amended and Restated Guaranty of Payment and Completion (as amended, modified and restated from time to time, the "Payment Guaranty") dated as of even date herewith from Anthony F. Randazzo ("Randazzo ") and Robert C. Nusbaum ("Nusbaum"); together with Randazzo, individually and collectively, jointly and severally, "Guarantor") for the benefit of Lender; and (iii) all other instruments and documents executed in connection with the Loan (as amended, modified and restated from time to time, together with the Note, the Loan Agreement, the Assignment of Leases and Rents and the Guaranty, the "Loan Documents");

WHEREAS, the obligations of Mortgagor under the Loan Agreement, the Note, this Mortgage, the Assignment of Leases and Rents, and the other Loan Documents are collectively referred to herein as the "Obligations";

WHEREAS, Lender is not willing to amend and restate the Loan or otherwise extend credit to Mortgagor unless Mortgagor unconditionally amends and restates the Original Mortgage in accordance with the terms of this Mortgage and agrees to perform the requirements and obligations set forth herein; and

WHEREAS, in consideration of advances, credits and other financial accommodations heretofore or hereinafter made to Mortgagor by Lender, Lender has required Mortgagor hereby to deliver, pledge, assign, transfer, mortgage and warrant to Lender the Mortgaged Property (as that term is hereinafter defined) as security for repayment of the Loan and for the Note as well as any and all other amounts owed to Lender under the terms of the Loan Documents. All capitalized terms not expressly defined herein shall have the same meanings as set forth in the Loan Documents.

II DEFINITIONS.

As used in this Mortgage, the terms defined in the Preamble hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified.

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Capitalized terms used herein but not defined shall have the meaning ascribed thereto in the Loan Agreement (as hereinafter defined):

“Hedging Contracts” means, interest rate swap agreements, interest rate cap agreements and interest rate collar agreements, or any other agreements or arrangements entered into between any Obligor and the Lender and designed to protect any Obligor against fluctuations in interest rates or currency exchange rates.

“Hedging Obligations” means, with respect to any Obligor, all liabilities of such Obligor to the Lender under Hedging Contracts.

“Loan Expenses” shall mean, collectively, the expenses, charges, costs (including both hard costs and soft costs) and fees relating to the making, administration, negotiation, documentation or any other aspect of the Loan or relating to the performance of the Work, including, without limitation, Lender’s reasonable attorneys’ fees and costs in connection with the negotiation, documentation and enforcement of the Loan, the fees of the Consultant, all recording fees and charges, title insurance charges and premiums, escrow fees, fees of insurance consultants, costs of surveys and of other bonds required by the Title Company in connection with clearing title to the Real Property or the issuance of title reports, binders, policies and the like, and all other costs, expenses, charges and fees referred to in or necessitated by the terms of this Mortgage or any of the other Loan Documents.

III THE GRANT

NOW, THEREFORE, to secure all present and future debts, obligations and liabilities of the Obligors to Lender arising pursuant to, or on account of, the provisions of this Mortgage, the Note, and any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, late charges, and other amounts due at any time under the Note; (b) to pay all Loan Expenses, indemnification payments, fees and other amounts due at any time under the Mortgage, or any of the other Loan Documents, together with interest thereon as provided in the Mortgage, or such Loan Document; (c) to pay and perform all Hedging Obligations of Borrower (or its Affiliates); and (d) to perform, observe and comply with all of the terms, covenants and conditions, expressed or implied, which Borrower is required to perform, observe or comply with pursuant to the terms of the Loan Agreement, this Mortgage or any of the other Loan Documents (all of which are sometimes referred to herein collectively as the “Indebtedness”), Mortgagor hereby **GRANTS, BARGAINS, ASSIGNS, WARRANTS, CONVEYS and MORTGAGES** to Lender and its successors and assigns forever, all of Mortgagor’s estate, right, title and interest, whether now or hereafter acquired, in and to the Premises, together with the following described property, whether now or hereafter acquired (the Premises, together with a security interest in and a lien on the following described property being hereinafter referred to collectively as the “Mortgaged Property”), all of which other property is hereby pledged on a parity with the Mortgaged Property and not secondarily:

(a) All buildings and other improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Mortgaged Property;

(b) All right, title and interest of Mortgagor, including, without limitation, any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, sidewalks and alleys adjoining the Mortgaged Property;

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(c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights and any and all other rights, liberties and privileges of the Mortgaged Property or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license and the reversions and remainders thereof;

(d) All leases and subleases now or hereafter on or affecting the Mortgaged Property, whether written or oral, and all agreements for use of the Mortgaged Property, together with all rents, issues, deposits, profits and other benefits now or hereafter arising from or in respect of the Mortgaged Property accruing and to accrue from the Mortgaged Property and the avails thereof;

(e) All fixtures and personal property now or hereafter owned by Mortgagor and attached to, contained in or used in connection with the Mortgaged Property or the aforesaid improvements thereon, including, without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, inventory, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, sheetrock, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be attached to such improvements, it being agreed that all such property owned by Mortgagor and placed on the Mortgaged Property or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purpose of this Mortgage to be part of the real estate constituting and located on the Mortgaged Property and covered by this Mortgage;

(f) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Premises and the other Mortgaged Property, or any part thereof, or to any rights appurtenant thereto;

(g) All compensation, awards, damages, claims, rights of actions and proceeds of or on account of (i) any damage or taking, pursuant to the power of eminent domain, of the Premises and the other Mortgaged Property or any part thereof, (ii) damage to all or any portion of the Premises and the other Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Premises and the other Mortgaged Property or of other property, or (iii) the alteration of the grade of any street or highway on or about the Premises and the other Mortgaged Property or any part thereof; and except as otherwise provided herein, Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and to apply the same toward the payment of the Indebtedness and other sums secured hereby;

(h) All contract rights, general intangibles, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Premises or the other Mortgaged Property or any part thereof;

(i) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Premises or the other Mortgaged Property;

(j) All contracts now or hereafter entered into by and between Mortgagor, as owner, and any contractor, or any party, as well as all right, title and interest of Mortgagor in, to and under any subcontracts, providing for the construction (original, restorative or otherwise) of any of the buildings, structures or improvements to or on the Mortgaged Property or any part thereof, or the furnishing of any

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building materials, supplies, equipment, goods or labor which are procured or to be procured for use on or in connection with any such construction, whether or not such materials and goods have been delivered to the Mortgaged Property;

(k) All agreements now or hereafter entered into with any party with respect to architectural, engineering, management, brokerage, promotional, marketing or consulting services rendered or to be rendered with respect to the planning, design, inspection or supervision of the construction, development, management, marketing, promotion, leasing, operation or sale of the Mortgaged Property or any portion thereof;

(l) All building materials and goods which are procured or to be procured for use on or in connection with the Premises or the other the Mortgaged Property, whether or not such materials and goods have been delivered to the Mortgaged Property;

(m) All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses, contracts for services to be rendered Mortgagor, or otherwise in connection with the Premises or the other Mortgaged Property and all other property, contracts, reports, proposals, and other materials now or hereafter existing in any way relating to the Premises or the other Mortgaged Property or construction of additional improvements thereto;

(n) All trademarks, trade names or symbols under which the Premises or the Mortgaged Property is operated or the business of Mortgagor at the Premises or the Mortgaged Property is conducted;

(o) All deposits (including but not limited to Mortgagor's rights to deposits with respect to utility services to the Mortgaged Property), and any deposits or reserves hereunder or under any other Loan Document for taxes, insurance or otherwise;

(p) All engineering, accounting, title, legal and other technical or business data concerning the Premises or the other Mortgaged Property which are in the possession of Mortgagor or in which Mortgagor can otherwise grant a security interest;

(q) All permits, licenses, franchises, certificates, development rights, commitments and rights to utilities, and other rights and privileges obtained by Mortgagor in connection with the Premises or the other Mortgaged Property or any of the other property described herein; provided, however, that any of the foregoing which by its terms or by operation of law is not assignable or would become void, voidable, terminable or revocable if pledged or assigned hereunder is expressly excepted and excluded from the terms of this Mortgage to the extent necessary so as to avoid such violation of law or voidness, avoidability, terminability or revocability;

(r) All rights to the payment of money from Lender under any Hedging Contract, and all accounts, deposit accounts and general intangibles including payment intangibles, described in any Hedging Contract;

(s) All books, records and computer software concerning the Premises and the other Mortgaged Property, and the property described in clauses (a) through (r) above; and

(t) The proceeds from any sale, transfer, pledge or other disposition of any or all of the foregoing described Mortgaged Property;

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To have and to hold the same unto Lender and its successors and assigns forever, for the purposes and uses herein set forth together with all right to possession of the Mortgaged Property after the occurrence of any Event of Default (as hereinafter defined in Section 5.01 hereof) hereunder subject only to any matters set forth in any policy of title insurance issued to Lender and insuring Lender's interest in the Mortgaged Property which are acceptable to Lender as of the date hereof (collectively, "Permitted Title Exceptions"); Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

MORTGAGOR REPRESENTS, WARRANTS AND COVENANTS to Lender that Mortgagor is lawfully seized of the Mortgaged Property, that the same is unencumbered except by the Permitted Title Exceptions, if any, and that it has good right, full power and lawful authority to convey and mortgage the same, and that Mortgagor will warrant and forever defend said parcels and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

If and when all obligations of Mortgagor to Lender under the Note have been fully satisfied and Mortgagor has satisfied all obligations thereunder and under the other Loan Documents, then this Mortgage shall be released at the cost of Mortgagor, but otherwise shall remain in full force and effect.

IV GENERAL AGREEMENTS

4.01 Principal and Interest. Mortgagor shall pay or cause to be paid promptly when due the principal and interest on the indebtedness evidenced by the Note at the times, at the variable rates and in the manner provided in the Loan Agreement, the Note, this Mortgage and the other Loan Documents. Any amount not paid when due hereunder shall accrue interest at the Default Rate (as defined in the Note).

4.02 Property Taxes. Unless Mortgagor has deposited sufficient funds with Lender in accordance with Section 4.03, Mortgagor shall pay when due and before any penalty attaches, all general taxes, special taxes, special assessments, water charges, sewer charges and any other charges that may be asserted against the Mortgaged Property or any part thereof or interest therein, and furnish to Lender duplicate receipts therefor within thirty (30) days after payment thereof.

4.03 Tax Escrow. Following an Event of Default and upon the request of Lender to provide for the payment of real estate taxes and assessments pertaining to the Mortgaged Property, Mortgagor shall, simultaneously with Mortgagor's monthly payments of interest and principal to Lender, deposit monthly with Lender one-twelfth (1/12th) of one hundred ten percent (110%) of the annual real estate taxes as reasonably estimated by Lender from time to time in such manner as Lender may prescribe so as to provide for the current year's real estate tax obligation. If the amount estimated to pay said taxes is not sufficient, Mortgagor shall pay the difference within five (5) days following Lender's demand therefor. Should Mortgagor fail to deposit sufficient amounts with Lender to pay such obligations, Lender may, but shall not be obligated to, advance monies necessary to make up any deficiency in order to pay such obligations. Any monies so advanced by Lender shall become so much additional Indebtedness and shall become immediately due and payable with interest due thereon at the Default Rate. Lender is not obligated to inquire into the validity or accuracy of the real estate tax obligations before making payments of the same and nothing herein contained shall be construed as requiring Lender to advance other monies for said purpose nor shall Lender incur any personal liability for anything it may do or omit to do hereunder. It is agreed that all such payments made, at the option of Lender, shall be (a) held in trust by it without earnings for the payment of the real estate tax obligations; (b) carried in a tax account for the benefit of Mortgagor and withdrawn by Lender to pay the real estate tax obligations; or (c) credited to the unpaid balance of the Indebtedness as received, *provided* that Lender advances upon this obligation sums sufficient to pay said items as the same accrue and become payable. If such items are held in trust or

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carried in a tax account for Mortgagor, the same are hereby pledged together with any other account of Mortgagor, held by Lender to further secure the Indebtedness, and any officer of Lender is authorized to withdraw the same and apply said sums as aforesaid.

4.04 Payments by Lender. In the event of an Event of Default hereunder, Lender is hereby authorized to make or advance, in the place and stead of Mortgagor, any payment relating to taxes, assessments, water and sewer charges, and other governmental charges, fines, impositions or liens that may be asserted against the Mortgaged Property or any part thereof, and may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien, sale, forfeiture of title or claim relating thereto. In the event of an Event of Default hereunder, Lender is further authorized to make or advance, in the place and stead of Mortgagor, any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge or payment, as well as take any and all actions which Lender deems necessary or appropriate on Mortgagor's behalf whenever, in Lender's sole and absolute judgment and discretion, such payments or actions seem necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Lender is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Lender's choosing. All payments, costs and other expenses incurred by Lender pursuant to this Section 4.04, including without limitation reasonable attorneys' fees, expenses and court costs, shall constitute additional Indebtedness and shall be repayable by Mortgagor upon demand with interest at the Default Rate.

4.05 Insurance; Insurance Proceeds.

(a) The Mortgagor will at all times keep the Mortgaged Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which Lender may require, provided that, in any case, the Mortgagor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than one hundred percent (100%) of the full replacement cost of the Mortgaged Property; (ii) flood insurance if and as required by applicable Federal law and as otherwise required by Lender; (iii) comprehensive commercial general liability insurance; (iv) rent loss and business interruption insurance; and (v) such other insurance as Lender may require from time to time, including, without limitation, builder's risk insurance. All policies regarding such insurance shall be issued by companies licensed to do business in the State of Illinois, be otherwise acceptable to Lender, provide deductible amounts acceptable to Lender, name lender as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least ten (10) days prior written notice to Lender. Such policies shall include (i) a mortgagee endorsement determined by Lender in good faith to be equivalent to the "standard" mortgagee endorsement so that the insurance, as to the interest of Lender, shall not be invalidated by any act or neglect of the Mortgagor, or the owner of the Mortgaged Property, any foreclosure or other proceedings or notice of sale relating to the Mortgaged Property, any change in the title or ownership to the Mortgaged Property, or the occupation or use of the Mortgaged Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement policy; (iii) an agreed amount endorsement; (iv) a contingent liability from operation endorsement; and (v) such other endorsements as Lender may request. The Mortgagor will furnish to Lender upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to Lender. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, the Mortgagor shall insure the Mortgaged Property in an amount sufficient to prevent the application of the coinsurance provision.

(b) The proceed of any insurance resulting from any loss with respect to the Mortgaged Property shall be paid to Lender and, at the option of Lender, be applied to the Indebtedness in such

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order as Lender may determine; provided, however, that if Lender shall require repair of the Mortgaged Property, Lender may release all or any portion of such proceeds to the Mortgagor for such purpose. Any insurance proceeds paid to the Mortgagor shall be held in trust for Lender and promptly paid to it.

4.06 Condemnation and Eminent Domain. Any and all awards heretofore or hereafter made or to be made to the present or any subsequent owner of the Mortgaged Property by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by Mortgagor to Lender, for the benefit of Lender, which awards Lender is hereby authorized to negotiate, collect and receive from the condemnation authorities. Lender is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Lender immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings of which it has knowledge affecting all or any part of the Mortgaged Property (including severance of, consequential damage to or change in grade of streets), and shall immediately deliver to Lender copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute and deliver to Lender, free and clear of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning all awards and other compensation heretofore, now and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. Any such award shall be applied toward the Indebtedness or applied toward restoring the Mortgaged Property in accordance with the provisions of and in the same manner as is provided for insurance proceeds in Section 4.05 of this Mortgage. Notwithstanding the foregoing, any expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred by Lender in intervening in such action or compromising and settling such action or claim, or collecting such proceeds, shall be reimbursed to Lender first out of the proceeds.

4.07 Maintenance of Property. No portion of the Mortgaged Property shall be altered, removed or demolished, severed, sold or mortgaged, without the prior written consent of Lender. In the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered by this Mortgage or by any separate security agreement executed in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in value, quality and condition to those replaced, free from any other security interest therein, encumbrances thereon or reservation of title thereto. Mortgagor shall promptly repair, restore or rebuild any building or other improvement or any part thereof now or hereafter situated on the Mortgaged Property that may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for such purpose. Any such building or other improvement or any part thereof shall be repaired, restored or rebuilt so as to be of at least equal value and of substantially the same character as prior to such damage or destruction.

Mortgagor further agrees not to permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, to keep and maintain the Mortgaged Property and every part thereof in good repair and condition, to effect such repairs as Lender may reasonably require, and, from time to time, to make all necessary and proper replacements thereof and additions thereto so that the Mortgaged Property and such buildings, other improvements, fixtures, chattels and articles of personal property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

4.08 Compliance with Laws. Mortgagor shall: (a) comply with, and shall cause each tenant to comply with, all statutes, ordinances, regulations, rules, orders, decrees and other requirements relating to the Mortgaged Property, or any part thereof, by any federal, state or local authority, including, without

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limitation, the Americans with Disabilities Act of 1990, and (b) observe and comply with, and shall cause each tenant to observe and comply with, all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Mortgaged Property or that have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Property or any part thereof. Mortgagor shall not initiate or acquiesce in any changes to or termination of any of the foregoing or of zoning design actions affecting the use of the Mortgaged Property or any part thereof without the prior written consent of Lender.

4.09 Liens and Transfers. Without Lender's prior written consent, Mortgagor shall not, directly or indirectly, create, suffer or permit to be created or filed or to remain against the Mortgaged Property, or any part thereof, hereafter any mortgage lien or other lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to the Mortgaged Property, whether superior or inferior to the lien of this Mortgage; *provided, however*, that Mortgagor may, within ten (10) days after the filing thereof, contest in good faith by appropriate legal or administrative proceedings any lien claim arising from any work performed, material furnished or obligation incurred by Mortgagor upon furnishing Lender a bond issued by a company approved by Lender in its sole and absolute discretion covering the lien claim, or an endorsement to Lender's title insurance policy insuring Lender's interest in the Mortgaged Property insuring over said lien claim, each in form and substance satisfactory to Lender in its sole and absolute discretion, or such other security and indemnification satisfactory to Lender, in its sole and absolute discretion, for the final payment and discharge thereof. In the event Mortgagor hereafter creates, suffers or permits any superior or inferior lien to be attached to the Mortgaged Property or any part thereof without such consent or without furnishing security as aforesaid, Lender shall have the unqualified right, at its option, to accelerate the maturity of the Notes, causing the entire principal balance thereof and all interest accrued thereon and all other indebtedness to be immediately due and payable.

4.10 Subrogation to Prior Lienholder's Rights. If the proceeds of the Loan secured hereby or any part thereof, or any amount paid out or advanced by Lender is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Lender shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

4.11 Lender's Dealings with Transferee. In the event of the sale or transfer, by operation of law, voluntarily or otherwise, of all or any part of the Mortgaged Property, Lender shall be authorized and empowered to deal with the vendee or transferee with regard to the Mortgaged Property, the Indebtedness and any of the terms or conditions hereof as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from its covenants hereunder, specifically including those contained in Section 4.09 hereof, and without waiving Lender's right of acceleration pursuant to Section 4.09 hereof.

4.12 Inspection of Property. Mortgagor shall permit Lender and its representatives and agents to inspect the Mortgaged Property from time to time upon reasonable prior telephonic notice during normal business hours and as frequently as Lender considers reasonable, provided however, if Lender determines that an emergency exists in connection with the Mortgaged Property, no telephonic notice shall be necessary.

4.13 Other Amounts Secured; Maximum Indebtedness. Mortgagor acknowledges and agrees that this Mortgage secures the entire principal amount of the Notes and interest accrued thereon, regardless of whether any or all of the Loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part and are future advances made at

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a later date, as well as any amounts owed to Lender pursuant to Section 4.02 and Section 4.04 hereof, any and all litigation and other expenses pursuant to Section 5.05 and Section 5.06 hereof and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Lender in connection with the Loan, all in accordance with the loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total Indebtedness exceed Nineteen Million Three Hundred Forty-Three Thousand Seven Hundred Twenty Dollars (\$19,343,720.00). It is agreed that any future advances made by Lender for the benefit of Mortgagor from time to time under this Mortgage, the other Loan Documents and whether or not such advances are obligatory or are made at the option of Lender, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the Indebtedness over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

4.14 Declaration of Subordination. At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Mortgaged Property upon the execution by Lender and recording thereof, at any time hereafter, in the appropriate official records of the county wherein the Mortgaged Property are situated, of a unilateral declaration to that effect.

4.15 Releases. Lender, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the liens of Lender all or any part of the Mortgaged Property, or release from liability any person or entity obligated to repay any Indebtedness, without in any way affecting the liability of any party pursuant to the Loan Agreement, the Notes, this Mortgage, any of the other Loan Documents or any of the Affiliate Loan Documents, including, without limitation, any guaranty given as additional security for the Indebtedness, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the Indebtedness, but shall extend the lien hereof as against the title of all parties having any interest, subject to the indebtedness, in the Mortgaged Property.

4.16 Mortgagor's Representations. Mortgagor hereby represents, warrants and covenants to Lender that it is a limited liability company which is lawfully seized of the Mortgaged Property hereby mortgaged, granted and conveyed and has the right to mortgage, grant and convey the Mortgaged Property, that the Mortgaged Property is unencumbered except by the Permitted Title Exceptions, if any, and that Mortgagor will represent, warrant and defend generally the title to the Mortgaged Property, or any portion thereof, against any and all claims and demands, subject only to the Permitted Title Exceptions, if any.

4.17 Assignment of Rents. (a) As further security for the repayment of the Note and any amounts due pursuant to this Mortgage, Mortgagor does hereby sell, assign and transfer to Lender for the benefit of Lender all rents, leases, issues, deposits and profits now due and which may hereinafter become due under or by reason of any lease or any letting of, or any agreement for the use, sale, or occupancy of the Mortgaged Property or any portion thereof (whether written or verbal), which may have been heretofore or may hereafter be made or agreed to or which may be made or agreed to by Lender under the

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powers herein granted, including without limitation sale contracts, leases, escrow and other agreements, it being Mortgagor's intention hereby to establish an absolute transfer and assignment of all such leases, contracts, escrows and agreements pertaining thereto (such leases, contracts, escrows and agreements being collectively referred to hereinbelow as "**agreements**" and any such individual lease, contract, escrow or other agreement being referred to hereinbelow as an "**agreement**"), and all the avails thereof, to Lender.

Mortgagor does hereby irrevocably appoint Lender as its true and lawful attorney in its name and stead (with or without taking possession of the Mortgaged Property) to rent, lease, let or sell all or any portion of the Mortgaged Property to any party or parties at such price and upon such term as Lender in its sole and absolute discretion may determine, to exercise any and all rights including rights of first refusal and options of Mortgagor to purchase and otherwise acquire title to all or any part of the Mortgaged Property, and to collect all of such rents, issues, deposits, profits and avails now due or that may hereafter become due under any and all of such agreements or other tenancies now or hereafter existing on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Mortgaged Property pursuant to the provisions set forth hereinbelow.

This assignment confers upon Lender a power coupled with an interest and it cannot be revoked by Mortgagor.

(b) Mortgagor represents and agrees that without the prior written consent of Lender, no rent for right of future possession will be paid by any person in possession of any portion of the Mortgaged Property in excess of one (1) installment thereof paid in advance and that no payment of rents to become due for any portion of the Mortgaged Property has been or will be waived, conceded, released, reduced, discounted or otherwise discharged or compromised by Mortgagor. Mortgagor waives any right of set-off against any person in possession of any portion of the Mortgaged Property. Mortgagor agrees that it will not further assign any of such rents, issues, profits, deposits or avails.

(c) Mortgagor further agrees to assign and transfer to Lender for the benefit of Lender all future leases and agreements pertaining to all or any portion of the Mortgaged Property and to execute and deliver to Lender, immediately upon demand of Lender, all such further assurances and assignments pertaining to the Mortgaged Property as Lender may from time to time require.

(d) Mortgagor shall, at its own cost: (i) at all times perform and observe all of the covenants, conditions and agreements of the lessor under the terms of any or all leases or similar agreements affecting all or any part of the Mortgaged Property; (ii) at all times enforce and secure the performance and observance of all of the material covenants, conditions and agreements of the Tenants under the terms of any or all of said leases or other agreements; (iii) appear in and defend any action or other proceeding arising out of or in any manner connected with said leases and other agreements, and to pay any and all costs of Lender incurred by reason of or in connection with said proceedings, including, without limitation, reasonable attorneys' fees, expenses and court costs; and (iv) promptly furnish Lender with copies of any notices of default either sent or received by Mortgagor under the terms of or pursuant to any of said leases or other agreements.

(e) Although it is the intention of Mortgagor and Lender that the assignment, including, without limitation, the power of attorney appointment, contained in this Section 4.17 is a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Lender shall not exercise any of the rights and powers conferred upon it herein unless and until an Event of Default hereunder has occurred, or a condition which with the passage of time or giving of notice or both, would constitute an Event of Default hereunder.

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(f) Lender, in the exercise of the rights and powers conferred upon it herein, shall have full power to use and apply the rents, issues, deposits, profits and avails of the Mortgaged Property to the payment of or on account of the following, in such order as Lender may, in its sole and absolute discretion determine:

(i) operating expenses of the Mortgaged Property (including, without limitation, all costs of management, sale and leasing thereof, which shall include reasonable compensation to Lender and its agents, if management be delegated thereto, reasonable attorneys' fees, expenses and court costs, and lease or sale commissions and other compensation and expenses of seeking and procuring tenants or purchasers and entering into leases or sales), establishing any claims for damages, and premiums on insurance authorized hereinabove;

(ii) taxes, special assessments, water and sewer charges on the Mortgaged Property now due or that may hereafter become due;

(iii) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Mortgaged Property (including, without limitation, the cost from time to time of installing or replacing personal property therein, and of placing the Mortgaged Property in such condition as will, in the sole judgment of Lender, make them readily rentable or salable);

(iv) any Indebtedness or any deficiency that may result from any foreclosure sale pursuant thereto; and

(v) any remaining funds to Mortgagor or its successors or assigns, as their interests and rights may appear.

(g) Mortgagor does further specifically authorize and instruct each and every present and future lessee or purchaser of all or any portion of the Mortgaged Property to pay all unpaid rentals or deposits agreed upon in any lease or agreement pertaining to the Mortgaged Property to Lender upon receipt of demand from Lender to pay the same without any further notice or authorization by Mortgagor, and Mortgagor hereby waives any rights or claims it may have against any lessee by reason of such payments to Lender.

(h) Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease or agreement pertaining to the Mortgaged Property, and Mortgagor shall and does hereby agree to indemnify and hold Lender harmless from and against any and all liability, loss and damage that Lender may or might incur under any such lease or agreement or under or by reason of the assignment thereof, as well as any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part to perform or discharge any of the terms, covenants or conditions contained in such leases or agreements. Should Lender incur any such liability, loss or damage under any such lease or agreement, or under or by reason of the assignment thereof, or in the defense of any claims or demands relating thereto, Mortgagor shall reimburse Lender for the amount thereof (including, without limitation, reasonable attorneys' fees, expenses and court costs) immediately upon demand.

(i) Nothing herein contained shall be construed as making or constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by Lender pursuant to the provisions set forth herein. In the exercise of the powers herein granted to

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Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Mortgagor.

(j) Mortgagor may not enter into new leases or amend, modify, terminate or cancel any existing lease or waive any rights thereunder, or accept a voluntary surrender of any lease, without the prior written consent of Lender.

(k) Without limitation of the provisions of this Mortgage or of the absolute nature of the assignment of the rents, leases, issues, deposits and profits as set forth hereinabove, Mortgagor and Lender agree that (i) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (ii) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as rents, leases, issues, deposits and profits, and (iii) such security interest shall extend to all rents, leases, issues, deposits and profits acquired by the estate after the commencement of any case in bankruptcy. Without limitation of the provisions of this Mortgage or of the absolute nature of the assignment of the rents, leases, issues, deposits and profits hereunder, to the extent Mortgagor (or Mortgagor's bankruptcy estate) shall be deemed to hold any interest in any such rents, leases, issues, deposits and profits after the commencement of a voluntary or involuntary bankruptcy case, Mortgagor hereby acknowledges and agrees that all such rents, leases, issues, deposits and profits are and shall be deemed to be "cash collateral" under Section 363 of the Bankruptcy Code. Mortgagor may not use the cash collateral without the consent of Lender and/or an order of any bankruptcy court pursuant to 11 U.S.C. 363(c)(2), and Mortgagor hereby waives any right it may have to assert that such rents, leases, issues, deposits and profits do not constitute cash collateral. No consent by Lender to the use of cash collateral by Mortgagor shall be deemed to constitute Lender's approval, as the case may be, of the purpose for which such cash collateral was expended.

4.18 Security Agreement. (a) This Mortgage shall be deemed a "Security Agreement" as defined in the Uniform Commercial Code of the State of Illinois (the "Code"), and creates a security interest in favor of Lender for the benefit of Lender in all property including, without limitation, (i) all sums at any time on deposit for the benefit of Mortgagor or held by Lender (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Mortgaged Property or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the Code) which property is hereinafter referred to as "Personal Property", and all replacements of, substitutions for, additions to and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to Lender for the benefit of Lender, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Lender for the benefit of Lender, all to secure payment of the Indebtedness.

(b) All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this Section 4.18 shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(i) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Lender and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

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(ii) The Collateral is to be used by Mortgagor solely for business purposes.

(iii) The Collateral will be kept at the Mortgaged Property and will not be removed therefrom without the consent of Lender (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Mortgaged Property but will not be affixed to any other real estate.

(iv) The only persons having any interest in the Mortgaged Property are Mortgagor, Lender and holders of interests, if any, expressly permitted hereby.

(v) No financing statement (other than Financing Statements showing Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender and will do all such acts as Lender may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Lender and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Lender to be desirable. Mortgagor hereby irrevocably authorizes Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (A) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (B) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Lender promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Lender in any jurisdiction prior to the date of this Mortgage.

(c) Mortgagor and Lender agree that the filing of such a Financing Statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing the intention of the parties hereto that everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (A) the rights in or the proceeds of any fire or hazard insurance policy, or (B) any award in eminent domain proceedings for a taking or for loss of value, or (C) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Mortgaged Property whether pursuant to lease or otherwise, shall never be

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construed as in any way altering any of the rights of Lender under this Mortgage or impugning the priority of Lender's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of Lender in the event any court or judge shall at any time hold with respect to (A), (B) and (C) that notice of Lender's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal Government and any subdivisions or entity of the Federal Government, must be filed in the Code records.

(d) Upon an Event of Default, Lender shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (*provided* that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Lender shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Lender may render the Collateral unusable without removal and may dispose of the Collateral on the Mortgaged Property. Lender may require Mortgagor to assemble the Collateral and make it available to Lender for its possession at a place to be designated by Lender which is reasonably convenient to both parties. Lender will give Mortgagor at least ten (10) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Lender may buy at any public sale, or Lender may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Mortgaged Property. If Lender so elect, the Mortgaged Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Lender, shall be applied against the Indebtedness in such order or manner as Lender shall select. Lender will account to Mortgagor for any surplus realized on such disposition.

(e) Mortgagor shall execute, acknowledge and deliver to Lender, within ten (10) days after request by Lender, any and all security agreements, financing statements and any other similar security instruments reasonably required by Lender, in form and of content reasonably satisfactory to Lender, covering all property of any kind whatsoever owned by Mortgagor that, in the reasonable opinion of Lender, is essential to the operation of the Mortgaged Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the state in which the Mortgaged Property are located. Mortgagor shall further execute, acknowledge and deliver any financing statement, affidavit, continuation statement, certificate or other document as Lender may request in order to perfect, preserve, maintain, continue and extend such security instruments. Mortgagor further agrees to pay to Lender all fees, costs and expenses (including, without limitation, all reasonable attorneys' fees and expenses and court costs) incurred by Lender in connection with the preparation, execution, recording, filing and refile of any such document.

(f) The terms and provisions contained in this Section 4.18, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

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4.19 Fixture Financing Statement. From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or are to become fixtures related to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Lender (Secured Party) are set forth below. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or the counties where the Mortgaged Property is located. For this purpose, the following information is set forth:

- (a) Name and Address of Debtor:

OS Lemont Development Company, LLC
2617 Beacon Hill Drive
Auburn Hills, Michigan 48326

- (b) Name and Address of Secured Party:

RBS Citizens, N.A. d/b/a Charter One, successor by merger to
Charter One Bank, N.A.
71 South Wacker Drive, Suite 2900
Chicago, Illinois 60606

- (c) This document covers goods which are or are to become fixtures.
(d) Debtor is the record owner of the Premises.
(e) Debtor's chief executive office is located in the State of Illinois.
(f) Debtor's exact legal name is as set forth in the first paragraph of this Mortgage.
(g) Debtor agrees that:

(i) Where Collateral is in possession of a third party, Mortgagor will join with Lender in notifying the third party of Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender;

(ii) Mortgagor will cooperate with Lender in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) Until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its company name without Lender's prior written consent.

4.20 Interest Laws. It being the intention of Lender and Mortgagor to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Loan Agreement, the Notes, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Notes. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Loan Agreement, the Notes, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this Section 4.20 shall govern and control; (b) neither Mortgagor nor any other party obligated under the terms of the Loan Agreement, the Note or any

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of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Lender may have received hereunder shall, at the option of Lender, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the Interest Rate (as that term is defined in the Loan Agreement) shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Loan Agreement, the Note, this Mortgage and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in the Interest Rate; and (e) neither Mortgagor nor any other party obligated under the terms of the Loan Agreement, the Notes or any of the other Loan Documents shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.

V DEFAULTS AND REMEDIES

5.01 Events Constituting Defaults. Each of the following events shall constitute a default (an "Event of Default") under this Mortgage:

(a) The occurrence of a Default or an Event of Default under the terms of the Loan Agreement, the Note, or any other Loan Document; or

(b) Default shall be made in the due observance or performance of any of the other covenants, agreements or conditions required to be kept, performed or observed by Mortgagor under this Mortgage, subject to the expiration of any applicable cure period set forth in the Loan Agreement or the other Loan Documents, if any.

5.02 Acceleration of Maturity. Upon the occurrence of any Event of Default, at the election of Lender, the entire principal balance then outstanding under the Loan Agreement and the Note, together with all unpaid interest accrued thereon and all other sums due from Mortgagor thereunder, under this Mortgage, including without limitation the Indebtedness, or any other Loan Document, shall become immediately due and payable with interest thereon at the Default Rate.

5.03 Foreclosure of Mortgage. Upon the occurrence of any Event of Default, or at any time thereafter, Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Premises are located and to exercise any other remedies of Lender provided herein or in the other Loan Documents, or which Lender may have at law or in equity. Any failure by Lender to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

5.04 Lender's Continuing Options. The failure of Lender to declare an Event of Default or exercise any one or more of its options to accelerate the maturity of the Indebtedness and to foreclose the lien hereof following any Event of Default as aforesaid, or to exercise any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments of such Indebtedness, shall neither constitute a waiver of any such Event of Default or of Lender's options hereunder nor establish, extend or affect any grace period for payments due under the Loan Agreement or the Notes, but such options shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Lender, may, at Lender's option, be rescinded by written acknowledgment to that effect by Lender and shall not affect Lender's right to accelerate maturity upon or after any future Event of Default.

5.05 Litigation Expenses. In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Lender under the Loan Agreement, the Notes, this Mortgage, the other Loan Documents, or in any other proceeding whatsoever in connection with the Mortgaged Property in which

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Lender is named as a party, there shall be allowed and included, as additional Indebtedness in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Lender, including, without limitation, reasonable attorneys' fees and expenses and court costs, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies and any similar data and assurances with respect to title to the Mortgaged Property as Lender may deem reasonably necessary, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the Illinois Mortgage Foreclosure Law (as amended from time to time, 735 ILCS 5/15-1101, *et seq.*) (the "IMF Law") to be included in the decree of sale, either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to any such decree the true condition of the title to or value of the Premises or the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon, including, without limitation, the reasonable fees and expenses of, and court costs incurred by, any attorney employed by Lender in any litigation affecting the Loan Agreement, the Note, this Mortgage, any of the other Loan Documents, or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor with interest thereon at the Default Rate.

5.06 Performance by Lender. In the event of any Event of Default, or in the event any action or proceeding is instituted which materially affects, or threatens to materially affect, Lender's interest in the Mortgaged Property, Lender may, but need not, make any payment or perform any act on Mortgagor's behalf in any form and manner deemed expedient by Lender, and Lender may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Mortgaged Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs, and any other monies advanced by Lender to protect the Mortgaged Property and the lien of this Mortgage, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Lender without notice and with interest thereon at the Default Rate from the date an advance is made to and including the date the same is paid. The action or inaction of Lender shall never be construed to be a waiver of any right accruing to Lender by reason of any default by Mortgagor. Lender shall not incur any personal liability because of anything it may do or omit to do hereunder, nor shall any acts of Lender act as a waiver of Lender's right to accelerate the maturity of the Indebtedness or to proceed to foreclose this Mortgage.

5.07 Right of Possession. In any case in which, under the provisions of this Mortgage, Lender has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor shall, forthwith upon demand of Lender, surrender to Lender, and Lender shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agents or attorneys. In accordance with Sections 5-1701 and 5-1702 of the IMF Law, Lender, in its discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Mortgaged Property relating thereto, and may exclude Mortgagor, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Lender and under the powers herein granted:

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(a) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, whether legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits and avails of the Mortgaged Property, including, without limitation, actions for recovery of rent, and actions in forcible detainer, all without notice to Mortgagor;

(b) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Mortgagor to cancel the same;

(c) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage or subordinated to the lien hereof;

(d) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Property, 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 date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Property are subject to the lien hereof and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and

(e) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Mortgaged Property as may seem judicious to Lender, to insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

Without limiting the generality of the foregoing, Lender shall have all right, power, authority and duties as provided in the IMF Law. Nothing herein contained shall be construed as constituting Lender as Lender in possession in the absence of the actual taking of possession of the Mortgaged Property.

5.08 Priority of Payments. Any rents, issues, deposits, profits and avails of the Mortgaged Property received by Lender after taking possession of all or any part of the Mortgaged Property, or pursuant to any assignment thereof to Lender for the benefit of Lender under the provisions of this Mortgage shall be applied in payment of or on account of the following, in such order as Lender or, in case of a receivership, as the court, may in its sole and absolute discretion determine:

(a) operating expenses of the Mortgaged Property (including, without limitation, reasonable compensation to Lender, any receiver of the Mortgaged Property, any agent or agents to whom management of the Mortgaged Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

(b) taxes, special assessments, water and sewer charges now due or that may hereafter become due on the Mortgaged Property, or that may become a lien thereon prior to the lien of this Mortgage;

(c) insurance premiums, any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Mortgaged Property (including, without limitation, the

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cost, from time to time, of installing or replacing any personal property therein, and of placing the Mortgaged Property in such condition as will, in the judgment of Lender or any receiver thereof, make it readily rentable or salable);

- (d) any Indebtedness or any deficiency that may result from any foreclosure sale pursuant hereto;
- (e) the satisfaction of all obligations specifically set forth in the leases; and
- (f) any remaining funds to Mortgagor or its successors or assigns, as their interests and rights may appear.

5.09 Appointment of Receiver. Upon, or at any time prior or after, the filing of any complaint to foreclose the lien of this Mortgage or instituting any other foreclosure of the liens and security interests provided for in this Mortgage or any other legal proceedings under this Mortgage, Lender may, at Lender's sole option, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Mortgaged Property, as a matter of strict right and without notice to Mortgagor, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Lender, but nothing herein is construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed; *provided* that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of all of the rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Mortgage. Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Indebtedness; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the IMF Law, including the power to take possession, control and care of the Mortgaged Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Indebtedness, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further time, when Mortgagor or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing leases and make new leases of the Mortgaged Property or any part thereof, 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 date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

5.10 Foreclosure Sale. In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Lender may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

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5.11 Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 5.05 and Section 5.06 hereof; (b) all other items that, under the terms of this Mortgage, constitute secured Indebtedness additional to that evidenced by the Loan Agreement and the Note, with interest thereon at the Default Rate; (c) all principal and interest, together with any prepayment charge, remaining unpaid under the Loan Agreement and the Note, in the order of priority specified by Lender in its sole and absolute discretion; and (d) the balance, if any, to Mortgagor or its successors or assigns, as their interests and rights may appear.

5.12 Application of Deposits. In the event of any Event of Default, Lender may, at its option, without being required to do so, apply any monies or securities that constitute deposits made to or held by Lender or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Mortgagor's obligations under the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents in such order and manner as Lender may elect in its sole and absolute discretion. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Mortgaged Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Loan Agreement, the Note and any other Indebtedness and shall be held to be applied irrevocably by such depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor.

5.13 Indemnification. Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Lender in the exercise of the rights and powers granted to Lender in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor will indemnify and hold harmless Lender and any and all current, future or former officers, directors, employees, representatives and agents, and each of their respective successors and assigns, from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees, expenses and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Lender at any time by any third party which relate to or arise out of: (a) the ownership, leasing, use, operation or maintenance of the Mortgaged Property or any interest therein or receipt of any rents, issues, proceeds or profits therefrom; (b) any accident, injury to or death of persons, or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgage or any Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; or (g) the offer for sale or sale of all or any portion of the Mortgaged Property. Any amounts owed to Lender by reason of this Section 5.13 shall constitute additional Indebtedness which is secured by this Mortgage and shall become immediately due and payable upon demand therefor, and shall bear interest at the Default Rate from the date such loss or damage is sustained by Lender until paid. The obligations of Mortgagor under this Section 5.13 shall survive any termination or satisfaction of this Mortgage.

5.14 Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant

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to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the Mortgaged Property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of reinstatement and redemption under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor acknowledges that the Premises do not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law.

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6.01 Notices. Any notice required hereunder shall be in writing, and shall be given in accordance with the requirements of, and to the addresses, as set forth in the Loan Agreement.

6.02 Time of Essence. It is specifically agreed that time is of the essence of this Mortgage.

6.03 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Premises.

6.04 Governing Law; Litigation. The place of the location of the Mortgaged Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of the State of Illinois. To the extent that this Mortgage may operate as a security agreement under the Code, Lender shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER, IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 6.04. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED IN THIS MORTGAGE AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.**

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6.05 Rights and Remedies Cumulative. All rights and remedies set forth in this Mortgage are cumulative, and the holder of any Notes and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

6.06 Severability. If any provision of this Mortgage or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

6.07 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein to or of any breach or default by any other interested party referred to herein regarding the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.

6.08 Headings. The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

6.09 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. Whenever the words "including", "include" or "includes" are used in this Mortgage, they should be interpreted in a non-exclusive manner as though the words ", without limitation," immediately followed the same.

6.10 Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor, its successors, assigns, legal representatives and all other persons or entities claiming under or through Mortgagor, and the word "Mortgagor", when used herein shall include all such persons and entities and any others liable for the payment of the Indebtedness or any part thereof, whether or not they have executed the Note or this Mortgage. The word "Lender", when used herein, shall include Lender's successors, assigns and legal representatives, including all other holders, from time to time, of the Note.

6.11 No Joint Venture. Mortgagor and Lender acknowledge and agree that under no circumstances shall Lender be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor, including, without limitation, by virtue of its becoming a Lender in possession or exercising any of its rights pursuant to this Mortgage or pursuant to any of the other Loan Documents, or otherwise.

6.12 Additional Fees.

(a) Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents, including without limitation, Lender's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Loan Agreement, the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Lender), duties, imposts, assessments and charges arising out of or in connection with

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the execution and delivery of the Loan Agreement, the Note and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Lender:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Lender shall be a party by reason of the Loan Documents or in which the Loan Documents or the Mortgaged Property are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder (or), and do work in connection with, Lender's taking possession of and managing the Mortgaged Property, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Mortgaged Property, the assumption of liability for any of the Indebtedness or the transfer of the Mortgaged Property in lieu of foreclosure; or

(vi) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Lender's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

All expenses, charges, costs and fees described in this Section 6.12 shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

6.13 Compliance with the Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the IMF Law, the provision of the IMF Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Law.

(b) Mortgagor and Lender shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(c) If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Lender under the IMF Law in the absence of said provision, Lender shall be vested with the rights granted in the IMF Law to the full extent permitted by law.

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(d) All advances, disbursements and expenditures made or incurred by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage, the other Loan Documents or by the IMF Law (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the IMF Law, including, without limitation, those provisions of the IMF Law herein below referred to:

(i) all advances by Lender in accordance with the terms of this Mortgage or the other Loan Documents to: (A) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the IMF Law;

(ii) payments by Lender of (A) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance (*provided* that nothing in this Section 6.13 shall be construed as authorizing the existence of any senior mortgage or other prior lien or encumbrance); (B) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the IMF Law;

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens (*provided* that nothing in this Section 6.13 shall be construed as authorizing the existence of any senior mortgage or other prior lien);

(iv) attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d) and 15-1510 of the IMF Law; (B) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Mortgage or arising from the interest of Lender hereunder; or (C) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Mortgaged Property;

(v) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the IMF Law;

(vi) expenses deductible from proceeds of sales referred to in Section 15-1512(a) and (b) of the IMF Law; and

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Lender takes possession of the Mortgaged Property imposed by Section 15-1704(c)(1) of the IMF Law; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments deemed by Lender to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; and (D) shared or common expense assessments payable to

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any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property.

All Protective Advances shall be so much additional Indebtedness, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the IMF Law.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the IMF Law, apply to and be included in:

- (1) any determination of the amount of Indebtedness at any time;
- (2) the Indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (3) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Section 5-1603(d)(2) and (e) of the IMF Law;
- (4) determination of amount deductible from sale proceeds pursuant to Section 15-1512 of the IMF Law;
- (5) application of income in the hands of any receiver or Lender in possession; and
- (6) computation of any deficiency judgment pursuant to Sections 15-1508(b)(2), 15-1508(c) and 15-1511 of the IMF Law.

(e) In addition to any provision of this Mortgage authorizing Lender to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the IMF Law, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMF Law.

6.14 Loan Proceeds. Mortgagor represents and warrants (i) that the proceeds of the Loan secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4 (or any substitute, amended or replacement statute), and that the Indebtedness constitutes a business loan which comes within the purview of said 815 ILCS 205/4, and (ii) that the Loan evidenced by the Loan Agreement and the Notes is an exempted transaction under the Truth in Lending Act, 15 U.S.C. §1601 *et seq.*

6.15 Recapture. To the extent Lender receives any payment by or on behalf of Mortgagor, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to Mortgagor or its respective estate, trustee, receiver, custodian or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or

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satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the Indebtedness as of the date such initial payment, reduction or satisfaction occurred.

6.16 No Lien Management Agreements. Any property management agreement for the Mortgaged Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Mortgaged Property shall be subject and subordinate to the lien of this Mortgage and shall provide that Lender may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at Lender's request, shall be recorded with the Recorder of Deeds of the county where the Mortgaged Property is located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Lender, in recordable form whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

6.17 Deed in Trust. If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

6.18 JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF MORTGAGOR, LENDER HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MORTGAGE, OR IN ANY WAY CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE DEALINGS OF MORTGAGOR, LENDER WITH RESPECT TO THIS MORTGAGE, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF MORTGAGOR, LENDER HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT MORTGAGOR, LENDER MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF MORTGAGOR, LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER ON THE THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

6.19 Collateral Protection Act. Unless Mortgagor provides Lender with evidence of the insurance required by this Mortgage or any other Loan Document, Lender may purchase insurance at Mortgagor's expense to protect Lender's interest in the Mortgaged Property or any other collateral for the Indebtedness. This insurance may, but need not, protect Mortgagor's interests. The coverage Lender 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. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required under by this Mortgage or any other Loan Document. If Lender purchases insurance for the Mortgaged Property or any other collateral for the Indebtedness, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Lender 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

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Indebtedness. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 *et seq.*, Mortgagor hereby acknowledges Lender's right pursuant to this Section 6.19 to obtain collateral protection insurance.

6.20 Rights of Tenants. Lender shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any Tenant or Tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Lender. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

6.21 Adjustable Mortgage Loan Provisions. The Note which this Mortgage secures is an adjustable note on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Note.

6.22 No Merger. The parties hereto intend that this Mortgage and the lien hereof shall not merge in fee simple title to the Mortgaged Property, and if Lender acquires any additional or other interest in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

6.23 Forbidden Entity. Mortgagor hereby certifies that it is not a "forbidden entity" as that term is defined in Section 22.6 of the Illinois Deposit of State Moneys Act, 15 ILCS 520/22.6; Public Act 094-0079.

6.24 USA Patriot Notice Act. Lender hereby notifies Mortgagor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 signed into law on October 26, 2001) (the "Patriot Act"), it is required to obtain, verify and record information that identifies Mortgagor, which information includes the name and address of Mortgagor and any other information that will allow Lender to identify Mortgagor in accordance with the Patriot Act.

[SIGNATURE PAGE FOLLOWS]


UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the date and year first above written.

MORTGAGOR:

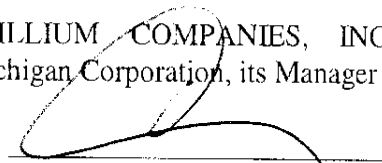
OS LEMONT DEVELOPMENT COMPANY, LLC, an Illinois limited liability company

By: NUSBAUM VENTURES-LEMONT, LLC, a Michigan limited liability company, one of its Managers

By: 
Robert C. Nusbaum, its Manager

By: ACR, LLC, a Michigan limited liability company, one of its Managers

By: TRILLIUM COMPANIES, INC., a Michigan Corporation, its Manager

By: 
Anthony F. Randazzo, its President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ~~ILLINOIS~~ MI)
) SS.
COUNTY OF Franklin)

I, James M. Tenre, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Robert C. Nusbaum, the Manager of NUSBAUM VENTURES-LEMONT, LLC, a Michigan limited liability company, one of the Managers of OS LEMONT DEVELOPMENT COMPANY, LLC, an Illinois limited liability company, who 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26 day of Jan, 2011.

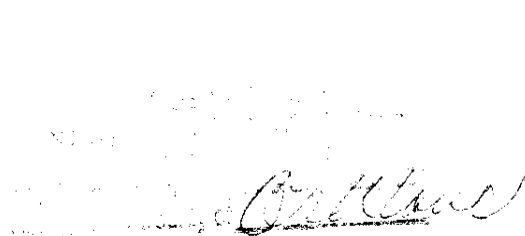

JAMES M. TENRE
Notary Public, State of Illinois
Commission Expires 09/23/2011

James M. Tenre
Notary Public JAMES M. TENRE
My commission expires: Sept 23, 2011

STATE OF ~~ILLINOIS~~ MI)
) SS.
COUNTY OF Champaign)

I, James M. Tenre, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Anthony F. Randazzo, the President of TRILLIUM COMPANIES, INC., a Michigan Corporation, the Manager of ACR, LLC, a Michigan limited liability company, one of the Managers of OS LEMONT DEVELOPMENT COMPANY, LLC, an Illinois limited liability company, who 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21 day of Jan, 2011.



James M. Tenre
Notary Public JAMES M. TENRE
My commission expires: Sept 23, 2011

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

THE WEST 165 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND, CONVEYED TO THE COUNTY OF COOK, A BODY POLITIC, BY DEED DATED OCTOBER 23, 2003 AND RECORDED DECEMBER 13, 2004 AS DOCUMENT NUMBER 0434839063:

THE SOUTH 5.18 METERS (17 FEET) OF THE NORTH 15.24 METERS (50 FEET) OF THE WEST 50.29 METERS (165 FEET) OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN; AND ALSO EXCEPT THE FOLLOWING DESCRIBED LAND CONVEYED TO THE COUNTY OF COOK, A BODY POLITIC, BY DEED DATED MAY 2ND 2011 AND RECORDED MAY 18, 2011 AS DOCUMENT NUMBER 1113818053 IN COOK COUNTY, ILLINOIS:

THE NORTH 50.00 OF THE WEST 165 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND, CONVEYED TO THE COUNTY OF COOK, A BODY POLITIC, BY DEED DATED OCTOBER 23, 2003 AND RECORDED DECEMBER 13, 2004 AS DOCUMENT NUMBER 0434839063:

THE SOUTH 5.18 METERS (17 FEET) OF THE NORTH 15.24 METERS (50 FEET) OF THE WEST 50.29 METERS (165 FEET) OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 2 IN COMMUNITY BANK OF LEMONT SUBDIVISION OF LOT 1 IN THE PLAT OF CONSOLIDATION OF PART OF LOT 3 IN COUNTY CLERK'S DIVISION OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL3:

THE SOUTH 123.72 FEET OF THE WEST 208.70 FEET OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY

PARCEL 4:

PARCEL 1: THE NORTH 1/2 OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

THE SOUTH 100 FEET OF THE WEST 225 FEET OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 1237, 1243 and 1251 State Street
1217 State Street
15454 127th Street
Lemont, Illinois

PIN No.: 22-32-200-034-0000
22-32-200-048-0000
22-32-200-018-0000
22-32-200-008-0000
22-32-200-029-0000