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BOOTBANK A1 2 of 2

Doc#: 1822041041 Fee: \$68.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/08/2018 10:14 AM Pg: 1 of 11

Document prepared by and
after recording return to:

Hamilton Thies & Lorch LLP
200 S. Wacker Drive, Suite 3800
Chicago, Illinois 60606
Attn: Marcia Owens

Property Addresses:
6300 North River Road
Rosemont, Illinois 60018

PIN Number:
12-03-100-031-0000

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of August 2, 2018, by and from **6300 RIVER ROAD (ROSEMONT) OWNER, LLC**, a Delaware limited liability company, with an address at c/o Farpoint Development, 120 North Racine Street, Suite 200, Chicago, Illinois 60607 ("Assignor"), to and for the benefit of **GSI FINANCE COMPANY LLC**, an Illinois limited liability company, its successors and assigns, with an address at 1301 Schiferl Road, Bartlett, Illinois 60103 ("Lender").

RECITALS:

A. Assignor is the owner of certain real property located in Cook County, Illinois, which is more particularly described in Exhibit A attached hereto.

B. Assignor and Lender entered into that certain loan arrangement (the "Loan") pursuant to that certain Construction Loan and Security Agreement dated as of even date herewith (as amended, modified and restated from time to time, the "Loan Agreement"), by and between Assignor and Lender, which Loan is evidenced by that certain Promissory Note dated as of even date herewith (as amended, modified and restated from time to time, the "Note"), made by Assignor in favor of Lender, pursuant to which Lender is making a loan to Assignor in the aggregate maximum principal amount of Eight Million Two Hundred Ninety Three Thousand Nine Hundred Sixteen and 04/100 Dollars (\$8,293,916.04).

C. The Loan is secured, among other items, by (i) a certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of even date herewith (as amended, modified and restated from time to time, the "Mortgage"), executed and delivered by Assignor for the benefit of Lender, encumbering certain interests in real and personal property as more particularly described on Exhibit A attached hereto (the "Property"); (ii) a certain Guaranty of Payment and Completion dated as of even date herewith (as amended, modified, and restated from time to time, the "Guaranty"), executed by SCOTT L. GOODMAN, an individual ("Guarantor"), for the benefit of Lender; (iii) a certain Environmental Indemnity

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Agreement dated as of even date herewith (as amended, modified and restated from time to time, the "Environmental Agreement"), executed by Assignor and Guarantor in favor of the Lender; and (iv) certain other documents securing repayment of the Note (together with the Mortgage, the Environmental Agreement, this Assignment, the Loan Agreement, the Guaranty, the Note, and all other documents evidencing or securing the Loan, the "Loan Documents"). All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Agreement and the Loan Documents are hereby made a part of this Assignment to the same extent and with the same force and effect as if they were fully set forth herein and Assignor covenants and agrees to keep and perform them, or cause them to be kept and performed, strictly in accordance with their terms.

D. The obligations of Assignor under the Loan Agreement, the Note, the Mortgage, this Assignment, and the other Loan Documents are collectively referred to herein as the "Obligations".

E. Assignor is required, as a condition to the making of the Loan, to transfer and assign to the Lender all of Assignor's right, title and interest in, to and under the Leases and Rents (as defined below).

AGREEMENT:

NOW, THEREFORE, as an inducement to the Lender to make the Loan to Assignor and to extend such additional credit as the Lender may from time to time agree to extend under the Loan Documents, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Assignor hereby represents, warrants, covenants and agrees as follows:

1. **Definitions**. As used herein, the following terms shall have the following meanings:

"Event of Default" means an Event of Default, as defined in the Loan Agreement.

"Leases" means all leases, subleases, rental contracts, occupancy agreements, licenses and other arrangements (in each case whether existing now or in the future) pursuant to which any person or entity occupies or has the right to occupy or use any portion of the Property, and includes (a) any supplement, modification, amendment, renewal or extension of any Lease and (b) any security or guaranty for any Lease.

"Lessees" means the lessees under the Leases or any subtenants or occupants of the Property.

"Rents" means all rents, issues, income, revenues, royalties, profits and other amounts now or in the future payable under any of the Leases, including those past due and unpaid.

Capitalized terms used in this Assignment and not otherwise defined are used as defined in the Loan Agreement.

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2. **Assignment.** As security for the payment and performance of the Obligations, Assignor hereby absolutely and unconditionally transfers, conveys, sets over and assigns to Lender, all present and future right, title and interest of Assignor in, to and under the Leases and the Rents, together with all advance payments, security deposits and other amounts paid or payable to or deposited with Assignor under any of the Leases and all other rights and interests of Assignor under or in respect of any of the Leases. This Assignment is intended to be and is an absolute present assignment from Assignor to Lender, it being intended hereby to establish a complete and present transfer of all Leases and Rents with the right, but without the obligation, to collect all Rents.

3. **License.** Except as hereinafter set forth, Assignor shall have a license to collect the Rents accruing under the Leases as they become due ("License"), but not in advance, and to enforce the Leases. The License shall automatically be revoked, at Lender's option, upon the occurrence of an Event of Default. Assignor covenants and agrees that in exercising its License it shall hold all Rents in trust and shall apply the same first to the payment of the reasonable expenses of owning, maintaining, repairing, operating and renting the Property, and then to payment of the Obligations.

4. **Representations and Warranties.** Assignor hereby represents and warrants to the Lender that: (a) Assignor is the absolute owner of the entire lessor's interest in each of the Leases, with absolute right and title to assign the Leases and the Rents; (b) the Leases are valid, enforceable and in full force and effect and have not been modified, amended or terminated; (c) there are no outstanding assignments or pledges of the Leases or of the Rents and no other party has any right, title or interest in the Leases or the Rents; (d) there are no existing defaults under the provisions of the Leases on the part of the lessor and to Assignor's knowledge, there are no existing defaults under the provisions of the Leases on the part of Lessees thereunder; (e) to Assignor's knowledge, no Lessee has any defense, set-off or counterclaim against Assignor; (f) no Lessee has any purchase option or first refusal right to purchase or any right or option for additional space with respect to the Property; (g) Assignor has not accepted prepayments of installments of rent or any other charges under any Lease for a period of more than one (1) month in advance except for security or similar deposits; and (h) all work required to be performed by Assignor, as landlord, as of the date hereof under any Lease has been completed in accordance with the provisions of the Lease.

5. **Covenants of Assignor.**

5.1 **New Leases and Lease Terminations and Modifications.** Except as expressly permitted in the Loan Agreement, Assignor shall not: (a) enter into, cancel, surrender or terminate (except as a result of a material default by Lessees thereunder and failure of such Lessee to cure the default within the applicable time periods set forth in the Lease) any Lease; (b) amend or modify any Lease; (c) make any subsequent assignment or pledge of a Lease; (d) consent to the subordination of the interest of any Lessee in any Lease; (e) consent to any assignment by any Lessee or any subletting, without the prior written consent of Lender; or (f) enter into any renewal or extension of any Lease other than upon exercise of an express option therefor contained in such Lease. Any attempt to do any of the foregoing without the prior written consent of Lender (if such consent is required) shall be null and void.

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5.2 Performance under Leases. Assignor shall observe and perform all of the material covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof. With respect to any Lease, except as expressly permitted in the Loan Agreement or with Lender's prior written consent, Assignor shall not: (a) release the liability of any Lessee or any guaranty thereof; (b) consent to any Lessee's withholding of rent or making monetary advances and off-setting the same against future rentals; (c) consent to any Lessee's claim of a total or partial eviction; (d) consent to a termination or cancellation, except as specifically provided above; or (e) enter into any oral leases with respect to all or any portion of the Property.

5.3 Collection of Rents. Assignor shall not collect any of the Rents, issues, income or profits assigned hereunder more than one (1) month in advance of the time when the same shall become due, except for security or similar deposits;

5.4 Further Assignment. Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all Rents, except as specifically permitted by the Loan Documents;

5.5 Lease Guaranty. Except as expressly permitted in the Loan Agreement or with Lender's prior written consent, Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law;

5.6 Waive Rental Payments. Assignor shall not waive or excuse the obligation to pay rent under any Lease;

5.7 Defending Actions. Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any Lessee or guarantor thereunder, and shall pay all costs and expenses of Lender, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Lender may appear;

5.8 Enforcement. Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by Lessees and guarantors thereunder;

5.9 Notice. Assignor shall immediately notify Lender of any material breach by a Lessee or guarantor under any Lease;

5.10 Subordination. Assignor shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent; and

5.11 Bankruptcy of Lessee. If any Lessee is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that if any such Lease is so terminated or rejected, no

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settlement for damages shall be made without the prior written consent of Lender, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Lender. Assignor hereby assigns any such payment to Lender and further covenants and agrees that upon the request of Lender, it will duly endorse to the order of Lender any such check.

6. **Cancellation of Lease.** In the event that any Lease permits cancellation thereof on payment of consideration and the privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Lender, and if an Event of Default has occurred, shall be applied, at the election of Lender, to the Obligations in whatever order Lender shall choose in its discretion or shall be held in trust by Lender, as further security, without interest, for the payment of the Obligations. Prior to such Event of Default, Assignor may use and apply such termination payments to expenses of the Property.

7. **Lender's Rights Upon Lessee Bankruptcy.** Upon the occurrence of an Event of Default, and if a Lessee under a Lease files or has filed against it any petition in bankruptcy or for reorganization, or undertakes or is subject to similar action, Lender shall have, and is hereby assigned by Assignor, all of the rights which would otherwise inure to the benefit of Assignor in such proceedings, including, without limitation, the right to seek "adequate protection" of its interests, to compel rejection of any Lease, and to seek such claims and awards as may be sought or granted in connection with the rejection of such Lease. Unless otherwise consented to by Lender in writing, Lender's exercise of any of the rights provided herein shall preclude Assignor from the pursuit and benefit thereof without any further action or proceeding of any nature. Lender, however, shall not be obligated to make timely filings of claims in any bankruptcy, reorganization or similar action, or to otherwise pursue creditor's rights therein.

8. **Default of Assignor.**

8.1 **Remedies.** Upon the occurrence of an Event of Default, Assignor's License to collect Rents shall immediately cease and terminate. Lender shall thereupon be authorized at its option to enter and take possession of all or part of the Property, in person or by agent, employee or court appointed receiver, and to perform all acts necessary for the operation and maintenance of the Property in the same manner and to the same extent that Assignor might reasonably so act. In furtherance thereof, Lender shall be authorized, but under no obligation, to collect the Rents arising from the Leases, and to enforce performance of any other terms of the Leases including, but not limited to, Assignor's rights to fix or modify rents, sue for possession of the leased premises, relet all or part of the leased premises, and collect all Rents under such new Leases. Assignor shall also pay to Lender, promptly upon any Event of Default: (a) all rent prepayments and security or other deposits paid to Assignor pursuant to any Lease assigned hereunder; and (b) all charges for services or facilities or for escalations which have theretofore been paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default. Lender will, after payment of all proper costs, charges and any damages, apply the net amount of such Rents to the Obligations. Lender shall have sole discretion as to the manner in which such Rents are to be applied, the reasonableness of the costs to which they are applied, and the items that will be credited thereby.

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8.2 Notice to Lessee. Assignor hereby irrevocably authorizes each Lessee, upon demand and notice from Lender of the occurrence of an Event of Default, to pay all Rents under the Leases to Lender. Assignor agrees that each Lessee shall have the right to rely upon any notice from Lender directing such Lessee to pay all Rents to Lender, without any obligation to inquire as to the actual existence of an Event of Default, notwithstanding any notice from or claim of Assignor to the contrary. Assignor shall have no claim against any Lessee for any Rents paid by Lessee to Lender.

8.3 Assignment of Defaulting Assignor's Interest in Lease. Lender shall have the right to assign Assignor's right, title and interest in and to the Leases to any person acquiring title to the Property through foreclosure or otherwise. Such Lender shall not be liable to account to Assignor for the Rents thereafter accruing.

8.4 No Waiver. Lender's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Lender's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies the Lender has under the Loan Agreement, the Note, the Mortgage and any of the other Loan Documents. Lender's rights and remedies hereunder may be exercised as often as the Lender deems expedient.

8.5 Costs and Expenses. The cost and expenses (including any receiver's fees and fees) incurred by Lender pursuant to the powers contained in this Assignment shall be immediately reimbursed by Assignor to Lender, on demand, shall be secured hereby and, if not paid by Assignor, shall bear interest from the date due at the Default Rate (as defined in the Note). Lender shall not be liable to account to Assignor for any action taken pursuant hereto, other than to account for any Rents actually received by Lender.

9. Indemnification of Lender. Assignor hereby agrees to indemnify, defend, protect and hold Lender harmless from and against any and all liability, loss, cost, expense or damage (including reasonable attorneys' fees) that Lender may or might incur under the Leases or by reason of this Assignment. Such indemnification shall also cover any and all claims and demands that may be asserted against Lender under the Leases or this Assignment. Nothing in this section shall be construed to bind Lender to the performance of any Lease provisions, or to otherwise impose any liability upon Lender, including, without limitation, any liability under covenants of quiet enjoyment in the Leases in the event that any Lessee shall have been joined as party defendant in any action to foreclose the Mortgage and shall have been barred thereby of all right, title, interest, and equity of redemption in the Property. This Assignment imposes no liability upon Lender for the operation and maintenance of the Property or for carrying out the terms of any Lease before Lender has entered and taken possession of the Property. Any loss or liability incurred by Lender by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Lender's request, be immediately reimbursed by Assignor. Such reimbursement shall include interest at the Default Rate provided in the Note, costs, expenses and reasonable attorney fees. Lender upon entry and taking of possession, collect the Rents and apply them to reimbursement for any such loss or liability. The provisions of this Section 9 shall survive repayment of the Obligations and any termination or satisfaction of this Assignment.

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10. **Additions to, Changes in and Replacement of Obligations.** Lender may take security in addition to the security already given to the Lender for the payment of the Obligations or release such other security, and may release any party primarily or secondarily liable on the Obligations, may grant or make extensions, renewals, modifications or indulgences with respect to the Obligations or the Mortgage and replacements thereof, which replacements of the Obligations or the Mortgage may be on the same terms as, or on terms different from, the present terms of the Obligations or the Mortgage, and may apply any other security held by it to the satisfaction of the Obligations, without prejudice to any of its rights hereunder.

11. **Power of Attorney.** In furtherance of the purposes of this Assignment, Assignor hereby appoints Lender, as Assignor's attorney-in-fact, with full authority in the place of Assignor, at the option of Lender at any time after the occurrence of an Event of Default, and in the name of Assignor or Lender, to (a) collect, demand and receive the Rents and other amounts payable under any Lease, (b) bring suit and take other action to enforce the Leases, (c) enforce, supplement, modify, amend, renew, extend, terminate and otherwise administer the Leases and deal with Lessees in relation to the Leases, (d) give notices, receipts, releases and satisfactions with respect to the Leases and the Rents and other amounts payable under any Lease, and (e) take such other action as Lender may reasonably deem necessary or advisable in connection with the exercise of any right or remedy or any other action taken by Lender under this Assignment.

12. **No Mortgagee in Possession; No Other Liability.** The acceptance by Lender of this Assignment, with all of the rights, power, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Property by Lender, be deemed or construed to: (a) constitute Lender as a mortgagee in possession or place any responsibility upon Lender for the care, control, management or repair of the Property, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by any Lessee, occupant or other party, or for any dangerous or defective condition of the Property, nor thereafter at any time or in any event obligate Lender to appear in or defend any action or proceeding relating to the Leases or to the Property; (b) require Lender to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases; or (c) require Lender to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by Lessees and not assigned and delivered to Lender. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person in or about the Property.

13. **Termination of Assignment.** Lender shall terminate and release this Assignment as to all or a portion of the Property to the same extent as the Mortgage is released in whole or in part when repaid in full.

14. **Miscellaneous.**

14.1 **Severability.** If any term of this Assignment or the application hereof to any person or set of circumstances, shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such provision or part thereof to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent consistent with applicable law.

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14.2 Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties only and are not part of this Assignment.

14.3 Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall be construed together and shall constitute one instrument. It shall not be necessary in making proof of this Assignment to produce or account for more than one such counterpart.

14.4 Notices. All notices or other written communications hereunder shall be given in the manner set forth in the Loan Agreement.

14.5 Modification. No amendment, modification or cancellation of this Assignment or any part hereof shall be enforceable without Lender's prior written consent.

14.6 Successors and Assigns; Gender; Joint and Several Liability. The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all subsequent owners of the Property, and all subsequent holders of the Note and the Mortgage, subject in all events to the provisions of the Mortgage regarding transfers of the Property by Assignor. In this Assignment, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. If there is more than one (1) party constituting Assignor, all obligations of each Assignor hereunder shall be joint and several.

14.7 Expenses. Assignor shall pay on demand all costs and expenses incurred by Lender in connection with the review of Leases, including reasonable fees and expenses of Lender's outside counsel.

15. Governing Law and Consent to Jurisdiction.

15.1 Substantial Relationship. The parties agree that the State of Illinois has a substantial relationship to the parties and to the underlying transactions embodied by the Loan Documents.

15.2 Place of Delivery. Assignor agrees to furnish to Lender at Lender's office in Chicago, Illinois all further instruments, certifications and documents to be furnished hereunder, if any.

15.3 Governing Law. This Assignment and the obligations of Assignor hereunder that affect the Property shall be governed by and interpreted and determined in accordance with the laws of the State of Illinois.

16. WAIVER OF JURY TRIAL. ASSIGNOR BY ITS ACCEPTANCE HEREOF, HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG ASSIGNOR AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO

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THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN ASSIGNOR AND LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

[Signature page follows]

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EXHIBIT A

Legal Description of the Property

LOT 1 IN THE FINAL PLAT OF SUBDIVISION OF 6300 NORTH RIVER ROAD, BEING A RESUBDIVISION OF PART OF LOTS 3 AND 6 IN GERHARD HUEHL ESTATE DIVISION IN SECTION 3, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT RECORDED OCTOBER 30, 2017 AS DOCUMENT 1730329079.

Common Address:

6300 RIVER ROAD, ROSEMONT, ILLINOIS 60018

PIN:

12-03-100-031-0000

Property of Cook County Clerk's Office