

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):  
March 28, 2018

**American Superconductor Corporation**

(Exact name of registrant as specified in its charter)

Delaware

000-19672

04-2959321

(State or other jurisdiction  
of incorporation)

(Commission  
File Number)

(IRS Employer  
Identification No.)

114 East Main Street  
Ayer, Massachusetts

01432

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code **(978) 842-3000**

Not Applicable  
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## **Item 2.01 Completion of Acquisition or Disposition of Assets.**

On February 5, 2018, American Superconductor Corporation (the “Company”) reported in a Current Report on Form 8-K that its wholly-owned subsidiary, ASC Devens, LLC (the “Seller”), entered into a Purchase and Sale Agreement (the “PSA”) with 64 Jackson, LLC (the “Purchaser”) and Stewart Title Guaranty Company (“Escrow Agent”), to effectuate the sale of certain real property located at 64 Jackson Road, Devens, Massachusetts, as described in the PSA, including the building that has served as the Company’s headquarters (collectively, the “Property”), in exchange for total consideration of \$23.0 million, composed of (i) cash consideration of \$17.0 million, and (ii) a \$6.0 million subordinated secured commercial promissory note payable to the Seller (the “Seller Note”) at an interest rate equal to the short-term applicable federal rate then in effect at closing (the “Transaction”). Subsequently, the Seller, the Purchaser and Jackson 64 MGI, LLC (“Assignee”) entered into an Assignment of Purchase and Sale Agreement (the “Assignment Agreement”), pursuant to which the Purchaser assigned all of its rights and interests in the PSA to the Assignee and the Assignee agreed to assume all of the Purchaser’s obligations and liabilities under the PSA. Under the terms of the Assignment Agreement, the Purchaser and the Assignee agreed, among other things, to be co-obligors under the PSA and to have joint and several liability for the performance of all obligations of Purchaser set forth thereunder.

The Transaction closed on March 28, 2018, at which time the Assignee delivered (i) cash consideration, net of certain agreed upon closing costs, of \$16.9 million, and (ii) the Seller Note at an interest rate of 1.96%. The Seller Note is secured by a subordinated second mortgage on the Property (the “Subordinated Mortgage”) and a subordinated second assignment of leases and rents (the “Subordinated Assignment”), whereby the Assignee has assigned to the Seller all of the Assignee’s right, title and interest in all leases, subleases, tenancies or other arrangements pertaining to the Property and all rent, income, fees and other amounts due the Assignee under all of the leases.

The Seller also has entered into an Intercreditor, Subordination and Standstill Agreement dated March 28, 2018 (the “Intercreditor Agreement”) with the Assignee’s first mortgagee, East Boston Savings Bank, pursuant to which the Seller has agreed, among other things, to subordinate the Seller Note, the Subordinated Mortgage and the Subordinated Assignment to the rights of the Assignee’s first mortgagee.

The foregoing description of the PSA is subject to and qualified in its entirety by reference to the full text of the agreement, which was filed as Exhibit 10.1 to the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on February 5, 2018.

The foregoing descriptions of the Seller Note, the Assignment Agreement, the Subordinated Mortgage, the Subordinated Assignment and the Intercreditor Agreement are subject to and qualified in its entirety by reference to the full text of the agreements, which are filed as Exhibits 10.1, 10.2, 10.3, 10.4 and 10.5, respectively, to this Current Report on Form 8-K and incorporated into this Item 2.01 by reference.

## **Item 9.01 Financial Statements and Exhibits.**

### ***(d) Exhibits***

<b>Exhibit Number</b>	<b>Description</b>
10.1	<a href="#"><u>Subordinated Secured Commercial Promissory Note of Jackson 64 MGI, LLC in favor of ASC Devens LLC dated March 28, 2018.</u></a>
10.2	<a href="#"><u>Assignment of Purchase and Sale Agreement, dated as of March 26, 2018, by and among ASC Devens, LLC, 64 Jackson, LLC and Jackson 64 MGI, LLC.</u></a>
10.3	<a href="#"><u>Subordinated Second Mortgage of Jackson 64 MGI, LLC in favor of ASC Devens LLC effective March 28, 2018.</u></a>
10.4	<a href="#"><u>Subordinated Second Assignment of Leases and Rents by Jackson 64 MGI, LLC to ASC Devens LLC dated March 28, 2018.</u></a>
10.5	<a href="#"><u>Intercreditor, Subordination and Standstill Agreement by and among East Boston Savings Bank, ASC Devens LLC and Jackson 64 MGI, LLC dated March 28, 2018.</u></a>

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

AMERICAN SUPERCONDUCTOR CORPORATION

Date: April 3, 2018

By: /s/ John W. Kosiba, Jr.

John W. Kosiba, Jr.

*Senior Vice President and Chief Financial Officer*

**This Note is subject to an Intercreditor, Subordination and Standstill Agreement of even date herewith between Lender and the East Boston Savings Bank. Any assignment, transfer or conveyance of this Note shall be subject to the aforesaid Intercreditor, Subordination and Standstill Agreement referenced above.**

SUBORDINATED SECURED COMMERCIAL PROMISSORY NOTE

\$6,000,000

March 28, 2018

FOR VALUE RECEIVED, Jackson 64 MGI, LLC, a Delaware limited liability company with a usual place of business at 133 Pearl Street, Boston, Massachusetts 02110 (the "Borrower") promise(s) to pay to the order of ASC Devens, LLC, a Delaware limited liability company (its successors, assigns and any future holder or holders this Note collective, the "Lender"), at Lender's office located at 114 East Main Street, Ayer, Massachusetts 01432, or at such other place as Lender may designate in writing, the principal sum of Six Million and 00/100 Dollars (\$6,000,000), plus interest from the date hereof, all as hereinafter set forth.

This Subordinated Secured Commercial Promissory Note ("Note") is issued pursuant to that certain Purchase and Sale Agreement between the Borrower and the Lender dated as of February 1, 2018, as it may be amended, modified and/or restated from time to time by mutual written agreement of Lender and Borrower (the "Agreement"), all of the terms and conditions of which are incorporated herein by reference. Capitalized terms used herein and not defined herein have the meanings ascribed to them in the Agreement.

This Note is subject to an Intercreditor, Subordination and Standstill Agreement of even date herewith between Lender and the East Boston Savings Bank. Any assignment, transfer or conveyance of this Note shall be subject to said Intercreditor, Subordination and Standstill Agreement.

INTEREST

Interest from the date hereof upon the unpaid principal balance from time to time outstanding shall accrue at a fixed rate of one and ninety-six hundredths percent (1.96%) per annum. Interest shall be calculated on the basis of actual days elapsed and a 360-day year.

REPAYMENT

Principal and interest due Lender hereunder shall be repaid as follows:

- A. Three Million and 00/100 Dollars (\$3,000,000) of principal, together with all accrued interest shall be due and payable on March 31, 2019.
- B. Three Million and 00/100 Dollars (\$3,000,000), plus all accrued interest thereon shall be due and payable on March 31, 2020.

C. Notwithstanding the foregoing, in the event that the Mortgaged Premises (defined below) is sold (a "Sale"), the entire unpaid principal shall be repaid, in full, together with all accrued interest thereon in connection with such Sale. The payment in full of all amounts due under this Note as the result of a Sale shall be paid at, and shall be a condition to, the closing of, a Sale.

Any payments received by Lender with respect to this Note prior to demand, acceleration or maturity shall be applied first to any costs, expenses or charges due Lender from Borrower, second to any unpaid accrued interest hereunder, and third to the unpaid principal hereunder. Any payments received after demand, acceleration or maturity shall be applied in such a manner as Lender shall determine.

If any payment received by Lender with respect to this Note shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under federal or state law, or otherwise due any party other than Lender, then the obligation for which the payment was made shall not be discharged by the payment and shall survive as an obligation due hereunder, notwithstanding Lender's return to Borrower or any other party of the original of this Note or other instrument evidencing the obligation for which payment was made.

Subject to the terms of the Intercreditor, Subordination and Standstill Agreement referenced above, Borrower may prepay this Note from time to time in whole or part without penalty. All prepayments (with prepayment defined herein as any payment of principal in advance of its due date) shall be applied first to any costs, expenses or charges due Lender from Borrower, second to any accrued interest that is due and payable as of the date of the prepayment, and third against the principal payments due hereunder in the inverse order of their maturity. Any partial prepayments shall not affect Borrower's obligation to make any of the payments required hereunder until all indebtedness evidenced by this Note is fully paid.

Pursuant to that second subordinated Mortgage of even date between the Lender and Borrower (the "Mortgage"), the following described property from Borrower, in addition to all other collateral now or hereafter provided by Borrower, or by any guarantor or endorser hereof, to Lender, shall secure this Note and all other present and future obligations of Borrower to Lender: second mortgage on property located at 64 Jackson Road, Devens, Massachusetts (the "Mortgaged Premises").

This Note shall be in default, and all unpaid principal, interest, and other amounts due hereunder, shall, at Lender's option, be immediately due and payable, without prior notice, protest, or demand, upon the occurrence of any one or more of the following events of default (the "Events of Default"): (a) the failure of Borrower to pay when due any amount due hereunder; (b) an Event of Default (as defined in the Mortgage) under the Mortgage, or (c) the granting of any trust mortgage upon any assets of Borrower, the occurrence of any assignment for the benefit of Borrower's creditors, or the appointment of a custodian, trustee, or receiver with respect to any assets of Borrower, or the filing of any petition by or against Borrower under the Bankruptcy Reform Act of 1978 (as amended), or any other federal or state law by which Borrower is or may be relieved from

its debts, except that with respect to an involuntary filing against the Borrower, the Borrower shall have forty five days from the date of filing to dismiss the involuntary filing prior to it constituting an Event of Default, or (d) a monetary breach or monetary default by the Borrower of any terms, covenants, or conditions of any loan, guaranty, financial instrument or other agreement involving indebtedness, secured to the Borrower's first mortgage lender after the passage of any applicable notice and/or cure periods. An Event of Default will be deemed to be continuing unless waived in writing by Lender or the Event of Default has been cured as provided herein or in the Mortgage and Security Agreement.

If the entire amount of any required principal and/or interest payment is not paid in full on the date the same is due, the Borrower shall pay to the Lender a late fee equal to five percent (5.00%) of the required payment.

Upon the occurrence of an Event of Default which remains uncured beyond any applicable notice and/or cure period, the unpaid principal hereunder shall, at the option of the Lender, bear interest at a per annum interest rate equal to nine percent (9.00%) per annum until such Event of Default is cured or waived in writing by Lender.

Borrower, and each endorser and guarantor hereof, severally agree to hereby waive presentment, demand, notice and protest and also waives any delay on the part of the holder hereof. Each also assents to (i) any extension, or other indulgence (including, without limitation, any release substitution or addition of collateral or of any direct or indirect obligor) permitted by Lender with respect to this Note and/or any collateral given to secure this Note, (ii) any extension or other indulgence, as described above, with respect to any other obligation or any collateral given to secure such other obligation of Borrower or any endorser or guarantor to Lender, or (iii) to the modification or amendment, at any time and from time to time, of this Note, the Mortgage and Security Agreement, or any other instrument securing this Note or any of the loan documents evidencing the Obligations at the request of any person liable thereon. A discharge or release of any party directly or indirectly liable hereon shall not discharge or otherwise affect the liability of any other party directly or indirectly liable hereon.

No indulgence, delay, or omission by Lender in exercising or enforcing any of its rights or remedies hereunder shall operate as a waiver thereof on that occasion nor on any other occasion. No waiver of any default hereunder shall operate as a waiver of any other default hereunder, nor as a continuing waiver. No waiver of a default or of any other right or remedy hereunder, nor any modification of any provision of this Note, shall be enforceable unless it is in writing signed by the party against whom the waiver or modification is to be enforced. All of Lender's rights and remedies hereunder and under any other related loan documents shall be cumulative and may be exercised singularly or concurrently, at Lender's sole and exclusive discretion.

It is not intended under this Note to charge interest at a rate exceeding the maximum rate of interest permitted to be charged under applicable law, but if interest exceeding said maximum rate should be paid hereunder, the excess shall, at Lender's option, be (a) deemed a voluntary prepayment of principal not subject to the prepayment premium (if any) set forth herein or (b) refunded to Borrower.

Borrower, and each endorser and guarantor hereof, jointly and severally agree to pay on demand all costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred by Lender in connection with the protection and/or enforcement of any of Lender's rights or remedies against Borrower or any such endorser or guarantor (whether or not any suit has been instituted by or against Lender).

This Note shall be binding upon Borrower and each endorser and guarantor hereof and upon their respective heirs, successors, and representatives, and shall inure to the benefit of Lender and its successors, endorsees and assigns.

The liabilities of the Borrower (and each co-maker, if any), and any endorser or guarantor hereof, are joint and several. Each reference in this Note to the Borrower, any endorser and any guarantor, is to such maker, co-maker (if any), endorser and guarantor, individually, as well as collectively. No party obligated on account of this Note may seek contribution from any other party also obligated unless and until all obligations to Lender of the party to whom contribution is sought have been satisfied in full. Each reference to Lender herein is to the named payee hereto or any subsequent holder hereof, and their respective successors, endorsees and assigns.

Borrower represents to Lender that the proceeds of this Note will not be used for personal, family or household purposes and that this loan is strictly a commercial transaction.

**BORROWER, AND EACH ENDORSER AND GUARANTOR HEREOF, HEREBY EXPRESSLY WAIVE ALL RIGHTS TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE RELATING, DIRECTLY OR INDIRECTLY, TO THIS NOTE AND/OR OTHER LOAN DOCUMENTS (IF ANY) EXECUTED IN CONNECTION HERewith AND ALSO SUBMIT TO THE JURISDICTION OF THE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS (AND THE FEDERAL COURTS SITUATED THEREIN) WITH RESPECT TO ALL CLAIMS CONCERNING THIS NOTE AND/OR ANY COLLATERAL SECURING THEIR RESPECTIVE LIABILITIES TO LENDER.**

This Note shall be governed by the laws of the Commonwealth of Massachusetts, without regard to its principles of conflicts of laws, and shall take effect as a sealed instrument.

**[SIGNATURE FOLLOWS ON NEXT PAGE]**



Signed under seal as of the day and year first above written.

JACKSON 64 MGI, LLC, a Delaware limited liability company

By: 64 Jackson, LLC, a Massachusetts limited liability company, Its Manager

By: /s/ Steven E. Goodman

Name: Steven E. Goodman

Title: Manager

**ASSIGNMENT OF PURCHASE AND SALE AGREEMENT**

THIS ASSIGNMENT OF PURCHASE AND SALE AGREEMENT (“**Assignment**”), is made as of this 26<sup>th</sup> day of March, 2018, by and between **ASC DEVENS LLC**, a Delaware limited liability company (“**Seller**”), **64 JACKSON, LLC**, a Massachusetts limited liability company (“**Purchaser**”), and **JACKSON 64 MGI, LLC**, a Delaware limited liability company (“**Assignee**”) (Seller, Purchaser and Assignee are sometimes referred herein, collectively, as the “**Parties**”). All initially capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement (as such term is defined below).

**RECITALS**

WHEREAS, Seller and Purchaser have entered into that certain Purchase and Sale Agreement (“**Purchase Agreement**”), dated as of February 1, 2018, for the sale of the Property (as defined in the Purchase Agreement); and

WHEREAS, the Parties desire to enter into this Assignment to, among other things, assign the Purchaser’s rights and interests in the Purchase Agreement to Assignee and to evidence Assignee’s assumption of Purchaser’s obligations and liabilities under the Purchase Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Assignment of Purchase Agreement. Purchaser hereby assigns and transfers to Assignee all of Purchaser’s right, title, claim and interest in and to the Purchase Agreement, the Property, and the Deposit deposited into escrow with the Escrow Agent or to Seller by Purchaser in connection with the Purchase Agreement.

2. Assumption. Assignee hereby acknowledges and agrees to all of the terms of the Purchase Agreement and accepts the foregoing assignment and assumes and agrees to perform all obligations of Purchaser under the Purchase Agreement, in accordance with the terms thereof.

3. No Release. The assignment and assumption set forth in Paragraphs 1 and 2 hereof shall not release Purchaser from the obligation of Purchaser or Assignee to perform in accordance with the terms of the Purchase Agreement. Purchaser acknowledges that, notwithstanding such assignment and assumption, Purchaser shall remain primarily obligated under the Purchase Agreement and Purchaser and Assignee shall be co-obligors under the Purchase Agreement with joint and several liability for the performance of all obligations of Purchaser set forth thereunder, including, without limitation, the indemnification obligations of Purchaser set forth in the Purchase Agreement.

4. Representations and Warranties of Assignee. Assignee hereby represents and warrants to Seller that each and every representation and warranty made by Purchaser in the Purchase Agreement is true and correct with respect to Assignee as of the date of the Purchase Agreement, the date of this Assignment and the Closing Date (as defined in the Purchase Agreement) and such representations and warranties apply fully to this Assignment and shall survive the Closing (as defined in the Purchase Agreement). Assignee has the full right and authority and has obtained any

and all consents required therefor to enter into this Assignment, and to consummate or cause to be consummated the sale contemplated herein. The persons signing this Assignment on behalf of Assignee are authorized to do so. This Assignment has been authorized and properly executed and constitutes the valid and binding obligations of Assignee, enforceable against Assignee in accordance with its terms.

5. Amendment to Purchase Agreement. The Purchase Agreement is hereby amended in the following manner:

- a. The term "**Purchaser**" as used in the Purchase Agreement is amended to mean Purchaser and/or Assignee; and
- b. All exhibits to the Purchase Agreement, as so amended, shall be signed and delivered by Seller and Assignee in accordance with the terms of the Purchase Agreement.

6. Ratification of Agreements. Except as expressly amended and modified under this Assignment, the Parties hereby ratify and affirm the terms and provisions of the Purchase Agreement in their entirety.

7. Counterparts. This Assignment may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument. A signed facsimile or electronic copy of this Assignment or a signed portable document format (.pdf) copy of this Assignment shall be binding upon the parties to this Assignment as fully and to the same extent as an original signed copy.

8. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

*[signature page follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Assignment of Purchase and Sale Agreement to be duly executed as of the date and year first above written.

**PURCHASER:**

64 JACKSON, LLC

By: /s/ Steve Goodman

Name: Steve Goodman

Title: Manager

**ASSIGNEE:**

JACKSON 64 MGI, LLC

By: /s/ Steve Goodman

Name: Steve Goodman

Title: Manager

**SELLER:**

ASC DEVENS LLC

By: /s/ John Kosiba

Name: John Kosiba

Title: Authorized Person

*This space reserved for Recorder's use only*

Property Address: 64 Jackson Road, Devens, Massachusetts

**This Subordinated Second Mortgage is subject to an Intercreditor, Subordination and Standstill Agreement of even date herewith between Mortgagee and the East Boston Savings Bank. Any assignment, transfer or conveyance of this Subordinated Second Mortgage shall be subject to the aforesaid Intercreditor, Subordination and Standstill Agreement referenced above.**

#### **SUBORDINATED SECOND MORTGAGE**

**JACKSON 64 MGI, LLC**, a Delaware limited liability company having an address of 133 Pearl Street, Boston, Massachusetts 02110 ("**Mortgagor**"), for consideration paid, grants the Premises to **ASC DEVENS, LLC**, a Delaware limited liability company having an address of 114 East Main Street, Ayer, Massachusetts 01432 ("**Mortgagee**"), with **MORTGAGE COVENANTS**,

to secure the payment, performance and observance of all the Obligations. The term “**Obligations**” means all of the debts, liabilities, agreements and other obligations of Mortgagor and every other party to the Loan Documents due Mortgagee, whether direct or indirect, absolute or contingent, joint or several, due or to become due, now existing or arising in the future. The term “**Loan Documents**” includes this Second Mortgage (“**Mortgage**”), that certain Subordinated Secured Commercial Promissory Note of Mortgagor payable to Mortgagee in the original principal amount of \$6,000,000 of even date herewith, that certain Subordinated Assignment of Leases and Rents granted by Mortgagor to Mortgagee of even date herewith, and all other documents delivered to Mortgagee in connection with this Mortgage by Mortgagor or by others and all amendments, restatements, modifications, extensions and renewals thereof.

This Mortgage is subject to an Intercreditor, Subordination and Standstill Agreement of even date herewith between Mortgagee and the East Boston Savings Bank. Any assignment, transfer or conveyance of this Mortgage shall be subject to said Intercreditor, Subordination and Standstill Agreement.

The term “**Premises**” includes the following, all of which are subject to this Mortgage:

(i) The land in Devens, Worcester County, Massachusetts on Jackson Road, more particularly described in *Exhibit A* attached;

(ii) All buildings, structures and improvements now or at any time in the future on the land;

(iii) All Fixtures, which term means (1) all goods, equipment, fixtures, building materials and tangible personal property (except (a) consumable goods, (b) equipment of Mortgagor which is not affixed to the real estate and (c) personal property owned by tenants of the Premises which the tenants are entitled to remove by law or agreement) now or in the future located on, attached to or incorporated in the construction of and used in connection with the operation of the Premises including, but not limited to, all sidetracks, boilers, tanks, pumps, furnaces, radiators, alarm systems, cooling towers, compressors, elevators, escalators, cranes and all heating, lighting, power, plumbing, electrical, communications, ventilating, refrigerating, air conditioning, sprinkler, incinerating and building service equipment, and (2) all related accessories, additions and replacements;

(iv) All right, title and interest of Mortgagor in all easements, rights (including mineral, air and water rights), privileges, appurtenances, licenses, permits and governmental approvals, now or in the future pertaining to the Premises; and

(v) All rents, income, profits, royalties or accounts receivables from the Premises.

**Section 1 - General Covenants of Mortgagor.** Until the Obligations are paid, performed and observed in full, in addition to the **STATUTORY CONDITION**, Mortgagor agrees as follows:

1.1 **Insurance.** Subject to the rights of the holder of the Prior Mortgage, to keep all buildings, improvements and Fixtures which are part of the Premises insured against direct risk

of physical loss in an amount not less than 100% of their replacement cost. Mortgagor agrees to keep all buildings and improvements under construction insured under a Builder's Risk, Completed Value, non-reporting form of policy which provides coverage for "completion and/or premises occupancy." All insurance will (i) be written with a standard mortgagee clause by companies of recognized responsibility authorized to write such insurance in Massachusetts and having a Best's financial rating of B or better, (ii) be on forms reasonably satisfactory to Mortgagee, (iii) and subject to the rights of the holder of the Prior Mortgage, be payable in case of loss to Mortgagee, as its interest may appear, and (iv) contain a provision that it may not be cancelled or modified without at least thirty (30) days prior written notice to Mortgagee. Mortgagor agrees to deliver to Mortgagee, when requested, satisfactory evidence of (a) all existing insurance policies, (b) new policies for insurance about to expire at least thirty (30) days before the expiration and (c) payment of all insurance premiums.

1.2 **Taxes.** To pay or cause to be paid, before the last day on which payment may be made without penalty or interest (the "**Payment Date**") all taxes (or payments in lieu of taxes), special or general assessments, water and sewer charges and other municipal charges with respect to the Premises ("**Taxes**") and to furnish evidence of payment to Mortgagee.

1.3 **Mortgages and Encumbrances.** To keep the title to the Premises free of all mortgages and other encumbrances except for (i) the lien for Taxes not yet due, (ii) the first mortgage of the East Boston Savings Bank (the "**Prior Mortgage**"), and (iii) encumbrances assented to by Mortgagee, regardless of whether the mortgage or encumbrance has priority over this Mortgage.

1.4 **Maintenance and Use of Premises.** To maintain the Premises in as good condition as they now are or may be in the future, reasonable wear and tear excepted. Mortgagor agrees not to permit (i) removal, demolition or other waste of the Premises, (ii) lapse or revocation of any license, permit or other governmental authorization issued with respect to the Premises, (iii) material change in the structure or use of the Premises or (iv) violation of a law or ordinance affecting the Premises or its use. At Mortgagee's request, Mortgagor agrees to provide evidence of compliance with the provisions of this or any other covenant in the Loan Documents.

1.5 **Leases.** Subject to the rights of the holder of the Prior Mortgage, to deliver to Mortgagee copies of all leases, licenses, franchises and other agreements under which a person occupies any part of the Premises ("**Leases**"). Subject to the rights of the holder of the Prior Mortgage, Mortgagor assigns the Leases and all rent, income, fees and other amounts due Mortgagor under the Leases ("**Rents**") to Mortgagee as additional security for the Obligations. Mortgagor grants to Mortgagee full power, as irrevocable attorney-in-fact of Mortgagor, to execute and deliver assignments of the Leases and the Rents to itself, to any future holder of this Mortgage or to any person claiming title to the Premises as a result of foreclosure proceedings. When an Event of Default exists, Mortgagee may, without waiving any of its other rights, collect the Rents and enforce all obligations of tenants under the Leases without taking possession of the Premises and without performing any obligations of the landlord under the Leases.

1.6 **Environmental Laws and Compliance.** To comply with and to cause the Premises to comply with all applicable Federal, state and local laws, codes, ordinances, rules, regulations and interpretations now or in the future existing, and all applicable orders of administrative agencies including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act of 1976, the Superfund Amendments and Reauthorization Act of 1986 and Massachusetts General Laws, Chapters 21C and 21E, relating to the environment, health, safety, sanitation, underground storage tanks and the “release or threat of release” of Hazardous Materials (the “**Environmental Laws**”). The term “**Hazardous Materials**” means (i) lead paint, asbestos, radon and (ii) “oil”, “hazardous materials”, “hazardous wastes” and “hazardous substances” as those terms are defined in the Environmental Laws.

1.6.1 **Copies of Notices.** To give to Mortgagee, immediately, copies of all notices, reports, citations and other communications given or received by Mortgagor in connection with any Environmental Laws whether or not relating to the Premises.

1.7 **Indemnification.** To defend, indemnify and hold Mortgagee and its directors, officers, agents and employees harmless against all claims, losses and liabilities, including reasonable attorneys’ fees and costs of litigation, incurred by Mortgagee on account of (i) Mortgagor’s failure to comply with Environmental Laws, or (ii) a release or threat of release of Hazardous Materials on the Premises, subject, however, to Mortgagee’s obligations pursuant to Section 12.6 of that certain Purchase and Sale Agreement by and between Mortgagor and Mortgagee for the Premises, which obligations shall expire on the two year anniversary of the date of this Mortgage.

1.8 **Alienation.** Not to cause or permit, directly or indirectly, whether voluntarily or by operation of law, (i) title to all or part of the Premises to become vested in a person other than Mortgagor, or (ii) all or part of the Premises to become subject to the provisions of Massachusetts General Laws, Chapter 183A relating to condominiums, or (iii) the transfer of a controlling interest in the legal entity that is Mortgagor, excluding estate planning transfers provided that Steven Goodman remains the Manager of the Mortgagor. If any of the changes described above occur, in addition to exercising remedies available to it, Mortgagee may, at its option and without notice to Mortgagor, deal with the successor in interest with reference to this Mortgage and the Obligations in the same manner as with Mortgagor, without reducing or discharging Mortgagor’s liability for the Obligations. When requested, without delay Mortgagor agrees to disclose to Mortgagee the name, address and ownership interest of each legal and beneficial owner of the Premises or Mortgagor.

**Section 2 - Events of Default.** The occurrence of one or more of the following events or conditions is an Event of Default and a breach of the condition of this Mortgage:

(i) The failure to pay an Obligation when due;

(ii) The failure, other than in the payment of money, to perform or observe an Obligation which continues beyond an applicable period of notice or grace;



(iii) A representation or warranty made or furnished to Mortgagee by a party to the Loan Documents or in compliance with the provisions of the Loan Documents proves to have been false or incomplete in any material respect when made;

(iv) Mortgagor or a guarantor of the Obligations (“**Guarantor**”) (a) is or becomes insolvent within the meaning of the Massachusetts Uniform Commercial Code; (b) files a petition in bankruptcy or a petition to take advantage of an insolvency act; (c) makes an assignment for the benefit of its creditors; (d) consents to the appointment of a receiver or custodian of itself or of the whole or a substantial part of its property; (e) is named debtor party in an involuntary bankruptcy proceeding and the proceeding is not dismissed within sixty (60) days; (f) files a petition or answer seeking reorganization or arrangement under a Federal or state law; or (g) dies, dissolves or terminates its existence;

(v) With respect to Mortgagor or a Guarantor, and without the consent of either, a court enters an order (a) appointing a receiver or custodian of either or of the whole or a substantial part the property of either, or (b) approving a petition filed against either seeking reorganization or arrangement under a Federal or state law, and the order is not vacated, set aside or stayed within sixty (60) days after it is entered;

(vi) Under a law for the relief or aid of debtors, a court assumes custody or control of Mortgagor or a Guarantor or of the whole or a substantial part of the property of either, and the custody or control is not terminated or stayed within sixty (60) days after the date it is assumed;

(vii) A court enters final judgment against Mortgagor for the payment of money in excess of \$1,000,000, and, within sixty (60) days after entry of the judgment, Mortgagor does not (a) discharge the judgment or provide for its discharge in accordance with its terms, or (b) procure a stay of execution and within the sixty (60) day period, or such longer period during which execution of the judgment has been stayed, appeal and cause the execution to be stayed during the appeal;

(viii) The monetary default by Mortgagor with respect to any prior indebtedness secured by the Premises; or

(ix) The occurrence of an Event of Default under any one or more of the Loan Documents.

**Section 3 - Rights and Remedies.** Without prejudice to Mortgagee’s rights with respect to Obligations payable on demand, if an Event of Default exists, Mortgagee may, without notice except to the extent notice is required by law, exercise the rights and remedies provided in this Section 3, conferred by law or under the Loan Documents with respect to the Premises, Mortgagor or any other person. Mortgagee’s rights and remedies are cumulative and not exclusive of or alternative to any rights or remedies it would otherwise have. A delay or failure by Mortgagee in exercising or enforcing its rights or remedies does not constitute a waiver.

3.1 **Remedies.** Whenever an Event of Default exists, Mortgagee may:

(i) Declare the Obligations immediately due and payable, without presentment, notice, protest or further demand, all of which are hereby expressly waived;

(ii) Exercise the **STATUTORY POWER OF SALE**;

(iii) Initiate actions or proceedings available to Mortgagee under applicable law to protect its interest in the Premises and the Obligations; or

(iv) Petition for the appointment of a receiver of the Premises, which appointment may be made *ex parte* and without notice except to the extent notice is required by law, without regard to the solvency of Mortgagor or a Guarantor at the time of application for the receiver and without regard to the value of the Premises.

3.2 **Receiver.** Mortgagor consents to the appointment of Mortgagee or other qualified person as receiver, to take possession of and to operate the Premises and to collect the Rents. Notwithstanding the appointment of a receiver or other custodian, Mortgagee is entitled, as pledgee, to the possession and control of all cash, deposits and instruments at the time payable or deliverable under this Mortgage.

3.3 **Specific Performance.** Failure by Mortgagor to perform its agreements contained in the Loan Documents will result in irreparable harm to Mortgagee for which Mortgagee has no adequate remedy at law. Therefore, Mortgagor agrees that its agreements contained in the Loan Documents are specifically enforceable by Mortgagee.

3.4 **Foreclosure Sales.** Mortgagee has the right in case of a sale which it is entitled to make, to sell the Premises at public auction, either as a whole or by parcels and without regard to other collateral now or in the future securing the Obligations. In the case of a sale by parcels, the purchaser of a parcel will take good title, even if a sum may already have been realized from the sale of other parcels sufficient to satisfy all the Obligations. The foreclosure sale may be held at the offices of Mortgagee or on or near the Premises, without notice or demand, except to the extent notice or demand is required by law.

3.5 **Foreclosure Expenses, Surplus.** If (i) foreclosure, bankruptcy or other legal proceedings involve Mortgagee's interest under this Mortgage, whether the proceedings are begun by Mortgagee or others and whether the proceedings are suspended or terminated or the Premises redeemed, or (ii) Mortgagee takes possession of the Premises, Mortgagee will be entitled to collect and Mortgagor agrees to reimburse Mortgagee for all expenses, including reasonable attorneys' fees, incurred by Mortgagee in the foreclosure, bankruptcy or other legal proceeding or in the maintenance, protection and management of the Premises. If surplus proceeds are realized from a foreclosure sale, Mortgagee will not be liable for interest on the proceeds pending distribution, and all costs and reasonable attorneys' fees incurred by it in proceedings to determine the person or persons entitled to the surplus will be paid from the surplus proceeds.

3.6 **Forbearance not a Waiver.** The liability of Mortgagor will not be reduced, the priority of this Mortgage will not be affected, and the rights of Mortgagee with respect to

Mortgagor or the security for the Obligations will not be impaired by any of the following events, regardless of whether Mortgagee receives additional consideration: (i) the sale of all or part of the Premises, (ii) a forbearance by Mortgagee, (iii) an extension of the time for payment or performance of the Obligations, (iv) a release of security for or a guarantor of the Obligations or (v) an indulgence given by Mortgagee to Mortgagor or to any other person having an interest in the Premises or liable for the Obligations. Mortgagor waives notice of any extension, forbearance or indulgence and agrees that no waiver, express or implied, by Mortgagee of a default by a party to the Loan Documents will constitute a waiver of a future default in the same or any other provision of the Loan Documents.

3.7 **Insurance Policies.** If this Mortgage is foreclosed, and subject to the rights of the holder of the Prior Mortgage, Mortgagor grants to Mortgagee full power, as irrevocable attorney-in-fact of Mortgagor, to cancel the insurance required to be maintained by Mortgagee under this Mortgage, retain the return premiums and apply them to the Obligations or to transfer the insurance to a person claiming title to the Premises as a result of foreclosure proceedings.

**Section 4 - Damage to Premises.** Subject to the rights of the holder of the Prior Mortgage, Mortgagor appoints Mortgagee as its irrevocable attorney-in-fact (i) to adjust and to settle claims on account of damage to the Premises resulting from a taking or casualty, (ii) to receive all condemnation and insurance proceeds ("**Proceeds**") arising out of the damage and (iii) to endorse in favor of itself or any other person drafts or checks for Proceeds received by it. Mortgagee agrees to apply all Proceeds first, to expenses including, but not limited to, the reasonable fees and disbursements of attorneys and other professionals incurred by Mortgagee in collecting the Proceeds and, if no Event of Default exists, the balance to the cost of restoring the Premises. Mortgagee may, in its discretion, (a) pay the Proceeds to Mortgagor for application to the cost of the work, or (b) advance the Proceeds from time to time to Mortgagor and/or its contractor for application to the cost of the work as the cost is certified to Mortgagee by an architect or contractor in charge of the restoration who has been approved in writing by Mortgagee; provided, however, that Mortgagee is not obligated to make advances if, as a result, the balance of the Proceeds is or will become less than the amount specified in the architect's or contractor's certificate as the amount required to complete the restoration. Upon receipt by Mortgagee of satisfactory evidence that the restoration has been completed, that the cost of all labor and materials has been paid in full and that there are no liens on the Premises, and if no Event of Default exists, Mortgagee agrees to pay the balance of the Proceeds held by it to Mortgagor. If the Proceeds held by Mortgagee are insufficient to pay the entire cost of restoration, Mortgagor agrees to pay the deficiency on demand.

**Section 5 - Payments by Mortgagee.** Mortgagee is authorized but not obligated (i) to pay all Taxes with accrued interest, penalties and charges, (ii) to pay the premiums for insurance required under the Loan Documents, (iii) to incur and pay reasonable expenses, including attorneys' fees, in protecting its rights under the Loan Documents, and maintaining, protecting or managing the collateral securing the Obligations, (iv) to pay indebtedness secured by a mortgage of real estate or security interest in property or Fixtures included as part of the Premises, (v) to add all amounts paid or incurred for the above purposes to the principal amount of the Obligations, and (vi) to apply to the above purposes or to the repayment of amounts paid by Mortgagee, sums paid under the Loan

Documents as interest or principal. The amounts paid by Mortgagee will bear interest at the highest rate payable under the Loan Documents and will be payable on demand.

**Section 6 - Entry by Mortgagee.** Mortgagee or its agents may enter the Premises at any time, before or after an Event of Default, to inspect the Premises, to appraise the Premises, to determine compliance with the provisions of the Loan Documents and to take any action while on the Premises authorized under this Mortgage or which it considers necessary to preserve the value of the Premises. Entry by Mortgagee for the purposes authorized under this Section will not be considered entry for any other purpose or constitute possession of the Premises. Mortgagor agrees to reimburse Mortgagee on demand for all expenses incurred in connection with an entry made under this Section, including the cost of appraisal, testing, remedial action or other activities by Mortgagee or its agents while on the Premises.

**Section 7 - Notices and Communications.** All notices, demands, requests and other communications provided for or permitted under this Mortgage must be in writing and be delivered by hand or sent by nationally recognized and reputable overnight delivery service, express mail, certified mail or first-class mail, postage prepaid, to the parties, respectively at the following addresses:

(a) If to Mortgagee, at the address stated at the beginning of this Mortgage (or at such other address as Mortgagee designates in writing to Mortgagor), with a copy to the persons Mortgagee designates in writing to Mortgagor, or

(b) if to Mortgagor, at the address stated at the beginning of this Mortgage (or at such other address as Mortgagor designates in writing to Mortgagee) with a copy to the persons Mortgagor designates in writing to Mortgagee.

A communication provided for in this Mortgage will become effective only when the person to whom it is given receives it or is considered to have received it. If it is mailed by express, certified or first-class mail, it will be considered to be received on (i) the second business day after being mailed or (ii) the day of its receipt, whichever is earlier.

**Section 8 - Miscellaneous Provisions.** The following miscellaneous provisions are applicable to this Mortgage:

8.1 **Successors and Assigns.** The term "Mortgagee" includes Mortgagee, its successors and assigns, and any subsequent holder or holders of this Mortgage. The term "Mortgagor" includes Mortgagor and any subsequent owner or owners of the equity of redemption of the Premises assented to by Mortgagee. All of the agreements of Mortgagor are binding upon the successors and assigns of the original Mortgagor and any person claiming under Mortgagor.

8.2 **Amendment.** This Mortgage may not be amended except by written agreement signed by Mortgagor and Mortgagee.

8.3 **Headings.** The headings contained in this Mortgage are for reference purposes only and do not affect the meaning or interpretation of this Mortgage.

8.4 **Governing Law.** This Mortgage will be construed under and governed by the laws of the Commonwealth of Massachusetts.

8.5 **Severability.** If a provision of this Mortgage is held to be invalid or unenforceable, the provision will be enforceable to the extent that a court, after limiting or reducing it, considers it reasonable to enforce the provision. If it is held to be unreasonable to enforce the provision to any extent, the provision will be severed from this Mortgage and the remainder of this Mortgage will continue in effect.

**Section 9 - Consent to Jurisdiction; Waivers. MORTGAGOR IRREVOCABLY AND UNCONDITIONALLY (i) SUBMITS TO PERSONAL JURISDICTION IN THE COMMONWEALTH OF MASSACHUSETTS OVER ANY ACTION OR PROCEEDING ARISING OUT OF THE LOAN DOCUMENTS, AND (ii) WAIVES ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY STATE (a) TO TRIAL BY JURY, (b) TO OBJECT TO JURISDICTION WITHIN THE COMMONWEALTH OF MASSACHUSETTS OR VENUE IN A PARTICULAR FORUM WITHIN THE COMMONWEALTH OF MASSACHUSETTS AND (c) TO CLAIM OR RECOVER ANY DAMAGES OTHER THAN ACTUAL DAMAGES INCLUDING SPECIAL EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES. MORTGAGOR AGREES THAT, IN ADDITION TO METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, SERVICE MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO MORTGAGOR AT THE ADDRESS PROVIDED IN THE RECITALS HERETO, WHICH SERVICE WILL BE COMPLETE FIVE (5) DAYS AFTER BEING MAILED.** This provision may not be construed to prevent Mortgagee from bringing an action or proceeding or exercising its rights in any other jurisdiction. Mortgagor acknowledges that it has been informed by Mortgagee that the provisions of this Section constitute a material inducement upon which Mortgagee has relied, is relying and will rely in entering into this Mortgage and the other Loan Documents, and that it has reviewed the provisions of this Section with its counsel. Either party may file an original counterpart or a copy of this Section with any court as written evidence of the consent of Mortgagor and Mortgagee to the waiver of their rights to trial by jury.

[SIGNATURE PAGE FOLLOWS]

WITNESS the execution hereof under seal this 26<sup>th</sup> day of March, 2018.

JACKSON 64 MGI, LLC, a Delaware limited liability company

By: 64 Jackson, LLC, a Massachusetts limited liability company, Its Manager

By: /s/ Steven E. Goodman

Name: Steven E. Goodman

Title: Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 26<sup>th</sup> day of March, 2018, before me, the undersigned notary public, Steven E. Goodman personally appeared, proved to me through satisfactory evidence of identification, which was Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as the voluntary act of Jackson 64 MGI, LLC.

/s/ Hayley Marsh

Notary Public

Printed Name: Hayley Marsh

My Commission Expires: August 17, 2023

[Seal]

EXHIBIT "A"

A certain parcel of land known as Lot 7, located in the Town of Harvard now known as Devens, County of Worcester and the Commonwealth of Massachusetts. Beginning at a stone bound to be set at the easterly corner of said lot on the southwesterly sideline of Givry Street;

Thence S 52° 47' 59" W, nine hundred twelve and 16/100 (912.16) feet to a stone bound to be set;

Thence N 77° 23' 38" W, eight hundred ninety and 78/100 (890.78) feet to a stone bound to be set;

Thence N 15°53' 53" E, six hundred thirty-three and 13/100 (633.13) feet t a stone bound to be set;

Thence along a curve to the right with a radius of one thousand nine hundred thirty-six and 00/100 (1936.00) feet, a length of one thousand thirty-two and 70/100 (1032.70) feet to a stone bound to be set;

Thence along a curve to the right a radius of twenty-five and 79/100 (25.79) feet, a length of forty-three and 30/100 (43.30) feet to a stone bound to be set;

Thence S 37° 20' 20" E, one thousand four hundred eleven and 03/100 (1411.03) feet to the point of beginning.

Said Lot 7 containing 34.89 +- Acres and shown on a plan entitled "Harvard, Massachusetts Level 1 Subdivision lot 7 Givry Street" prepared by Howe Surveying Associates, Inc. dated July 19, 2000, revised through October 4, 2000 recorded in Plan Book 761, Plan 44.

BEING the same premise conveyed to Mortgagor herein by deed of ASC Devens LLC and recorded in the Worcester County Registry of Deeds immediately prior hereto.

*This space reserved for Recorder's use only*

**This Subordinated Second Assignment of Leases and Rents is subject to an Intercreditor, Subordination and Standstill Agreement of even date herewith between Lender and the East Boston Savings Bank. Any assignment, transfer or conveyance of this Subordinated Second Assignment of Leases and Rents shall be subject to the aforesaid Intercreditor, Subordination and Standstill Agreement referenced above.**

**SUBORDINATED SECOND ASSIGNMENT OF LEASES AND RENTS**

**THIS SUBORDINATED ASSIGNMENT OF LEASES AND RENTS** (this "**Assignment**") is dated as of the 28th day of March, 2018 and is made by **JACKSON 64 MGI, LLC**, a Delaware limited liability company, to **ASC DEVENS, LLC**, a Delaware limited liability company.

**SECTION 1**

**Terms Defined**



**SECTION 1.1 Definitions.** In this Assignment each of the following terms and any pronoun used in its place has the meaning and incorporates the data stated for that term in this Section 1.1, and the singular includes the plural if the context requires:

**Borrower:** JACKSON 64 MGI, LLC, a Delaware limited liability company having an address of 133 Pearl Street, Boston, Massachusetts 02110.

**Lender:** ASC DEVENS LLC, a Delaware limited liability company having an address of 114 East Main Street, Ayer, Massachusetts 01434.

**Mortgage:** The Second Mortgage from Borrower to Lender recorded with this Assignment and describing real estate located at 64 Jackson Road, Devens, Massachusetts.

**Note:** The Secured Subordinated Commercial Promissory Note of Borrower payable to Lender in the original principal amount of \$6,000,000 of even date herewith

**Premises:** The land, together with the buildings, structures and improvements now or in the future erected on the land, more particularly described in Exhibit A attached.

**Prior**

**Mortgage:** The Mortgage and Security Agreement granted to East Boston Savings Bank and recorded with the Worcester District Registry of Deeds in Book 58594, Page 337.

**Obligations:** All of Borrower's debts, agreements and other obligations contained in the Mortgage and this Assignment, including any modification or extension of them, and all other debts, agreements and obligations of Borrower to Lender of every kind, direct or indirect, absolute or contingent, due or to become due, now existing or arising in the future. The term Obligations used in this Assignment incorporates all of the "**Obligations**" as that term is defined in the Mortgage.

**Rents:** All rent, income, fees and other amounts due Borrower under the Leases during the term of this Assignment, including but not limited to reimbursement for operating expenses and real estate taxes.

**Tenant:** Any person, firm, corporation or other entity occupying the Premises under a Lease.

**Leases:** All leases, subleases, tenancies or other arrangements (including licenses and concessions), whether written or unwritten, now existing or in the future

entered into, under which a Tenant occupies all or any part of the Premises for any purpose.

## **SECTION 2**

### **Assignment of Leases and Rents**

**SECTION 2.1 Assignment.** In order to secure the payment and performance of the Obligations and in consideration of One Dollar (\$1.00) and other valuable consideration paid by Lender, the receipt of which Borrower acknowledges, Borrower hereby assigns to Lender all of Borrower's right, title and interest in (a) the Leases, including but not limited to, the benefit of all covenants of the Tenants under the Leases, and (b) the Rents. Except to the extent actually delivered to Lender as evidenced by Lender's receipt, this Assignment does not include any security deposits, prepaid rent or other amounts received by Borrower with respect to any of the Leases before the date of this Assignment. Borrower hereby irrevocably grants to Lender complete authority, in its name or in Borrower's name, to enforce the covenants of the Tenants, to demand, collect, receive and give receipts for the Rents, to enforce payment of the Rents by the Tenants and to exercise all the rights and remedies which Borrower might exercise with respect to covenants of the Tenants and payment of the Rents, but for this Assignment.

**SECTION 2.2 Cooperation of Borrower.** Borrower agrees to cooperate with Lender in carrying out the purposes of this Assignment and to execute, acknowledge and deliver such additional assignments, conveyances and assurances as Lender may reasonably request. When requested by Lender, Borrower agrees at its expense to enforce or to secure the performance of every provision of the Leases to be performed by the Tenants. Borrower agrees not to interfere with the exercise by Lender of any right or authority conferred by this Assignment.

**SECTION 2.3 Conditional Nature of Assignment; Prior Mortgage; Prior Assignment of Leases and Rents.** This Assignment is made on the condition that so long as no default continues beyond any applicable grace period in the payment or performance of any of the Obligations, Borrower may exercise all the rights of the landlord under the Leases, including the right to collect and retain the Rents, and may enforce all covenants of the Tenants. The rights of the Lender set forth in this Assignment are subject to the rights of the holder of the Prior Mortgage as set forth in the Prior Mortgage and of the Prior Assignment of Leases and Rents.

## **SECTION 3**

### **Representations and Warranties**

**SECTION 3.1 Borrower's Representations and Warranties.** Borrower represents and warrants to Lender that:

- (a) Borrower is the sole owner of the entire landlord's interest in the Leases;

- (b) all existing Leases are valid and enforceable, and there exist no written Leases and no amendments or other agreements, written or unwritten, modifying in any way the terms of any Lease which have not been delivered or disclosed to the Lender;
- (c) to the best of Borrower's knowledge, neither the landlord nor any Tenant is in default in any material respect under the provisions of any of the Leases, and no set-off or counterclaim against Borrower exists in favor of any Tenant;
- (d) Borrower has no knowledge of any act or omission on the part of any landlord or Tenant which, with the giving of notice or the passage of time, or both, would constitute material default under the provisions of any of the Leases;
- (e) no Rents for any period after the date of this Assignment have been waived by Borrower or collected by Borrower before the time they are due; and
- (f) no Rents have been assigned or encumbered.

**SECTION 3.2** Intentionally deleted.

## **SECTION 4**

### **Covenants**

**SECTION 4.1 Borrower's Covenants.** Borrower agrees that during the term of this Assignment it will:

- (a) at its expense faithfully perform and observe every material obligation to be performed and observed by the landlord under each of the Leases;
- (b) enforce and not waive the performance and observance of every material obligation to be performed and observed by the Tenants under the Leases;
- (c) not collect Rents for any period more than thirty (30) days before they are due;
- (d) not make any additional assignment of the Leases or the Rents;
- (e) deliver to Lender immediately upon receipt, but under no circumstances more than five (5) days after demand, all schedules, notices, demands or documents given or received by Borrower and in any way referring to the Leases, the Rents; and
- (f) not cause or permit any "oil," "hazardous materials," "hazardous wastes" or "hazardous substances" (collectively "**Hazardous Substances**") as defined under 42 U.S.C. Section 9601, et seq., as amended, 42 U.S.C. Section 6901,

et seq., as amended, Massachusetts General Laws, Chapters 21C and 21E, as amended, and the regulations from time to time adopted under those laws (collectively, "**Environmental Legal Requirements**") to be released on the Premises or into the air from the Premises or into the waste disposal system servicing the Premises, except in compliance with applicable Environmental Legal Requirements; not generate, store or dispose of Hazardous Substances in the Premises or dispose of Hazardous Substances from the Premises to any other location, except in compliance with all applicable Environmental Legal Requirements.

## **SECTION 5**

### **Lender's Remedies; Expenses**

**SECTION 5.1 Lender's Right to Perform.** If Borrower fails to perform or observe any of its obligations under the Leases so as to entitle any Tenant to terminate a Lease or recover damages, Lender may, but with no duty to do so and without releasing Borrower, perform Borrower's obligations under the Leases to the extent Lender considers necessary to protect its security.

**SECTION 5.2 Lender's Remedies.** At any time after a default in the payment or performance of any Obligations, which default extends beyond any applicable grace period, regardless of whether Lender elects to declare the Obligations immediately due and payable, at its option, without notice to Borrower and without waiving the default, Lender may (i) take possession of the Premises and manage, lease and operate the Premises on such terms and for such period of time as it considers to be appropriate, and (ii) with or without taking possession of the Premises, in its own name or in the name of Borrower, sue for and collect the Rents, including any that are past due, and (iii) amend or terminate any of the Leases and enter into new Leases of all or any part of the Premises on terms which Lender considers appropriate, and any amendment, termination or new Lease made by Lender will be binding on Borrower. Lender may, whether or not it takes possession of the Premises and without any obligation to do so, make alterations, renovations, repairs and improvements to the Premises. Lender may exercise its remedies provided in this Section 5.2 without regard to the adequacy of any other security for the Obligations.

**SECTION 5.3 Lender's Expenses.** If, in exercising its rights and pursuing its remedies under this Assignment or with respect to any of the Obligations or Lender's security for the Obligations, Lender incurs any expenses, including attorneys' fees, Borrower agrees to reimburse those expenses on demand. If Borrower fails to reimburse any of Lender's expenses, Lender may reimburse them by application of Rents, as provided in Section 6.1, or Lender may add them to the principal amount of the Obligations. Regardless of any action by Lender, failure of Borrower to reimburse Lender's expenses within ten (10) days after demand, constitutes a material default under this Assignment.

**SECTION 5.4 Remedies Cumulative.** The rights and remedies of Lender under this Assignment are cumulative and are not in place of, but are in addition to, any other rights and

remedies which Lender may have under the Note, the Mortgage or any other agreement made in connection with the Note, the Mortgage or any of the Obligations.

## **SECTION 6**

### **Application of Rents**

**SECTION 6.1 Application of Rents.** After any default in the payment or performance of any Obligations, which default extends beyond any applicable grace period, regardless of whether Lender elects to declare any Obligation immediately due and payable, Lender may apply any Rents then held or in the future received by it under this Assignment to payment of the following in such order of priority and in such amounts as Lender considers appropriate:

- (a) all reasonable expenses of taking possession of, managing, operating and maintaining the Premises, including but not limited to: the salaries and benefits of a managing agent and such other employees as Lender considers necessary; all supplies, utilities and fuel; all taxes, assessments, water rates, sewer rates and any other municipal charges and liens; premiums for all insurance which Lender considers necessary; and the cost of all reasonable alterations, renovations, repairs or improvements;
- (b) the Obligations; and
- (c) all reasonable expenses, including attorney's fees, incurred by Lender in connection with this Assignment, the Note, the Mortgage or any other Obligations.

**SECTION 6.2 Balance of Rents.** If any balance remains after the application of the Rents as provided in Section 6.1, Lender may pay the balance to Borrower. If Lender has any reasonable doubt about Borrower's entitlement, Lender may pay the balance as ordered in a final judgment of a court of competent jurisdiction in any action brought by Lender or any other person claiming an interest in the Rents.

## **SECTION 7**

### **Miscellaneous**

**SECTION 7.1 Liability of Lender.** No act, omission or error of judgment by Lender, other than its gross negligence or willful misconduct, in connection with this Assignment shall impose any liability on Lender or give rise to any offset, counterclaim or defense to the Obligations.

**SECTION 7.2 Indemnification of Lender.** Lender is not required to perform or observe any obligation under the Leases. Borrower hereby agrees to indemnify Lender against all claims, losses and expenses, including reasonable attorney's fees, which may be imposed on or

incurred by Lender by reason of the Leases, by reason of this Assignment, or by reason of any alleged obligation or undertaking to be performed by Lender under the Leases. If Lender incurs any loss or expense under the Leases or by reason of this Assignment or in the defense of any such alleged obligation, Borrower agrees immediately, upon demand, to reimburse Lender.

**SECTION 7.3 Non-waiver.** The failure of Lender to avail itself of any of the provisions of this Assignment, at any time or for any period of time, shall not be construed to be a waiver of any of its rights under this Assignment.

**SECTION 7.4 Notices.** Any notice, request, direction, consent, approval, waiver or other communication required or permitted under this Assignment must be in writing and will become effective only when received unless sent by certified or registered mail, postage prepaid, return receipt requested and addressed to the parties respectively at their addresses recited in Section 1.1, in which case it will be effective three (3) days after being mailed. Either party may change its address by written notice to the other party given at least ten (10) days before the effective date of such change.

THIS ASSIGNMENT is binding upon and will inure to the benefit of Borrower and Lender and their respective successors and assigns.

Executed as a sealed instrument.

JACKSON 64 MGI, LLC, a Delaware limited liability company

By: 64 Jackson, LLC, a Massachusetts limited liability company, Its Manager

By: /s/ Steven E. Goodman

Name: Steven E. Goodman

Title: Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 26<sup>th</sup> day of March, 2018, before me, the undersigned notary public, Steven E. Goodman personally appeared, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed voluntarily for its stated purpose as the voluntary act of Jackson 64 MGI, LLC.

/s/ Hayley Marsh

Notary Public

Printed Name: Hayley Marsh

My Commission Expires: August 17, 2023

[Seal]

EXHIBIT "A"

A certain parcel of land known as Lot 7, located in the Town of Harvard now known as Devens, County of Worcester and the Commonwealth of Massachusetts. Beginning at a stone bound to be set at the easterly corner of said lot on the southwesterly sideline of Givry Street;

Thence S 52° 47' 59" W, nine hundred twelve and 16/100 (912.16) feet to a stone bound to be set;

Thence N 77° 23' 38" W, eight hundred ninety and 78/100 (890.78) feet to a stone bound to be set;

Thence N 15°53' 53" E, six hundred thirty-three and 13/100 (633.13) feet to a stone bound to be set;

Thence along a curve to the right with a radius of one thousand nine hundred thirty-six and 00/100 (1936.00) feet, a length of one thousand thirty-two and 70/100 (1032.70) feet to a stone bound to be set;

Thence along a curve to the right a radius of twenty-five and 79/100 (25.79) feet, a length of forty-three and 30/100 (43.30) feet to a stone bound to be set;

Thence S 37° 20' 20" E, one thousand four hundred eleven and 03/100 (1411.03) feet to the point of beginning.

Said Lot 7 containing 34.89 +- Acres and shown on a plan entitled "Harvard, Massachusetts Level 1 Subdivision lot 7 Givry Street" prepared by Howe Surveying Associates, Inc. dated July 19, 2000, revised through October 4, 2000 recorded in Plan Book 761, Plan 44.

BEING the same premise conveyed to Mortgagor herein by deed of ASC Devens LLC and recorded in the Worcester County Registry of Deeds immediately prior hereto.



**INTERCREDITOR, SUBORDINATION AND STANDSTILL AGREEMENT**

Intercreditor, Subordination and Standstill Agreement made as of the 28th day of March, 2018 by and between **EAST BOSTON SAVINGS BANK** (hereafter “**Senior Lender**”) with a principal place of business at 67 Prospect Street, Peabody, Massachusetts 01960 and **ASC DEVENS LLC**, a Delaware limited liability company (hereafter the “**Junior Lender**”) with a place of business at 114 East Main Street, Ayer, Massachusetts 01432.

**RECITALS**

WHEREAS, Jackson 64 MGI, LLC, a Delaware limited liability company (hereafter the “**Borrower**”) with a principal place of business at 133 Pearl Street, Boston, Massachusetts 02110, has applied to the Senior Lender for a \$17,500,000 commercial real estate mortgage loan to acquire the Devens Property (the “**Senior Loan**”); and

WHEREAS, the Senior Loan is secured by a Mortgage and Security Agreement and an Assignment of Leases, Rents and Profits encumbering the property of the Borrower located at and known as 64 Jackson Road, Devens, Massachusetts (the “**Devens Property**”). Such Mortgage and Security Agreement is referred to herein as the “**Senior Mortgage and Security Agreement**” and such Assignment of Leases, Rents and Profits is referred to herein as the “**Assignments of Leases and Rent**”; and

WHEREAS, the Junior Lender has been granted a second mortgage on the Devens Property by the Borrower to secure the Borrower’s obligations to the Junior Lender set forth in a certain Subordinated Commercial Promissory Note, dated as of the date hereof, in the original principal amount of \$6,000,000.00, as provided for pursuant to a Purchase and Sale Agreement by and between the Borrower and the Junior Lender dated as of February 1, 2018, (the “**Junior Loan**”), secured by a Subordinated Second Mortgage (“**Junior Mortgage**”) and a Subordinated Second Assignment of Leases and Rents (“**Junior Assignment**”) encumbering the Devens Property, and the Borrower has requested that the Junior Loan, Junior Mortgage and Junior Assignment be permitted by the Senior Lender as set forth in this agreement; and

WHEREAS, Senior Lender has agreed to approve the Borrower’s request provided that the Senior Loan secures a continued first priority position with respect to the Devens Property and provided that the Senior Lender has reached agreement with the Junior Lender with respect to the respective rights, entitlements and priorities between the Senior Lender and Junior Lender; and

WHEREAS, the Senior Lender will not approve the Borrower’s request and the terms proposed under the Junior Loan without these provisions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual promises and covenants herein made, the parties hereto agree as follows:

1. Senior Loan Documents - The Borrower has executed, acknowledged and delivered to the Senior Lender, as the case may be, the following loan documents (the “Senior Loan Documents”) as same may be amended from time to time:

- a. Loan Agreement;
- b. Promissory Note;
- c. Mortgage and Security Agreement;
- d. Assignment of Leases, Rents and Profits;
- e. Collateral Assignment of Contracts, Licenses, Permits and Approvals;
- f. Property Carry Reserve Account Agreement;
- g. Hazardous Materials Indemnity Agreement;
- h. Nonrecourse Carve-Out Guaranty of John Matteson (the “**Matteson Guaranty**”);
- i. Nonrecourse Carve-Out Guaranty of Tracy Goodman (the “**Goodman Guaranty**”, and together with the Matteson Guaranty, the “**Guaranties**”);
- j. UCC-1 Financing Statements; and
- k. Other documents, certificates, affidavits, subordination agreements, assignments and/or warranties or representations executed in addition to or in connection with the Senior Loan Documents.

2. Junior Loan Documents – The Borrower has executed and delivered to the Junior Lender the following loan documents (the “**Junior Loan Documents**” and collectively with the Senior Loan Documents, the “**Loan Documents**”) as follows:

- a. Subordinated Commercial Promissory Note;
- b. Subordinated Second Mortgage; and
- c. Subordinated Second Assignment of Leases and Rents.

3. Approval of Junior Loan - Notwithstanding anything to the contrary contained in the Senior Loan Documents and any documents executed in conjunction therewith, the Senior Lender hereby consents to the existence of the Junior Loan.

4. Priority of Liens - Senior Lender and Junior Lender agree that at all times, whether before, after or during the pendency of any bankruptcy, reorganization or other insolvency proceeding involving Borrower, and notwithstanding the priorities which would ordinarily result from the order of the granting of any lien, or the order of filing of any financing statements or mortgages, the priorities of the liens in favor of the Senior Lender and the Junior Lender shall be as follows:

- a. In the event of any distribution of the proceeds of any collateral covered by the Senior Loan Documents or Junior Loan Documents whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding involving the readjustment of the obligations and indebtedness of Borrower (and including without limitation, any recoveries under the Guaranties), or the application of the assets of Borrower (and including without limitation, any recoveries under the Guaranties), to the payment or liquidation

thereof, or as a result of foreclosure of the Devens Property or the dissolution or winding up of Borrower's business or the sale of the Devens Property or all or substantially all of Borrower's assets (and including without limitation, any recoveries under the Guaranties), all distributions of proceeds of said collateral shall be first made to the Senior Lender until the Borrower's obligations to the Senior Lender are paid in full, and thereafter to the Junior Lender. Each party agrees that should it receive any monies in contravention of this Agreement from the sale, liquidation, casualty or other disposition of, or as a result of its Loan Documents, in any collateral at any time during the term of this Agreement, it will (unless otherwise restricted or prohibited by law) hold the same in trust for and promptly pay over the same to the party entitled to receive such monies in accordance with the priorities of liens provided hereunder.

- b. The Junior Loan and the liens, if any, of any Junior Loan Documents shall, upon the execution hereof, be subject to and subordinate to the Senior Loan and liens of the Senior Loan Documents which shall at all times have priority over the Junior Loan and any Junior Loan Documents as to:
  - i. All monies due, and to become due, pursuant to the Senior Loan;
  - ii. All interest, including any default rate interest or late fees, which may become due and owing thereon with respect to the Senior Loan;
  - iii. All costs, reasonable attorney's fees and expenses incurred by the Senior Lender in connection with collection efforts as to the Senior Loan or Senior Loan Documents.
- c. The Junior Lender shall not receive, accept or demand from the Borrower any pre-payments or payments whatsoever with respect to the Junior Loan, nor shall the Junior Lender exercise any remedy for failure of Borrower to make any payment with respect to the Junior Loan, in each case until and after the obligations under the Senior Loan are paid in full. In the event that Junior Lender shall accept or receive any funds or payments in contravention of this subsection, said amounts shall be held in trust for the benefit of the Senior Lender and shall be paid over to the Senior Lender upon written demand therefore. Further, in the event the Junior Lender shall commence to exercise its remedies under the Junior Loan in contravention of this sub-section and the Junior Lender shall thereafter recover or receive any funds on account of the Junior Loan, said funds shall be paid over to the Senior Lender to the extent of its unpaid loan balance, interest or expenses with respect to the Senior Loan. Notwithstanding the aforesaid, so long as there is then no Event of Default under the Senior Loan Documents, the Borrower may pay, and the Junior Lender may receive on or about March 31, 2019 and on or about March 31, 2020, an annual principal payment of \$3,000,000.00 plus interest accrued thereon under the Junior Loan Documents (without limiting the foregoing, it is expressly understood that Borrower may not make any prepayments or accelerated payments under the Junior Loan Documents). Provided further, the Junior Lender shall not receive, accept or

demand principal or interest payments from the Borrower if there is then an Event of Default under the Senior Loan Documents about which Junior Lender has received notice (except for any default or event of default under the Junior Loan Documents for which no notice shall be required) and/or if any said payment creates or results in an Event of Default of any covenant contained in Section 5.12(b) (Minimum Debt Service Coverage), under the Senior Loan Document known as the Loan Agreement. As provided in this subsection 4(c), said payments shall immediately cease and terminate upon delivery by the Senior Lender to the Junior Lender of a Senior Default Notice. Provided, further, the Junior Lender shall not without the express written permission of the Senior Lender, exercised in its sole and exclusive discretion, exercise any remedy against Borrower under any Junior Loan Documents whether or not the Junior Lender has received a Senior Default Notice. Notwithstanding the foregoing, nothing contained herein shall prevent the Junior Lender from (i) accelerating the Junior Loan in accordance with its terms and subject to the provisions of this Agreement, or (ii) filing any proof of claim in respect of the amounts outstanding under the Junior Loan in connection with any bankruptcy or similar proceedings of the Borrower; provided that any amounts received or receivable in connection therewith in respect of the Junior Loan by the Junior Lender shall be subject to the provisions of Sections 4(a) above and this section

The Junior Lender acknowledges that it has received and reviewed with its counsel the Senior Loan Documents and fully understands the terms and obligations of the Borrower thereunder including, without limitation, the rates of interest on the Senior Loan. The Junior Lender acknowledges that a default under the Junior Loan shall be a default under the Senior Loan.

5. Conduct of Liquidation – The Senior Lender may conduct a foreclosure or liquidation of the Devens Property or those assets of the Borrower in which it has a lien pursuant to the Senior Loan Documents subject, however, to the following:

- a. If the Senior Lender conducts a foreclosure or liquidation, the Senior Lender shall provide the Junior Lender with copies of all demands, communications, correspondence and pleadings which relate to the Senior Lender's conduct of such foreclosure or liquidation.
- b. The proceeds of any foreclosure or liquidation shall be distributed in accordance with the priorities set forth in Section 4 above.
- c. If the Senior Lender conducts a foreclosure or liquidation it shall provide the Junior Lender with a written statement of the results of such foreclosure or liquidation and the distribution of the proceeds thereof.
- d. The parties agree that Senior Lender is the holder of a first priority lien as to all collateral covered by the Senior Loan Documents and that the Junior Lender may not conduct a foreclosure or liquidation without the prior written consent of Senior Lender or until the Senior Loan is paid in full.

- e. The Senior Lender may, in its sole discretion, accelerate or demand payment of the Senior Loan and initiate or conduct a liquidation, foreclose upon, realize upon, or exercise any of the Senior Lender's rights, powers and remedies with respect to the Devens Property or other collateral without the consent of the Junior Lender.
- f. The Junior Lender shall not have any right to contest any of the procedures or actions taken by Senior Lender with respect to the collateral covered by the Senior Loan Documents, including, without limitation, any price or other terms of sale or disposition of the Devens Property or collateral.
- g. The Senior Lender and Junior Lender each hereby waive any and all rights to require the other to marshal any collateral or any part thereof covered by the Loan Documents upon any foreclosure or liquidation of the Devens Property or the collateral, nor shall the Senior Lender be required to first pursue or otherwise realize upon any other collateral (unconnected to the Devens Property) and/or pursue its right under any guarantees of the Senior Loan. The Senior Lender does hereby reserve its right to pursue all remedies afforded it under the Senior Loan Documents without affecting its rights hereunder.

6. Distribution of Insurance Proceeds – In the event insurance proceeds are realized in any asset of the Borrower in which both the Senior Lender and the Junior Lender have a lien, the proceeds thereof shall be distributed in accordance with the priorities set forth in Section 4 above. In the event of such realization of insurance proceeds during any period prior to payment in full of the Senior Lender, the Junior Lender hereby designates the Senior Lender as its attorney in fact to endorse any draft, check or other item on which the Junior Lender's name appears. In the event that the Senior Lender or the Junior Lender receives any insurance proceeds on any assets of the Borrower, the Senior Lender or the Junior Lender, as the case may be, to hold such proceeds in trust and to distribute such proceeds as provided herein.

7. Term - This Agreement shall be irrevocable by Senior Lender or Junior Lender until all indebtedness, obligations and liabilities of Borrower to Senior Lender have been paid-in-full satisfied and all financing arrangements between Borrower and Senior Lender have been terminated.

8. No Contest as to Liens - Junior Lender admits the validity and perfection of the liens Senior Lender holds in the Devens Property and collateral and agrees that so long as this Agreement shall not have terminated Junior Lender shall not contest in any judicial, administrative or other proceeding the validity or perfection of such Senior Loan Documents or liens created thereby or the priority accorded to such liens hereunder.

9. Additional Assurances - The parties agree to execute, acknowledge and deliver to each other all other and further instruments, documents or assurances that any other party may reasonably request to give full force and effect to the provisions of this Agreement.

10. Successors and Assigns - This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns. The term "Borrower" as used herein shall also refer to the successors and assigns of the Borrower, including, without

limitation, a receiver, trustee, custodian or debtor-in-possession. The Junior Lender shall not sell, assign or transfer any of the Junior Lender's interests in the Junior Loan unless and until the buyer, assignee or transferee thereof shall deliver a written instrument to the holders of the Senior Loan agreeing that such transferee shall be bound by all of the provisions of this Agreement and shall be deemed to be a "Junior Lender" for all purposes of this Agreement.

11. Notices - Any notice, demand and other communication under this Agreement shall be in writing and shall be deemed satisfactorily given upon delivery in hand, delivery by commercial carrier, delivery by Federal Express or other overnight courier services, or deposits in the United States mails, postage prepaid, by certified mail, return receipt requested, addressed as follows:

If the Senior Lender:

East Boston Savings Bank  
67 Prospect Street  
Peabody, MA 01960  
Attn: Brian R. Haney, Vice President

With a copy to:

Burton Winnick, Esquire  
McCarter English, LLP  
265 Franklin Street  
Boston, Massachusetts 02110

If to Junior Lender:

ASC Devens LLC  
114 East Main Street  
Ayer, Massachusetts 01432  
Attn: General Counsel and Corporate Secretary

With a copy to:

Todd K. Helwig, Esquire  
Mirick O'Connell  
1800 West Park Drive, Suite 400  
Westborough, MA 01581

or such other address as may have been specified by written notice delivered in the manner specified herein.

12. Relationship of Parties - This Agreement is entered into solely for the purposes set forth above, and no party assumes any responsibility to any other party to advise the others of information known to such party regarding the financial condition of Borrower, or regarding the Devens Property or collateral, or of any other circumstances bearing upon the risk of nonpayment of the obligations of Borrower. However, both the Senior Lender and the Junior Lender shall within

a reasonable time thereof in writing inform the other of any Event of Default occurring under its respective Loan Documents. Each party shall be responsible for managing its relationship with Borrower and no party shall be deemed the agent of any other party under this Agreement. Senior Lender may further alter, amend, extend, supplement, release, discharge, or otherwise modify any terms of the Senior Loan documents with Borrower without notice to or consent of any other party, except to the extent that any such alteration, amendment, modification or change in terms results in an increase in the outstanding obligations of the Senior Loan. Neither Senior Lender nor Junior Lender shall increase the outstanding obligations of its respective loan without the prior written consent of the other party to this Agreement.

13. Applicable Law - This Agreement, and the transactions evidenced hereby, shall be governed by, and construed under, the internal laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of law, as the same may from time to time be in effect.

14. Consent to Jurisdiction - Senior Lender and Junior Lender agree that any action or proceeding to enforce, or arising out of, this Agreement may be commenced in any court of The Commonwealth of Massachusetts or in the District Court of the United States for the District of Massachusetts, and Senior Lender and Junior Lender waive personal service of process and agree that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served by registered or certified mail to Senior Lender or Junior Lender, as the case may be, or as otherwise provided by the laws of The Commonwealth of Massachusetts or the United States.

15. JURY TRIAL WAIVER - SENIOR LENDER AND JUNIOR LENDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY SENIOR LENDER AND JUNIOR LENDER MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO. ALL PARTIES HERETO REPRESENT AND WARRANT THAT NO REPRESENTATIVE OR AGENT OF THE OTHER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SENIOR LENDER OR JUNIOR LENDER WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS RIGHT TO JURY TRIAL WAIVER. JUNIOR LENDER ACKNOWLEDGES THAT SENIOR LENDER HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.

16. No Third Party Beneficiaries - Nothing contained in this Agreement shall be deemed to indicate that this Agreement has been entered into for the benefit of any person other than the parties hereto.

17. Section Titles - The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not part of the agreement between the parties hereto.

[Executions Appear on Following Page]

IN WITNESS WHEREOF, this Intercreditor, Subordination and Standstill Agreement has been duly executed under seal as of the date first above written.

SENIOR LENDER:

**EAST BOSTON SAVINGS BANK**

/s/ Richard Rougies      By: /s/ Brian R. Haney  
Witness                      Name: Brian R. Haney  
Title:      Vice President

**COMMONWEALTH OF MASSACHUSETTS**

COUNTY OF Essex

On this 26<sup>th</sup> day of March, 2018, before me, the undersigned notary public, personally appeared Brian Haney, the Vice President of East Boston Savings Bank, proved to me through satisfactory evidence of identification, which was personally known to me, to be the person whose name is signed above, and acknowledged to me that he signed it voluntarily for its stated purpose as Vice President of East Boston Savings Bank.

/s/ Iris Balurdi  
Notary Public  
My Commission Expires: January 27, 2023

JUNIOR LENDER:

**ASC DEVENS LLC**

/s/ John R. Samia      By: /s/ John Kosiba  
Witness                      Name: John Kosiba  
Title:      Authorized Person

**COMMONWEALTH OF MASSACHUSETTS**

COUNTY OF Worcester

On this \_\_\_\_ day of March, 2018, before me, the undersigned notary public, personally appeared John Kosiba, the authorized person of ASC Devens LLC, proved to me through satisfactory evidence of identification, which was MA Driver's license, to be the person whose name is signed above, and acknowledged to me that he signed it voluntarily for its stated purpose as the authorized person of ASC Devens LLC.

/s/ Laura B. Pellerin  
Notary Public: Laura B. Pellerin  
My Commission Expires: January 27, 2023

The undersigned Borrower does hereby consent to the terms and conditions of the within Agreement and agrees to be bound thereto and does hereby specifically authorize the Senior Lender and Junior Lender to exchange the financial data of Borrower herein referenced. The Borrower covenants and agrees not to make any distribution or payment to the Junior Lender in violation of the terms of this Agreement.

BORROWER:

**JACKSON 64 MGI, LLC**



By: **64 Jackson, LLC**, its Manager

/s/ Hayley Marsh

Witness

By: /s/ Steven E. Goodman

Name: Steve E. Goodman

Title: Manager

**COMMONWEALTH OF MASSACHUSETTS**

COUNTY OF Suffolk

On this 26<sup>th</sup> day of March, 2018, before me, the undersigned notary public, personally appeared Steve E. Goodman the Manager of 64 Jackson, LLC, the Manager of Jackson 64 MGI, LLC, proved to me through satisfactory evidence of identification, which was driver's license, to be the person whose name is signed above, and acknowledged to me that he signed it voluntarily for its stated purpose, as Manager of 64 Jackson, LLC, the Manager of Jackson 64 MGI, LLC.

/s/ Hayley Marsh

Notary Public:

My Commission Expires: August 17,

2023