

# UNOFFICIAL COPY

This instrument prepared by  
Kimberly K. Enders, Esq.  
100 West Monroe Street #1500  
Chicago, Illinois 60603



Doc#: 0528535207 Fee: \$52.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/12/2005 09:43 AM Pg: 1 of 15

When recorded mail to:  
Labe Bank  
4343 N. Elston Ave.  
Chicago, IL 60641

Handwritten notes: 11/2

**JUNIOR REAL ESTATE MORTGAGE, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND UCC FIXTURE FILING**  
("Mortgage No. 2")

**THIS JUNIOR REAL ESTATE MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND UCC FIXTURE FILING** ("Mortgage") is dated September 22, 2005, between Zivko Kovacevic and Radmila Kovacevic, married to each other, whose address is 831 Burton Avenue, Highland Park, Illinois 60068-3712 (referred to below as "Grantor"); and Labe Bank, an Illinois banking corporation, whose address is 4343 North Elston Avenue, Chicago, Illinois 60641 (referred to below as "Lender").

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**GRANT OF MORTGAGE.** For valuable consideration, Grantor mortgages, warrants and conveys to Lender all of Grantor's right, title and interest in and to the real property described in Exhibit A, together with all existing or subsequently erected or affixed buildings, improvements and fixtures: all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, located in Lake County, State of Illinois (the "Real Property").

**ASSIGNMENT OF RENTS AND SECURITY INTEREST.** Grantor presently assigns to Lender all of Grantor's right, title and interest in and to all leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property hereinafter described and Rents.

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**DEFINITIONS.** The following words shall have the following meanings when used in this Mortgage. Terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

BOX 334 CTI

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**A. NOTE.** The word “Note” means the Promissory Note dated the date hereof between Lender and Kosa Development, LLC (“Debtor”) in the amount of Two Million Five Hundred Twenty-Five Thousand Eight Hundred Fifty Dollars (\$2,525,850), together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the Note. Grantor is affiliated with Debtor. The maturity date of the Note is September 22, 2006.

**B. IMPROVEMENTS.** The word “improvements” means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**C. INDEBTEDNESS.** The word “Indebtedness” means all principal and interest and other charges and fees payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Lender to enforce obligations of Grantor under this Mortgage, together with interest on such amounts as provided in either the Note or this Mortgage. Specifically, without limitation, this Mortgage also secures any future amounts which Lender may advance to Grantor under the Note within twenty (20) years from the date of this Mortgage to the same extent as if such future advance were made as of the date of the execution of this Mortgage.

**D. PERSONAL PROPERTY.** The words “Personal Property” mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**E. PROPERTY.** The word “Property” means collectively the Real Property and the Personal Property.

**F. RELATED DOCUMENTS.** The words “Related Documents” mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**G. RENTS.** The word “Rents” means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ALL OBLIGATIONS OF GRANTOR UNDER THIS MORTGAGE AND THE RELATED DOCUMENTS. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

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**1. PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due, and shall strictly perform all of Grantor's obligations under this Mortgage.

**2. POSSESSION AND USE.** Until an Event of Default occurs, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents from the Property.

**3. DUTY TO PROTECT AND MAINTAIN.** Grantor agrees neither to abandon nor leave unattended the Property and shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, maintenance or any other acts which are reasonably necessary to preserve its value.

**4. HAZARDOUS SUBSTANCES.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Grantor represents and warrants to Lender that: (a) during the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about the Property; (b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) except as previously disclosed to and acknowledged by Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state and local laws, regulations and ordinances, including without limitation those laws, regulations and ordinances described above.

Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this paragraph of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for hazardous waste. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and

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expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this paragraph of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this paragraph of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**5. NUISANCE, WASTE.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

**6. ALTERATION OF IMPROVEMENTS.** Grantor shall not make material alterations to any improvements on the Real Property without the prior written consent of Lender.

**7. LENDER'S RIGHT TO ENTER.** Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

**8. COMPLIANCE WITH LAW.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**9. DUE ON SALE OR FURTHER ENCUMBRANCE - CONSENT BY LENDER.** Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale, transfer, encumbrance or hypothecation without the Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale, transfer, encumbrance or hypothecation" means the conveyance or encumbrance of Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than one (1) year, lease-option contract, exchange, assignment or mortgage or by sale, assignment, including collateral assignment, or transfer of any beneficial interest in or to any trust holding title to the Real Property, or by any other method of conveyance of Real Property interest.

**10. TAXES AND LIENS:**

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(a) **PAYMENT.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Mortgage, except for the lien of taxes and assessments not due and except as otherwise provided in the following paragraph.

(b) **FUNDS FOR TAXES AND INSURANCE.** Subject to applicable law or to a written waiver for Lender, to insure payment of taxes required in 10(a) hereof, Grantor shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Mortgage as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; and (e) yearly mortgage insurance premiums, if any. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Grantor's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Grantor for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Grantor interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Grantor to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Grantor any interest or earnings on the Funds. Grantor and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Grantor, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Mortgage.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Grantor for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Grantor in writing, and, in such case Grantor shall pay to Lender the amount necessary to make up the deficiency. Grantor shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

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Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Grantor any Funds held by Lender. If, under this Mortgage, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Mortgage.

Notwithstanding the foregoing provisions of this Section 10(b) requiring deposits for the payment of real estate taxes and insurance premiums, Lender hereby waives the requirement for such deposits while such deposits are being made by Grantor to the Holder of the Mortgage which is senior to this Mortgage, retaining however the right to reinstate such requirement in the event for any reason such deposits are not being made to the Holder of such senior Mortgage.

**(c) RIGHT TO CONTEST.** Grantor will pay in full, under protest in the manner provided by statute, any taxes which Grantor may desire to contest. However, if deferment of payment is required to conduct any contest or review, Grantor shall deposit the full amount thereof, together with an amount equal to the interest and penalties during the period of contest (as estimated by Lender) with Lender. In any event, Grantor shall (and if Grantor shall fail to do so, Lender may, but shall not be required to, use the monies deposited as aforesaid) pay all taxes, notwithstanding such contest, if in the opinion of Lender, the Property shall be in jeopardy or in danger of being forfeited or foreclosed.

**(d) EVIDENCE OF PAYMENT.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**11. NOTICE OF CONSTRUCTION.** Grantor must receive Lender's written approval at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$5,000.00.

## **12. PROPERTY DAMAGE INSURANCE:**

**(a) MAINTENANCE OF INSURANCE.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property and the Personal Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Unless Grantor provides Lender with evidence of the insurance coverage, Lender may purchase insurance at Grantor's expense to protect Lender's

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interest in the Premises. This insurance may, but need not, protect Grantor's interests. The coverage that Lender purchases may not pay any claim that Grantor makes or any claim that is made against Grantor in connection with the Premises. Grantor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Grantor has obtained insurance as required by their agreement. If Lender purchases insurance for the Premises, Grantor will be responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Grantor's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Grantor may be able to obtain on Grantor's own.

(b) **APPLICATION OF PROCEEDS.** Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$5,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at its election, apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default hereunder. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to prepay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor.

(c) **UNEXPIRED INSURANCE AT SALE.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any trustee's sale or other sale held under the provisions of this Mortgage, or at any foreclosure sale of such Property.

13. **EXPENDITURES BY LENDER.** If Grantor fails to comply with any provision of this Mortgage or if any action or proceeding is commenced that would materially affect Lender's interests in the Property, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate. Any amount that Lender expends in so doing including attorney's fees will bear interest at the Default Rate specified in the Note from the date incurred or paid by Lender to the date of repayment by Grantor and shall become immediately due and payable without notice. This Mortgage also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

14. **TITLE.** Grantor warrants that Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those issued in

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favor of, and accepted by, Lender in connection with this Mortgage, and Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

**15. DEFENSE OF TITLE.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice.

**16. NO MODIFICATION.** Grantor shall not enter into any agreement with the holder of any mortgage or other security agreement which has priority over this Mortgage by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

**17. CONDEMNATION:**

**(a) APPLICATION OF NET PROCEEDS.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

**(b) PROCEEDINGS.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice.

**18. STAMP TAX.** If any tax is due or becomes due in respect to the issuance of the Note or in respect to this Mortgage, Grantor shall pay such tax in the manner required by such law.

**19. SECURITY AGREEMENT.** This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**20. FINANCING STATEMENT.** This Mortgage is intended to be a UCC Financing Statement/fixture filing within the purview of section 9-402(6) of the Uniform Commercial Code with respect to the collateral and the goods described herein, which goods are and may become fixtures relating to the Real Property. The addresses of the Mortgagor as Debtor and the Mortgagee



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as Secured Party are set forth herein. This Mortgage is to be filed for record with the Recorder of Deeds of the county or counties where the Real Property is located.

**21. ADDRESSES.** The mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Mortgage.

**22. FURTHER ASSURANCES.** Grantor will make, execute and deliver to Lender, and when requested by Lender, cause to be filed or recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor under the Note, this Mortgage, and the Related Documents, and (b) the liens and security interests created by this Mortgage on the Property, whether now owned or hereafter acquired by Grantor. Grantor shall reimburse Lender for all costs and expenses, including attorney's fees, incurred in connection with the matters referred to in this paragraph.

**23. ATTORNEY-IN-FACT.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**24. FULL PERFORMANCE.** If Grantor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time. If, however, payment is made by Grantor, whether voluntarily or otherwise, or by guarantor or by any third party, on the Indebtedness and thereafter Lender is forced to remit the amount of that payment (a) to Grantor's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, (b) by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Lender or any of Lender's property, or (c) by reason of any settlement or compromise of any claim made by Lender with any claimant (including without limitation Grantor), the Indebtedness shall be considered unpaid for the purpose of enforcement of this Mortgage and this Mortgage shall continue to be effective or shall be reinstated, as the case may be, notwithstanding any cancellation of this Mortgage or of any note or other instrument or agreement evidencing the Indebtedness and the Property will continue to secure the amount repaid or recovered to the same extent as if that amount never had been originally received by Lender, and Grantor shall be bound by any judgment, decree, order, settlement or compromise relating to the Indebtedness or to this Mortgage.

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**25. DEFAULT.** Each of the following, at the option of Lender, shall constitute an event of default (“Event of Default”) under this Mortgage: (a) Grantor commits fraud or makes a material misrepresentation at any time in connection with the Note, this Mortgage or the Related Documents; (b) Grantor does not meet the repayment terms of the Note; (c) a default shall continue for fifteen (15) days after notice thereof by Lender to Grantor or in the due and punctual performance of any other agreement or condition herein or in the Note or in the Related Documents.

**(a) RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law.

**(b) ACCELERATE INDEBTEDNESS.** Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**(c) UCC REMEDIES.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**(d) COLLECT RENTS.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this sub-paragraph either in person, by agent, or through a receiver.

**(e) MORTGAGEE IN POSSESSION.** Lender shall have the right to be placed as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The mortgagee in possession or receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**(f) JUDICIAL FORECLOSURE.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

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(g) **DEFICIENCY JUDGMENT.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

(h) **OTHER REMEDIES.** Lender shall have all other rights and remedies provided in this Mortgage, the Note or the Related Documents or available at law or in equity.

(i) **SALE OF THE PROPERTY.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

(j) **WAIVER; ELECTION OF REMEDIES.** A waiver by any party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor under this Mortgage after failure of Grantor to perform shall not affect Lender's right to declare a default and exercise its remedies under this Mortgage.

(k) **ATTORNEYS' FEES; EXPENSES.** If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title to prosecute such suit or to evidence to bidders at sales, which may be had pursuant to such decree, the true conditions of the title to or value of the Property. All expenditures and expenses in this section mentioned and expenses and fees as may be incurred in the protection of said Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceedings affecting this Mortgage, the Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Grantor, with interest thereon at the Default Rate as set forth in the Note.

26. **NOTICES TO GRANTOR AND OTHER PARTIES.** Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the mailing thereof by certified mail to the addresses set forth on page one or to such other place as any party hereto may by notice in writing designate, shall constitute service of notice hereunder effective three (3) days after deposit in the U.S. Mails.

27. **AMENDMENTS.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No

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alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**28. APPLICABLE LAW.** This Mortgage has been delivered to Lender and accepted by Lender in the State of Illinois. This Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois.

**29. CAPTION HEADINGS.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

**30. MERGER.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**31. MULTIPLE PARTIES.** All obligations of Grantor under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor.

**32. SEVERABILITY.** The unenforceability or invalidity of any provisions hereof shall not render any other provisions herein contained unenforceable or invalid.

**33. SUCCESSORS AND ASSIGNS.** Subject to the limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

**34. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of this Mortgage.

**35. WAIVER OF HOMESTEAD EXEMPTION.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Illinois as to all Indebtedness secured by this Mortgage.

**36. WAIVERS AND CONSENTS.** Lender shall not be deemed to have waived any rights under this Mortgage (or under the Related Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or any of Grantor's obligations as to any future transactions. Whenever consent by Lender is required in this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

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**37. GRANTOR'S RIGHT TO REINSTATE.** If Grantor meets certain conditions, Grantor shall have the right to have enforcement of this Mortgage discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Mortgage; or (b) entry of a judgment enforcing this Mortgage. Those conditions are that Grantor: (a) pays Lender all sums which then would be due under this Mortgage and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Mortgage, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's rights in the Property and Grantor's obligation to pay the sums secured by this Mortgage shall continue unchanged. Upon reinstatement by Grantor, this Mortgage and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 9.

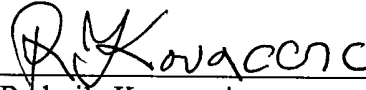
**38. JURY WAIVER.** GRANTOR KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES IRREVOCABLY THE RIGHT IT MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THE INDEBTEDNESS, OR THE PROPERTY, OR ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH LENDER AND GRANTOR ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO GRANTOR.

*Signature page follows*

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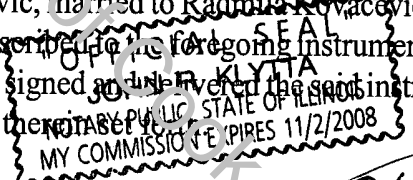
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed and delivered on 9/12, 2005.

  
\_\_\_\_\_  
Zivko Kovacevic

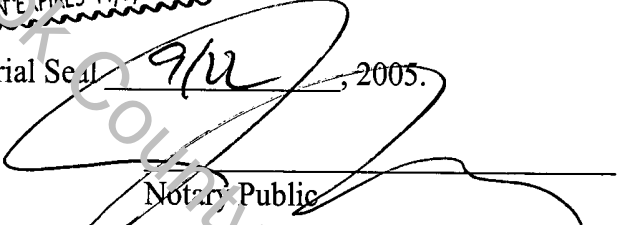
  
\_\_\_\_\_  
Radmila Kovacevic

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF C O O K    )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Zivko Kovacevic, married to Radmila Kovacevic, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.



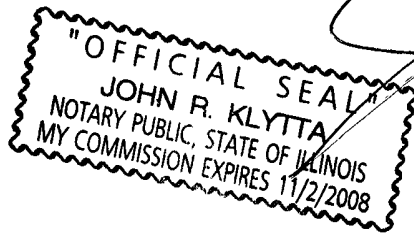
GIVEN under my hand and Notarial Seal 9/12, 2005.

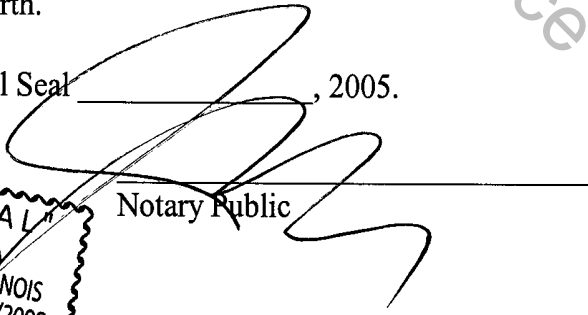
  
\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF C O O K    )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Radmila Kovacevic, married to Zivko Kovacevic, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal \_\_\_\_\_, 2005.



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

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION:

LOT 34 IN BLOCK 1 IN FIRST ADDITION TO RAVINIA HIGHLANDS IN THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 34 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN AND IN THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 43 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS

COMMONLY KNOWN AS: 831 BURTON AVENUE, HIGHLAND PARK, IL 60035  
P.I.N.: 16-25-310-031-0000

Property of Cook County Clerk's Office