



Doc#: 0635441090 Fee: \$38.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 12/20/2006 02:20 PM Pg: 1 of 8

Lawyers Unit #03308 Case# ~~06-1333~~ CC

REAL ESTATE MORTGAGE

THIS MORTGAGE is made this 7th day of November, 2006, between JAMES BAUMAN SIMMONS, (the "Borrower"), and the Mortgagee, JAMES B. SIMMONS, Trustee of the James B. Simmons Trust ("Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of Three Hundred Fifty Thousand Dollars (\$350,000.00), which indebtedness is evidenced by Borrower's note of even date herewith (herein "Note"), providing for 360 payments of principal and interest in the amount of 6 % payable beginning on November 1, 2006, and with interest only payable on the first day of each month thereafter with the balance the principal and any interest due on November 1, 2011.

TO SECURE to Lender the repayment of the indebtedness and other money due under the provisions of the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower in this Mortgage and the Note, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of Cook, State of Illinois:

SEE EXHIBIT A ATTACHED

Commonly known as: 240 E. Illinois Street, Unit 601, P636, Chicago, Illinois ("the Property")

PIN Number:

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property covenants are herein referred to as the "Property".

1. Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, that the Property is unencumbered except for a first mortgage, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

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2. **Payment of the Note.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note and any other sums due thereunder.

3. **Charges; Liens.** Borrower shall pay one half of all real estate taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Mortgage; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in the manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

4. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in Paragraph 2 hereof or change the amount of such installments. If under Paragraph 17 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

5. **Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property.

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6. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. If Lender required mortgage insurance is a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law. Borrower shall pay the amount of all mortgage insurance premiums in the manner provided under Paragraph 4 hereof.

Any amounts disbursed by Lender pursuant to this Paragraph 6 with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of Payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this Paragraph 6 shall require Lender to incur any expense or take any action hereunder.

7. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

8. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemner offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Mortgage.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in Paragraph 2 hereof or change the amount of such installments.

9. **Borrower Not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend

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time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest.

10. **Forbearance By Lender Not A Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.

11. **Remedies Cumulative.** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity and may be exercised concurrently, independently or successively.

12. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 18 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

13. **Notice.** Any notice or other communication required or permitted to be given to a party under this Mortgage shall be in writing, unless otherwise specified in this Mortgage, and shall be deemed given (1) if and when personally delivered, (2) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set opposite the signature, or as noted on the last page hereof, (3) on the third business day after being deposited in the United States mail, registered mail, return receipt requested and postage prepaid, or (4) upon facsimile transmission with appropriate acknowledgement (provided, however, that such notice or communication shall be contemporaneously mailed to its intended recipient via registered mail, return receipt requested either party may change its address for notice by giving written notice thereof in accordance with the provisions of this paragraph to the other party.

14. **Governing Law.** This Mortgage shall be governed by the law of the State of Illinois. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

16. **Transfer of the Property; Assumption.** If all or any part of the Property, or Borrower's other property as specified in Paragraph 23 herein, or an interest therein is sold or transferred by Borrower, including a Contract for Conditional Sale, or Installment Sales Contract, without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three (3) years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Mortgage shall be at such rate as Lender shall request. If Lender has waived the

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option to accelerate provided in this Paragraph 16, and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Mortgage and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with Paragraph 13 hereof. Such notice shall provide a period of not less than thirty (30) days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by Paragraph 17 hereof.

17. Acceleration; Remedies. Except as provided in Paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall mail notice to Borrower as provided in Paragraph 13 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty (30) days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right (if any) to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosures, including, but not limited to, reasonable attorney's fees, and costs of documentary evidence, abstracts and title reports. Such costs and attorney's fees shall be included in the Decree for Sale as additional indebtedness.

The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the note; fourth, any overplus to Mortgagors, their heirs, legal representatives or assigns, as their rights may appear.

No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the note hereby secured.

18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage, the Note and Notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage and in enforcing Lender's remedies as provided in Paragraph 17 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

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19. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under Paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable. Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all rents to be paid directly to Lender or Lender's agent.

Upon acceleration under Paragraph 17 hereof or abandonment of the Property, Lender shall be entitled, to the extent provided by applicable law, to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefore, all of the rents' institute and carry on all legal proceedings necessary for the protection of the property, including such proceedings as may be necessary to recover possession of the Property; collect the rents and remove any tenant or tenants or other persons from the Property. Lender may also lease or rent the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

20. **Additional Provisions.** Mortgagor agrees that (1) He and any Tenants occupying the Premises will comply with all Environmental Laws and reporting requirements with respect to handling, storage, transportation and disposal of Hazardous Materials on the Premises; (2) agrees to provide Mortgagee with a copy of any environmental site assessment obtained by or prepared at the direction of the Mortgagor; (3) agrees to provide Mortgagee with written notice of any release, remediation and disposal of Hazardous Materials on the Premises, together with copies of all notices to or from federal, state or local agencies relating to such matters.

If the presence of Hazardous Materials (as herein defined) on the Premises is caused by Mortgagor, or Mortgagor's agent, employee, invitee, licensee, tenant or subtenant, and such Hazardous Materials result in contamination of the premises, then Mortgagor shall defend, hold harmless and indemnify the Mortgagee from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses resulting from the presence of such Hazardous Materials, including, without limitation, reasonable attorney's fees and costs incurred in connection with any investigation of site conditions or any clean-up, remedial removal or restoration work required by any federal, state or local governmental agency or political subdivision because of such Hazardous Materials present on the Premises; and including reasonable attorney's fees expended in enforcement of this indemnity. Without limiting the foregoing, if the presence of any such Hazardous Materials on the Premises results in any contamination of the Premises, Mortgagor shall promptly take all actions at his sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises.

Hazardous Materials is hereby defined to include any and all chemicals, organic and inorganic compounds, polymers, solvents, substances or wastes regulated under CERCLA; oil and petroleum products, asbestos containing materials, and all other materials classified under Environmental Laws (federal, State or local) as caustic, explosive, hazardous, toxic or volatile, or for which the laws set forth reporting requirements.


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21. **Release.** Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower.

22. **Waiver of Valuation and Appraisal.** Borrower hereby waives all right of valuation and appraisal.

IN WITNESS WHEREOF, Borrowers have executed this Mortgage.


BORROWER


JAMES BAUMAN SIMMONS Date: 11/7/06

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

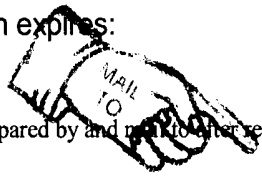
On this 7th day of November, 2006, before me, the undersigned, a Notary Public in and for said County and State, personally appeared JAMES BAUMAN SIMMONS and acknowledged the execution of the above mortgage as his voluntary act and deed.

Witness my hand and official seal.


Notary Public



My commission expires:



This instrument prepared by and mailed after recording: Marie A. Gross, 150 North Wacker Drive, Suite 2020, Chicago IL 60606.

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Exhibit A

Legal Description

PIN: 17-10-212-019-00000 (affects underling land)

UNIT 601 IN THE LOFTS AT CITYFRONT PLAZA CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

CERTAIN PARTS OF THE LAND, PROPERTY AND SPACE COMPRISED OF A PART OF BLOCK 1 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH 1/4 SECTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY ILLINOIS; WHICH SURVEY IS ATTACHED TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT 0630315058, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS.

EASEMENT FOR INGRESS AND EGRESS OVER THE COMMON AREAS AS CREATED BY THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS DATED FEBRUARY 28, 2006 AND RECORDED MARCH 8, 2006 AS DOCUMENT NUMBER 0606745116.

GRANTOR ALSO HEREBY GRANTS TO THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, AS RIGHTS AND EASEMENTS APPURTENANT TO THE ABOVE DESCRIBED REAL ESTATE, THE RIGHTS AND EASEMENTS FOR THE BENEFIT OF SAID PROPERTY SET FORTH IN THE DECLARATION OF CONDOMINIUM AND GRANTOR RESERVES TO ITSELF, ITS SUCCESSORS AND ASSIGNS, THE RIGHTS AND EASEMENT SET FORTH IN SAID DECLARATION FOR THE BENEFIT OF THE REMAINING PROPERTY DESCRIBED THEREIN.

THIS DEED IS SUBJECT TO ALL RIGHTS, EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS CONTAINED IN SAID DECLARATION THE SAME AS THOUGH THE PROVISIONS OF SAID DECLARATION WERE RECITED AND STIPULATED AT LENGTH HEREIN.