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Cook County Recorder of Deeds  
Date: 01/15/2009 08:14 AM Pg: 1 of 13

**AFTER RECORDING RETURN TO:**

TCF National Bank  
500 W. Brown Deer Road  
Milwaukee, Wisconsin 53217  
Attn: Russ McMinn

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**ABSOLUTE ASSIGNMENT OF RENTS AND  
OF LANDLORD'S INTEREST IN LEASES**

DATED January 13, 2009

THIS ABSOLUTE ASSIGNMENT OF RENTS AND OF LANDLORD'S INTEREST IN LEASES (this "Agreement") is by **161 TOWER ROAD LLC**, an Illinois limited liability company, having an office at c/o Wrightwood Capital, 2 North LaSalle Street, 9th Floor, Chicago, Illinois 60602 (the "Borrower"), in favor of **TCF NATIONAL BANK**, a national banking association, having an office at 500 W. Brown Deer Road, Milwaukee, Wisconsin 53217, its successors and assigns ("Lender").

**RECITALS**

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

A. Borrower has executed and delivered to Lender that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated of even date herewith and recorded concurrently herewith in the Office of the Recorder of Deeds of Cook County, State of Illinois (the "**Security Instrument**"), which Security Instrument secures a certain Promissory Note executed by Borrower, and other co-makers if any, named therein, in the principal sum of \$4,400,000.00, together with interest thereon (the "**Note**"). The property encumbered by the Security Instrument is more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Property**"). The Note, Security Instrument, and all other documents relating to or securing the Note are referred to herein collectively as the "**Loan Documents**".

B. Borrower desires to assign to Lender as a present absolute assignment all of Borrower's rights, title and interest in and to all leases, tenancy agreements, and other occupancy agreements now existing or hereafter entered into by Borrower, or now or hereafter covering all or any part of the Property, together with all extensions, renewals, modifications and replacements thereof (all such leases, tenancy agreements, rental agreements, occupancy agreements and other similar agreements are referred to herein collectively as the "**Leases**" and all tenants, occupants, lessees, or similar parties thereunder are referred to herein collectively as the "**Tenants**"), for the purpose of relinquishing to Lender all of

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Borrower's right to collect and enjoy the rents, royalties, security deposits, issues, profits, income and other benefits at any time accruing by virtue of any of such Leases.

## AGREEMENT

**NOW, THEREFORE, FOR VALUABLE CONSIDERATION**, Borrower does hereby grant, sell, transfer, assign and convey to Lender, its successors and assigns, all Leases, recorded or unrecorded, together with all rents, royalties, issues, security deposits, profits and income thereunder, all guaranties thereof, and all of the other benefits under the Leases (and the right to collect the same, whether now due, or which hereafter become due or to which Borrower may now or shall hereafter become entitled), arising or issuing from or out of the Leases, or from or out of the Property, or any part thereof, together with any and all rights which Borrower may have against the Tenants, or any of them, any and all security interests now or hereafter held by Borrower pursuant to any of the Leases covering any property of the tenants under the Leases, and any letters of credit delivered to Borrower by any tenants (hereafter collectively referred to as the "**Rents and Profits**"), Borrower retaining, however, a revocable license, as hereinafter provided in Paragraph 2 below, to collect the Rents and Profits and enforce the Leases, so long as Borrower is not in Default under this Agreement, the Note, the Security Instrument or any of the other Loan Documents. Furthermore, Borrower does hereby grant, sell, transfer, assign and convey to Lender, its successors and assigns, any release, termination or "buy-out" consideration now or hereafter payable to Borrower with respect to any Lease. Borrower will immediately notify Lender when any release, termination or "buy-out" consideration is due and payable to Borrower by any tenants or guarantors with respect to any Lease and notwithstanding anything to the contrary set forth in this Agreement or any of the Loan Documents, Lender may, in its sole and absolute discretion, require that any such release, termination or "buy-out" consideration be paid immediately to Lender as proceeds of its collateral. In its absolute and sole discretion and without regard to the adequacy of Lender's security, Lender may apply such payments to reduce the unpaid principal balance of the indebtedness evidenced by the Note or deposit such payments in a non-interest bearing account established with Lender which account shall be held as additional security for the indebtedness evidenced by the Note.

### **BORROWER HEREBY FURTHER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:**

1. **Payment of Note.** Borrower desires to secure (i) the timely payment of the principal of and interest on the Note and all other indebtedness secured by the Security Instrument, and (ii) the full compliance with the terms, conditions, covenants and agreements contained in the Note, the Security Instrument and the other Loan Documents, excluding any guaranties of the Note and any other Loan Documents which expressly provide that the obligations thereunder either are unsecured or are not secured by the Security Instrument. This Agreement is not an assignment for security purposes, nor a pledge of rents for additional security, but an absolute, present assignment of Borrower's interest in the Leases and the Rents and Profits.
2. **Payment of Rents to Lender; License in Borrower to Collect Rents and Profits.**
  - (a) **Payment of Rents to Lender.** Borrower expressly authorizes all Tenants to pay to Lender, or its nominees, agents or order, all sums due, or to become due, under the Leases, and Lender is hereby authorized to give, for and on behalf of Borrower, full receipt and acquittance for any payments so made. Without any requirement to give notice of any kind or character, this Agreement shall constitute an automatic, present, full and unconditional direction and authority to each Tenant under each Lease to pay all Rents and Profits to Lender, or such agents, nominees or order as designated by Lender in writing, without proof of the defaults relied upon by Lender. Borrower hereby irrevocably authorizes each Tenant to rely upon and comply with any notice or demand which may be given by Lender for such payment of Rents and Profits due or to become due as herein specified without liability on the part of the Tenant for determining the validity or

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propriety of Lender's notice or demand, and notwithstanding any claim by Borrower that such notice or demand is invalid or improper. Borrower will have no claim against the Tenant for any Rents and Profits paid by such Tenant to Lender.

(b) Borrower's License to Collect Rents and Profits. Notwithstanding that Borrower has made a present, absolute and executed assignment of the Rents and Profits to Lender, and a present absolute and executed grant to Lender of the powers herein specified, Lender hereby grants to Borrower a revocable license, strictly on the terms and conditions set forth herein, to collect, apply and retain the Rents and Profits as they become due and payable (the "License").

(c) Automatic Termination of License. The License given by Lender to Borrower hereunder to collect, apply and retain Rents and Profits shall be automatically revoked and terminated, without notice or demand of any kind, upon and after Default by Borrower under this Agreement, the Note, the Security Instrument or any of the other Loan Documents. Notwithstanding the foregoing, in the event that Lender is required by a provision of law to give Borrower notice or to make a demand to terminate the License or to enforce the assignment granted by Borrower to Lender hereunder, such notice, if not otherwise given by Lender in such other manner as may be permitted or required by applicable law, shall be deemed to have been given by Lender and actually received by Borrower when Lender sends to Borrower, in the manner set forth in Paragraph 16 hereof, a written notice of default or demand for payment of the amount in default whether or not such notice or demand specifically refers to or contains a termination of the License.

(d) Turnover of Rents and Profits Collected after Termination of License or Default. Borrower shall immediately turn over to Lender upon receipt or collection any Rents and Profits collected or received by Borrower after the termination of Borrower's License or after default by Borrower under this Agreement, the Note, the Security Instrument or any of the other Loan Documents. Any such Rents and Profits not turned over by Borrower to Lender as required hereby shall be held by Borrower in trust for Lender.

3. Warranties of Borrower. Borrower warrants, represents and covenants as to each Lease now or hereafter covering all or any part of the Property:

(a) Lease in Full Force and Effect. Each Lease is in full force and effect, valid and enforceable in accordance with its terms and has not been modified, amended or altered, whether in writing or orally, since delivery thereof to Lender; in the event Borrower shall hereafter enter into a modification, amendment, renewal, or extension of any Lease, Borrower shall deliver a copy of such agreement to Lender;

(b) No Default. No default exists on the part of the Tenant or Borrower thereunder and to the best of Borrower's knowledge, no event has occurred and is continuing which would result in any such default but for the requirement that notice be given or a period of time shall pass in accordance with the terms of the Lease;

(c) Limitation on Advance Collection of Rent. No rent has been collected more than one (1) month in advance;

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- (d) No Previous Assignment of Lease. There is no assignment or pledge of any Lease, or any interest therein, nor Rents and Profits arising therefrom, other than in favor of Lender;
- (e) No Setoffs. To Borrower's knowledge, no Tenant has any defense, setoff or counterclaim against Borrower under any Lease;
- (f) No Concessions Granted. All rent due under each Lease has been collected and no concession has been granted to any Tenant in the form of a waiver, release, reduction, discount or other alteration of rent due or to become due thereunder, except as expressly set forth in such Lease;
- (g) No Option to Purchase. No Lease grants to the Tenant thereunder, or anyone else, an option to purchase, or a right of first refusal to purchase, any part of the Property;
- (h) Owner of Landlord's Interest. Borrower is the sole owner of the entire landlord's interest in all Leases and it has not and will not perform or fail to perform any acts or execute any other instruments which might prevent Lender from fully exercising its rights under the terms, covenants and conditions of this Agreement; and
- (i) Authority of Borrower. Borrower has full right, power and authority to assign the Leases and the Rents and Profits to Lender and Borrower has not done any act which might prevent Lender from exercising its rights under this Agreement.
4. Borrower's Covenants With Respect to Leases. Borrower covenants with respect to each Lease:
- (a) Enforcement. Borrower shall, at Borrower's sole cost and expense, enforce (except by termination of the Leases) the performance or observance of each and every term, covenant and condition of the Leases to be performed or observed by the Tenants thereunder. Without the prior written consent of Lender, Borrower shall not (i) amend, modify, cancel, terminate (except following a default by the Tenant thereunder which has not been cured within the period, if any, expressly provided for such cure in the Lease) any Lease, (ii) waive, excuse, or in any manner release or discharge any Tenant or guarantors from their obligations with respect to any Lease, (iii) extend the term of any Lease entered into prior to the date hereof, or (iv) enter into any new Lease after the date hereof. The foregoing consents of Lender may be given in advance as to any Lease or Leases by Lender pursuant to leasing guidelines prepared by Borrower and approved in writing by Lender. Notwithstanding the foregoing, with respect to any Lease which covers 12,500 square feet or less of the total rentable square footage of the Property, Lender hereby grants permission to Borrower, revocable at any time immediately upon notice to Borrower without regard to the due and faithful performance by Borrower under the Security Instrument, the Note, this Agreement and the other Loan Documents, to take any of the foregoing actions if in the judgment of Borrower, reasonably exercised, such actions do not adversely affect Lender's interest in the Property, the Leases or the Rents and Profits therefrom; provided that, unless Lender has expressly approved such lease, or amendment or extension thereof, either by special request of Borrower or by advance approval of lease terms and concessions pursuant to leasing guidelines prepared from time to time by Borrower and approved by Lender, such lease must be on market terms, must not contain concessions to the tenant or provide for monetary payments by Borrower which would cause the net effective rent thereunder to be less than a sum which, when

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combined with the rentals which are required to be paid under all other leases covering the Property, would not be sufficient to cover the normal operating expenses and taxes of the Property, debt service on the indebtedness evidenced by the Note, and a reasonable reserve for capital replacements and improvements, and must be documented on a lease form approved by Lender without material change.

- (b) No Advance Collection of Rent. Borrower shall not collect any Rents and Profits more than one (1) month in advance of the date on which they become due under the terms of any Lease; nor shall Borrower discount any future accruing Rents and Profits.
- (c) No Assignment Without Consent. Borrower shall not consent to any assignment of any Lease, or any subletting thereunder, whether or not in accordance with its terms, without the prior written consent of Lender. Notwithstanding the foregoing provision, Lender hereby grants permission to Borrower, revocable at any time immediately upon notice to Borrower without regard to the due and faithful performance by Borrower under the Note, the Security Instrument, this Agreement and the other Loan Documents, to consent to any such assignment of Lease or any subletting thereunder if in the judgment of Borrower, reasonably exercised, such actions do not adversely affect Lender's interest in the Property, the Leases or the Rents and Profits therefrom.
- (d) No Further Assignment; No Subordination. Borrower shall not execute any further assignments of any of the Leases or Rents and Profits, or any interest therein, or suffer or permit any such assignment to occur by operation of law; nor shall Borrower request, consent to, agree to or accept a subordination of any Lease to any mortgage, deed of trust or other encumbrance, or any other Lease or suffer or permit conversion of any Lease to a sublease.
- (e) Performance of Obligations; Notice; Appear and Defend. Borrower shall faithfully perform and discharge all obligations of the landlord under the Leases, and shall give prompt written notice to Lender not later than five (5) days after Borrower's receipt of any notice of default from any Tenant or any other person, and shall furnish Lender with a complete copy of such notice. Borrower shall appear in and defend, at no cost to Lender, any action or proceeding arising under or in any manner connected with any Lease.

5. Rights of Lender. Borrower hereby grants to Lender the following rights:

- (a) Lender as Creditor in Debtor-Relief Proceedings. Lender shall be deemed to be a creditor of each Tenant in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such Tenant (without obligation on the part of Lender, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein).
- (b) Copies of Leases; Right to Assign. Lender shall have the right to require at any time and from time to time that Borrower promptly furnish to Lender original or certified copies of all Leases now existing or hereafter created. Lender shall have the right to assign Borrower's right, title and interest in the Leases to any subsequent holder of the Note and Security Instrument or any interest therein, or to any person acquiring title to all or any part of the Property through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to Lender.

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- (c) Right of Performance. In the event Borrower shall fail to perform any of its agreements hereunder, Lender shall have the right, upon not less than 10 Business Days prior written notice of such failure to Borrower and the continued failure of Borrower to perform any such agreement, to take any action as Lender may deem necessary or appropriate to protect its interest. No action by Lender hereunder shall release Borrower from its obligations under this Agreement.
- (d) Rights Upon Default. Upon any Default by Borrower under this Agreement, or under the Note, Security Instrument or any other Loan Documents, and without notice to or consent of Borrower, Lender shall have the following rights and remedies either in person or by a receiver appointed by the court:
- (i) Use and Possession. To use and possess, without rental or charge, the personal property of Borrower located on the Property and used in the operation or occupancy thereof, and to apply any of the Rents and Profits to pay installments due for personal property rented or purchased on credit, insurance premiums on personal property, or other charges relating to personal property on the Property;
  - (ii) Management and Operation of Property. To take possession of the Property, manage and operate the Property and Borrower's business thereon, and to take possession of and use all books of accounts and financial records of Borrower and its property managers or representatives relating to the Property;
  - (iii) New Leases and Cancellation of Existing Leases. To execute new Leases of any part of the Property, including Leases that extend beyond the term of the Security Instrument, and to cancel or alter any existing leases;
  - (iv) Sign For and Bind Borrower. To sign the name of Borrower and to bind Borrower on all papers and documents relating to the operation, leasing and maintenance of the Property;
  - (v) Right to Enforce. To enforce any and all of the rights and remedies of an assignee under applicable law in such manner and at such time or times as Lender may elect in its sole discretion and without regard to the adequacy of its security;
  - (vi) Suit to Enforce Assignment. Bring an action against Borrower for turnover of Rents and Profits collected by Borrower after Borrower's default hereunder, or under the Note, the Security Instrument or any of the other Loan Documents; and/or
  - (vii) Obtain Appointment of Receiver to Enforce Assignment. Bring an action against Borrower to obtain the appointment of a receiver to collect and pay over to Lender the Rents and Profits from the Property. Lender may, in its sole and absolute discretion, seek the appointment of a receiver solely to collect the Rents and Profits from the Property, or may seek the appointment of a receiver to operate the Property and collect the Rents and Profits. Borrower hereby stipulates to the Court its consent to such appointment of a receiver if at the time of Lender's request Borrower is in default hereunder, or under the Note, the Security Instrument or any of the other Loan Documents.

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- (e) No Loss of Rights upon Enforcement. No enforcement action of the type authorized by Paragraph 5(d) above, and no collection, distribution, or application of Rents and Profits by Lender, shall do any of the following:
- (i) No Mortgagee in Possession. Make Lender a mortgagee in possession of the Property, except if Lender takes actual physical possession and control of the real property in its own name;
  - (ii) No Action. Constitute an action, render any of Borrower's obligations to Lender unenforceable, or otherwise limit any rights available to Lender; or
  - (iii) No Bar to Deficiency Judgment. Be deemed to create any bar to a deficiency judgment pursuant to any provision of law governing or relating to deficiency judgments following the enforcement of any encumbrance, lien, or security interest, notwithstanding that the action, collection, distribution, or application may reduce the indebtedness secured by the assignment or by any deed of trust or other security instrument.
- (f) Lender As Borrower's Attorney-In-Fact. Borrower hereby appoints Lender as its true and lawful attorney-in-fact, with full power of substitution and with power of Lender in its own name and capacity, or in the name and capacity of Borrower, to perform the acts specified under Paragraph 5(d) above, and otherwise to demand, collect, receive and give complete acquittance for any and all Rents and Profits accruing from the Property and, at Lender's discretion, to make any settlement of any claims, either in its own name or in the name of Borrower, or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of the Rents and Profits. This power is coupled with an interest and is irrevocable during the term of this Agreement; provided, however, that Lender shall not exercise its rights under such power unless or until a Default exists.
- (g) Lender's Rights Not Obligations. None of the rights granted to Lender hereunder, including without limitation the payment or authorization of payment of any protective payments, shall be construed as obligations of Lender and all such rights shall be in addition to all other rights of Lender under the Note, Security Instrument and other Loan Documents and may be exercised, if at all, concurrently or in any order or priority, as determined by Lender. If Borrower fails to make any payment or do any act as herein provided, or if Lender deems that its interest hereunder or under the Security Instrument could be impaired, then Lender shall have the right (but not the obligation) and without notice to or demand on Borrower, and without releasing Borrower from any obligation hereunder, to make or do the same in such manner and to such extent as Lender may deem necessary to protect Lender's rights, including, without limitation, to appear in and defend any action or proceeding purporting to affect the rights or powers of Lender, and to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees and costs in connection therewith. Borrower shall indemnify, defend and hold Lender harmless from and against any and all liabilities, losses and damages which Lender may incur under the Leases, or by reason of this Agreement, and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations to be performed or discharged by Lender under any Lease or this Agreement. Should Lender incur any liability, loss or damage under any Lease, or under or by reason of this Agreement, Borrower shall immediately upon demand reimburse Lender for the amount thereof, together with all costs

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and expenses and reasonable attorneys' fees incurred by Lender. All of the foregoing sums shall bear interest until paid at the then applicable rate set forth in the Note and shall be secured by the Security Instrument and all other Loan Documents which secure the Note.

6. **Payment of Property Expenses.** In addition to the rights granted to it by the Security Instrument, Lender is hereby authorized (but shall not be obligated), out of the Rents and Profits received hereunder, to pay, in such order of priority as Lender determines, all rents, taxes, assessments and charges on the Property, or any portion thereof, to insure the land, buildings and improvements located thereon, and to expend such other sums as may be in its judgment necessary or proper to defend title, or property, or use thereof, recover Rents and Profits, or otherwise exercise its rights hereunder. Lender may (but shall not be obligated to) advance funds for any of the above purposes, and any amount so paid or advanced shall be a first and prior claim on the Rents and Profits realized from the Property, and shall be repaid to Lender before any other distribution of the Rents and Profits. Should the Rents and Profits be insufficient to pay advances so made by Lender, any unpaid balance shall, at the option of Lender, become a part of the indebtedness secured by the Security Instrument and the other Loan Documents which secure the Note and shall bear interest from the date of advancement at the interest rate set forth in the Note.
7. **Application of Rents and Profits.** Any amount received or collected by Lender pursuant to this Agreement shall be applied to the following items, the priority of payment of such items to be within the sole discretion of Lender:
- (a) **Repayment to Lender.** To the repayment to Lender of any and all amounts advanced by it or costs and expenses incurred under the terms of this Agreement, together with interest at the then applicable rate specified in the Note;
  - (b) **Payment of Taxes and Assessments.** To the payment of taxes, assessments and charges and the expense of insurance, operation, maintenance and management of, repairs to and improvements on the Property, but Lender shall not be obligated to pay any taxes, assessments or charges or to keep insurance on, operate, maintain or manage or make repairs to or improvements on the Property;
  - (c) **Payment of Expenses.** To the payment of all other reasonable and necessary expenses of the management, protection and preservation of the Property, but without obligation to manage, protect or preserve the Property; and/or
  - (d) **Payment of Amounts Due Under Loan Documents.** To the payment of all amounts due or to become due under the Note, Security Instrument, or any other Loan Document which secures the Note, or any extension or renewal thereof, whether by way of principal, interest, or otherwise. The surplus, if any, after full payment of the above, shall be paid to Borrower.
8. **Limitation on Lender's Duties.** Nothing herein contained, or contained in the Note, Security Instrument, or any other Loan Document, shall be deemed to create any responsibility or liability on the part of Lender for rental of the Property, or any part thereof, or for collection of Rents and Profits, or for the control, care, management or repair of the Property, or any portion thereof, or any personal property, or for the carrying out of any of the terms or provisions of any Lease, or for any other thing which is authorized herein or the failure to do any of the foregoing, or for any waste of the Property by Tenants under any of the Leases or by any other party, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep,



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repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger. This Agreement is a grant of rights to Lender and shall not be deemed to constitute Lender a "mortgagee in possession" or be held to create any duties or liabilities on the part of Lender, except as herein expressly set forth.

9. **Enforcement of Agreement by Lender.** Lender is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Agreement and to collect the Rents and Profits assigned hereunder, including the right of Lender or its designee to enter upon the Property, or any part thereof, with or without force and with or without process of law, and take possession of all or any part of the Property, together with all personal property, fixtures, documents, books, records, papers and accounts of Borrower relating thereto as herein specified, and to exclude Borrower, its agents and servants, wholly therefrom. Lender shall be under no obligation to pursue any of the rights or claims assigned to it hereunder, and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Borrower in the Leases.
10. **Default Under Agreement; Default Under Note and Loan Documents.** Any Default by Borrower in the performance of any obligation, covenant or agreement contained herein shall constitute and be deemed to be a Default under the terms of the Note, the Security Instrument and all other Loan Documents, entitling Lender to exercise any and all of the rights and remedies contained therein, including, without limitation, the right to declare all sums secured by the Security Instrument immediately due and payable.
11. **No Waiver For Failure to Act.** The failure of Lender to avail itself of any of the terms, covenants and conditions of this Agreement for any period of time, or at any time or times, shall not be construed as or deemed to be a waiver of any of its rights under the terms hereof or under the Note, Security Instrument, or any other Loan Documents.
12. **Duration of Assignment.** This Agreement, and the rights granted to and for the benefit of Lender hereunder, shall remain in full force and effect so long as the indebtedness and obligations evidenced by the Note and secured by the Security Instrument or other Loan Documents, or any extension or renewal thereof, remain unpaid or unperformed and, in the event of foreclosure, whether by private sale or court action, during any period of redemption and until the recording of the deed issued under such foreclosure proceedings and until the delivery of actual and complete possession of the Property to the grantee in such deed. Upon payment and performance in full of the indebtedness and obligations evidenced by the Note and secured by the Security Instrument or any other Loan Document, this Agreement shall terminate; however, the affidavit, letter or statement of any officer or authorized representative of Lender, showing that any part of such indebtedness remains unpaid, shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Agreement, and any person or entity may, and is hereby expressly authorized to, rely completely thereon.
13. **Remedies Cumulative.** The rights and remedies provided herein shall not be exclusive but shall in all respects be cumulative and in addition to the rights, powers, and remedies retained by Lender under the Note, Security Instrument and any other Loan Document.
14. **Successors Bound.** The terms, covenants and conditions contained herein shall run with the Property, shall inure to the benefit of and bind the parties hereto and their respective heirs, successors and assigns permitted under the Security Instrument.
15. **Severability.** If any term of this Agreement, or the application thereof to a person or circumstance, shall to any extent be declared invalid or unenforceable, the remainder of this Agreement, or the application of such term, to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby and each term

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of this Agreement shall remain valid and enforceable to the fullest extent permitted by law.

16. **Notices.** Except for any notice required by applicable law to be given in another manner, all notices provided pursuant to this Agreement shall be deemed to be given and received in accordance with the Notices provision of the Security Instrument.
17. **Foreclosure; Recognition of Leases.** In the event that Lender elects following any default of Borrower under any Loan Document to declare any or all Tenant Leases (as defined in Paragraph 19 of the Security Instrument) to be prior and superior to the lien of the Security Instrument and to recognize the rights of the Tenant(s) (as defined in said Paragraph 19) thereunder, the priority and recognition of any Tenant Lease shall not extend to any provisions of such Tenant Lease which have been made or entered into in contravention of any express requirement of this Agreement, the Security Instrument or any other Loan Document, and any such provisions shall not be binding upon Lender or any purchaser at a foreclosure sale following an election to declare such Tenant Lease to be prior and superior to this Security Instrument, and the Tenant under such Tenant Lease shall be bound to and shall attorn to Lender or such purchaser under all other provisions of such Tenant Lease and shall have no claim against Lender or such purchaser on account of any provisions which are rendered non-binding by virtue of the foregoing provisions; provided, that nothing herein shall be deemed to be a waiver by such Tenant of any right or claim such Tenant may have against the original Borrower on account of such provisions; and provided further that the foregoing provisions of this paragraph shall be subject to the terms of any Subordination, Nondisturbance and Attornment Agreement, or equivalent written instrument, which may be executed by Lender in favor of any Tenant.
18. **Present and Absolute Assignment.** This Agreement is expressly intended for the benefit and protection of Lender, and all subsequent holders of the Note and Security Instrument now held by Lender and all persons holding a participating interest therein, and Borrower understands that this Agreement is a PRESENT ABSOLUTE ASSIGNMENT OF THE RENTS AND PROFITS AND OF LANDLORD'S INTEREST IN LEASES, subject only to the revocable license granted under Paragraph 2(b) above.
19. **Amendments.** This Agreement may not be amended, modified or changed, nor shall any waiver of any provisions hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement is sought.
20. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the United States of America and any rules, regulations or orders issued or promulgated thereunder applicable to the affairs of, or transactions entered into, by Lender as a national banking association; and this Agreement shall, to the extent not covered thereby, otherwise be governed by, and construed and enforced in accordance with, the laws of the state where the Property is located without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than such state.
21. **Release of Assignment.** The recording of any valid full reconveyance or full release of the Security Instrument shall operate as a release of this Agreement in favor of the then owner of the Property; provided, however, that the recording of any valid partial reconveyance or partial release of the Security Instrument shall operate as a release of this Agreement only with respect to that portion of the Property thereby reconveyed or released from the Security Instrument, the term Property as used in this Agreement being deemed thereafter to refer only to that portion of the Property remaining encumbered by the Security Instrument and the term Borrower as used in this Agreement being deemed thereafter to refer only to the owner or owners of such remaining portion of the Property.

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22. **Waiver of Jury Trial.** To the fullest extent permitted by law, Borrower and Lender HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, the Note, this Security Instrument or any of the Loan Documents, or the enforcement of any remedy under any law, statute, or regulation. Neither party will seek to consolidate any such action in which a jury has been waived, with any other action in which a jury trial cannot or has not been waived. Each party acknowledges that it has received the advice of counsel with respect to this waiver.
23. **Conflicts with Security Instrument.** The provisions of this Agreement shall prevail over any inconsistent provisions set forth in the Security Instrument or other Loan Documents.

[SIGNATURES ON NEXT PAGE]

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IN WITNESS WHEREOF, Borrower has executed this Agreement as of the day and year first written above.

**BORROWER:**

161 TOWER ROAD LLC,  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: DAVID J. FRIEDMAN  
Title: VICE PRESIDENT

Property of Cook County Clerk's Office


### ACKNOWLEDGEMENT

STATE OF ILLINOIS

COUNTY OF COOK

On this 9 day of January, 2009 before me, a Notary Public in and for said State, personally appeared David Friedman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/ their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

 OFFICIAL SEAL  
Norma J. Quinones  
Notary Public, State of Illinois  
My Commission Expires September 12, 2011  
Norma J. Quinones  
My Commission expires: 9/12/2011

**DOCUMENT IS NOT TO BE EXECUTED IN COUNTERPARTS**  
**OR UNDER A POWER OF ATTORNEY**  
**ALL SIGNATURES MUST BE ACKNOWLEDGED**

# UNOFFICIAL COPY

**Exhibit A**  
**Legal Description of Property**

The Property is located in the City of Burr Ridge, County of Cook, State of Illinois and is described as follows:

LOT 3 IN SHOE'S ADDITION, BEING A SUBDIVISION OF PART OF SECTIONS 19 AND 30, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 2, 1979 AS DOCUMENT NUMBER 25080404, AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 4, 1979 AS DOCUMENT 25266456.

Address: 161 Tower Drive, Burr Ridge, Illinois

Tax Parcel Number: 18-19-300-034-000

Property of Cook County Clerk's Office