

UNOFFICIAL COPY**Illinois Anti-Predatory
Lending Database
Program****Certificate of Exemption**

0909334095

Doc#: 0909334095 **Fee:** \$56.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/03/2009 02:09 PM Pg: 1 of 11

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The property identified as:**PIN:** 20-11-318-014-0000**Address:****Street:** 5314 S. University Avenue**Street line 2:****City:** Chicago**State:** IL**ZIP Code:** 60615**Lender:** Whoriskey, LLC**Borrower:** Giuliano Testa and Ursula Giesen**Loan / Mortgage Amount:** \$900,000.00

This property is located within Cook County and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Certificate number: 84A61C3B-A078-46CB-BE76-D5B76607E3F9**Execution date:** 04/02/2009

UNOFFICIAL COPY**MORTGAGE**

This MORTGAGE made this
~~24~~ day of October, 2008, between
 Giuliano Testa and Ursula Giesen,
 Husband & Wife by Tenants by the
 Entirety, 1235 S. Wabash, Apt. #4,
 Chicago, IL 60605 (hereinafter
 collectively referred to as

Above Space for Recorder's Use Only

"Borrower"), and Whoriskey, LLC, a Florida limited liability company, having its principal place of business at 1611 East 53rd Street, Chicago, IL 60615 (hereinafter referred to as "Lender").

WITNESSETH

The Borrower has become indebted to the Lender in the aggregate principal sum of NINE HUNDRED THOUSAND DOLLARS (\$900,000.00), with interest at the rate of five percent (5%) per anum, according to the terms and conditions specified in the Note, any unpaid remaining balance provided for in the Note or in this Mortgage being due and payable on or before November 1, 2038. The terms of the Note are incorporated herein by reference.

NOW, THEREFORE, in consideration of this loan, and as security for repayment to the Lender of the principal, interest and other sums provided for in the Note and Mortgage according to the terms and conditions of the Note and Mortgage, and as security for the performance of the agreements and conditions contained in the Note and Mortgage, the Borrower mortgages to the Lender the real estate located in the City of Chicago, County of Cook and State of Illinois, described as follows:

PARCEL 1: Lot 8 in Block 10 in Egandale, a Subdivision of the East 118 acres of the Southwest ¼ of Section 11, Township 38 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Real Estate Index Number(s): 20-11-318-014-0000

Address of Real Estate: 5314 S. University Avenue Chicago, IL 60615

together with all improvements now or hereafter erected on the property, and all easements, appurtenances,

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and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Mortgaged Property."

1.00 The Borrower further covenants and agrees that:

1.01 Warranty of Title. The Borrower has good and marketable fee simple title to the Mortgaged Property, free and clear of all liens, encumbrances, charges, and all other conditions.

1.02 Payment and Performance. The Borrower will pay to the Lender, in accordance with the terms of the Note and this Mortgage, the principal, interest, and all other sums, and will perform and comply with all the agreements, conditions, covenants, provisions, and stipulations of the Note and this Mortgage.

1.03 Maintenance of Mortgaged Property. The Borrower will not commit or permit the commission of waste in or about the Mortgaged Property. The Borrower will not remove, demolish, or structurally alter any building erected at any time on the Mortgaged Property, without the prior written consent of the Lender. The Borrower will not permit the Mortgaged Property to become vacant, deserted, or unguarded, and will maintain the Mortgaged Property in good condition and repair, reasonable wear and tear excepted. The borrower will make, when necessary, all repairs of every nature.

1.04 Condemnation Awards. All awards made to the owners of the Mortgaged Property by any governmental or other lawful authorities for Mortgaged Property taken or damaged through exercise of eminent domain, or for any easement taken in the property, including any awards for changes of grade of streets, are assigned to the Lender, who is authorized to collect and receive the proceeds from the authorities and to give proper receipts for those awards. The Lender will apply these payments (after deduction of attorneys' fees and other costs of collecting the funds) toward the payment of the amount owed on this Mortgage and the accompanying Note, even though the amount owed may not then be due and payable. The Borrower agrees, on request, to make any assignments or other instruments needed to assign the awards to the Lender, free and clear of any encumbrances. The Borrower agrees to give the Lender immediate notice of the actual or threatened commencement of any eminent domain proceedings affecting the Mortgaged Property, and will give the Lender copies of any papers served on the Borrower in connection with those proceedings. The Borrower will not make any settlement for damages sustained without the Lender's prior written

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approval, which approval will not be unreasonably withheld.

1.05 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 any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 1.05 shall become additional debt of Borrower secured by this Mortgage. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender

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may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with the excess, if any, paid to Borrower.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Mortgage, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Mortgage, whether or not then due.

1.06 Taxes and Other Charges. The Borrower will pay all taxes, assessments, water and sewer rents, and other charges or claims assessed, levied, or filed against the Borrower, the Mortgaged Property, or the interest of the Lender in the Mortgaged Property, or that, by law, may have priority over the indebtedness secured by this Mortgage. These expenses will be paid when due and payable and before interest or penalties accrue. The Borrower will provide the Lender with receipts for payments of these amounts no later than the

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payment dates. If the Borrower, in good faith and by appropriate legal action, contests the validity or amount of any item, the Borrower, may establish on its books or by deposit of cash with the Lender, as the Lender may elect, a reserve for the payment in an amount required by the Lender.

1.07 Security Agreement. This Mortgage constitutes a security agreement under the Uniform Commercial Code and creates a security interest in the personal property included in the Mortgaged Property. The borrower will execute and file any financing statements or other security agreements the Lender may require to confirm the lien of this Mortgage with respect to the personal property. The Borrower will pay all costs of filing.

1.08 Compliance With Law and Regulations. The Borrower will comply with all laws, ordinances, regulations, and orders of all federal, state, municipal, and other governmental authorities relating to the Mortgaged Property.

1.09 Defaults and Right to Remedy. If the Borrower fails to pay taxes, assessments, water and sewer charges, other lienable claims (not including contested claims), or insurance premiums, or fails to make necessary repairs, permits waste, or otherwise fails to comply with its obligations under the Mortgage, the Note, or any other document executed in connection with the Mortgage, then the Lender, at its election and without notice to the Borrower, has the right to make any payment or expenditure that the Borrower should have made, or that the Lender deems advisable, to protect the security of this Mortgage or the Mortgaged Property. Any payment by the Lender will not prejudice the Lender's right or remedies under this Mortgage. All sums, as well as costs, advanced by the Lender pursuant to this Mortgage will be due immediately from the Borrower to the Lender, will be secured by this Mortgage, and will bear interest at three percent per year in excess of the rate otherwise provided in the Note from the date of payment by the Lender until the date of repayment.

2.01 Events of Default. Any of the following will constitute an "Event of Default":

- (a) Failure of the Borrower to pay any installment of principal or interest, or any other sum, on the date it is due under the Note or this Mortgage subject to any applicable grace period provided in the Note or in this Mortgage;

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- (b) The Borrower's failure to perform any of the other agreements, conditions, or covenants in the Note, Mortgage or any other document executed in connection with the Mortgage. If the failure to perform cannot reasonably be cured within the cure period, it will not be an Event of Default if the Borrower commences to cure nonperformance or noncompliance within the cure period and diligently pursues performance or compliance to completion;
- (c) The entry of a decree by court having jurisdiction over the Mortgaged Property with respect to the Borrower in an involuntary case under the federal bankruptcy laws, or any other applicable federal or state bankruptcy, insolvency, or similar laws;
- (d) The appointment of a receiver, liquidator, custodian, trustee, (or similar official) for any substantial part of the Borrower's property;
- (e) A court-ordered winding-up or liquidation of the Borrower's affairs;
- (f) The commencement by the Borrower of a voluntary case under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency, or similar laws;
- (g) The consent by the Borrower to the appointment of a receiver, liquidator, trustee, custodian, or similar official for any substantial part of the Borrower's property;
- (h) The Borrower's making any assignment for the benefit of creditor, or the failure of the Borrower generally to pay its debts as they become due; or
- (i) If a final judgment for the payment of money is rendered against the Borrower in an amount greater than \$25,000.00, and, within sixty days after the entry, the judgment has not been discharged or execution stayed pending appeal, or if, within sixty days after the expiration of any stay, the judgment has not been discharged.

For purposes of this Paragraph 2.01, "the Borrower" means the party named as the Borrower in this Mortgage and all persons guaranteeing the Borrower's obligations to the Lender.

2.02 Remedies. (a) If any Event of Default occurs, the entire unpaid balance of principal, accrued interest, and all other sums secured by this Mortgage will become immediately due and payable, at the option of the Lender on written notice to the Borrower.

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(b) When the entire indebtedness becomes due and payable, because of maturity or because of any Event of Default, then the Lender may institute an action of mortgage foreclosure, or take any other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security that the law may allow. The Lender may proceed to final judgment and execution for the entire unpaid balance of the principal debt, with interest at the rate(s) stipulated in the Note, and all other sums due in accordance with the provisions of the Note and this Mortgage. This amount includes all sums that may have been loaned by the Lender to the Borrower after the date of this Mortgage, and all sums that may have been advanced by the Lender for taxes, water or sewer charges, other lienable charges or claims, insurance, repairs, maintenance, and all costs of the suit. The Borrower authorizes the Lender at its option to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property.

(c) When the entire indebtedness becomes due and payable, because of maturity or because of any Event of Default, the Lender may enter into possession of the Mortgaged Property, with or without legal action. In the alternative, the Lender will be entitled to appointment of a receiver without regard to the solvency of the Borrower or another person liable for the debt secured by this Mortgage, and regardless of whether the Lender has an adequate remedy at law. Either the Lender or a receiver may rent the Mortgaged Property for any period and on any terms and conditions that the Lender or receiver may see fit. The Lender or the receiver may collect rents, and, after deducting all costs of collection and administration expense, apply the net rentals to the payment of taxes, water and sewer charges, other lienable charges and claims, and insurance premiums, and to the maintenance, repair, or restoration of the Mortgaged Property, or to the reduction of the principal or interest, as the Lender or the receiver may elect. For that purpose, the Borrower assigns to the Lender all rentals due under any existing or future lease of the Mortgaged Property, as well as all rights and remedies provided in the lease or at law or in equity for the collection of the rentals. Any lease or leases entered into by the Lender or the receiver pursuant to this Paragraph 2.02 will survive foreclosure of the Mortgage and repayment of the debt, unless the lease provides otherwise.

(d) With respect to the personal property in which a security interest is granted, the Lender may exercise any of the rights of a secured party under this Mortgage, the Uniform Commercial Code, and any

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other applicable law. If the Lender is required to provide notice of a public or private sale, lease, or other disposition of the personal property, the notice may be personally delivered to the Borrower or may be deposited in the United States Mail with postage prepaid, at least ten (10) business days prior to the proposed action. This notice will constitute reasonable and fair notice to the Borrower of any action.

2.03 Attorneys' Fees. If the Lender becomes a party to any suit or proceeding affecting the Mortgaged Property, the lien created by this Mortgage, or the Lender's interest in the Mortgaged Property, or if the Lender engages counsel to collect any of the indebtedness or to enforce performance of the agreements or covenants of this Mortgage or the Note, the Lender's costs, expenses, and reasonable attorneys' fees will be paid by the Borrower, on demand, with interest at the rate provided in the Note. Until paid they will be deemed to be part of the indebtedness evidenced by the Note and secured by this Mortgage.

3.01 Assignment. Except as provided otherwise in this instrument, the Lender may assign this mortgage, together with any and all notes or bonds representing the obligation of the Borrower to make payments, at any time without the prior consent of the Borrower. However, the Lender must give the borrower actual notice of any assignment by certified mail, return receipt requested, or by Federal Express or personal delivery, before the due date of the next installment payment that is to be paid after the effective date of the assignment.

3.02 Other Financing. The Borrower will not create or permit to exist any other lien on, or security interest in any portion of the Mortgaged Property, without the prior written consent of the Lender.

3.03 Due-on-Sale Clause. Without the prior written consent of the Lender, the Borrower will not cause or permit any sale, exchange, transfer, lease, or conveyance ("transfer") or any part of the Mortgaged Property, or any interest in it, voluntarily or by operation of law.

3.04 Notices. Unless otherwise specified, all notices permitted or required under this Mortgage or the Note will be in writing, and will be sent by registered or certified mail, postage prepaid, or by Federal Express or by personal delivery, addressed, or served to, the addressee at the address set forth in this Mortgage or in the Note, or at such other address as the addressee may designate in writing from time to time.

3.05 State Law to Apply. This Mortgage shall be construed under and in accordance with the laws

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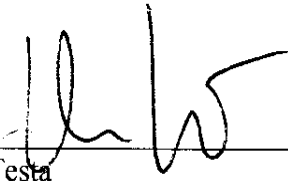
of the State of Illinois.

3.06 Amendment. This Mortgage cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change is sought.

3.07 Parties Bound. This Mortgage will be binding on and inure to the benefit of the parties and their respective heirs, personal representative, successors, and assigns.

3.08 Captions. The captions preceding the test of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and will not constitute a part of this Mortgage, nor will they in any way affect its meaning, construction, or effect.

Executed in Chicago, Illinois this 24 day of October, 2008.



Giuliano Testa



Ursula Giesen

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STATE OF ILLINOIS, COUNTY OF COOK, SS.

The undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that GUILIANO TESTA, 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 free and voluntary act and as the free for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 1st day of ~~October~~^{December}, 2008.



Monica Locum-Miller
Notary Public

Commission expires _____.

STATE OF ILLINOIS, COUNTY OF COOK, SS.

The undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Ursula Giesen, 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 free and voluntary act and as the free for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 1st day of ~~October~~^{December}, 2008.



Monica Locum-Miller
Notary Public

Commission expires _____.

This instrument was prepared by: John T. McGarry, 1611 E. 53rd St., Chicago, IL 60615

MAIL TO:
John T. McGarry
1611 E. 53rd St.
Chicago, IL 60615