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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 0914257214 Fee: \$72.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 05/22/2009 09:19 AM Pg: 1 of 19

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 12-36-401-041-0000

Address:

Street: 1946 N. 75th Ave.

Street line 2: 2800&04 N. 75th Ave-12-25-225-035&034-0000

City: Elmwood Park

State: IL

ZIP Code: 60707

Lender: MIDWEST BANK AND TRUST COMPANY

Borrower: JOSEPH ANDRIACCHI &TR#98-2-7373

Loan / Mortgage Amount: \$4,826,000.00

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: 297A100D-D672-48B3-B8C3-4A07E5F46271

Execution date: 12/10/2008

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JUNIOR MORTGAGE

**Midwest Bank and Trust Company, as Successor Trustee to
Midwest Trust Services, Inc., Trustee Under Trust Agreement
dated July 28, 1998 and Known as Trust Number 98-2-7373**

and

Joseph M. Andriacchi

to and for the benefit of

**Midwest Bank and Trust Company
an Illinois banking association**

to and for the benefit of

**THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:**

Francis L. Keldermans, Esq.
Holland & Knight LLP
131 S. Dearborn Street
30th Floor
Chicago, Illinois 60603

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JUNIOR MORTGAGE

THIS JUNIOR MORTGAGE ("Mortgage") is made as of December 10, 2008, by Midwest Bank and Trust Company, as Successor Trustee to Midwest Trust Services, Inc., as Trustee ("Trustee") Under Trust Agreement dated July 28, 1998 and Known as Trust Number 98-2-7373, (the "Trust") and Joseph M. Andriacchi ("Joseph Andriacchi") (the Trust and Joseph Andriacchi are referred to collectively as "Mortgagor"), to and for the benefit of Midwest Bank and Trust Company, an Illinois banking association, its successors and assigns ("Mortgagee" or "Lender"):

RECITALS:

A. On or about June 27, 2006, Lender made a loan ("Loan") to Park Place on North Avenue, LLC, an Illinois limited liability company ("Park Place" or "Initial Borrower") in the original principal amount of Four Million Eight Hundred Twenty-Six Thousand and no/100 Dollars (\$4,826,000.00), pursuant to the terms and conditions contained in that Construction Loan Agreement ("Initial Loan Agreement") by and between Initial Borrower and Lender.

B. The Loan is evidenced by a Promissory Note (the "Initial Note") dated June 27, 2006 in the original principal amount of the Loan made payable by Initial Borrower to the order of Lender.

C. The Loan is secured by, among other things, (i) a Construction Mortgage ("Initial Mortgage") dated June 27, 2006 executed by the Initial Borrower in favor of Lender and recorded on July 12, 2006 with the Cook County Recorder of Deeds ("Recorder's Office") as Document No. 0619347171 creating a first lien on the property commonly known as 7700-06 W, North Avenue, Elmwood Park, Illinois, (ii) that Assignment of Rents ("Assignment of Rents") dated June 27, 2006 executed by the Initial Borrower in favor of Lender and recorded on July 12, 2006 with the Recorder's Office as Document No. 0619347172, and (iii) certain other loan documents.

D. The Initial Loan Agreement has been amended and modified from time to time as described in that Modification of Loan Documents (the "Modification") of even date herewith by and among Initial Borrower, Joseph Andriacchi, the Trustee (under the Trust and other trusts) and Lender.

E. The Initial Borrower desires to modify the Loan Documents in order to, among other things, (i) extend the Maturity Date of the Note, (ii) modify the Interest Rate, (iii) add the Trust and Joseph Andriacchi as a co-Borrower, (iv) cross-collateralize and cross-default this Loan with other loans to Joseph Andriacchi, (v) cap the availability of loan proceeds at \$4,063,654.25, and (vi) provide Lender with additional security for the Loan, pursuant to the terms and conditions set forth in the Modification.

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F. Joseph Andriacchi owns 40% of the membership interest in Park Place. Joseph Andriacchi owns 100% of the beneficial interest of and sole power of direction in the Trust.

G. In consideration of and as a condition precedent to Lender's agreeing to modify the Loan Documents and enter into the Modification, the Mortgagor agrees to enter into this Mortgage.

H. Park Place, Joseph Andriacchi and Trustee (under the Trust and the other trusts described in the Modification) are referred to collectively as the "Borrower".

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants, hypothecates and conveys to Mortgagee, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

THE REAL ESTATE located in the State of Illinois and legally described on Exhibit A attached hereto and made a part hereof ("Real Estate");

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf ("Improvements");

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

TO HAVE AND TO HOLD the Premises, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Event of Default; Mortgagee hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges and other indebtedness evidenced by or owing under the Note, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower or any other obligor to or benefiting Mortgagee which are

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evidenced or secured by or otherwise provided in the Note or this Mortgage; and (iii) the reimbursement to Mortgagee of any and all sums incurred, expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, any of the other Loan Documents, with interest thereon as provided herein or therein (collectively, "Indebtedness").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Mortgagor represents, warrants and covenants that (a) the Trust is the holder of (i) the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of Mortgagee and as otherwise described on Exhibit B attached hereto ("Permitted Exceptions"); (b) Mortgagor has legal power and authority to mortgage and convey the Premises, and (c) Beneficiary owns 100% of the beneficial interest and power of direction in the Trust, free from any lien, security interest, encumbrance or other right, title or interest of any any person or entity other than in favor of the Mortgagee, and has the legal power and authority to direct the Trustee to mortgage and convey the Premises.

2. Borrower agrees to pay i) when due the Indebtedness in accordance with the terms of the Note and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Borrower under the Note and this Mortgage and ii) pay when due any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee.

3. If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation, release or change.

4. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

a. Borrower fails to pay (i) any installment of principal or interest payable pursuant to the terms of the Note, or (ii) any other amount payable to Lender under the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents within ten (10) days after the date when any such payment is due in accordance with the terms hereof or thereof;

b. the existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage, the Loan Agreement (as defined in the Modification) or any of the other Loan Documents or of any statement or certification as to facts delivered to Mortgagee by Borrower;

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c. Any Borrower files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of any Borrower or of all or any substantial part of the property of Mortgagor or any guarantor of the Note or any of the Premises or all or a substantial part of the assets of Mortgagor or any guarantor of the Note are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within thirty (30) days;

d. the commencement of any involuntary petition in bankruptcy against Mortgagor or Park Place or any guarantor of the Note or the institution against Mortgagor or any guarantor of the Note of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor or any guarantor of the Note which shall remain undismissed or undischarged for a period of sixty (60) days;

e. the occurrence of an "Event of Default" under the Note.

5. If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to Borrower, with interest thereon accruing from the date of such Event of Default until paid at the Default Rate.

When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act").

In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable 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 all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Borrower's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Loan Agreement, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

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6. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Mortgagee may determine in its sole and absolute discretion.

7. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

a. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

b. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

8. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

9. Mortgagee and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times upon not less than twenty four (24) hours prior notice to Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

10. Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Mortgagee in connection with the execution of such release.

11. Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

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To Mortgagee: Midwest Bank and Trust Company
 1691 N. Milwaukee
 Chicago, Illinois 60647
 Attn: Lester Arceo, Assistant Vice President

With a copy to: Francis L. Keldermans, Esq.
 Holland & Knight LLP
 131 S. Dearborn Street
 30th Floor
 Chicago, Illinois 60603

to Trust: Midwest Bank and Trust Company, as Trustee
 1606 North Harlem Avenue
 Elmwood Park, Illinois

With a copy to: Joseph M. Andriacchi
 1142 Franklin Avenue
 River Forest, Illinois

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

12. The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

a. The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15 - 1601 or other applicable law or replacement statutes;

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b. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

c. Trustee represents that the provisions of this paragraph (including the waiver of reinstatement and redemption rights) were made at the express direction of Joseph Andriacchi, as beneficiary under the Trust and being the person having the power of direction over the Trust, and are made on behalf of the trust estate of the Trust and all beneficiaries of the Trust, as well as all other persons mentioned above.

13. (a) Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

i. May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

ii. May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

iii. May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

iv. May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

v. May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the Indebtedness or the transfer of the Premises in lieu of foreclosure; or

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vi. May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

b. All expenses, charges, costs and fees described in this Paragraph 13 shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

14. Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

15. All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Mortgagee to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

16. Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) (collectively, "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Mortgagee in accordance with the terms of this Mortgage; provided, however, that Mortgagor shall not be obligated to indemnify or hold Mortgagee harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Mortgagee. All costs provided for herein and paid for by Mortgagee shall be so much additional Indebtedness and shall become immediately due and payable upon demand by Mortgagee and with interest thereon from the date incurred by Mortgagee until paid at the Default Rate.

17. Mortgagor and Mortgagee additionally agree:

a. This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and

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all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

b. In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Mortgagee shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

c. Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

d. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

e. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by Mortgagee of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

f. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

g. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or

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associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of Mortgagor and Mortgagee hereunder is solely that of debtor/creditor.

h. Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Loan Agreement, the Note and the other Loan Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

i. The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Premises, and if Mortgagee acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

j. **Consent to Jurisdiction** TO INDUCE MORTGAGEE TO ACCEPT THE NOTE, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

k. **Waiver of Jury Trial.** MORTGAGOR AND MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

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1. **Complete Agreement.** This Mortgage, the Loan Agreement, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Mortgagor and Mortgagee.

18. **Subordination.** The Indebtedness secured hereby, as well as all rights and remedies set forth herein, are subordinated to the payment of the indebtedness evidenced by **[description of the first mortgage to be inserted on receipt of title commitment]** (the "Prior Mortgage") and this Mortgage is made expressly subject to all terms and provisions of the Prior Mortgage and the indebtedness evidenced thereby.

19. **Cross Default and Cross Collateralization.** An Event of Default under any other Loan Documents with respect to any indebtedness owing by Joseph Andriacchi to Mortgagee thereunder ("Other Loans") shall be an Event of Default with respect to this Loan, and upon the occurrence of an Event of Default, Mortgagee shall have the right to exercise any and all remedies granted to Mortgagee under this Agreement in accordance with the terms and conditions hereof. The collateral securing the Loan shall secure the Other Loans. The collateral securing the Other Loans shall also secure the Loan.

20. **Trustee Exculpation.** This Mortgage is executed by the Trustee, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing in this Mortgage shall be construed as creating any liability on such Trustee personally to perform any express or implied covenant, condition or obligation under this Mortgage, all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Mortgage. Notwithstanding the foregoing, the Lender shall not be precluded from: (a) recovering any condemnation awards or insurance proceeds attributable to the Premises ; (b) recovering any tenant security deposits, advance or pre-paid rents; or (c) enforcing the personal liability of Joseph Andriacchi as co-maker of the Note, of the payment of the Note and performance of the Loan Documents.

[Signature Page Follows]

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IN WITNESS WHEREOF, Mortgagor has executed and delivered this Junior Mortgage as of the day and year first above written.

MORTGAGOR:

Midwest Bank and Trust Company, as Successor Trustee to Midwest Trust Services, Inc., as Trustee Under Trust Agreement dated July 28, 1998 and Known as Trust Number 98-2-7373

By: Rosanne M. Dupass
Name: ROSANNE M. DUPASS
Title: Trust Officer

Joseph M. Andriacchi
Joseph M. Andriacchi, individually

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Joseph M. Andriacchi, Trust Officer of **Midwest Bank and Trust Company**, as Successor Trustee to Midwest Trust Services, Inc., as Trustee under Trust Agreement dated July 28, 1998 and known as Trust Number 98-2-7373 is 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/she signed and delivered said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of ~~February~~ ^{March}, 2009.

Nancy Owens

Notary Public



STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Joseph M. Andriacchi, is 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of ~~February~~ ^{March}, 2009.

Shawnese Carson

Notary Public



UNOFFICIAL COPY

EXHIBIT A-1

THE PROPERTY

1946 N. 75th Avenue, Elmwood Park, Illinois

Lot 1 in Andriacchi's Third Subdivision, a subdivision of Lots 21 and 22 (except the South 33.0 feet thereof) in Montclare Hillside First Addition, being a subdivision of the North 1/2 of the Northwest 1/4 of the Southeast 1/4 of Section 36, Township 40th North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois, recorded July 27, 1914 as Document No. 5465421, in Cook County, Illinois.

PIN: 12-36-401-041-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A-2

THE PROPERTY

2804 N. 75th Avenue, Elmwood Park, Illinois

NORTH HALF OF THE SOUTH TWO THIRDS OF LOT 24 IN ELMWOOD PARK GARDENS, BEING A SUBDIVISION A SUBDIVISION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 12-25-225-034

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A-3

THE PROPERTY

2800 N. 75th Avenue, Elmwood Park, IL

THE SOUTH 1/2 OF LOT 24 IN ELMWOOD PARK GARDENS, BEING A SUBDIVISION A SUBDIVISION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 12-25-225 035

Property of Cook County Clerk's Office

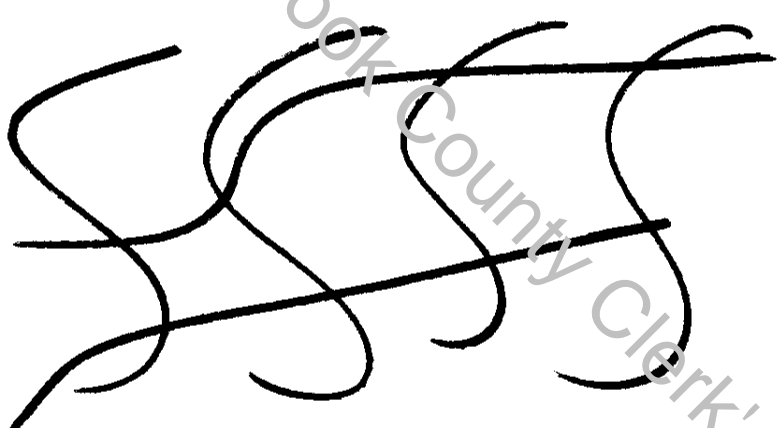
UNOFFICIAL COPY

EXHIBIT B

PERMITTED EXCEPTIONS

6112435_v1

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A large, stylized handwritten signature in black ink, consisting of several overlapping loops and flourishes, is written across the center of the page. The signature is partially obscured by the diagonal watermark text.