

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program



Doc#: 0921103037 Fee: \$76.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 07/30/2009 10:59 AM Pg: 1 of 21

### Certificate of Exemption

**Report Mortgage Fraud**  
**800-532-8785**

The property identified as: **PIN: 03-04-100-018-0000**

**Address:**

**Street:** 70 S. Buffalo Grove Road

**Street line 2:**

**City:** Buffalo Grove

**State:** IL

**ZIP Code:** 60089

**Lender:** Grzegorz Smalec

**Borrower:** Buffalo Creek Condominiums, LLC

**Loan / Mortgage Amount:** \$935,000.00

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:** B1900DD8-D7CE-4306-8A96-892A7C0971AB

**Execution date:** 07/28/2009

**UNOFFICIAL COPY****FOR RECORDER'S USE ONLY****PREPARED BY AND WHEN  
RECORDED MAIL TO:**

Grzegorz Smalec  
4615 Linden Ave.  
Glenview, IL 60025

**MORTGAGE**

THIS MORTGAGE (the "Mortgage"), made as of this 28 day of February, 2008, by and between Buffalo Creek Condominiums, LLC an Illinois limited liability company (hereinafter referred to as "Borrower") with a mailing address of 1501 Leystone Court, Rolling Meadows, IL 60008, in favor of Grzegorz Smalec, having its principal place and mailing address at 4615 Linden Ave., Glenview, IL 60025 (hereinafter referred to as "Lender"):

**WITNESSETH:**

Borrower is justly indebted to Lender in the principal sum of NINE HUNDRED THIRTY FIVE THOUSAND AND NO/100 (\$935,000.00) (the "Loan") evidenced by a certain Note (the "Note") of even date herewith in that amount, made by Borrower and payable to the order of and delivered to Lender, in and by which said Note Borrower promises to pay the said principal sum and interest in the manner and at the rates as provided therein and pursuant to the terms of that certain Loan Agreement between Borrower and Lender of even date herewith (the "Loan Agreement"). The unpaid principal amount and all accrued and unpaid interest due under the Note, if not sooner paid, shall be due on February 1, 2010, except that if certain conditions described in the "Loan Documents" (as hereinafter defined) are not satisfied in accordance with the provisions thereof, the unpaid principal amount and all accrued and unpaid interest due under the Note shall be due on such earlier date or dates as are specified in the Note. All such payments on account of the indebtedness evidenced by the Note shall be first applied to reimburse Lender for advances made by Lender to protect the "Premises" (as hereinafter defined), second to the payment of any fees, expenses or other costs that Borrower is obligated to pay hereunder or under the Loan Documents, third to accrued and unpaid interest under the Note, or the Default Rate (as defined in the Note), as the case may be, fourth to interest on the unpaid principal amount of the Note at the interest rate provided therein, and fifth to reduce the unpaid principal amount of the Note, and all of said principal and interest shall be payable at such place as the holder or holders of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of Lender, at 4615 Linden Ave., Glenview, IL 60025. The interest rate is the rate as stated in the Note executed by Borrower.

NOW, THEREFORE, Borrower, to secure the payment of said principal sum of money and said interest in accordance with the terms, provisions and limitations of the Loan Agreement, this Mortgage and of the Note secured hereby, together with any extensions, renewals or refinancings thereof, and the performance of the covenants and agreements herein contained and in the Note, the Loan Agreement, and the other Loan

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Documents by Borrower or Guarantor (as hereinafter defined) to be performed and also in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid, the receipt and sufficiency of which are hereby acknowledged, does by these presents MORTGAGE, GRANT, BARGAIN, SELL, REMISE, RELEASE, ALIEN AND CONVEY unto Lender, its successors and assigns, the real estate and all of its estate, right, title and interest therein situated, located in Elk Grove Village, Cook County, Illinois and legally described in Exhibit A attached hereto and made a part hereof, which, together with the property hereinafter described, is referred to herein collectively as the "Premises";

TOGETHER with all easements, rights of way, strips and gores of land, vaults, streets, alleys, water rights, mineral rights, and rights used in connection with the Premises or to provide a means of access to the Premises, and all tenements, hereditaments and appurtenances thereof and thereto pertaining or belonging, and all underground and overhead passageways and licenses in connection therewith;

TOGETHER with all leasehold estates, right, title and interest of the Borrower in any and all leases, subleases, licenses (to the extent assignable), management agreements, arrangements, concessions, or agreements, written or oral, relating to the use and occupancy of the Premises and improvements or any portion thereof located thereon, now or hereafter existing or entered into;

TOGETHER with all rentals, earnings, income, deposits, security deposits, receipts, royalties, payment intangibles, revenues, issues and profits, investment property, deposit accounts, letter-of-credit rights, accounts receivable, room rentals, food and beverage revenues and other amounts generated from the use, occupancy and operation of the Premises for so long and during all such times as Borrower may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily);

TOGETHER with any and all buildings and improvements now or hereafter erected on the Premises, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements and all tangible personal property owned by Borrower now or any time hereafter located on or at the land or used in connection therewith, including, but not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating, boilers, refrigerating, electronic monitoring, water, lighting, power, sanitation, waste removal, entertainment, recreational, window or structural cleaning rigs, maintenance and all other equipment of every kind), any and all lobby and other indoor or outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), furnishings, appliances, inventory, rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, venetian blinds, partitions, chandeliers and other lighting fixtures, and all other fixtures, apparatus, equipment, furniture, furnishings, and articles used in connection with the operation of the Premises, it being understood that the enumeration of any specific articles of property shall in no wise result in or be held to exclude any items of property not specifically mentioned;

TOGETHER with all the estate, interest, right, title, and other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Borrower now has or may hereinafter acquire in the Premises, and any and all awards made for the taking by eminent domain, or by any proceedings or purchase in lieu thereof, of the whole or any part of the Premises, including without limitation any awards resulting from the change of grade of streets and awards for severance damages.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

Borrower covenants that it is lawfully seized of the Premises, that the same are unencumbered except for such liens and encumbrances as shall have been expressly approved in writing by Lender (the "Permitted

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Exceptions”), and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

TO HAVE AND TO HOLD the Premises unto Lender, its successors and assigns, forever, for the purposes and uses herein set forth, and Borrower does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Premises unto Lender.

Borrower represents and covenants that (i) Borrower is the holder of the fee simple title to the Premises free and clear of all liens and encumbrances, except for the Permitted Exceptions, and (ii) Borrower has legal power and authority to mortgage and convey the Premises.

## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.** Borrower shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics’ liens or other liens or claims for lien, except that Borrower shall have the right to contest in good faith and with diligence the validity of any such lien or claim upon: (i) placing a bond with Lender in an amount, form, content and issued by a surety acceptable to Lender for the payment of any such lien, or (ii) obtaining a title indemnity insuring Lender’s interest against said lien in an amount, form, content and issued by a title insurance company acceptable to Lender, in either case within ten (10) days after the filing of such lien; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to the lien hereof (no such superior or inferior lien to be permitted hereunder), and upon request, exhibit satisfactory evidence of the discharge of any such lien to Lender; (d) complete any building or buildings, and all construction work with respect thereto, now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises or the use thereof, including, without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) except as provided in the Loan Agreement, make no structural or non-structural alterations to the Premises or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Lender; (g) suffer or permit no change in the general nature of the occupancy of the Premises, without the prior written consent of Lender; (h) initiate or acquiesce in no zoning reclassification without the prior written consent of Lender; and (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note. As used in this Article and elsewhere in this Mortgage, the term “indebtedness” shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Lender thereunder, and all other sums at any time secured by this Mortgage.

2. **Payment of Taxes and Assessments.** Borrower shall pay before any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges, and electric, gas and other utility charges, and all other liens or charges levied or assessed against the Premises of any nature whatsoever when due, and shall furnish to Lender duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Borrower shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof.

### 3. **Insurance.**

(a) Borrower shall maintain insurance on the Premises consistent with the certificate of insurance presented to Lender at the time the Loan was made, pursuant to an all risk policy of insurance issued by a company rated A-13 or better by Best among property and casualty insurers, or such other rating as approved by Lender. Borrower also shall at all times maintain comprehensive public liability, property damage and workers’ compensation insurance covering the Premises and any employees thereon, with such limits for

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personal injury, death and property damage as Lender may require. All policies of insurance to be furnished hereunder shall be in forms, amounts and deductibles, and from companies, satisfactory to Lender, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Lender, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Lender. Borrower shall deliver all policies, including additional and renewal policies, to Lender, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

(b) Borrower shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Lender is included thereon under a standard mortgagee clause acceptable to Lender. Borrower immediately shall notify Lender whenever any such separate insurance is taken out and promptly shall deliver to Lender the policy or policies of such insurance.

(c) In the event of loss Borrower will give immediate notice of such loss by mail to Lender, who shall have the right, but not the obligation, to make proof of loss. Lender is at all times authorized to collect and receipt for any insurance money. Each insurance company concerned is hereby authorized and directed to make payment for such loss to Borrower and Lender jointly. If and only if (i) the cost of repair of the damage is less than \$25,000.00 and the repairs can be completed at least 60 days prior to the maturity date of the Note, and (ii) Borrower shall satisfy each and every condition contained in Paragraph 19, below, then Lender shall make the proceeds available for restoration or repair of the property as provided in Paragraph 19 hereof; otherwise, Lender may, at its sole and absolute discretion, apply the insurance proceeds to the outstanding indebtedness due from Borrower to Lender. In the event of an entry of decree of foreclosure of this Mortgage, all right, title and interest of Borrower in and to any and all insurance policies then in force shall pass to the purchaser at the foreclosure sale. Borrower shall furnish Lender, without cost to Lender, at the request of Lender, from time to time, evidence of the replacement value of the Premises. In the event of an entry of decree of foreclosure, Borrower authorizes and empowers Lender to effect insurance upon the Premises in the amounts aforesaid, for a period covering the time from entry of said decree to and including the date of sale, and if necessary therefor, to cancel any or all existing insurance policies.

4. **Condemnation.** If all or any part of the Premises is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damage made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Lender, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Borrower, and the same shall be paid forthwith to Lender, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its expenses, including costs and attorneys fees, at the option of Lender, in its sole discretion, either to (i) the outstanding indebtedness due from Borrower to Lender or (ii) the restoration or repair of the property damaged, subject to the conditions set forth in Paragraph 19 hereof, and provided that the property can be restored or repaired to constitute a complete architectural unit.

5. **Stamp Tax.** If, by the laws of the United States of America, or of any state having jurisdiction over Borrower, any tax is due or becomes due in respect of the issuance of this Mortgage or the Note hereby secured, Borrower covenants and agrees to pay such tax in the manner required by any such law. Borrower further covenants to reimburse Lender for any sums which Lender may expend by reason of the imposition of any tax on the issuance of this Mortgage or the Note secured hereby. Notwithstanding the foregoing, Borrower shall not be required to pay any income or franchise taxes of Lender.

6. **Observance of Lease Assignment.**

(a) As additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, Borrower, as lessor, has assigned to Lender all of



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its right, title and interest as lessor in and to all leases, rentals, earnings, income, deposits, security deposits, receipts, royalties, revenues, issues and profits, accounts receivables, room rental, food and beverage revenues and other amounts generated from the use, occupancy and operation of the Premises which now or hereafter affect the Premises pursuant to the Assignment of Rents and Lessor's Interest in Leases of even date herewith.

(b) Borrower will not, without Lender's prior written consent: (i) execute, renew, cancel, modify or amend any lease; (ii) execute an assignment or pledge of any rents and/or any leases affecting all or any portion of the Premises; or (iii) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, other than security and other deposits.

(c) Borrower at its sole cost and expense will (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases affecting all or any portion of the Premises, on the part of the lessor thereunder to be kept and performed; (ii) use its best efforts to enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the lessees to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the lessor or of the lessees thereunder; (iv) as additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, transfer and assign to Lender any lease or leases affecting all or any portion of the Premises heretofore or hereafter entered into, and make, execute and deliver to Lender, upon demand, any and all instruments required to effectuate said assignment; (v) give written notice to Lender within five (5) days of the occurrence of any material default under any lease affecting all or any portion of the Premises and (vi) exercise within five (5) days of any written demand therefor by Lender any right to request from the lessee under any lease affecting all or any portion of the Premises a certificate with respect to the status thereof.

(d) Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Lender, expressly or by implication, to perform any of the covenants of Borrower as lessor under any of the leases assigned to Lender or to pay any sum of money or damages therein provided to be paid by the lessor, each and all of which covenants and payments Borrower agrees to perform and pay.

(e) In the event of the enforcement by Lender of the remedies provided for by law or by this Mortgage, the lessee under each lease affecting all or any portion of the Premises shall, at the option of Lender, attorn to any person succeeding to the interest of Borrower as a result of such enforcement and shall recognize such successor in interest as lessor under such lease without change in the terms or other provisions thereof; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one (1) month in advance or any amendment or modification to any lease made without the consent of Lender or said successor in interest. Each lessee, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

(f) Lender shall have the option to declare this Mortgage (after the expiration of the cure period expressly provided for in Paragraph 13(b) below) in default because of a default of the lessor under any lease affecting all or any portion of the Premises which is not cured by the lessor within the applicable cure period, if any, whether or not such default is cured by Lender pursuant to the right granted herein. It is covenanted and agreed that a default remaining uncured after the expiration of any applicable cure periods expressly provided for under the Assignment of Rents and Lessor's Interest in Leases referred to in the first grammatical paragraph of this Paragraph 8 or under any assignment of leases executed pursuant to this Paragraph 8 shall constitute a default hereunder on account of which the whole of the indebtedness secured hereby shall at once, at the option of Lender, become immediately due and payable without notice to Borrower.

7. **Effect of Extensions of Time.** If the payment of said indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the indebtedness be released, all persons

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now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation or release.

8. **Effect of Changes in Laws Regarding Taxation.** In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Lender's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder or holders thereof, then, and in any event, Borrower, upon written demand by Lender, shall pay such taxes or assessments, or reimburse Lender therefor; provided, however, that Borrower shall not be deemed to be required to pay any income or franchise taxes of Lender. Notwithstanding the foregoing, if in the opinion of counsel for Lender (a) it might be unlawful to require Borrower to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Lender may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to be and become due and payable thirty (30) days from the giving of such written notice.

9. **Lender's Performance of Defaulted Acts.** In case of default hereunder or under any Loan Document, Lender may, but need not, make any payment or perform any act herein required of Borrower in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Lardlord under any lease affecting all or any portion of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys fees (including, but not limited to, all appellate level and post-judgment proceedings) and any other monies advanced by Lender in regard to any tax referred to in Paragraph 7 hereof or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at an annual rate equal to the Default Rate (as defined in the Note). The interest accruing under this Paragraph 11 shall be immediately due and payable by Borrower to Lender, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Inaction of Lender shall never be considered as a waiver of any right accruing to it on account of any default on the part of Borrower.

10. **Lender's Reliance on Tax Bills and Claims for Lien.** Lender, in making any payment hereby authorized, with contemporaneous written notice to Borrower: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

11. **Acceleration of Indebtedness in Event of Default.** The occurrence of any one or more of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Borrower fails to pay on the date when due any installment of principal or interest or other monetary sum payable pursuant to the Note or the Loan Documents (as hereinafter defined);

(b) Marcin Malarz and Jacek Sienkiewicz ("Guarantors") or Borrower fails promptly to perform or cause to be performed any other obligation or to observe any other condition, covenant, term, agreement or provision required to be performed or observed by such party under (i) the Note, (ii) this Mortgage and

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various other Mortgages of even date herewith made by Borrower or Guarantor to Lender, (iii) Assignment of Rents and Lessor's Interest in Leases of even date herewith made by Borrower to Lender, (iv) the Continuing Guarantee of even date herewith made by Guarantor to Lender, (v) the Security Agreement of even date herewith made by Borrower to Lender, (vi) the Loan Agreement, (vii) any other Loan Documents, as defined in the Loan Agreement (the documents described in sections (i) through (vii) above, both inclusive, and any and all other documents executed in connection therewith, being hereinafter collectively referred to as the "Loan Documents") provided, however, that unless and until the continued operation or safety of the Premises, or the priority, validity or enforceability of this Mortgage or the lien hereof or the lien of any other security granted to Lender or the value of the Premises is immediately threatened or jeopardized, Borrower shall have a period not to exceed thirty (30) days after written notice of such failure of performance or observance to cure the same.

(c) Any material inaccuracy or untruth arises in any representation when made, or in any covenant or warranty at any time, made in this Mortgage or in any of the other Loan Documents;

(d) At any time, Borrower or any Guarantor files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or insolvent, or institutes (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal, state or other statute or law, or admits in writing his or its inability to pay his or its debts as they mature, or makes an assignment for the benefit of his or its creditors, or seeks or consents to the appointment of any receiver, trustee or similar officer for all or any substantial part of his or its property;

(e) The commencement of any involuntary petition in bankruptcy against Borrower or any Guarantor or the institution against Borrower or any Guarantor 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 Borrower or any Guarantor which shall remain undismissed or undischarged for a period of sixty (60) days;

(f) A transfer in violation of the provisions of Paragraph 26 hereof occurs; or

(g) The death, legal incompetency or mental disability of any Guarantor or if any Guarantor attempts to revoke or disclaim its guarantee.

If an Event of Default occurs, Lender may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without prior notice to Borrower, with interest thereon from the date of such Event of Default at the Default Rate. If, while any insurance proceeds or condemnation awards are being held by Lender to reimburse Borrower for the cost of rebuilding or restoration of buildings or improvements on the Premises, as set forth in Paragraph 19 hereof, Lender shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Lender shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of the indebtedness then due hereunder shall be returned to Borrower or any party entitled thereto without interest.

## 12. **Foreclosure; Expense of Litigation.**

(a) When the indebtedness hereby secured shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In case of any foreclosure sale of the Premises, the same may be sold in one or more parcels. 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 Lender for reasonable



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attorneys' fees, appraisers' fees (including, but not limited to all appellate level and post-judgment proceedings), 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 title, as Lender may deem 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 in this Paragraph 14 mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or other proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any litigation or other proceeding or threatened litigation or other proceeding, shall be immediately due and payable by Borrower, with interest thereon at the Default Rate, and shall be secured by this Mortgage.

(b) Without limiting the liability of Borrower as set forth above, Borrower shall indemnify Lender and its officers, directors, employees and agents, and hold them harmless from and against all claims, injury, damage, loss and liability of any and every kind to any persons or property by reason of (i) the buildings and all construction work with respect thereto; (ii) the operation or maintenance of the Premises; or (iii) any other action or inaction by or matter which is the responsibility of Borrower.

13. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 14 hereof; second, on account of all other items which may under the terms hereof constitute secured indebtedness or as evidenced by the Note, with interest thereon as herein and therein provided, and all principal and interest remaining unpaid on the Note; and third, any surplus to Borrower, its successors or assigns, as their rights may appear.

14. **Appointment of Receiver.** Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and Lender or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of and from the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further period when Borrower, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his or her hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and/or (b) the deficiency in case of a sale and deficiency.

15. **Rights Cumulative.** Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, 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 Lender, 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 Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise

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shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

16. **Lender's Right of Inspection.** Lender and its agents shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

17. **Disbursement of Insurance or Condemnation Proceeds.** In the event insurance or condemnation proceeds are to be applied to restoration:

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises or of the improvements upon the Premises, whether by fire or other casualty or by condemnation or a taking under the power of eminent domain, Borrower shall obtain from Lender its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(b) Prior to the payment or application of insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the Premises or of the improvements upon the Premises as provided in Paragraphs 5 and 6 hereof, Lender shall be entitled to evidence of the following:

(i) That Borrower is not then in default under any of the terms, covenants or conditions of the Note or of the Loan Documents;

(ii) That either such property has been fully restored, or that the expenditure of such money as may be received from such insurance proceeds or condemnation or eminent domain award will be sufficient to repair, restore or rebuild the Premises or the improvements upon the Premises, free and clear of all liens, except the lien of this Mortgage, and any other mortgage or liens encumbering the Premises at the time the loss or condemnation occurred which were filed prior to this Mortgage or which Lender approved.

(iii) That in the event such insurance proceeds or condemnation or eminent domain award shall be insufficient to repair, restore or rebuild such property, Borrower shall deposit with Lender funds equaling such deficiency, which, together with the insurance proceeds or condemnation or eminent domain award, shall be sufficient to repair, restore and rebuild such property; and

(iv) That prior to the disbursement of any such proceeds or award held by Lender in accordance with the terms of this Paragraph 19 for the cost of any repair, restoration or rebuilding, Lender shall be furnished with a statement of Borrower's architect, certifying the extent of the repair, restoration and rebuilding completed to the date thereof, and that such repair, restoration and rebuilding have been performed to date in conformity with the plans and specifications approved by Lender; and Lender shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation or eminent domain award to the repair, restoration or rebuilding of the Premises or of the improvements upon the Premises as provided in Paragraphs 5 and 6 hereof, there shall have been delivered to Lender the following:

(i) A waiver of subrogation from any insurer which claims that no liability exists as to Borrower or the then owner or other assured under the policy of insurance in question; and

(ii) Such performance and payment bonds, and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Lender.

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(d) In the event Borrower shall fail to repair, restore or rebuild the Premises or the improvements upon the Premises within a reasonable time, then Lender, at its option, and upon not less than thirty (30) days' written notice to Borrower, may commence to repair, restore or rebuild such property for or on behalf of Borrower, and for such purpose, may perform all necessary acts to accomplish such repair, restoration or rebuilding. In the event that insurance proceeds or a condemnation or eminent domain award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Premises or of the improvements upon the Premises, such excess shall be used by Borrower to up-grade the improvements upon the Premises or shall be applied on account of the unpaid principal balance of the Note.

(e) In the event that Borrower commences the repair, restoration or rebuilding of the Premises or of the improvements upon the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 19, or in the event that Borrower shall fail to repair, restore or rebuild the Premises or the improvements upon the Premises within a reasonable time, and if Lender does not repair, restore or rebuild such property as provided in Paragraph 19(d) hereof, then Lender may, at its option, accelerate the indebtedness evidenced by the Note and apply all or any part of the insurance proceeds or condemnation or eminent domain award against the indebtedness secured hereby.

18. **Release.** Lender shall release this Mortgage and the lien thereof, in its entirety, by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of expenses incurred by Lender in connection with the execution of such release.

19. **Notices.** Any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied or sent by overnight courier or U.S. Mail and shall be deemed given: (a) if served in person, when served; (b) if telecopied, on the date of transmission if before 3:00 p.m. (Chicago time) on a business day; provided that a hard copy of such notice is also sent pursuant to (c) or (d) below; (c) if by overnight courier, on the first business day after delivery to the courier; or (d) if by U.S. Mail certified or registered mail, return receipt requested on the fifth (5th) day after deposit in the mail postage prepaid.

1.1.

Notices to Borrower: Buffalo Creek Condominiums, LLC  
1501 Keystone Court  
Rolling Meadows, IL 60008  
Fax: 847-222-1520

Notice to Lender: Grzegorz Smalec  
4615 Linden Ave.  
Glenview, IL 60025  
Fax: 847-299-4556

Either party may designate a different address for notice purposes by giving notice thereof in accordance with this Paragraph 19; provided, however, that such notice shall not be deemed given until actually received by the addressee.

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

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21. **Waiver of Rights.** To the extent permitted by law, Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of all such laws. To the extent permitted by law, Borrower, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

22. **Expenses Relating to Note and Mortgage.** Borrower will pay all reasonable expenses, charges, costs and fees relating to the loan evidenced by the Note and secured by this Mortgage or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Lender's attorneys' fees in connection with the negotiation, underwriting, approval, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all of Lender's inspection costs, fees and expenses with regard to the Premises, 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 Borrower shall not be required to pay any income or franchise taxes of Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note or this Mortgage. All expenses, charges, costs and fees described in the preceding sentence shall be so much additional indebtedness secured hereby, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with such interest, by Borrower forthwith upon demand.

23. **Business Purpose.** Borrower covenants that the proceeds of the loan evidenced by the Note and secured by this Mortgage will be used for business purposes and that the principal obligation secured hereby constitutes a business loan which comes within the purview of such statute.

24. **Transfer of Premises; Further Encumbrance.** In determining whether or not to make the loan secured hereby, Lender examined the creditworthiness of Borrower and found it acceptable and relied and continues to rely upon the same as the means of repayment of the Note. Lender also evaluated the background and experience of Borrower in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon the same as the means of maintaining the value of the Premises, which is Lender's security for the Note. Borrower was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby, or had the opportunity to be so represented, and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Borrower recognizes that Lender in connection with any refinancing is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan. Borrower further recognizes that any secondary or junior financing placed upon the Premises, (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Lender to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Lender come into possession thereof with the intention of selling the same; and (d) would impair Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by Lender would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Lender's security, both of repayment by Borrower and of the value of the Premises; (ii) giving Lender the full benefit of its bargain and contract with Borrower; (iii) allowing Lender to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Borrower agrees that if this Paragraph 24 be deemed a restraint on alienation, that it is a reasonable one, and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or of any interest in the Premises (whether voluntary or by operation of law), including, without limitation, the entering into of an installment agreement for the sale of the Premises, the placement or granting of liens on all or any part of the Premises or the placement or



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granting of chattel mortgages, conditional sales contracts, financing statements or security agreements which would be or create a lien on the personal property utilized in the operation of the Premises, or the granting of a mortgage commonly known as a "wrap around" or an improvement loan, without Lender's prior written consent, shall be an Event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder: any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises, or any partnership interest in Borrower or any membership interest in the general partner of Borrower. Any waiver by Lender of an Event of Default under this Paragraph 24 shall not constitute a consent to, or a waiver of, any right, remedy or power of Lender upon a subsequent Event of Default under this Paragraph 24. Borrower acknowledges that any agreements, liens or encumbrances created or entered into in violation of the provisions of this Paragraph 24 shall be void and of no force or effect.

25. **Financial Statements.** Borrower shall cause to be delivered to Lender, such financial statements as may be requested from time to time by Lender.

26. **Statement of Indebtedness.** Borrower, within seven (7) days after being so requested by Lender, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage and the date to which interest has been paid, and stating either that no offsets or defenses exist against the Mortgage debt or, if such offsets or defenses are alleged to exist, the nature thereof.

27. **Further Instruments.** Upon request of Lender, Borrower will execute, acknowledge and deliver all such additional instruments and further assurances of title, and will do or cause to be done all such other further acts and things, as may be reasonably necessary fully to effectuate the intent of this Mortgage.

28. **Security Agreement and Financing Statements.**

(a) Borrower and Lender agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the state in which the Premises are located with respect to all sums on deposit with the Lender and with respect to any property included in the definition herein of the word "Premises," which property may not be deemed to form a part of the real estate described in Exhibit A or may not constitute a "fixture" (within the meaning of the Code, and all replacements of such property, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and Deposits is hereby granted to the Lender; and (iii) that the Deposits and all of Borrower's right, title and interest therein are hereby assigned to the Lender; all to secure payment of the indebtedness and to secure performance by the Borrower of the terms, covenants and provisions hereof.

(b) If an Event of Default occurs under this Mortgage, Lender, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Lender shall elect to proceed with respect to the Collateral separately from the real property, Lender shall have all remedies available to a secured party under the Code and five (5) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Lender shall include, but not be limited to, attorneys fees and legal expenses incurred by Lender. Borrower agrees that, without the written consent of Lender, Borrower will not remove or permit to be removed from the Premises any of the Collateral except that so long as the Borrower is not in default hereunder, Borrower shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created



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hereby and that the security interest of Lender shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. Borrower covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless Lender otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

(c) Borrower and Lender agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Premises" herein are or are to become fixtures on the land described in Exhibit A (ii) this instrument, upon recording or registration in the real estate records of Cook County, Illinois shall constitute a "fixture filing" within the meaning of the applicable sections of the Code; and (iii) Borrower is the record owner of the land described in Exhibit A. The addresses of the Borrower and Lender are set forth in Section 19 hereof.

(d) Borrower, upon request by Lender from time to time, shall execute, acknowledge and deliver to Lender, or cause any affiliated party to so execute, acknowledge and deliver to Lender, a separate Security Agreement, Financing Statement or other similar security instruments, in form satisfactory to Lender, covering all property of any kind whatsoever owned by Borrower or such affiliated party, as the case may be, which in the sole opinion of Lender is essential to the operation of the Premises and which constitutes goods within the meaning of the Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this Mortgage under the laws of the state in which the Premises are located, and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Lender may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security interest under such security instrument. Notwithstanding the foregoing, if permitted by applicable law, Lender shall be authorized to file all proper financing statements without the signature of Borrower. Borrower further agrees to pay to Lender on demand all costs and expenses incurred by Lender in connection with the preparation, execution, recording, filing and re-filing of any such document. Borrower shall from time to time, on request of Lender, deliver to Lender an inventory of the Collateral in reasonable detail.

## 29. Miscellaneous.

(a) Successors and Assigns. This Mortgage and all provisions hereof shall extend to and be binding upon Borrower and its successors, grantees and assigns, any subsequent owner or owners of the Premises who acquire the Premises subject to this Mortgage, and all persons claiming under or through Borrower, and the word "Borrower" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note, the Guarantee or this Mortgage. The word "Lender" when used herein shall include the successors and assigns of Lender named herein, and the holder or holders, from time to time, of the Note secured hereby.

(b) Invalidity of Provisions. In the event one or more of the provisions contained in this Mortgage or in the Note secured hereby or in any security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall, at the option of Lender, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision were not contained herein or therein. This Mortgage and the Note it secures shall be governed by and construed in accordance with the laws of the State of Illinois.

(c) Municipal and Zoning Requirements. Borrower 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 Borrower

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hereby assigns to Lender 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 municipal or governmental requirement. Borrower shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Borrower which would result in a violation of any of the provisions of this Paragraph 29(c) shall be void.

(d) Right of Tenants. Lender 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. The failure to join any such tenant or tenants as party or parties defendant in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose his, her, its or their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the indebtedness secured hereby, 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) Option of Lender to Subordinate. At the option of Lender, 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 Lender and recording thereof, at any time hereafter, in the Public Records of and for the county wherein the Premises are situated, of a unilateral declaration to that effect.

(f) Use of Proceeds. Borrower warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(g) Value for Purposes of Insurance. Upon request by Lender, Borrower agrees to furnish evidence of replacement value, without cost to Lender, of the type which is regularly and ordinarily provided to insurance companies, with respect to the buildings and other improvements on the Premises.

(h) Lender in Possession. Nothing herein contained shall be construed as constituting Lender a Lender in possession in the absence of the actual taking of possession of the Premises by Lender pursuant to this Mortgage.

(i) Relationship of Lender and Borrower. Lender shall in no event be construed for any purpose to be a partner, member, joint venturer, agent or associate of Borrower or of any lessee, operator, concessionaire or licensee of Borrower in the conduct of their respective businesses.

(j) Time of the Essence. Time is of the essence of the payment by Borrower of all amounts due and owing to Lender under the Note and the performance and observance by Borrower of all of the terms, conditions, obligations and agreements contained in this Mortgage.

(k) Future Advances. In Lender's sole discretion, Lender may (but in no way shall be obligated to) from time to time within twenty (20) years from the date of this Mortgage or within such lesser period of time as may in the future be provided by law as a prerequisite for the sufficiency of actual or record notice of optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable considerations, make further advances to Borrower, or Borrower's permitted successors in title, which shall be collateralized by the lien of this Mortgage, provided that at no time shall the outstanding principal indebtedness collateralized by this Mortgage, including advances, exceed a sum which is five (5) times the principal amount of the Loan as shown on page one (1) of this Mortgage, plus interest and any disbursements made for the payment of taxes, levies or insurance or other matters on the Premises with interest on those disbursements. Borrower shall immediately upon request of Lender execute and deliver to Lender a note evidencing each and every such future advance and notices of such advances in recordable form. All such

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notes shall be of equal dignity and a default in the payment of any one shall be of equal dignity and a default in the payment of any one shall constitute a default in the payment of all other notes.

30. **Indemnity**. Borrower shall indemnify and save Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs)[including, but not limited to all appellate level and post-judgment proceedings] of whatever kind or nature which may be imposed on, incurred by or asserted against Lender at any time which relate to or arise from: the making of the loan evidenced by the Note and secured by this Mortgage; any suit or other proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Lender may or does become a party, either as a plaintiff or as a defendant, by reason of this Mortgage, or for the purpose of protecting the lien of this mortgage; and/or the ownership, use, operation and/or maintenance of the Premises. All costs provided for herein and paid for by Lender shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and together with interest thereon at the Default Rate.

31. **Hazardous Substances**. As used below, "Hazardous Substances" shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), petroleum products, or any other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, or state lien or state super lien or environmental clean-up statutes (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). Borrower warrants, represents and covenants, to the best of its knowledge, as follows:

(a) Neither the Premises nor any other personal or real property owned by Borrower is subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances or environmental problems, impairments or liabilities with respect to the Premises or such other property, or the direct or indirect violation of any Environmental Laws.

(b) No Hazardous Substances are located on or have been stored, processed or disposed of on or released or discharged from (including ground water contamination) the Premises and no above or underground storage tanks, exist on the Premises. Borrower shall not allow any Hazardous Substances to be stored, located, discharged, possessed, managed, processed or otherwise handled on the Premises and shall comply with all Environmental Laws affecting the Premises.

(c) Borrower shall comply with any and all laws, regulations or orders with respect to the discharge and removal of Hazardous Substances, shall pay promptly when due the costs of removal of any such Hazardous Substances and shall keep the Premises free of any lien imposed pursuant to such laws, regulations or orders.

Borrower hereby agrees to indemnify and hold Lender harmless from and against, and shall reimburse Lender for, any and all loss, claim, liability, damages, injuries to person, property or natural resources, cost, expense, action or cause of action, arising from, out of or as a consequence, direct or otherwise, of the release or presence of any Hazardous Substance at the Premises whether originating at the Premises or any property adjacent thereto, whether foreseeable or unforeseeable, and whether or not known to Borrower, regardless of when such release occurred or such presence is discovered. The foregoing indemnity includes, but shall not be limited to, all costs of removal, remediation of any kind, detoxification, clean up and disposal of such Hazardous Substances, all costs of determining whether the Premises is in compliance and causing the Premises to be in compliance with all applicable Environmental Laws, all costs and fees associated with claims for damages to persons, property, or natural resources, and both any Borrower's and Lender's attorneys' fees (including, but not limited to, all appellate level and post-judgment proceedings) and any

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Borrower's and Lender's consultants' fees and court costs in respect thereto whether or not litigation or administrative proceedings shall occur. It is expressly understood and agreed that to the extent Borrower and/or Lender is strictly liable under any applicable statute or regulation pertaining to the protection of the environment, this indemnity shall likewise be without regard to fault on the part of Borrower or Lender with respect to the violation of law which results in liability to Lender. The provisions of the foregoing shall survive foreclosure of this Mortgage and satisfaction of the Note, and shall be in addition to any other rights and remedies of Lender.

32. **Waiver of Right of Redemption.** Borrower hereby releases and waives any and all rights to retain possession of the Premises after the occurrence of an Event of Default and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Borrower, all persons and entities interested in Borrower and each and every person (except judgment creditors of Borrower) acquiring any interest in, or title to, the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by law.

33. **Mechanics' Lien Compliance.** Prior to commencement of construction of any improvements on the Premises, Borrower shall comply with all applicable requirements of any mechanic's lien statutes in the jurisdiction where the Premises are located, including, if required, the posting of a notice of commencement on the Premises when work is being furnished thereto.

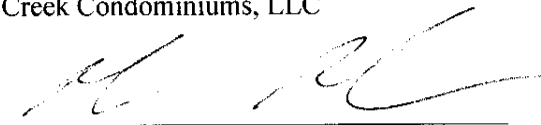
34. **Priority of Mortgage Lien.** The Mortgage shall be a first priority lien on the Premises and to maintain and protect such priority and perfection, Lender is authorized to do all matters permitted and sanctioned by applicable statutes, as now existing or hereafter amended.

35. **Jury Trial Waiver.** BORROWER HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT AND THE BUSINESS RELATIONSHIP THAT IS BEING ESTABLISHED. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY BORROWER, AND BORROWER ACKNOWLEDGES THAT NEITHER LENDER NOR ANY PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INCLUDE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT IT HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT IT WILL CONTINUE TO RELY ON THIS WAIVER IN RELATED FUTURE DEALINGS WITH LENDER. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL.

**Venue.** BORROWER, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO OR FROM THIS MORTGAGE SHALL BE LITIGATED, AT LENDER'S SOLE DISCRETION AND ELECTION, ONLY IN COURTS HAVING A SITUS WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS OR ANY COUNTY IN WHICH REAL ESTATE SUBJECT TO THIS MORTGAGE IS LOCATED. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTIES AND STATES WHERE ALL OR ANY PORTION OF THE REAL ESTATE SUBJECT TO THIS MORTGAGE IS LOCATED. BORROWER HEREBY WAIVES ANY RIGHT BORROWER MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST BORROWER BY LENDER ON THIS MORTGAGE IN ACCORDANCE WITH THIS PARAGRAPH.

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Buffalo Creek Condominiums, LLC

By: 

Marcin Malarz

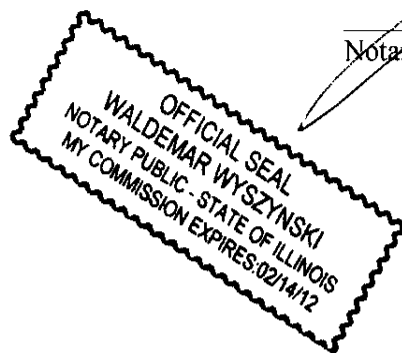
Title: Mgr.

Property of Cook County Clerk's Office

STATE OF ILLINOIS, COUNTY OF COOK ) SS: I, the undersigned, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Marcin Malarz, personally known to me to be the same person(s) whose name is subscribed to the foregoing instrument, as duly authorized Manager of Buffalo Creek Condominiums, LLC and individually, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND OFFICIAL SEAL, this 28<sup>th</sup> day of February, 2008.

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





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## EXHIBIT A

### Legal Description of the Premises

PARCEL 1:

THAT PART OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF BUFFALO GROVE ROAD AND THE SOUTHEASTERLY LINE OF A TRACT OF LAND CONVEYED TO JOHN KLINE BY WARRANTY DEED RECORDED JUNE 21, 1899 AS DOCUMENT 2836175 AND RUNNING THENCE SOUTH 34 DEGREES, 26 MINUTES EAST ALONG THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 15.00 FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH ALONG THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 985.00 FEET; THENCE SOUTH 55 DEGREES, 34 MINUTES WEST AT RIGHT ANGLES TO THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 400.00 FEET; THENCE NORTH 34 DEGREES, 26 MINUTES WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 802.00 FEET; THENCE NORTH 55 DEGREES, 34 MINUTES EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 210.00 FEET; THENCE NORTH 34 DEGREES, 26 MINUTES WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 130.00 FEET; THENCE NORTHEASTERLY TO THE PLACE OF BEGINNING; (EXCEPTING THEREFROM THAT PART DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF BUFFALO GROVE ROAD AND THE SOUTHEASTERLY LINE OF A TRACT OF LAND CONVEYED TO JOHN KLINE BY WARRANTY DEED RECORDED JUNE 21, 1899 AS DOCUMENT 2836175 AND RUNNING THENCE SOUTH 34 DEGREES, 26 MINUTES, EAST ALONG THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 564.15 FEET TO THE PLACE OF BEGINNING OF THIS EXCEPTION; THENCE CONTINUING SOUTH ALONG THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 435.85 FEET THENCE SOUTH 55 DEGREES, 34 MINUTES WEST AT RIGHT ANGLES TO THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 400.00 FEET; THENCE NORTH 34 DEGREES, 26 MINUTES WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 391.60 FEET; THENCE NORTH 55 DEGREES, 34 MINUTES EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 108.75 FEET; THENCE NORTH 34 DEGREES, 26 MINUTES WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 100.00 FEET; THENCE NORTH 55 DEGREES, 34 MINUTES EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 68.00 FEET; THENCE SOUTH 34 DEGREES, 26 MINUTES EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 55.75 FEET; THENCE NORTH 55 DEGREES, 34 MINUTES EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 223.25 FEET TO THE PLACE OF BEGINNING);

AND EXCEPT THE EASTERLY 50.00 FEET OF THIS PARCEL 1,

ALSO EXCEPTING FROM THE ABOVE DESCRIBED PARCEL THAT PART OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF BUFFALO GROVE ROAD AND THE SOUTHEASTERLY LINE OF A TRACT OF LAND CONVEYED TO JOHN KLINE BY WARRANTY DEED RECORDED JUNE 21, 1899 AS DOCUMENT 2836175 AND RUNNING THENCE SOUTH 34 DEGREES, 26 MINUTES EAST ALONG THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH ALONG THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 985.00 FEET; THENCE SOUTH 55 DEGREES, 34 MINUTES WEST AT RIGHT ANGLES TO THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 400.00 FEET; THENCE NORTH 34 DEGREES, 26 MINUTES WEST AT RIGHT ANGLES

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TO THE LAST DESCRIBED LINE, A DISTANCE OF 802.00 FEET; THENCE NORTH 55 DEGREES, 34 MINUTES EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 210.00 FEET; THENCE NORTH 34 DEGREES, 26 MINUTES WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 130.00 FEET; THENCE NORTHEASTERLY ON THE MOST NORTHERLY LINE (SO DESIGNATED FOR THE PURPOSE OF THIS DESCRIPTION) TO THE PLACE OF BEGINNING; (EXCEPTING THEREFROM THE EASTERLY 50.00 FEET FALLING IN BUFFALO GROVE ROAD AS WIDENED), LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID SECTION, WITH THE CENTERLINE OF BUFFALO GROVE ROAD, (THE CENTERLINE OF BUFFALO GROVE ROAD AFORESAID BEING A STRAIGHT LINE EXTENDED FROM A POINT IN THE NORTH LINE OF SAID SECTION 4), SAID POINT BEING 961.90 FEET EAST FROM THE NORTHWEST CORNER OF SAID SECTION, AS MEASURED ALONG SAID NORTH LINE TO THE NORTHEASTERLY CORNER OF BUFFALO GROVE UNIT NUMBER 1, A SUBDIVISION IN THE NORTHWEST 1/4 OF SAID SECTION, SAID NORTHEASTERLY CORNER BEING A POINT OF INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF ST. MARY'S PARKWAY AS DEDICATED BY SAID SUBDIVISION, WITH THE CENTERLINE OF BUFFALO GROVE ROAD; THENCE SOUTHEASTERLY ON SAID CENTERLINE, A DISTANCE OF 280.40 FEET; THENCE SOUTHEASTERLY AT RIGHT ANGLES TO SAID CENTERLINE, A DISTANCE OF 50.00 FEET TO THE SOUTHWESTERLY LINE OF BUFFALO GROVE ROAD AS WIDENED, FOR A PLACE OF BEGINNING; THENCE WESTERLY TO THE INTERSECTION OF THE AFORESAID DESCRIBED MOST NORTHERLY LINE, WITH A LINE 140.00 FEET SOUTHWESTERLY OF AND PARALLEL WITH THE CENTERLINE OF BUFFALO GROVE ROAD AFORESAID, IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

THAT PART OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF BUFFALO GROVE ROAD AND THE SOUTHEASTERLY LINE OF A TRACT OF LAND CONVEYED TO JOHN KLINE BY WARRANTY DEED RECORDED JUNE 21, 1899 AS DOCUMENT 2836175 AND RUNNING THENCE SOUTH 34 DEGREES, 26 MINUTES EAST ALONG THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 564.15 FEET; THENCE SOUTH 55 DEGREES, 34 MINUTES WEST AT RIGHT ANGLES TO THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 223.25 FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 34 DEGREES 26 MINUTES EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 44.25 FEET; THENCE SOUTH 55 DEGREES, 34 MINUTES WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 68.00 FEET; THENCE NORTH 34 DEGREES, 26 MINUTES WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 100.00 FEET; THENCE NORTH 55 DEGREES, 34 MINUTES EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 68.00 FEET; THENCE SOUTH 34 DEGREES, 26 MINUTES EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 55.75 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## PARCEL 3:

THAT PART OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF BUFFALO GROVE ROAD AND THE SOUTHEASTERLY LINE OF A TRACT OF LAND CONVEYED TO JOHN KLINE BY WARRANTY DEED RECORDED JUNE 21, 1899 AS DOCUMENT 2836175 AND RUNNING THENCE SOUTH 34 DEGREES, 26 MINUTES EAST ALONG THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 564.15 FEET

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TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH ALONG THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 435.85 FEET; THENCE SOUTH 55 DEGREES, 34 MINUTES WEST AT RIGHT ANGLES TO THE CENTERLINE OF BUFFALO GROVE ROAD, A DISTANCE OF 400.00 FEET; THENCE NORTH 34 DEGREES, 26 MINUTES WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 391.60 FEET; THENCE NORTH 55 DEGREES, 34 MINUTES EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 176.75 FEET; THENCE NORTH 34 DEGREES, 26 MINUTES WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 44.25 FEET; THENCE NORTH 55 DEGREES, 34 MINUTES EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 223.25 FEET TO THE PLACE OF BEGINNING (EXCEPTING THEREFROM THE EASTERLY 50.00 FEET THEREOF), IN COOK COUNTY, ILLINOIS.

Address: **70, 100, 150, 152 S. Buffalo Grove Road, Buffalo Grove, IL 60089**  
**154, 156, 160, 162 S. Buffalo Grove Road, Buffalo Grove, IL 60089**  
**164 S. Buffalo Grove Road, Buffalo Grove, IL 60089**  
**70 St. Mary Parkway, Buffalo Grove, IL 60089**

P.I.N. (underlying): 03-04-100-018-0000  
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