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Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Doc#: 0934834087 Fee: \$72.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/14/2009 03:33 PM Pg: 1 of 19

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 17-05-312-008-0000

**Address:**

**Street:** 1348 W. Augusta Blvd.

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60642

**Lender:** FAIRVIEW LOFTS CONDOMINIUMS ASSOCIATION

**Borrower:** HAMID BAHARY, aka STEVEN BAHARY and MASSOUD BAHARY, aka MIKE BAHARY

**Loan / Mortgage Amount:** \$136,350.00

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:** 82FD375F-45EC-49FB-B8B1-8C0B037E0253

**Execution date:** 12/14/2009

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WHEN RECORDED MAIL TO:

Howard C. Emmerman  
 BEERMANN SWERDLOVE LLP  
 161 N. Clark Street, Suite 2600  
 Chicago, IL 60601

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 SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY
 

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**MORTGAGE**

THIS MORTGAGE IS DATED Dec 7, 2009 between **HAMID BAHARY, also known as STEVIN BAHARY**, whose address is 2223 N. Cicero, Chicago, Illinois and **MASSOUD BAHARY, also known as MIKE BAHARY**, whose address is 2223 N. Cicero, Chicago, Illinois (referred to jointly and severally below as "**Mortgagor**"); and **FAIRVIEW LOFTS CONDOMINIUM ASSOCIATION**, a condominium association created and existing pursuant to the Illinois Condominium Property Act, 1012 N. Milwaukee, Chicago, Illinois (referred to below as "**Mortgagee**").

**GRANT OF MORTGAGE.** For valuable consideration, Mortgagor mortgages, warrants, and conveys to Mortgagee all of Mortgagor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, located in Cook County, State of Illinois (the "Real Property"):

**PARCEL 1: LOT 12 IN BLOCK 14 IN ELSTON'S ADDITION TO CHICAGO, IN THE SOUTH WEST ¼ OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; AND**

**PARCEL 2: ANY AND ALL RIGHTS, TITLE AND EASEMENTS OWNED BY GRANTORS OVER AND UPON LOT 5 IN BLOCK 14 IN ELSTON'S ADDITION TO CHICAGO, IN THE SOUTH WEST ¼ OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS**

The Real Property tax identification number is 17-05-312-008-0000

Commonly known as 1348 W. Augusta Blvd., Chicago, IL 60642

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Mortgagor presently assigns to Mortgagee all of Mortgagor's right, title, and interest in and to all leases of the Property and all Rents from the Property. In addition, Mortgagor grants to Mortgagee a security interest under the Uniform Commercial Code in the Personal Property and Rents, as defined below.

**DEFINITIONS.** The following words shall have the following meanings when used in this Mortgage. Terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Borrower.** The word "Borrower" means each and every person or entity signing the Note.

**Existing Indebtedness.** The words "Existing Indebtedness" mean the indebtedness described below in the Existing Indebtedness section of this Mortgage.

**Mortgagor.** The word "Mortgagor" means any and all persons and entities executing this Mortgage, including without limitation all Mortgagors named above. Any Mortgagor who signs this Mortgage, but does not sign the Note, is signing this Mortgage only to grant and convey that Mortgagor's interest in the Real Property and to grant a security interest in Mortgagor's interest in the Rents and Personal Property to Mortgagee and is not personally liable under the Note except as otherwise provided by contract or law.

**Guarantor.** The word "Guarantor" means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the Indebtedness.

**Improvements.** The word "Improvements" means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Mortgagee to discharge obligations of Mortgagor or expenses incurred by Mortgagee to enforce obligations of Mortgagor under this Mortgage, together with interest, if any, on such amounts as provided in this Mortgage.

**Mortgagee.** The word "Mortgagee" means Fairview Lofts Condominium Association, a condominium association created and existing pursuant to the Illinois Condominium Property Act, its successors and assigns.

**Mortgage.** The word "Mortgage" means this Mortgage between Mortgagor and Mortgagee, and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents.

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**Note.** The word "Note" means the promissory note or credit agreement dated as of the same date of this Mortgage, from Mortgagor to Mortgagee, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Mortgagor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the property, interests and rights described above in the "Grant of Mortgage" section.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property, except those due from Mortgagee.

**THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ALL COVENANTS AND AGREEMENTS CONTAINED IN THIS MORTGAGE AND THE RELATED DOCUMENTS. THIS MORTGAGE IS INTENDED TO AND SHALL BE VALID AND HAVE PRIORITY OVER ALL SUBSEQUENT LIENS AND ENCUMBRANCES, INCLUDING STATUTORY LIENS, EXCEPTING SOLELY TAXES AND ASSESSMENTS LEVIED ON THE REAL PROPERTY, TO THE EXTENT OF THE MAXIMUM AMOUNT SECURED HEREBY. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**MORTGAGOR'S WAIVERS.** Mortgagor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Mortgagee from bringing any action against Mortgagor, including a claim for deficiency to the extent Mortgagee is otherwise entitled to a claim for deficiency, before or after Mortgagee's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

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Mortgagor does not waive any statutory rights of reinstatement or redemption, to the extent such rights exist as a matter of law.

**MORTGAGOR'S REPRESENTATIONS AND WARRANTIES.** Mortgagor warrants that Mortgagor has the full power and right to enter into this Mortgage and to hypothecate the Property.

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Borrower shall pay to Mortgagee all Indebtedness secured by this Mortgage as it becomes due, and Borrower and Mortgagor shall strictly perform all their respective obligations under this Mortgage.

**PREPAYMENT RIGHT.** So long as Debtor is not in default under this Note or the Mortgage, Debtor shall have the unconditional right to prepay the principal balance and all interest accrued under this Note to and including the date of prepayment without charge or penalty.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Mortgagor and Borrower agree that Mortgagor's possession and use of the Property shall be governed by the following provisions:

**Temporary Lease.** The Real Property is subject to a temporary lease thereof to the Mortgagee. Any activity or inactivity of Mortgagor under said temporary lease which would otherwise constitute a breach of this Mortgage shall not constitute any such breach, all other provisions hereof notwithstanding.

**Possession and Use.** Until in default, Mortgagor may remain in possession and control of and operate and manage the Property and collect the Rents from the Property.

**Duty to Maintain.** Mortgagor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Mortgagor represents and warrants to Mortgagee that: (a) During the period of Mortgagor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by Mortgagor on, under, or about the Property; (b) Mortgagor has no

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knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Mortgagee in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by Mortgagee in writing, (i) neither Mortgagor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Mortgagor authorizes Mortgagee and its agents to enter upon the Property to make such inspections and tests, at Mortgagor's expense, as Mortgagee may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Mortgagee shall be for Mortgagee's purposes only and shall not be construed to create any responsibility or liability on the part of Mortgagee to Mortgagor or to any other person. The representations and warranties contained herein are based on Mortgagor's due diligence in investigating the Property for hazardous waste. Mortgagor hereby (a) releases and waives any future claims against Mortgagee for indemnity or contribution in the event Mortgagor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Mortgagee against any and all claims, losses, liabilities, damages, penalties, and expenses which Mortgagee may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Mortgagor's ownership or interest in the Property, whether or not the same was or should have been known to Mortgagor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Mortgagee's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Mortgagor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property.

**Removal of Improvements.** Mortgagor shall not demolish or remove any Improvements to be constructed on the Real Property without the prior written consent of Mortgagee. As a condition to the removal of any Improvements, Mortgagee may require Mortgagor to make arrangements satisfactory to Mortgagee to replace such Improvements with Improvements of at least equal value.

**Mortgagee's Right to Enter.** Mortgagee and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Mortgagee's interests and to



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inspect the Property for purposes of Mortgagor's compliance with the terms and conditions of this Mortgage.

**Compliance with Governmental Requirements.** Mortgagor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Mortgagor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Mortgagor has notified Mortgagee in writing prior to doing so and so long as, in Mortgagee's sole opinion, Mortgagee's interests in the Property are not jeopardized. Mortgagee may require Mortgagor to post adequate security or a surety bond, reasonably satisfactory to Mortgagee, to protect Mortgagee's interest.

**Duty to Protect.** Mortgagor agrees neither to abandon nor leave unattended the Property. Mortgagor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY MORTGAGOR.** Mortgagee may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without the Mortgagee's prior written consent, of all or any part of the Real Property, or any interest in the Real Property to any party other than to a Mortgagor or an affiliated party. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property or by any other method of conveyance of Real Property interest. If any Mortgagor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Mortgagor. However, this option shall not be exercised by Mortgagee if such exercise is prohibited by federal law or by Illinois law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are a part of this Mortgage.

**Payment.** Mortgagor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Mortgagor shall maintain the Property free of all liens having priority over or equal to the interest of Mortgagee under this Mortgage, except for the lien of taxes and assessments not due, except for the Existing Indebtedness referred to below, and except as otherwise provided in the following paragraph.

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**Right To Contest.** Mortgagor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Mortgagee's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Mortgagor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Mortgagor has notice of the filing, secure the discharge of the lien, or if requested by Mortgagee, deposit with Mortgagee cash or a sufficient corporate surety bond or other security satisfactory to Mortgagee in an amount sufficient to discharge the lien plus any costs and attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Mortgagor shall defend itself and Mortgagee and shall satisfy any adverse judgment before enforcement against the Property. Mortgagor shall name Mortgagee as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Mortgagor shall upon demand furnish to Mortgagee satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Mortgagee at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Mortgagor shall notify Mortgagee at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Mortgagor will upon request of Mortgagee furnish to Mortgagee advance assurances reasonably satisfactory to Mortgagee that Mortgagor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Mortgage.

**Maintenance of Insurance.** Mortgagor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Mortgagee. Mortgagor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Mortgagee may request with Trustee and Mortgagee being named as additional insureds in such liability insurance policies. Additionally, Mortgagor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Mortgagee may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Mortgagee. Mortgagor shall deliver to Mortgagee certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Mortgagee and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Mortgagee will not be impaired in any way by any act, omission or default of Mortgagor



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or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Mortgagor agrees to obtain and maintain Federal Flood Insurance, to the extent such insurance is required by Mortgagee and is or becomes available, for the term of the loan and for the full unpaid principal balance of the loan, or the maximum limit of coverage that is available, whichever is less.

**Application of Proceeds.** Mortgagor shall promptly notify Mortgagee of any loss or damage to the Property. Mortgagee may make proof of loss if Mortgagor fails to do so within fifteen (15) days of the casualty. Whether or not Mortgagee's security is impaired, Mortgagee may, at its election, apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Mortgagee elects to apply the proceeds to restoration and repair, Mortgagor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Mortgagee. Mortgagee shall, upon satisfactory proof of such expenditure, pay or reimburse Mortgagor from the proceeds for the reasonable cost of repair or restoration if Mortgagor is not in default hereunder. Any proceeds which have not been disbursed within 180 days after their receipt and which Mortgagee has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Mortgagee under this Mortgage, then to prepay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Mortgagee holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Mortgagor.

**Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any trustee's sale or other sale held under the provisions of this Mortgage, or at any foreclosure sale of such Property.

**Compliance with Existing Indebtedness.** During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Mortgage, to the extent compliance with the terms of this Mortgage would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Mortgage for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the Existing Indebtedness.

**Mortgagor's Report on Insurance.** Upon request of Mortgagee, however not more than once a year, Mortgagor shall furnish to Mortgagee a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining that value; and (e) the expiration date of the policy. Mortgagor shall, upon request of Mortgagee, have an independent appraiser satisfactory to Mortgagee determine the cash value replacement cost of the Property.

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**EXPENDITURES BY MORTGAGEE.** If Mortgagor fails to comply with any provision of this Mortgage, including any obligation to maintain Existing Indebtedness in good standing as required below, or if any action or proceeding is commenced that would materially affect Mortgagee's interests in the Property, Mortgagee on Mortgagor's behalf may, but shall not be required to, take any action that Mortgagee deems appropriate. Any amount that Mortgagee expends in so doing will bear interest at the rate charged under the Note from the date incurred or paid by Mortgagee to the date of repayment by Mortgagor. All such expenses, at Mortgagee's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Mortgage also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Mortgagee may be entitled on account of the default. Any such action by Mortgagee shall not be construed as curing the default so as to bar Mortgagee from any remedy that it otherwise would have had.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Mortgage.

**Title.** Mortgagor warrants that: (a) Mortgagor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report or final title opinion issued in favor of, and accepted by, Mortgagee in connection with this Mortgage, and (b) Mortgagor has the full right, power, and authority to execute and deliver this Mortgage to Mortgagee.

**Defense of Title.** Subject to the exception in the paragraph above, Mortgagor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Mortgagor's title or the interest of Mortgagee under this Mortgage, Mortgagor shall defend the action at Mortgagor's expense. Mortgagor may be the nominal party in such proceeding, but Mortgagee shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Mortgagee's own choice, and Mortgagor will deliver, or cause to be delivered, to Mortgagee such instruments as Mortgagee may request from time to time to permit such participation.

**Compliance With Laws.** Mortgagor warrants that the Property and Mortgagor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**EXISTING INDEBTEDNESS.** The following provisions concerning existing indebtedness (the "Existing Indebtedness") are a part of this Mortgage.

**Existing Lien.** The lien of this Mortgage securing the Indebtedness may be secondary and inferior to an existing lien. Mortgagor expressly covenants and agrees to pay, or see

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to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

**Default.** If the payment of any installment of principal or any interest on the Existing Indebtedness is not made within the time required by the note evidencing such indebtedness, or should a default occur under the instrument securing such indebtedness and not be cured during any applicable grace period therein, then, at the option of Mortgagee, the Indebtedness secured by this Mortgage shall become immediately due and payable, and this Mortgage shall be in default.

**No Modification.** Mortgagor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Mortgage by which that agreement is modified, amended, extended, or renewed without the prior written consent of Mortgagee. Mortgagor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Mortgagee.

**CONDEMNATION.** The following provisions relating to condemnation of the Property are a part of this Mortgage.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Mortgagee may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Mortgagee in connection with the condemnation.

**Proceedings.** If any proceeding in condemnation is filed, Mortgagor shall promptly notify Mortgagee in writing, and Mortgagor shall promptly take such steps as may be necessary to defend the action and obtain the award. Mortgagor may be the nominal party in such proceeding, but Mortgagee shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Mortgagor will deliver or cause to be delivered to Mortgagee such instruments as may be requested by it from time to time to permit such participation.

### IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.

The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

**Current Taxes, Fees and Charges.** Upon request by Mortgagee, Mortgagor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Mortgagee to perfect and continue Mortgagee's lien on the Real Property.

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**Taxes.** The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (b) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (c) a tax on this type of Mortgage chargeable against the Mortgagee or the holder of the Note; and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default (as defined below), and Mortgagee may exercise any or all of its available remedies for an Event of Default as provided below unless Mortgagor either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Mortgagee cash or a sufficient corporate surety bond or other security satisfactory to Mortgagee.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage.

**Security Agreement.** This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Mortgagee shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Mortgagee shall have the right to record any and all financing statements and take whatever other action is requested by Mortgagee to perfect and continue Mortgagee's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Mortgagee may, at any time and without further authorization from Mortgagor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Mortgagor shall reimburse Mortgagee for all expenses incurred in perfecting or continuing this security interest. Upon default, Mortgagor shall assemble the Personal Property in a manner and at a place reasonably convenient to Mortgagor and Mortgagee and make it available to Mortgagee within three (3) days after receipt of written demand from Mortgagee.

**Addresses.** The mailing addresses of Mortgagor (debtor) and Mortgagee (secured party), from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Mortgage.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage.

**Further Assurances.** At any time, and from time to time, upon request of Mortgagee, Mortgagor will make, execute and deliver, or will cause to be made, executed or



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delivered, to Mortgagee or to Mortgagee's designee, and when requested by Mortgagee, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Mortgagee may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Mortgagee, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Mortgagor and Borrower under the Note, this Mortgage, and the Related Documents, and (b) the liens and security interests created by this Mortgage on the Property, whether now owned or hereafter acquired by Mortgagor. Unless prohibited by law or agreed to the contrary by Mortgagee in writing, Mortgagor shall reimburse Mortgagee for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Mortgagor fails to do any of the things referred to in the preceding paragraph, Mortgagee may do so for and in the name of Mortgagor and at Mortgagor's expense. For such purposes, Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Mortgagee's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Borrower pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Mortgagor under this Mortgage, Mortgagee shall execute and deliver to Mortgagor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Mortgagee's security interest in the Rents and the Personal Property. If, however, payment is made by Borrower, whether voluntarily or otherwise, or by guarantor or by any third party, on the Indebtedness and thereafter Mortgagee is forced to remit the amount of that payment (a) to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, (b) by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Mortgagee or any of Mortgagee's property, or (c) by reason of any settlement or compromise of any claim made by Mortgagee with any claimant (including without limitation Borrower), the Indebtedness shall be considered unpaid for the purpose of enforcement of this Mortgage and this Mortgage shall continue to be effective or shall be reinstated, as the case may be, notwithstanding any cancellation of this Mortgage or of any note or other instrument or agreement evidencing the Indebtedness and the Property will continue to secure the amount repaid or recovered to the same extent as if that amount never had been originally received by Mortgagee, and Mortgagor shall be bound by any judgment, decree, order, settlement or compromise relating to the Indebtedness or to this Mortgage.

**DEFAULT.** Each of the following, at the option of Mortgagee, shall constitute an event of default ("Event of Default") under this Mortgage:

**Default on Indebtedness.** Failure of Borrower to make any payment when due on the Indebtedness.



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## MORTGAGE

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**Default on Other Payments.** Failure of Mortgagor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**Compliance Default.** Failure to comply with any other term, obligation, covenant or condition contained in this Mortgage, the Note or in any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor or Borrower under this Mortgage, the Note or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

**Insolvency.** The dissolution or termination of any corporate Mortgagor's existence as a corporation, the appointment of a receiver for any part of Mortgagor or Borrower's property, any assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Mortgagor or Borrower.

**Foreclosure, Forfeiture, etc.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Mortgagor or by any governmental agency against any of the Property. However, this subsection shall not apply in the event of a good faith dispute by Mortgagor as to the validity or reasonableness of the claim which is the basis of the foreclosure or forfeiture proceeding, provided that Mortgagor gives Mortgagee written notice of such claim and furnishes reserves or a surety bond for the claim satisfactory to Mortgagee.

**Breach of Other Agreement.** Any breach by Mortgagor or Borrower under the terms of any other agreement between Mortgagor or Borrower and Mortgagee that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Mortgagor or Borrower to Mortgagee, whether existing now or later.

**Existing Indebtedness.** A default shall occur under any Existing Indebtedness or under any instrument on the Property securing any Existing Indebtedness, or commencement of any suit or other action to foreclose any existing lien on the Property.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or such Guarantor dies or becomes incompetent or any Guarantor revokes any guaranty of the Indebtedness.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Mortgagee, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

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**Accelerate Indebtedness.** Mortgagee shall have the right at its option without notice to Borrower to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.

**UCC Remedies.** With respect to all or any part of the Personal Property, Mortgagee shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Mortgagee shall have the right, without notice to Mortgagor or Borrower, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Mortgagee's costs, against the Indebtedness. In furtherance of this right, Mortgagee may require any tenant or other user of the Property to make payments of rent or use fees directly to Mortgagee. If the Rents are collected by Mortgagee, then Mortgagor irrevocably designates Mortgagee as Mortgagor's attorney-in-fact to endorse instruments received in payment thereof in the name of Mortgagor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Mortgagee in response to Mortgagee's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Mortgagee may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Mortgagee in Possession.** Mortgagee shall have the right to be placed as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The mortgagee in possession or receiver may serve without bond if permitted by law. Mortgagee's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Mortgagee shall not disqualify a person from serving as a receiver.

**Judicial Foreclosure.** Mortgagee may obtain a judicial decree foreclosing Mortgagor's interest in all or any part of the Property.

**Deficiency Judgment.** If permitted by applicable law, Mortgagee may obtain a judgment for any deficiency remaining in the Indebtedness due to Mortgagee after application of all amounts received from the exercise of the rights provided in this section.

**Other Remedies.** Mortgagee shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Mortgagor or Borrower hereby waive any and all right to have the property marshalled. In exercising its rights and remedies, Mortgagee shall be free to sell all or any part of the Property

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## MORTGAGE

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together or separately, in one sale or by separate sales. Mortgagee shall be entitled to bid at any public sale on all or any portion of the Property.

**Notice of Sale.** Mortgagee shall give Mortgagor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

**Waiver, Election of Remedies.** A waiver by any party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Mortgagee to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Mortgagor or Borrower under this Mortgage after failure of Mortgagor or Borrower to perform shall not affect Mortgagee's right to declare a default and exercise its remedies under this Mortgage.

**Attorneys' Fees; Expenses.** If Mortgagee institutes any suit or action to enforce any of the terms of this Mortgage, Mortgagee shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Mortgagee that in Mortgagee's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the Note rate. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Mortgagee's attorneys' fees and Mortgagee's legal expenses whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, and title insurance, to the extent permitted by applicable law. Borrower also will pay any court costs, in addition to all other sums provided by law.

**NOTICES TO MORTGAGOR AND OTHER PARTIES.** Any notice under this Mortgage, including without limitation any notice of default and any notice of Sale to Mortgagor, shall be in writing and shall be effective when actually delivered, or when deposited with a nationally recognized overnight courier, or, if mailed, shall be deemed effective when deposited in the United States mail first class, registered mail, postage prepaid, directed to the addresses shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Mortgagee's

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address, as shown near the beginning of this Mortgage. For notice purposes, Mortgagor agrees to keep Mortgagee informed at all times of Mortgagor's current address.

**RIGHT OF FIRST OFFER.** In addition to and not by way of limitation of, any one or more of the rights granted to Mortgagee hereunder, Mortgagor hereby grants to the Association the right and option to match any *bona fide* offer that the Mortgagor would otherwise accept from any unaffiliated third party to the Mortgagor, its or their nominee(s) or agent(s), to purchase the Real Property, which right and option shall be exercisable within twenty (20) days after service of a written notice of receipt of such an offer by the Mortgagor on the Mortgagee. The execution and delivery of a release of the lien created by this Mortgage by the Mortgagee shall be conclusive evidence of its waiver of the rights created in this paragraph.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Mortgage:

**Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Applicable Law.** This Mortgage has been delivered to Mortgagee and accepted by Mortgagee in the State of Illinois. This Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois.

**Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

**Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Mortgagee in any capacity, without the written consent of Mortgagee.

**Multiple Parties; Corporate Authority.** All obligations of Mortgagor and Borrower under this Mortgage shall be joint and several, and all references to Mortgagor shall mean each and every Mortgagor, and all references to Borrower shall mean each and every Borrower. This means that each of the persons signing below is responsible for all obligations in this Mortgage.

**Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Mortgage in all other respects shall remain valid and enforceable.

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**Successors and Assigns.** Subject to the limitations stated in this Mortgage on transfer of Mortgagor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Mortgagor, Mortgagee, without notice to Mortgagor, may deal with Mortgagor's successors with reference to this Mortgage and the Indebtedness by way of forbearance or extension without releasing Mortgagor from the obligations of this Mortgage or liability under the Indebtedness.

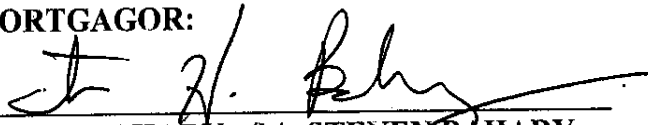
**Time is of the Essence.** Time is of the essence in the performance of this Mortgage.

**Waiver of Homestead Exemption.** Mortgagor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Illinois as to all Indebtedness secured by this Mortgage.

**Waivers and Consents.** Mortgagee shall not be deemed to have waived any rights under this Mortgage (or under the Related Documents) unless such waiver is in writing and signed by Mortgagee. No delay or omission on the part of Mortgagee in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Mortgagee, nor any course of dealing between Mortgagee and Mortgagor or Borrower, shall constitute a waiver of any of Mortgagee's rights or any of Mortgagor or Borrower's obligations as to any future transactions. Whenever consent by Mortgagee is required in this Mortgage, the granting of such consent by Mortgagee in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

**EACH MORTGAGOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND EACH MORTGAGOR AGREES TO ITS TERMS.**

**MORTGAGOR:**

  
 \_\_\_\_\_  
**HAMID BAHARY a/k/a STEVEN BAHARY**

  
 \_\_\_\_\_  
**MASSOUD BAHARY a/k/a MIKE BAHARY**

This Mortgage prepared by:

Howard C. Emmerman  
 Beermann Swerdlove LLP  
 161 N. Clark Street, Suite 2600  
 Chicago, IL 60601



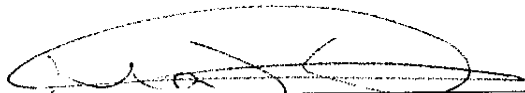
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## MORTGAGE

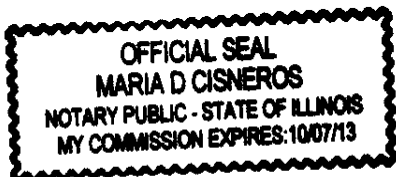
STATE OF ILLINOIS        )  
   ) SS.  
 COUNTY OF COOK         )

The undersigned, a notary public in and for the above county and state, certifies that HAMID BAHARY a/k/a STEVEN BAHARY, a Married man & MASSOUD BAHARY a/k/a MIKE BAHARY, a Married man, known to me to be the same persons whose names are above subscribed, appeared before me in person and acknowledged signing and delivering the instrument as the free and voluntary act of the President, for the uses and purposes therein set forth.

Dated: December 7, 2009

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

My commission expires: October 7, 2013



PROPERTY OF COOK County Clerk's Office