

UNOFFICIAL COPY

1002929152

Doc#: 1002929152 Fee: \$84.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/29/2010 04:34 PM Pg: 1 of 25

**Illinois Anti-Predatory
Lending Database
Program**

Certificate of Exemption

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

The property identified as: **PIN: 13-36-331-049-0000**

Address:

Street: 2800 W. North Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60647

Lender: Mohammad Ali Zahedi and Patricia S. Zahedi

Borrower: KVBN, Inc.

Loan / Mortgage Amount: \$305,684.33

This property is located within Cook County and the transaction is exempt from the requirements of 765 ILCS 7770 et seq. because the application was taken by an exempt entity.

Certificate number: 0E37DFFE-B896-417F-B258-352EEB8E1FA7

Execution date: 01/28/2010

3

UNOFFICIAL COPY

Prepared by
and when Recorded Mail
Original to:

Robert A. Boron
Robert A. Boron, Ltd.
33 N. LaSalle Street, Ste. 3200
Chicago, Illinois 60602

JUNIOR MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS

THIS JUNIOR MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS (the "Mortgage") is made as of January 20, 2010, by KVBN, INC., an Illinois corporation, whose address is 1040 Whitfield Road, Northbrook, IL, 60062 ("Mortgagor"), in favor of MOHAMMAD ALI ZAHEDI and PATRICIA S. ZAHEDI, jointly, or the survivor of them (collectively, the "Mortgagee"), with an office located at 1300 W. Belmont Avenue, Chicago, Illinois, 60657.

WHEREAS, Mortgagor has executed and delivered that certain Secured Promissory Note dated of even date herewith (the "Note") evidencing a loan from Mortgagee to Mortgagor in the original principal amount of Three-Hundred Five Thousand Six-Hundred Eighty-Four and 33/100 Dollars (\$305,684.33) (the "Loan").

WITNESSETH:

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the full and timely payment of the Indebtedness (as defined below), Mortgagor does hereby GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, MORTGAGE, PLEDGE, GRANT A SECURITY INTEREST IN, and SET OVER unto Mortgagee, Mortgagor's interest in the property and all buildings and other improvements now or hereafter constructed thereon (the "Premises") situated in Chicago, Illinois and described on Exhibit "A" attached hereto.

This Junior Mortgage is a Second and Junior Lien on the Premises, as defined herein, and is subject to the lien of a First Mortgage (the "Senior Mortgage") in favor of Midwest Bank and Trust Company, (the "Senior Mortgagee"), in the sum of \$3,644,133.00, on the same Property dated September 25, 2007, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on October 4, 2007, as Document No. 0727705018, for advances made or to be made on the notes secured by the last named mortgage and for other purposes specified therein.

Mortgagee agrees to release the encumbrance of this Junior Mortgage, without payment to

UNOFFICIAL COPY

the extent said release is required to release sale proceeds to be paid to the Senior Mortgagee; provided, however that Mortgagee shall have the right to view all closing documents to ensure that said sale proceeds are being paid to the Senior Mortgagee and to ensure that no proceeds of sale are being paid except to third-party contractors not affiliated with Mortgagor, and for usual and customary closing costs.

The following, with the Premises, are (except where the context otherwise requires) herein collectively called the "Mortgaged Property":

All appurtenances and all estate, rights and privileges of Mortgagor in and to the Premises;

Any and all water and water rights, ditch, and ditch rights, reservoir and reservoir rights, stock or interests in water, irrigation or ditch companies, royalties, minerals, oil and gas rights, lease or leasehold interests owned by Mortgagor, now or hereafter used or useful in connection with, appurtenant to or related to the Premises;

All right, title and interest of Mortgagor in and to all streets, roads and public improvements and places, whether existing, opened or proposed, and all easements and rights of way, public or private, now or hereafter used in connection with the Premises;

Subject to the rights of the Senior Mortgagee, all fixtures, construction materials and other articles of personal property now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon or used in connection with the Premises;

Subject to the rights of the Senior Mortgagee, all Leases and Rents; and

Subject to the rights of the Senior Mortgagee, any and all awards, payments or other amounts including interest thereon, which may be made with respect to the Mortgaged Property as a result of injury to or decrease in the value of the Mortgaged Property or as a result of the exercise of the right of eminent domain.

TO HAVE AND TO HOLD the Mortgaged Property, together with all and singular of the rights, privileges, tenements, hereditaments and appurtenances thereto in any way incident or belonging unto Mortgagee and to its successors and assigns forever.

FOR THE PURPOSE OF SECURING, in such order of priority as Mortgagee may elect, the following (the "Indebtedness"):

Payment of all principal, interest and other amounts under the Note, and any and all extensions, modifications, substitutions or renewals thereof, and the performance and discharge of each and every obligation of Mortgagor set forth in the Note;

UNOFFICIAL COPY

Payment to Mortgagee of all other sums, with interest thereon, becoming due or payable by Mortgagor under the provisions hereof, and the provisions of any and all other instruments, agreements and documents executed by Mortgagor or any other person or party and delivered to or for the benefit of Mortgagee in connection with the Loan (such other instruments, agreements and documents, together with the Note, this Mortgage and the Guarantees dated as of the date hereof for the benefit of the Mortgagee, are sometimes hereinafter collectively referred to as the "Loan Documents");

Due, prompt and complete observance and performance of each and every obligation, covenant and agreement of Mortgagor contained herein or in any of the other Loan Documents;

Payment of all principal, interest and other amounts due under any and all other obligations or indebtedness due from Mortgagor to Mortgagee, and timely performance of each and every obligation, covenant and agreement of Mortgagor to Mortgagee under any other instrument, agreement or document.

It is expressly understood and agreed that the indebtedness secured hereby will in no event exceed \$305,684.33. The Note has a maturity date of December 1, 2010. Notwithstanding the foregoing, prior to the satisfaction of the following conditions, this Mortgage shall be in full force and effect, and that following the satisfaction of the following conditions, this Mortgage shall become and be absolutely void and shall be released by the Mortgagee at the reasonable cost and expense of the Mortgagor: (A) the full, indefeasible and complete payment in full in cash and performance of the Indebtedness, and (B) ~~the expiration of any and all obligations and the complete satisfaction of all claims and causes of action of any kind against Mortgagor under the Loan Documents.~~ ✓k

This Mortgage shall secure not only the indebtedness outstanding on the date hereof but also advances of, or increases in, the indebtedness made after the date hereof to the same extent as if such future advances or increases were made on the date hereof. The lien of this Mortgage shall be valid as to such future advances or increases, with priority over subsequent liens and encumbrances (unless otherwise permitted hereunder) from the time this Mortgage is filed for record in the appropriate office of Cook County, Illinois.

PROVISIONS RELATING TO THE MORTGAGED PROPERTY

1. Taxes, Governmental Claims and Other Liens. Mortgagor agrees to pay or cause to be paid, prior to the date they would become delinquent if not paid, any and all taxes, assessments and governmental charges whatsoever levied upon or assessed or charged against the Mortgaged Property.
2. Insurance and Casualty.

UNOFFICIAL COPY

a. Mortgagor, at its sole cost and expense, shall insure (or cause to be insured) and keep insured the Mortgaged Property against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time reasonably require, and in any event, an amount sufficient to satisfy the indebtedness under this Mortgage. Each insurance carrier shall be acceptable to Mortgagee and all insurance shall be in form and content acceptable to Mortgagee. Each such policy shall name Mortgagee, and such other parties reasonably requested by Mortgagee, as additional insureds. Mortgagor's failure to maintain such insurance shall constitute a Default under this Mortgage, and in Mortgagee's sole discretion, Mortgagee shall have the right to obtain replacement insurance coverage, the cost for which being added as additional indebtedness under this Mortgage.

b. Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any such insurance, incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses, and Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, thereunder. Mortgagor hereby absolutely assigns and transfers to Mortgagee all of Mortgagor's right, title and interest in and to all such policies and any unearned premiums paid thereon and Mortgagee shall have the right, but not the obligation, to assign any then existing claims under the same to any purchaser of the Mortgaged Property at any foreclosure sale; provided, however, that so long as no Default exists hereunder, Mortgagor shall have the right under a license granted hereby, and Mortgagee hereby grants to Mortgagor a license, to exercise rights under said policies and in and to said premiums subject to the provisions of this Mortgage. Said license shall be revoked automatically upon the occurrence of a Default hereunder. The requirements of Mortgagee for insurance under the provisions of this Paragraph 2.b. may be modified or amended in whole or in part by Mortgagee, in its reasonable discretion, and Mortgagor agrees, upon any expiration of any existing policy or policies of insurance, to provide a replacement policy or policies which shall meet such amended or modified insurance standards.

If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of condemnation or other cause described in Paragraph 3 hereof, Mortgagor shall give immediate written notice to the insurance carrier and Mortgagee. With respect to any such casualty loss or condemnation award or settlement (such casualty losses and condemnation awards or settlements, after deduction of Mortgagee's costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with the collection thereof, collectively, the "Proceeds"), Mortgagor hereby authorizes and empowers Mortgagee (from the date hereof until the Indebtedness is indefeasibly paid in full in cash or, if a foreclosure occurs, until after entry of judgment of foreclosure and confirmation of sale), at Mortgagee's option and in Mortgagee's sole discretion as attorney-in-fact for Mortgagor, to pay premiums, to make proof of loss, to adjust and compromise any claim under insurance

UNOFFICIAL COPY

policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds. Mortgagor further authorizes Mortgagee, at Mortgagee's option, to apply the Proceeds, referenced in this Paragraph 2.b., to the payment of the sums secured by this Mortgage, whether or not then due, in such order as Mortgagee may determine.

c. All Proceeds actually received by Mortgagee in excess of such sums necessary to satisfy the Indebtedness and any other indebtedness due to Mortgagee under any other obligation, instrument or document shall be delivered to Mortgagor. If after the Proceeds are applied to the payment of the sums secured by this Mortgage, Mortgagee reasonably determines the remaining security to be inadequate to secure the remaining Indebtedness, Mortgagor shall upon written demand from Mortgagee prepay in principal such an amount as will reduce the remaining Indebtedness to a balance for which adequate security is present. The application by Mortgagee of any Proceeds to the sums secured by this Mortgage shall not cure or waive any Default.

d. At Mortgagee's request, Mortgagor shall have the obligation to promptly and diligently complete the work of reconstruction necessitated by any casualty and restore the Mortgaged Property to the equivalent of its condition immediately prior to such casualty, regardless of whether (A) the Proceeds are applied to the payment of the sums secured by this Mortgage, (B) the Proceeds are available to Mortgagor for the cost of such work in accordance with the terms hereof or (C) the Proceeds are sufficient for such costs.

3. Condemnation and Other Awards. Immediately upon receiving written notice of the institution or threatened institution of any proceeding for the condemnation of the Mortgaged Property or any part thereof or interest therein, Mortgagor shall notify Mortgagee of such fact. Mortgagor shall then file or defend its rights thereunder and prosecute the same with due diligence to its final disposition; provided, however, that Mortgagor shall not enter into any settlement of such proceeding without the prior approval of Mortgagee, not to be unreasonably withheld or delayed. Mortgagee shall be entitled, at its option, to appear in any such proceeding in its own name to represent its own interests, and in addition, upon the occurrence and during the continuation of a Default or if Mortgagor fails to diligently prosecute such proceeding, (i) Mortgagee shall be entitled, at its option, to appear in and prosecute any such proceeding or to make any compromise or settlement in connection with such condemnation on behalf of Mortgagor, and (ii) Mortgagor hereby irrevocably constitutes and appoints Mortgagee as its attorney-in-fact, and such appointment is coupled with an interest, to commence, appear in and prosecute such action or proceeding or to make such compromise or settlement in connection with any such condemnation on its behalf. The foregoing appointment is irrevocable and coupled with an interest. If the Mortgaged Property or any part thereof is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Mortgagor by virtue of its interest in the Mortgaged Property, shall be, and by these presents is, assigned, transferred and set over unto

UNOFFICIAL COPY

Mortgagee. If after such award or settlement is applied to the payment of the sums secured by this Mortgage, Mortgagee reasonably determines the remaining security to be inadequate to secure the remaining Indebtedness, Mortgagor shall upon written demand from Mortgagee prepay in principal such an amount as will reduce the remaining Indebtedness to a balance for which adequate security is present. The application by Mortgagee of any Proceeds to the sums secured by this Mortgage shall not cure or waive any Default.

4. Condition of Mortgaged Property.

a. Mortgagor agrees to comply with all laws, ordinances, regulations and governmental orders affecting the Mortgaged Property; not to commit, suffer or permit any act with respect to the Mortgaged Property in violation of law, or of any covenants, conditions or restrictions affecting the Mortgaged Property; and to do any other act or acts, all in a timely and proper manner, which from the character or use of the Mortgaged Property may be reasonably necessary to protect and preserve the value of the Mortgaged Property.

b. Mortgagor agrees to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Property.

5. Status of Title. Mortgagor agrees to protect, preserve and defend its interest and the interest of the Mortgagee in the Mortgaged Property and title thereto; to appear and defend this Mortgage in any action or proceeding affecting or purporting to affect the Mortgaged Property, the lien or security interest of this Mortgage thereon, or any of the rights of Mortgagee hereunder, and to pay all costs and expenses incurred by Mortgagee in or in connection with any such action or proceeding, including reasonable attorneys' fees, whether any such action or proceeding progresses to judgment and whether brought by or against Mortgagee. Mortgagee shall be reimbursed for any such costs and expenses in accordance with the provisions hereof. Mortgagee may, but shall not be under any obligation to, appear or intervene in such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as may be advised and may settle or compromise the same and, in that behalf and for any of such purposes, may expend and advance such sums of money as Mortgagee may deem necessary, and Mortgagee shall be reimbursed therefor.

6. Assignment of Rents and Performance of Leases.

a. Mortgagor hereby absolutely assigns and transfers to Mortgagee the following:

i. All leases, if any, written or oral, now in existence or hereafter arising

UNOFFICIAL COPY

and all agreements for the use and occupancy of all or any portion of the Premises, together with all the right, power and authority of Mortgagor to materially alter, modify or change the financial terms of such leases and agreements or to surrender, cancel or terminate such leases and agreements, and together with any and all extensions and renewals thereof and any and all further leases including subleases in which Mortgagor has any interest upon all or any part of the Premises (all of such leases, agreements, subleases and tenancies and rights as described therein, being hereinafter collectively called the "Leases");

ii. Any and all guaranties of the obligations of the lessees (the "Lessees") under any of such Leases;

iii. The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which Mortgagor may now or shall hereafter (whether during any applicable period of redemption, or otherwise) become entitled or may demand or claim, arising or issuing from or out of the Leases, or from or out of the Premises or any part thereof, including but not limited to: minimum rents, additional rents, percentage rents, parking maintenance charges or fees, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents and liquidated damages following default or late payment of rent, premiums payable by any Lessee upon the exercise of a cancellation privilege provided for in any Lease and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises, together with any and all rights and claims of any kind that Mortgagor may have against any Lessee under any Lease or any subtenants or occupants of the Premises (all such money, rights and claims being hereinafter collectively called the "Rents"), LESS AND EXCEPTING THEREFROM, HOWEVER, any sums which by the express provisions of any Lease are payable directly to any governmental authority or to any other person, firm or corporation other than the lessor under any Lease or any person, firm or corporation which controls or is controlled by or is under common control with the lessor under any Lease.

iv. Provided that there exists no Default hereunder, Mortgagor shall have the right under a license granted hereby and Mortgagee hereby grants to Mortgagor a license (but limited by the remedies of Mortgagee set forth herein) to collect, but not more than one month in advance, all of the Rents arising from or out of the Leases or any renewals or extensions thereof, or from or out of the Premises or any part thereof, and, subject to the restrictions set forth in the Loan Documents, to exercise all rights and remedies of the landlord under the Leases including, without limitation, day-to-day decisions. That portion of such amounts collected that is equal to the

UNOFFICIAL COPY

amount required to fully discharge all current sums due on the Indebtedness shall be held by Mortgagor only as trustee for the benefit of Mortgagee until payment in full of such then current sums. Mortgagor shall apply the Rents so collected first to payment of any and all amounts due and payable under this Mortgage and the Loan Documents. Thereafter, so long as no Default exists hereunder, Mortgagor may use the Rents in any manner that is consistent with the Loan Documents. The license granted hereby shall be revoked at Mortgagee's option upon written notice from Mortgagee to Mortgagor after the occurrence and during the continuance of a Default hereunder (such written notice to be given at any time after the occurrence of a Default and such revocation to be effective so long as a Default is continuing) and thereafter during the continuance of such Default all Rents collected shall be paid over to Mortgagee immediately upon receipt by Mortgagor.

v. Mortgagor shall (A) observe, perform and discharge duly and punctually all and singular the obligations, terms, covenants, conditions and warranties of Mortgagor, as landlord under the Leases, (B) give prompt notice to Mortgagee of any failure on the part of any lessee, or on the part of Mortgagor to observe, perform and discharge any obligations, terms, covenants, conditions and warranties under the lease, and of any written claim made by any Lessee of any, such failure by Mortgagor, (C) enforce, short of termination of the Leases, or secure in the name of Mortgagee, the performance of each and every material obligation, term, covenant, condition and agreement in the Leases to be performed by any Lessee or any guarantor, (D) appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with the Leases or the obligations, duties or liabilities of Mortgagor and any Lessee thereunder, do so in the name and on behalf of Mortgagee upon request by Mortgagee, but at the expense of Mortgagor, and pay all costs and expenses of Mortgagee, including reasonable attorneys' fees and disbursements, in any action or proceeding in which Mortgagee may appear, (E) at the request of Mortgagee, in confirmation of the assignment and transfer contemplated by this Mortgage, execute and deliver to Mortgagee assignments and transfers of all future Leases upon the same terms and conditions as herein contained, and (F) make, execute and deliver to Mortgagee upon demand and at any time or times, any and all assignments and other documents and instruments which Mortgagee may deem advisable to carry out the true purposes and intent of the assignment set forth in this Mortgage.

vi. Subject to the license described above, Mortgagor hereby constitutes and appoints Mortgagee the true and lawful attorney-in-fact, coupled with an interest, of Mortgagor, empowered and authorized in the name, place and stead of Mortgagor to demand, sue for, attach, levy, recover and receive all Rents and any premium or penalty payable upon the exercise by any Lessee under any Lease of a privilege of cancellation originally provided in such Lease and to give proper

UNOFFICIAL COPY

receipts, releases and acquittances therefor and after deducting expenses of collection, to apply the net proceeds as a credit upon any portion of the Indebtedness secured hereby selected by Mortgagee notwithstanding the fact that such portion of said Indebtedness may not then be due and payable or that such portion of said Indebtedness is otherwise adequately secured, and Mortgagor does hereby authorize and direct any such Lessee to deliver such payment to Mortgagee, in accordance with this Mortgage, and Mortgagor hereby ratifies and confirms all that its said attorney, Mortgagee, shall do or cause to be done by virtue of the powers granted hereby. The foregoing appointment is irrevocable and continuing and such rights, powers and privileges shall be exclusive in Mortgagee, its successors and assigns, so long as any part of the Indebtedness remains unpaid or undischarged. A Lessee need not inquire into the authority of Mortgagee to collect any Rents, and its obligations to Mortgagor shall be absolutely discharged to the extent of any payment to Mortgagee.

vii. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to all or any portion of the Leases upon, and only in the event of, the execution by Mortgagee of unilateral declaration to that effect and recording thereof in the Cook County Recorder's Office, but not otherwise; and in the absence thereof, this Mortgage shall be and remain superior to all Leases, regardless of their respective terms or dates of execution.

vii. The acceptance by Mortgagee of the assignment provided in this Mortgage, together with all of the rights, powers, privileges and authority created in this paragraph or elsewhere in this Mortgage, shall not, prior to entry upon and taking possession of the Premises by Mortgagee, be deemed or construed to constitute Mortgagee a "mortgagee in possession" nor thereafter or at any time or in any event obligate Mortgagee to comply with the terms provisions or obligations of Mortgagor pertaining to said Leases, nor appear in or defend any action or proceeding relating to the Leases, the Rents or the Premises or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Lease or to assume any obligation or responsibility for any security deposits or other deposits delivered to Mortgagor by any Lessee and not assigned and delivered to Mortgagee, nor shall Mortgagee be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Premises.

7. Hazardous Substances. As used below, and in any of the other Loan Documents, "Hazardous Substances" shall mean and include all hazardous and toxic substances, wastes or materials, hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, urea formaldehyde insulation, radioactive materials, biological substances

UNOFFICIAL COPY

and any other kind and/or type of pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), sewage sludge, industrial slag, solvents and/or any other similar substances, or materials which are included under or regulated by "CERCLA", "RCRA", or state superlien or environmental clean-up statutes (all such laws, rules, regulations, and orders being referred to collectively as "Environmental Laws"). Mortgagor hereby agrees to indemnify and hold harmless Mortgagee and its officers, directors, partners, employees and agents (each an "Indemnified Person") from any and all losses and damages incurred by any indemnified Person and against any liability, loss, claim, damage or expense (including reasonable attorneys' fees and disbursements but excluding punitive or consequential damages) claimed against or imposed upon any Indemnified Person, insofar as they may arise out of or are based upon any violation or claim of violation of Environmental Laws with respect to the Mortgaged Property, or any claim, order or judgment relating to Hazardous Substances with respect to the Mortgaged Property. Notwithstanding the foregoing, Mortgagor shall have no obligation to indemnify and hold harmless any Indemnified Person from or with respect to any matters resulting from the gross negligence or willful misconduct of such Indemnified Person.

8. No Recording; No Subordination. Unless Mortgagor first obtains the written consent of Mortgagee, Mortgagor shall not record or permit to be recorded any document or instrument (including, without limitation, any amendment or modification to any document or instrument previously recorded) against, incur or suffer to exist any indebtedness which is senior to, or *pari passu* with the indebtedness evidenced by the Note, except in connection with the Senior Mortgage, Declaration of Condominium and Reciprocal Easement Agreement, to be recorded against the Mortgaged Property, whether now or in the future.

REPRESENTATIONS AND WARRANTIES; COVENANTS; GENERAL PROVISIONS.

9. Representations and Warranties. As a material inducement to Mortgagee to make the Loan to Mortgagor, Mortgagor hereby represents and warrants as follows as of the date hereof:

a. Mortgagor is a corporation duly organized, validly existing and in good standing under the laws of its State of organization and qualified to conduct business in the State of Illinois, with requisite power and authority to (i) incur the indebtedness evidenced by the Note; and (ii) execute, deliver and perform this Mortgage and the other Loan Documents;

b. The execution of this Mortgage and the other Loan Documents and the full and complete performance of the provisions thereof, (i) are authorized by Mortgagor's By-Laws, (ii) have been duly authorized by all requisite corporate actions; (iii) do not require the approval or consent of any private party or governmental authority having jurisdiction over Mortgagor or the Mortgaged Property from whom written consent has not been obtained, and (iv) will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance (other than those contained in any of the Loan

UNOFFICIAL COPY

Documents) upon any property or assets of Mortgagor under any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument or agreement to which Mortgagor is a party or by which Mortgagor or the Mortgaged Property is bound;

c. Mortgagor is the sole legal and beneficial owner of the Mortgaged Property free and clear of all claims, liens and encumbrances except to the extent approved, in writing, by Mortgage;

d. There are no actions, suits or proceedings of a material nature pending, or to the actual knowledge of Mortgagor threatened against or affecting Mortgagor, any guarantor, or the Mortgaged Property, or involving the validity or enforceability of the Loan Documents or the priority of the lien and security interest created thereby, at law or in equity;

e. Mortgagor has complied with (i) any and all judicial decisions, statutes, rulings, directions, rules, regulations, permits, certificates or Ordinances of any governmental authority in any way applicable to Mortgagor, any guarantor or the Mortgaged Property, (ii) the requirements of Mortgagor under Mortgagor's Articles of Incorporation and By-Laws and (iii) any and all contracts (written or oral) of any nature that relate, in any way, to the Mortgaged Property and to which Mortgagor or any guarantor may be bound ("Legal Requirements");

f. All approvals, licenses, permits, certifications, filings, and other actions normally accepted as proof of compliance with the Legal Requirements by prudent lending institutions that make investments secured by real estate in the City of Chicago, Illinois, to the extent required and available as of the date hereof have been duly made, issued, obtained or taken; and

g. Each Loan Document constitutes a legal and binding obligation of, and is valid and enforceable against, Mortgagor, all other persons or entities (other than Mortgagee) obligated thereunder (if any) and the Mortgaged Property (as the case may be) in accordance with the terms thereof (subject to bankruptcy, insolvency and other laws affecting creditors' rights generally and general equitable principles) and is not subject to any right of rescission, set-off, counterclaim or defense.

10. Nature of Representations and Warranties. The representations and warranties made in this Mortgage and in any of the other Loan Documents shall remain true and correct in all material respects and shall survive so long as any of the obligations secured hereby have not been satisfied and/or the Loan or any part thereof shall remain outstanding, and for any applicable statute of limitations period thereafter.

11. Indemnity. Mortgagor shall indemnify, defend and hold Mortgagee and Mortgagee's

UNOFFICIAL COPY

agents, managers, members, employees and agents (collectively, the "Mortgagee Group") harmless from and against, any and all losses, damages (but not punitive or consequential damages), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which the Mortgagee Group may suffer or incur: (1) in connection with claims made by third parties against the Mortgagee Group for losses or damages suffered by such third party as a result of Mortgagor's conduct of business by Mortgagor or the failure to perform any of Mortgagor's obligations (including without limitation, any failure of any representation or warranty of Mortgagor to be true and correct and any claims made by third party service providers for unpaid fees and expenses); (ii) in connection with any claim or cause of action of any kind by any person to the effect that the Mortgagee Group is in any way responsible or liable for any act or omission by Mortgagor, whether on account of any theory of derivative liability or otherwise or (iii) in connection with any act or omission by Mortgagor, any contractor, subcontractor or material supplier, engineer, architect or other person or entity, with respect to the Mortgaged Property. The Mortgagee Group's rights of indemnity shall not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or allegation that the Mortgagee Group's conduct is active, passive or subject to any other classification or that the Mortgagee Group is indirectly responsible under any theory of any kind, character or nature for any act or omission by Mortgagor or any other person or entity except Mortgagee. Notwithstanding the foregoing, Mortgagor shall have no obligation to indemnify and defend the Mortgagee Group against and hold harmless the Mortgagee Group from any matters resulting from the gross negligence or willful misconduct of the Mortgagee Group. This indemnity shall survive the payment of all amounts payable pursuant to, and secured by, the Loan Documents.

12. Expenses. Mortgagor shall pay to Mortgagee immediately upon demand all reasonable costs and expenses, including, without limitation, reasonable legal fees and expenses, incurred by Mortgagee in connection with (i) the filing of this Mortgage with the recorder's office of Cook County, Illinois (ii) the payment of all documentary taxes, recording fees, brokerage fees and title insurance premiums and (iii) the enforcement by Mortgagee of its rights and remedies under this Mortgage and the other Loan Documents.

13. Assignments and Participations. At any time and from time to time without notice to Mortgagor, any guarantor or any other person or entity, Mortgagee may sell, transfer, assign or grant participations in all or any portion of the Loan and the Loan Documents.

14. Definitions. The term "Mortgagee" means the original Mortgagee hereunder, or any future owner and holder, including pledgees, of the Note, and the term "Mortgagor" means the original Mortgagor hereunder and/or any subsequent owner or owners of the Mortgaged Property. This Mortgage in all its parts applies to and binds the successors and assigns of all and each of the parties hereto.

15. Amendment. No alteration or amendment of this Mortgage, the Note, any of the other Loan Documents shall be effective unless in writing and signed by the parties sought to be

UNOFFICIAL COPY

charged or bound thereby.

16. Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois except to the extent preempted by United States federal law.

17. Notices. All notices or other communications required or permitted to be given pursuant to the provisions of this Mortgage and any of the other Loan Documents shall be in writing and shall be deemed to have been made or given when personally served, or one (1) business day after prepaid deposit for overnight delivery with an overnight courier service and properly addressed. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be:

To Mortgagor

KVBN, Inc.
1040 Whitfield Road
Northbrook, Illinois 60062

To Mortgagee:

Mohammad Ali Zahedi and Patricia S. Zahedi
1300 W. Belmont, #502
Chicago, Illinois 60657

Copy to: Robert A. Boron
Robert A. Boron, Ltd.
33 N. LaSalle Street, #3200
Chicago, IL 60602

provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

18. Usury Limitation. Mortgagor represents and agrees that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in Section 815 ILCS 205/4 of the Illinois Compiled Statutes, and that the principal obligation referenced herein constitutes a business loan which comes within the purview of Section 815 ILCS 205/4(1)(c). Notwithstanding any provisions in the Note secured by this Mortgage to the contrary, if any part of the indebtedness cannot be lawfully secured as provided for herein, or cannot be lawfully subject to the lien and security interest contemplated hereby to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured. It is the intent of Mortgagee and Mortgagor in the execution of the Note secured by this Mortgage, or any documents executed in connection therewith or under any other written or oral agreement by Mortgagor in favor of Mortgagee to contract in strict compliance with applicable usury law. In furtherance thereof, Mortgagee and Mortgagor stipulate and agree that none of the terms and provisions contained in the Note secured by this Mortgage, or in any other documents executed in

UNOFFICIAL COPY

connection therewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest that may be lawfully charged under applicable law, and the provisions of this Section shall control over all other provisions of the aforesaid Note and Mortgage and any other documents executed in connection therewith which may be in apparent conflict herewith. Mortgagee expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of the Note and this Mortgage is accelerated. If the maturity of the said Note shall be accelerated for any reason, or if the principal of the said Note is paid prior to the end of the term of the said Note and this Mortgage, and as a result thereof the interest received for the actual period of existence of the loan evidenced by the Note and this Mortgage exceeds the maximum lawful rate provided for by applicable law, Mortgagee shall, at its option, either refund to Mortgagor the amount of such excess or credit the amount of such excess against the principal balance of any indebtedness outstanding under any instrument due Mortgagee and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that Mortgagee shall collect monies and/or any other thing of value which are deemed to constitute interest which would increase the effective interest rate on the Note, secured by this Mortgage, or on other indebtedness secured hereby to a rate in excess of that permitted to be charged by applicable law, an amount equal to interest in excess of the lawful rate shall, upon such determination, at the option of Mortgagee, be either immediately returned to Mortgagor or credited against the principal balance of any indebtedness then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Mortgage, Mortgagor acknowledges that it believes the loan evidenced hereby to be non-usurious and agrees that if, at any time, Mortgagor should have reason to believe that such loan is in fact usurious, it will give Mortgagee written notice of such condition and Mortgagor agrees that Mortgagee shall have ninety (90) days after receipt of such notice in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" or "applicable usury law" as used in this Section shall mean the laws of the State of Illinois, or of the State under which this Mortgage is governed, or the laws of the United States. In any clauses or provisions herein contained shall operate or would prospectively operate to invalidate this Mortgage, then such clauses or provisions only shall be void and of no force and effect, and the remainder of this Mortgage shall remain operative and in full force and effect.

19. Waiver by Mortgagor. Mortgagor 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 such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclosure such lien may order the Mortgaged Property sold as an entirety. Mortgagor further waives and releases (a) all errors, defects and imperfections in any proceedings instituted by Mortgagor under the Note, this Mortgage, or any of the other Loan Documents; (b) all benefits that might accrue to Mortgagor by virtue of any present or future laws

UNOFFICIAL COPY

exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale under civil process, or extension, exemption from civil process or extension of time for payment, and (c) all notices not specifically required by this Mortgage of default, or of Mortgagor's exercise, or election to exercise, any option under this Mortgage. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 735 ILCS 5/15-12-1, or residential real property as defined in Section 735 ILCS 5/15-1291, and pursuant to Section 735 ILCS 5/15-1601(B), Mortgagor hereby waives any and all rights of redemption. To the extent permitted by law, Mortgagor hereby further waives any right to reinstate the loan evidenced by the Note, including, without limitation, any right to reverse any acceleration of such indebtedness as provided in Section 735 ILCS 5/15-1602. All waivers by Mortgagor in this Mortgage have been made voluntarily, intelligently and knowingly by Mortgagor after Mortgagor has been informed by counsel of Mortgagor's choice as to possible alternative rights. Mortgagor's execution of this Mortgage shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made. At any time after default hereunder, Mortgagee, or Mortgagee's agents or contractors, is authorized, without notice and in Mortgagor's sole discretion, to enter upon and take possession of the Mortgaged Property or any part thereof, an to perform any acts which Mortgagor deems necessary or proper to conserve the security interest herein intended to be provided by the Mortgaged Property, to operate any business or businesses conducted there, and to collect and receive all Rents thereof and therefrom, including those past due as well as those accruing thereafter. In addition to the aforesaid rights, Mortgagor shall have the right, in accordance with Sections 735 ILCS 5/15-1701 and 5/15-1702, as the same may have been or shall be amended, to be placed in possession of the Mortgaged Property.

20. No Offset. No offset or claim that Mortgagor now or may in the future have against Mortgagee shall relieve Mortgagor from paying installments or performing any other obligation herein or secured hereby.

21. No Third Parties Benefitted. This Mortgage is made and entered into for the sole protection and benefit of Mortgagee, Mortgagor and their respective successors and assigns, and no other person or persons shall have any right to action hereon or rights to any fund secured hereby at any time.

22. Heirs, Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of the heirs, successors, permitted assigns and personal representatives, of the parties hereto; provided, however, that Mortgagor shall not assign its rights hereunder or under the other Loan Documents in whole or in part. Any such assignment shall be void.

23. Time. Time is of the essence of this Mortgage and each provision hereof of which time is an element.

24. Severability. If any provision of this Mortgage or the application hereof to any

UNOFFICIAL COPY

person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Mortgage, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue to be valid and enforceable to the fullest extent permitted by law unless the invalid or unenforceable provision is of such a material nature to any or all of Mortgagor or Mortgagee that such party or parties would not have entered into or accepted this Mortgage if this Mortgage had not contained such provision.

25. Attorneys' Fees. If Mortgagee finds it necessary in its reasonable discretion to obtain the services of any attorney or to incur any other expenses to collect all or any portion of the principal or interest of the Note or to enforce any other rights this Mortgage or under any of the other Loan Documents, Mortgagor shall pay reasonable attorneys' fees and costs to Mortgagee in connection with such collection or enforcement, whether or not a suit to collect such amounts or enforce such rights is brought or, if brought, prosecuted to judgment. Any such amounts shall be reimbursed to Mortgagee.

26. Terms of Note Incorporated. The terms and provisions of the Note of even date herewith and executed simultaneously herewith are hereby incorporated herein, by reference. Conversely, the terms and provisions of this Mortgage are incorporated therein by reference.

27. Paragraph Headings. Paragraph headings are provided herein for convenience only and shall not serve as a basis for interpretation or construction of this Mortgage, nor as evidence of the intention of the parties hereto

28. No Merger. It being the desire and the intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

29. Insurance Provisions. Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or any party reasonably designated by Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any such insurance policies.

UNOFFICIAL COPY

DEFAULTS AND REMEDIES

30. Defaults. Any of the following events, after passage of the applicable cure period set forth below, shall constitute a "Default" hereunder:

- a. The occurrence of any "Event of Default" under and as defined in this Mortgage or in the Note;
- b. The liquidation, termination or dissolution of Mortgagor or any guarantor;
- c. The sale, lease, exchange, conveyance, transfer, mortgage, assignment, pledge or encumbrance, either voluntarily or involuntarily, or the agreement to do so, without the prior written consent of Mortgagee, of any right, title or interest of Mortgagor or of any successor to Mortgagor in and to the Mortgaged Property or any portion thereof;
- d. The obtaining of any loan, mortgage, financing, credit or other additional financing, either for the purposes of obtaining additional borrowed funds, or for the purpose of satisfying any loan, mortgage, financing, credit or encumbrance on the Mortgaged Property, whether or not permitted hereby, or for a combination of said purposes, without the full satisfaction of this Mortgage and the Note secured thereby;
- e. The levy, attachment or seizure pursuant to court order of (A) any right, title or interest of Mortgagor or of any successor to Mortgagor, in and to the Mortgaged Property or any portion thereof or (B) 10% or more of Mortgagor's interest therein;
- f. Any representation or warranty contained herein or in any of the other Loan Documents is not true and correct in all material respects or omits to state a material fact necessary to make such representation or warranty not misleading;
- g. The obtaining by any person of an order or decree in any court of competent jurisdiction enjoining or prohibiting Mortgagor or Mortgagee or either of them from performing this Mortgage;
- h. The rezoning of the Property so as to have an adverse effect on the value of the Mortgaged Property;
- i. The cessation, for any reason other than as a direct result of Mortgagee's bad faith, of any Loan Document to be in full force and effect or the failure of any lien intended to be created thereby to exist or to be valid and perfected for any reason other than as a direct result of

UNOFFICIAL COPY

Mortgagee's bad faith; or the revocation of any guaranty of the Loan; or the invalidation or otherwise ceasing to be in full force and effect of any lien in favor of Mortgagee contemplated by this Mortgage or any Loan Document; or the cessation of any such lien or obligation, for any reason, to have the priority contemplated by this Mortgage or the Loan Documents;

j. The failure of Mortgagor or any guarantor to fully perform any and all covenants and agreements hereunder or under any of the other Loan Documents;

k. The incurrence by Mortgagor of any indebtedness other than (A) the Loan, (B) the Senior Mortgage, (C) trade debt incurred in the ordinary course of operation, of the Mortgaged Property;

l. Any default or breach under any document evidencing the Senior Mortgage, or under any documents related thereto;

m. Mortgagor, directly or indirectly conveys, sells, assigns, transfer or otherwise disposes of, or grant any person an option to acquire, in one transaction or a series of related transactions, ten percent (10%) or more of Mortgagor's membership interests.

31. Remedies Upon Default.

a. At any time after a Default hereunder Mortgagee, at its option, and without further notice or demand, may declare all amounts secured hereby immediately due and payable; provided, however, that such amounts shall become immediately due and payable automatically and without any additional notice or demand to Mortgagor upon the occurrence of a Default as specified herein.

b. Mortgagee may in person or by agent enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof; make repairs and alterations, and do any acts which Mortgagee deems proper to protect the security hereof or to operate and maintain the Mortgaged Property; and either with or without taking possession, in its own name, terminate the license granted to Mortgagor to receive the Rents and sue for or otherwise collect and receive said Rents, including those past due and unpaid, and apply the same as provided below in this subparagraph (b). Without limiting the generality of the foregoing, Mortgagee may make, modify, enforce, cancel or accept surrender of any Lease, remove and evict any Lessee, increase or decrease Rents under any Lease, appear in and defend any action or proceeding purporting to affect the Mortgaged Property, and perform and discharge each and every obligation, covenant and agreement of Mortgagor contained in any Lease. Upon request of Mortgagee, Mortgagor shall assemble and make available to Mortgagee at the Premises any of the Mortgaged Property which is not located thereat or has been removed therefrom. The entering upon and taking possession of the Mortgaged Property, the collection of any Rents and the application thereof as aforesaid, shall not cure or waive any Default theretofore or thereafter occurring, or affect any notice of Default hereunder or invalidate any act done pursuant to any such notice. Mortgagee or Mortgagee's agent shall have

UNOFFICIAL COPY

access during Mortgagor's normal business hours to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those Rents actually received. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Mortgagee, other than Mortgagee's intentional misconduct or gross negligence. Nothing contained in this Paragraph (b) shall require Mortgagee to incur any expense or do any act. If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Such amounts, together with interest and attorneys' fees shall be immediately due and payable. Notwithstanding Mortgagee's continuance in possession or receipt and application of Rents, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law or in equity, all of which being cumulative, upon or after the occurrence of a Default. Any of the actions referred to in this Paragraph (b) may be taken by Mortgagee at such time as Mortgagee is so entitled, without regard to the adequacy of any security for the obligations hereby secured. The rights and powers of Mortgagee under this Mortgage shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

c. Mortgagee, without regard to the adequacy of any security for the indebtedness hereby secured and whether or not waste has occurred, without notice to Mortgagor, shall be entitled to the appointment of a receiver by any court having jurisdiction to take possession of and protect the Mortgaged Property, manage and operate the same, and collect the Rents therefrom.

d. Mortgagee may bring an action in any court of competent jurisdiction to foreclose this Mortgage or to enforce any of the covenants hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all costs and expenses which may be paid or incurred by or on behalf of Mortgagee or subsequent holders of the Note. In the event of a foreclosure sale or other disposition of the Mortgaged Property or any portion thereof, the proceeds of said sale or other disposition shall be applied, first, to such costs and expenses, then to payment of the Indebtedness in such order as Mortgagee shall elect, and finally the remainder, if any, shall be paid to Mortgagor. If the Mortgaged Property consists of several lots or parcels, Mortgagee may elect to sell the Property either as a whole or in separate lots or parcels. If Mortgagee elects to sell in separate lots or parcels, Mortgagee may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Mortgagor or Mortgagee, may purchase at the sale.

e. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the right of any tenant or tenants of the Premises having an interest in the Premises. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness, or foreclose the Mortgaged Property, secured

UNOFFICIAL COPY

hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

32. Right of Setoff. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, Mortgagee is hereby authorized by Mortgagor at any time or from time to time, without notice to Mortgagor or any other person, any such notice being hereby expressly waived, to set off any obligations or liabilities at any time held or owing by Mortgagee to or for the credit or the account of Mortgagor against the obligations and liabilities of Mortgagor to Mortgagee.

33. Foreclosure Procedure. Mortgagor hereby expressly waives any right which it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any foreclosure of this Mortgage.

34. Foreclosure Purchase. Upon any sale of the Mortgaged Property pursuant to judicial proceedings, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the amounts then secured hereby or adjudicated to be due and payable under the Note and this Mortgage, or under any other indebtedness due and payable to either the holder of the Note or the Mortgagee, for or in settlement or payment of all or any portion of the purchase price of the property purchased, and in such case, this Mortgage, the Note and documents evidencing expenditures secured hereby shall be presented to the person conducting the sale in order that the amount of said indebtedness so used or applied may be credited thereon as having been paid.

35. Cumulative Remedies. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative.

36. JURY TRIAL WAIVER. MORTGAGEE, BY ITS ACCEPTANCE HEREOF, AND MORTGAGOR EACH HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS MORTGAGE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS MORTGAGE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND MORTGAGEE, BY ITS ACCEPTANCE HEREOF, AND MORTGAGOR EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS MORTGAGE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS PARAGRAPH WITH ANY COURT AS

UNOFFICIAL COPY

WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

37. Compliance with Illinois Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15 ("IMFL"), the provisions of IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with IMFL. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default by Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under IMFL in the absence of said provision, Mortgagee shall be vested with the rights granted in IMFL to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Section 15-1510 and 15-1512 of IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

38. Subordination to Senior Mortgage. The liens and security interests created by this Mortgage and by all other documents given at any time to secure the Indebtedness shall be, and the same are hereby made and shall continue to be, subject and subordinate in all respects to the liens and security interests created by the Senior Mortgage. In addition, any assignment of rights by Mortgagor to Mortgagee or appointments by Mortgagor of Mortgagee as its attorney-in-fact hereunder are made subject and subordinate to any prior assignment of such rights and appointments made pursuant to the terms of the Senior Mortgage, and the Note secured thereby or any other instruments securing repayment of the Senior Mortgage indebtedness. The Senior Mortgage and the Note secured thereby shall not be amended without the prior written consent of Mortgagee (which may be granted or withheld in Mortgagee's sole and absolute discretion).

Signature Page Follows...

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Junior Mortgage and Assignment of Leases and Rents under seal as of the day and year first above written.

MORTGAGOR

KVBN, INC., an Illinois corporation,

By Victor Kashinskiy
Its President

Attest: Victor Kashinskiy
Its Secretary

Property of Cook County Clerk's Office

UNOFFICIAL COPY

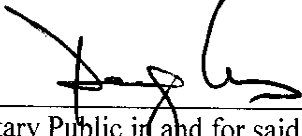
ACKNOWLEDGMENT

STATE OF ILLINOIS
 ss.
COUNTY OF COOK

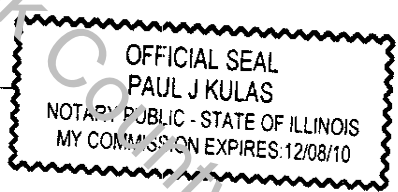
VICTOR KASHIVSKIY

I, PAUL J. KULAS, a Notary Public in and for said County, in the State aforesaid, do hereby certify that ~~Yaroslav Kot~~, as President and ~~Vyacheslav Yakovlev~~, as Secretary of KVEN, Inc., an Illinois corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary of such corporation, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts and as the free and voluntary act of said corporation, pursuant to the authority granted to them by said corporation, for the uses and purposes therein set forth.

WITNESS my hand and official seal this 20th day of January, 2010.



Notary Public in and for said
County and State



[SEAL]

UNOFFICIAL COPY

LEGAL DESCRIPTION

Units 201, 203, 403, 503, 602, 603 and 604 in 2800 West North Condominiums, as delineated on a Plat of Survey of 2800 West North Condominiums, which Plat of Survey is attached as Exhibit D to the Declaration of Condominium recorded August 27, 2009 in the office of the Recorder of Deeds of Cook County, Illinois as document number 0923931075 of the following described parcel of real estate:

Parcel 1: Lot 11 (except the East 25 feet and except the North 37.25 feet) in Block 16 in Hansbrough & Hess Subdivision of the East 1/2 of the Southwest 1/4 of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2: The North 37 1/4 feet of the West 39 feet of Lot 11 in Block 16 in Hansbrough & Hess Subdivision of the East 1/2 of the Southwest 1/4 of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3: That part of the East 25.0 feet of Lot 11 in Block 16 in Hansbrough & Hess Subdivision of the East 1/2 of the Southwest 1/4 of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, described as follows: beginning at the Southwest corner of the East 25.0 feet of Lot 11 aforesaid; thence North 00 degrees 31 minutes 30 seconds West along the West line of said East 25.0 feet for a distance of 173.03 feet; thence South 87 degrees 55 minutes 45 seconds East 20.42 feet; thence South 3 degrees 37 minutes 50 seconds West 172.06 feet to the South line of Lot 11; thence North 90 degrees West along said South line 7.89 feet to the point of beginning, in Cook County, Illinois.

Excepting therefrom commercial space more particularly described as follows:

The following parcel of land lying above a horizontal plane at elevation +18.85 feet (Chicago City Datum) and lying below a horizontal plane at elevation +32.91 feet (Chicago City Datum) described as follows:

Beginning at the point 0.16 feet North and 5.54 feet East of the Southwest Corner of said tract; thence North, a distance of 5.04 feet; thence West, a distance of 0.08 feet; thence North a distance of 57.66 feet; thence East, a distance of 19.54 feet; thence North a distance of 1.15 feet; thence East, a distance of 5.27 feet; thence South a distance of 15.75 feet; thence East, a distance of 13.06 feet; thence North, a distance of 0.35 feet; thence East, a distance 3.78 feet; ; thence North, a distance of 0.64 feet; thence Easterly, a distance of 3.25 feet; thence Southerly a distance of 2.75 feet; thence Westerly, a distance of 0.20 feet; thence Southerly, a distance of 46.16 feet; thence Westerly a distance of 41.30 feet to the point of beginning, in Cook County, Illinois.

P.I.N.: 13-36-331-039-0000
 13-36-331-040-0000
 13-36-331-048-0000
 13-36-331-049-0000 (affects underlying land)

Commonly known as 2800 W. North Avenue, Chicago, IL 60647