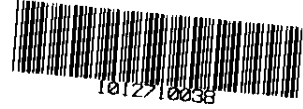


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Doc#: 1012710038 Fee: \$68.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/07/2010 12:22 PM Pg: 1 of 17

Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 17-10-126-011-1128

Address:

Street: 160 East Illinois, Unit 23D

Street line 2:

City: Chicago

State: IL

ZIP Code: 60611

Lender: Wells Fargo Bank, National Association

Borrower: George K. Kidman

Loan / Mortgage Amount: \$500,000.00

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

Box 400-CTCC

Certificate number: 7D86259D-40E2-4A11-A4E7-CC392E50AA7D

Execution date: 03/10/2010

A00199072 - Sales-JN

Property of Cook County Clerk's Office

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AND WHEN RECORDED MAIL TO.**

Courtney L. Anderson, Esq.
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603

**MORTGAGE
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage"), is made as of March 10, 2010, by **GEORGE K. KIDMAN**, ("Mortgagor"), for the benefit of **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association ("Wachovia"), as to an undivided 58.6% interest, and **WELLS FARGO BANK, NATIONAL ASSOCIATION** ("Wells Fargo"), as to an undivided 41.4% interest (Wachovia and Wells Fargo are hereinafter collectively referred to as "Mortgagee").

ARTICLE 1. GRANT

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Mortgage, Mortgagor irrevocably mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee and its successors and assigns forever all of that real property located in Cook County, Illinois described on **Exhibit A** attached hereto, together with all right, title, interest, and privileges of Mortgagor in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property all development rights or credits, air rights, water, water rights and water stock belonging, relating or pertaining to the real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real

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property (the "Improvements"); all interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

- 1.2 **ADDRESS.** The address of the Subject Property (if known) is: 160 East Illinois, Unit 23D, Chicago, Illinois 60611. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Mortgage on the Subject Property as described on **Exhibit A**.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Mortgage for the purpose of securing the following obligations ("Secured Obligations"):

- (a) Payment to Mortgagee of all sums at any time owing under that certain Promissory Note ("Note") dated March 10, 2010, in the principal amount of TWO MILLION DOLLARS (\$2,000,000.00) executed by Michael Corbin and George Kidman (together, "Borrower"), and payable to the order of Mortgagee, as lender; and
- (b) Payment and performance of all covenants and obligations of Mortgagor under this Mortgage; and
- (c) Notwithstanding anything to the contrary in this Mortgage, Mortgagee's recovery under this Mortgage is limited to: (i) the principal amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00); together with: (ii) an interest, fees and other costs and expenses payable by Mortgagor pursuant to the terms hereof, including, without limitation, the costs and expenses of enforcement and collection described in Article 6 hereof; and
- (d) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

- 2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Mortgagor hereby irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all leases of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof ("Leases"); and (b) the rents, revenue, income, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("Payments"). The term "Leases", as referred to herein, shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.

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The assignments of Leases and Payments contained in this Mortgage shall in no event diminish, alter, impair, or affect any other rights and remedies of Mortgagee, including but not limited to, the appointment of a receiver, nor shall any provision in this section diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth herein. In addition, this assignment shall be fully operative without regard to value of the Subject Property or without regard to the adequacy of the Subject Property to serve as security for the obligations owed by Mortgagor to Mortgagee. Further, except for the notices required hereunder, if any, Mortgagor hereby waives any notice of default or demand for turnover of rents by Mortgagee to apply to a court to deposit the Payments into the registry of the court or such other depository as the court may designate.

- 3.2 **GRANT OF LICENSE.** Mortgagee confers upon Mortgagor a license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Mortgagee may collect and apply the Payments pursuant to that certain Section entitled Application of Other Sums without notice and without taking possession of the Subject Property. Mortgagor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the lessees from any liability to Mortgagee by reason of relying upon and complying with any such notice or demand by Mortgagee.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise by Mortgagee, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Mortgagee hereunder; or (ii) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.
- 3.4 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that as of the date hereof, there are no Leases.
- 3.5 **COVENANTS.** Mortgagor covenants and agrees at Mortgagor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) give Mortgagee prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; (c) deliver to Mortgagee fully executed, counterpart original(s) of each and every Lease if requested to do so; and (d) execute and record such additional assignments of any Lease or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the lessor and lessee) of any Lease to the Mortgagee, in form and substance acceptable to Mortgagee, as Mortgagee may request. Mortgagor shall not, without Mortgagee's prior written consent: (i) enter into any Leases after the date hereof; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rentals one (1) month in advance of the time when it becomes due; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other mortgage or encumbrance. Any such attempted action in violation of the provisions of this Section shall be null and void. Without in any way limiting the requirement of Mortgagee's consent hereunder, any sums received by Mortgagor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Mortgagor shall be held in trust by Mortgagor for such purpose.

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ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Mortgagee as of the date of this Mortgage a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs, and all other personal property, and all embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the real property described on Exhibit A attached hereto and incorporated by reference herein or (ii) any existing or future improvements on the real property (which real property and improvements are collectively referred to herein as the "Subject Property"); together with all rents and security deposits derived from the Subject Property; all inventory, accounts, cash receipts, deposit accounts (including any impound accounts), accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Subject Property or any business now or hereafter conducted thereon by Mortgagor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Subject Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Subject Property; all advance payments of insurance premiums made by Mortgagor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under the Uniform Commercial Code in effect in the State of Illinois, as amended or recodified from time to time ("UCC").

This Mortgage creates a security interest in the Collateral, and, to the extent the Collateral is not real property, this Mortgage constitutes a security agreement from Mortgagor to Mortgagee under the UCC.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) Mortgagor has, or will have, good title to the Collateral; (b) except for that certain Mortgage dated February 21, 2008 and recorded as Document Number 0811526051 in the Official Records in Cook County, Illinois made to Citibank N.A. (the "First Mortgage") by Mortgagor (the "First Mortgage"), Mortgagor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; (c) Mortgagor's principal place of business is located at the address shown in that certain Section entitled Notices; and (d) Mortgagor's legal name is exactly as set forth on the first page of this Mortgage.
- 4.3 **COVENANTS.** Mortgagor agrees: (a) to execute and deliver such documents as Mortgagee deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Mortgagee prior written notice thereof; (c) to cooperate with Mortgagee in perfecting

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all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Mortgagee is authorized to file financing statements in the name of Mortgagor to perfect Mortgagee's security interest in Collateral.

4.4 **RIGHTS OF MORTGAGEE.** In addition to Mortgagee's rights as a "Secured Party" under the UCC, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under any applicable law.

4.5 **RIGHTS OF MORTGAGEE ON DEFAULT.** Upon the occurrence of a Default (hereinafter defined) under this Mortgage, then in addition to all of Mortgagee's rights as a "Secured Party" under the UCC or otherwise at law:

- (a) Mortgagee may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license and dispose of any or all of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales;
- (b) Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or dispose of the Collateral as Mortgagee deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Mortgagee may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral; and
- (c) In disposing of Collateral hereunder, Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Collateral may be applied by Mortgagee to the payment of expenses incurred by Mortgagee in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Mortgagee toward the payment of the Secured Obligations in such order of application as Mortgagee may from time to time elect.

Notwithstanding any other provision hereof, Mortgagee shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagor shall make an express written election of said remedy under any applicable law. Mortgagor agrees that Mortgagee shall have no obligation to process or prepare any Collateral for sale or other disposition.

4.6 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Mortgagee may, without the obligation to do so, in Mortgagee's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Mortgagor; provided, however, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

5.1 **TITLE.** Mortgagor represents and warrants that, except as disclosed to Mortgagee in a writing which refers to this warranty, Mortgagor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber.

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- 5.2 **TAXES AND ASSESSMENTS.** Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Mortgagee by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Mortgagee pursuant to any Secured Obligation; provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Mortgagee and which are measured by and imposed upon Mortgagee's net income.
- 5.3 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation when due.
- 5.4 **LIENS, ENCUMBRANCES AND CHARGES.** Except for the First Mortgage, Mortgagor shall immediately discharge any lien not approved by Mortgagee in writing that has or may attain priority over this Mortgage. Mortgagor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or Collateral, or any interest therein whether senior or subordinate hereto. Mortgagor covenants and agrees that the First Mortgage shall not be modified, amended or extended without the prior written consent of Mortgagee, which consent may be withheld in his sole and absolute discretion.
- 5.5 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**
- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Mortgagee and, at the request of Mortgagee, shall be paid directly to Mortgagee subject to the rights of First Mortgagee under the First Mortgage: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Mortgagee to be maintained by Mortgagor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Subject Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Subparagraph (d) of that certain Section entitled Maintenance and Preservation of the Subject Property, Mortgagee may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order acceptable to Mortgagee, and/or Mortgagee may release all or any part of the proceeds to Mortgagor upon any conditions Mortgagee may impose. Subject to the rights of First Mortgagee, Mortgagee may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Mortgagee; provided, however, in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Mortgagee or its employees or agents.
- (b) Subject to the rights of the First Mortgagee under the First Mortgage, at its sole option, Mortgagee may permit insurance or condemnation proceeds held by Mortgagee to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Mortgagee of such additional funds which Mortgagee determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee; (iii) the delivery to Mortgagee of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Mortgagee, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Mortgagee; and (iv) the delivery to Mortgagee of evidence acceptable to Mortgagee (aa) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (bb) that there has been no material adverse change in the financial condition or credit of Mortgagor since the date of this Mortgage; and (cc) of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Mortgagor

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hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Mortgagee of such insurance or condemnation proceeds, then Mortgagee may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose.

- 5.6 **MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY.** Mortgagor covenants: (a) to insure the Subject Property and Collateral against such risks as Mortgagee may require and, at Mortgagee's request, to provide evidence of such insurance to Mortgagee, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Subject Property and Collateral in good condition and repair; (c) not to remove or demolish the Subject Property or Collateral or any part thereof, not to alter, restore or add to the Subject Property or Collateral and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Mortgagee's prior written consent; (d) to complete or restore promptly and in good and workmanlike manner the Subject Property and Collateral, or any part thereof which may be damaged or destroyed, without regard to whether Mortgagee elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in that certain Section entitled Damages; Insurance and Condemnation Proceeds; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Subject Property or Collateral, and (g) to do all other acts which from the character or use of the Subject Property or Collateral may be reasonably necessary to maintain and preserve its value.
- 5.7 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Subject Property and Collateral and title to and right of possession of the Subject Property and Collateral, the security hereof and the rights and powers of Mortgagee hereunder against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property or Collateral and of any condemnation offer or action.
- 5.8 **ACTIONS BY MORTGAGEE.** From time to time and without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Mortgagee, without liability therefor and without notice, may: (a) release all or any part of the Subject Property from this Mortgage; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Mortgage.
- 5.9 **DUE ON SALE OR ENCUMBRANCE.** If the Subject Property or any interest therein shall be sold, transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the corporate stock or general partnership interests or limited liability company interests of Mortgagor), mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Mortgagee, THEN Mortgagee, in its sole discretion, may declare all Secured Obligations immediately due and payable.
- 5.10 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property and Collateral or in any manner obligated under the Secured Obligations ("Interested Parties"), Mortgagee may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Mortgage upon the Subject Property and Collateral.
- 5.11 **RELEASE OF ASSIGNMENT.** When this Mortgage has been fully released, the last such release shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.

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- 5.12 **SUBROGATION.** Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee or by the proceeds of any loan secured by this Mortgage.
- 5.13 **RIGHT OF INSPECTION.** Mortgagee, its agents and employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "Default" shall mean (a) at Mortgagee's option, the failure of Mortgagor to make any payment of principal or interest on the Note or to pay any other amount due hereunder or under the Note when the same is due and payable, whether at maturity, by acceleration or otherwise; (b) any default under the First Mortgage or (c) the failure of Mortgagor to perform any non-monetary obligation hereunder, or the failure to be true of any representation or warranty of Mortgagor contained herein and the continuance of such failure for ten (10) days after notice.
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Mortgagee shall have all the following rights and remedies:
- (a) With or without notice, to declare all Secured Obligations immediately due and payable;
 - (b) With or without notice, and without releasing Mortgagor or Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Mortgagee under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority to this Mortgage (including, without limitation, the First Mortgage), the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (v) to employ counsel, accountants, contractors and other appropriate persons;
 - (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;
 - (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations have been accelerated and are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment;
 - (e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Mortgagee deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Mortgagee's sole judgment, to protect or enhance the security hereof;
 - (f) To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions and to apply the proceeds received upon the Secured Obligations all in such order and manner as Mortgagee determines in its sole discretion;

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- (g) Upon sale of the Subject Property at any foreclosure sale, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Mortgagee; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Mortgagee (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; and (y) Mortgagee's credit bid may be (at Mortgagee's sole and absolute discretion) higher or lower than any appraised value of the Subject Property;
- (h) Upon the completion of any foreclosure of all or a portion of the Subject Property, commence an action to recover any of the Secured Obligations that remains unpaid or unsatisfied;
- (i) Exercise any and all remedies at law, equity, or under the Note or the Mortgage for such Default.
- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Mortgagee under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Mortgagee under that certain Section entitled Rights and Remedies or that certain Section entitled Grant of License, less all costs and expenses incurred by Mortgagee or any receiver under either of said Sections, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Mortgagee shall determine in its sole discretion; provided, however, Mortgagee shall have no liability for funds not actually received by Mortgagee.
- 6.5 **NO CURE OR WAIVER.** Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Mortgagee or any receiver shall cure or waive any breach, Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of or security interest created by this Mortgage.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Mortgagee immediately and without demand all costs and expenses incurred by Mortgagee pursuant to that certain Section entitled Rights and Remedies (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein.

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- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Subject Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Subject Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Mortgagee may perform any obligation of Mortgagor hereunder; provided, however, that: (i) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (ii) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Mortgagee under this Section.
- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Mortgagee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Mortgagor and Mortgagee. No failure on the part of Mortgagee to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Mortgagee in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Mortgagee shall not thereby waive the agreement contained herein that time is of the essence, nor shall Mortgagee waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

ARTICLE 7 HAZARDOUS MATERIALS.

- 7.1 **SPECIAL REPRESENTATIONS AND WARRANTIES.** Without in any way limiting the other representations and warranties set forth in this Mortgage, and after reasonable investigation and inquiry, Mortgagor hereby specifically represents and warrants to the best of Mortgagor's knowledge as of the date of this Mortgage as follows:
- (a) **Hazardous Materials.** The Subject Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "wastes," "regulated substances," "industrial solid wastes," or "pollutants" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials"). "Hazardous Materials" shall not include commercially reasonable amounts of such materials used in the ordinary course of construction of the Subject Property which are used and stored in accordance with all applicable environmental laws, ordinances and regulations.
- (b) **Hazardous Materials Laws.** The Subject Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

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- (c) Hazardous Materials Claims. There are no claims or actions ("Hazardous Materials Claims") pending or threatened against Mortgagor or the Subject Property by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

7.2 HAZARDOUS MATERIALS COVENANTS. Mortgagor agrees as follows:

- (a) No Hazardous Activities. Mortgagor shall not cause or permit the Subject Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.
- (b) Compliance. Mortgagor shall comply and cause the Subject Property and Collateral to comply with all Hazardous Materials Laws.
- (c) Notices. Mortgagor shall immediately notify Mortgagee in writing of: (i) the discovery of any Hazardous Materials on, under or about the Subject Property and Collateral; (ii) any knowledge by Mortgagor that the Subject Property and Collateral does not comply with any Hazardous Materials Laws; and (iii) any Hazardous Materials Claims.
- (d) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Subject Property, Mortgagor shall immediately take, at Mortgagor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

7.3 INSPECTION BY MORTGAGOR. Upon reasonable prior notice to Mortgagor, Mortgagee, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Subject Property and Collateral for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Subject Property and Collateral.

7.4 HAZARDOUS MATERIALS INDEMNITY. MORTGAGOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS MORTGAGOR, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) WHICH MORTGAGOR MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF THE USE, GENERATION, MANUFACTURE, STORAGE, DISPOSAL, THREATENED DISPOSAL, TRANSPORTATION OR PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE SUBJECT PROPERTY AND COLLATERAL. MORTGAGOR SHALL IMMEDIATELY PAY TO MORTGAGOR UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE NOTE. MORTGAGOR'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS MORTGAGOR SHALL SURVIVE THE CANCELLATION OF THE NOTE AND THE RELEASE OR PARTIAL RECONVEYANCE OF THE MORTGAGE.

7.5 LEGAL EFFECT OF SECTION. Mortgagor and Mortgagee agree that Mortgagor's duty to indemnify Mortgagee hereunder shall survive: (a) any judicial or non-judicial foreclosure under the Mortgage, or transfer of the Subject Property in lieu thereof, (b) the release or cancellation of the Mortgage; and (c) the satisfaction of all of Mortgagor's obligation under the Loan Documents.

ARTICLE 8. WAIVER OF RIGHT TO TRIAL BY JURY

8.1 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS MORTGAGE, AND BY ITS ACCEPTANCE HEREOF, MORTGAGOR, HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) 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

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TORT OR OTHERWISE; AND EACH PARTY AND MORTGAGEE HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS MORTGAGE AND MORTGAGEE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO AND MORTGAGEE TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

ARTICLE 9. MISCELLANEOUS PROVISIONS

- 9.1 **ADDITIONAL PROVISIONS.** The Note and this Mortgage contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. Where Mortgagor and Borrower are not the same, "Mortgagor" means the owner of the Property in any provision dealing with the Property, "Borrower" means the obligor in any provision dealing with the Secured Obligations, and both where the context so requires.
- 9.2 **MERGER.** No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Subject Property unless Mortgagee consents to a merger in writing.
- 9.3 **OBLIGATIONS OF MORTGAGOR, JOINT AND SEVERAL.** If more than one person has executed this Mortgage as "Mortgagor", the obligations of all such persons hereunder shall be joint and several.
- 9.4 **WAIVER OF MARSHALLING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Subject Property and Collateral, hereby waives all rights to have the Subject Property and Collateral and/or any other property which is now or later may be security for any secured Obligation ("Other Property") marshalled upon any foreclosure of the lien of this Mortgage or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Mortgagee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Mortgagee may designate.
- 9.5 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" and "Collateral" means all and any part of the Subject Property and Collateral, respectively, and any interest in the Subject Property and Collateral, respectively.
- 9.6 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section does not waive or modify the provisions of that certain Section entitled Due on Sale or Encumbrance.
- 9.7 **EXECUTION IN COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- 9.8 **CHOICE OF LAW.** This Mortgage shall be construed in accordance with the laws of the State of Illinois, except to the extent that federal laws preempt the laws of the State of Illinois.
- 9.9 **INCORPORATION.** All exhibits, schedules or other items attached hereto are incorporated into this Mortgage by this reference.
- 9.10 **CONSENTS AND DIRECTIONS.** So long as Wachovia owns more than an undivided 50% interest in the Note, Wachovia shall have the right to render or provide any consents or approvals under this Mortgage or to provide

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any directions hereunder, and Wachovia may exercise or accept the benefits of any of the rights or remedies under this Mortgage for itself and as agent for Wells Fargo.

- 9.11 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Mortgage shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor: George K. Kidman
2901 Rigsby Lane
Safety Harbor, Florida 34695

Mortgagee: Wachovia – A Wells Fargo Company
401 East Jackson Street, Suite 1450
Tampa, FL 33602
Attn: T. Edward Entreken
Vice President
Domestic Strategies Group

Any 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. Mortgagor shall forward to Mortgagee, without delay, any notices, letters or other communications delivered to the Subject Property or to Mortgagor naming Mortgagee, "Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the ability of Mortgagor to perform its obligations to Mortgagee under the Note.

ARTICLE 10. STATE SPECIFIC PROVISIONS

- 10.1 The terms and provisions set forth below in this Section 8 shall be construed, to the greatest extent possible, consistently with those set forth elsewhere in this Mortgage as being in addition to and supplementing such other terms and provisions set forth elsewhere in this Mortgage; however, notwithstanding anything to the contrary set forth elsewhere in this Mortgage, in the event of any conflict or inconsistency between the terms and provisions of this Section 8 and the terms and provisions set forth elsewhere in this Mortgage, the following terms and provisions of this Section 8 shall govern and control:

(a) Mortgagor represents and warrants to Mortgagee that the proceeds of the loan secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured by this Mortgage constitutes (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c) and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

(b) Pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Subject Property, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder. If Mortgagee purchases insurance for the Mortgaged Property, the Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance

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may be added to the Liabilities secured hereby. The costs of such insurance may be greater than the cost of insurance Mortgageor may be able to obtain for itself.

(c) It is the intention of Mortgageor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgageor agrees and covenants that:

(i) Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, to the maximum extent permitted by law, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver, any powers, rights or remedies prior to or upon the occurrence and during the continuance of a Default, which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Liabilities and shall have the benefit of all applicable provisions of the Act.

(ii) 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 to confer authority upon to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale.

(iii) In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Subject Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Premises or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions for in Sections 15-1701 and 15-1703 of the Act.

(v) Mortgageor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgageor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.

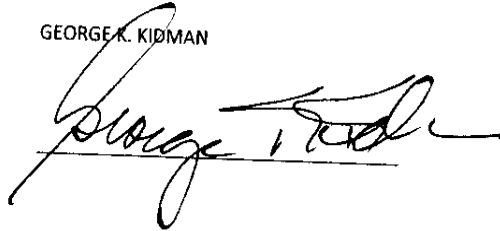
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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year set forth above.

"MORTGAGOR"

GEORGE K. KIDMAN



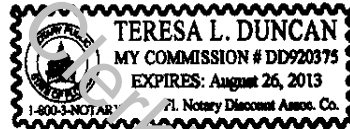
STATE OF FLORIDA
COUNTY OF Pine Hills

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that George K. Kidman personally known to me appeared before me this day in person and acknowledged that he signed and delivered such instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 10th day of March, 2010.

Teresa L. Duncan
Notary Public

My Commission Expires:



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DESCRIPTION OF SUBJECT PROPERTY

Exhibit A

PARCEL 1:

UNIT NO. 23D IN AVENUE EAST CONDOMINIUM, AS DELINEATED ON AND DEFINED ON THE PLAT OF SURVEY OF THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE:

THE EAST 1/2 OF LOT 10 AND ALL OF LOTS 11 AND 12 IN THE SUBDIVISION OF BLOCK 18 IN KINZIE'S ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS FOR AVENUE EAST CONDOMINIUM RECORDED AS DOCUMENT NO. 0725315094, AS MAY BE AMENDED FROM TIME TO TIME, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EXCLUSIVE RIGHT TO THE USE OF PARKING SPACE LIMITED COMMON ELEMENT NO. 414, 417, A LIMITED COMMON ELEMENT, AS DELINEATED ON THE SURVEY ATTACHED TO THE AFORESAID DECLARATION.

PARCEL 3:

THE EXCLUSIVE RIGHT TO THE USE OF STORAGE SPACE LIMITED COMMON ELEMENT NO. 128, A LIMITED COMMON ELEMENT, AS DELINEATED ON THE SURVEY ATTACHED TO THE AFORESAID DECLARATION.

GRANTOR ALSO HEREBY GRANTS TO THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, AS RIGHTS AND EASEMENTS APPURTENANT TO THE ABOVE-DESCRIBED REAL ESTATE, THE RIGHTS AND EASEMENTS FOR THE BENEFIT OF SAID PROPERTY SET FORTH IN THE DECLARATION OF CONDOMINIUM AFORESAID, AND GRANTOR RESERVES TO ITSELF, ITS SUCCESSORS AND ASSIGNS, THE RIGHTS AND EASEMENTS SET FORTH IN SAID DECLARATION FOR THE BENEFIT OF THE REMAINING PROPERTY DESCRIBED THEREIN.

PIN(S): 17-10-126-011-1128

CKA: 160 EAST ILLINOIS UNIT #23D, CHICAGO, IL, 60611