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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1013334056 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/13/2010 03:07 PM Pg: 1 of 10

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN: 17-28-212-002-0000**

Address:

Street: 309-13 West 23rd Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60608

Lender: Raymond B. Lee

Borrower: North Star Trust Company, as successor Trustee to Lakeside Bank, as Trustee Agreement dated September 8, 2004 and known as Trust Number 10-2741, as trustee

Loan / Mortgage Amount: \$2,200,000.00

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

Certificate number: 35370D56-08E8-42E3-B894-D19381025FF5

Execution date: 05/07/2010

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JUNIOR MORTGAGE

THIS JUNIOR MORTGAGE (the "Mortgage") is made as of this 10, day of August, 2008, by NORTH STAR TRUST COMPANY, as successor Trustee to LAKESIDE BANK, as Trustee under Trust Agreement dated September 8, 2004, and known as Trust Number 10-2741, not personally, but solely in its capacity as trustee, having an address at 500 West Madison, Suite 3150, Chicago IL 60661 (the "Borrower") to Raymond B. Lee, having an address at 2355 South Blue Island, Chicago, Illinois 60608 (the "Lender").

Borrower has executed and delivered to Lender a Promissory Note (the "Note") of even date herewith payable to the order of Lender in the principal sum of TWO MILLION TWO HUNDRED THOUSAND AND 00/100 Dollars (\$2,200,000), bearing interest and payable as set forth in the Note, and due on September 30, 2010.

In order to secure the payment of the principal indebtedness under the Note and interest and premiums on the principal indebtedness under the Note (and all replacements, renewals and extensions thereof, in whole or in part) according to its tenor, and to secure the payment of all other sums which may be at any time due under the Note or this Mortgage (collectively sometimes referred to herein as "Indebtedness"); and to secure the performance and observance of all the provisions contained in this Mortgage or the Note, and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower DOES HEREBY MORTGAGE AND CONVEY unto Lender, its successors and assigns forever, the following described property, rights and interests (which are referred to herein as the "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Land (as hereinafter defined) and not secondarily:

THE LAND located in the State of Illinois (the "Land") and legally described as follows:

Lot 13 (except the West 6.5 feet thereof), Lots 14, 15, 16, and 17 in block 4 in Archer Addition to Chicago, being a subdivision in Section 28, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Borrower and located on or used or intended to be used in connection with the Land or the improvements or in connection with any construction thereon, and owned by Borrower, and all of Borrower's rights or payments now or hereafter made on such personal property or fixtures by Borrower or on its behalf (the "Improvements");

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, in and to the same;

<p>This instrument prepared by and after recording return to:</p> <p>Marshall L. Blankenship Adducci, Dorf, Lehner, Mitchell & Blankenship, P.C. 150 N. Michigan Ave., Suite 2130 Chicago, IL 60601</p>	<p>Common Property Address:</p> <p>309-13 West 23rd Street Chicago, Illinois 60608</p> <p>PIN: 17-28-212-002-0000 17-28-212-003-0000</p>
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PROVIDED, NEVERTHELESS, that if Borrower shall pay in full when due the Indebtedness and shall timely perform

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and observe all of the provisions herein and in the Note provided to be performed and observed by the Borrower, then this Mortgage and the interest of Lender in and to all of the foregoing which are collectively referred to herein as the "Premises," shall cease and become void, but shall otherwise remain in full force.

BORROWER FURTHER AGREES AS FOLLOWS:

1. *Payment of Indebtedness and Performance of Covenants.* Borrower shall (a) pay the Indebtedness when due and (b) punctually perform and observe all of the requirements of the Note and this Mortgage.

2. *Maintenance, Repair, Compliance with Law, Use, etc.* Borrower shall (a) promptly repair or restore any portion of the Improvements which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for that purpose; (b) keep the Premises in good condition and free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any building or other Improvements at any time in the process of erection upon the Premises; (e) comply with all requirements of law relating to the Premises and the use thereof; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (g) comply with any restrictions of record with respect to the Premises; and comply with any conditions necessary to preserve and extend all rights that are applicable to the Premises; and (h) cause the Premises to be managed in a competent manner.

3. *Liens, Prohibition.* Subject to the provisions of Paragraph 4 hereof, Borrower shall not create or suffer or permit any encumbrance to attach to or be filed against the Premises, excepting only (i) the lien of real estate taxes and assessments not due and (ii) any liens and encumbrances of Lender. Except, however, Borrower may, in good faith and with reasonable diligence, contest the validity or amount of any such liens.

4. Taxes.

4.1. *Payment.* Borrower shall pay when due all taxes, assessments, and charges of every kind levied or assessed against the Premises or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Borrower, and Borrower shall furnish to Lender receipts therefor on or before the date the same are due; and shall discharge any claim or lien relating to Taxes upon the Premises.

4.2. *Contest.* Borrower may, in good faith and with reasonable diligence, contest the validity or amount of any such Taxes. If Borrower fails to prosecute such contest with reasonable diligence, Lender may, make such payment in full, and Borrower shall, on demand, repay such amount to Lender.

5. *Insurance Coverage.* Borrower will insure the Premises against such perils and hazards, and in such amounts and with such limits, and coverages required by the Senior Lender.

6. *Insurance Policies.* All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Lender. All Insurance Policies shall (i) include, when available, non-contributing mortgagee endorsements in favor of and with loss payable to Lender, (ii) include standard waiver of subrogation endorsements, and (iii) provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Lender.

7. *Proceeds of Insurance.* Borrower will give Lender prompt notice of any loss or damage to the Premises, and in case of loss covered by insurance policies, Lender shall allow Borrower to settle or adjust such claims and the proceeds of insurance shall be applied to reimburse Borrower for the cost of restoring or repairing the Premises, and Borrower shall diligently restore or repair the Premises; provided that Borrower shall pay all costs of such restoring or repairing in excess of the net proceeds of insurance made available pursuant to the terms hereof.

8. *Disbursement of Insurance Proceeds.* Insurance proceeds held by Lender for restoration or repairing of the Premises shall be disbursed from time to time upon Borrower furnishing Lender with (i) evidence satisfactory to it of the estimated cost of the restoration or repair, (ii) funds sufficient in addition to the proceeds of insurance, to fully pay for the restoration or repair, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Lender may require and approve.

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9. *Condemnation and Eminent Domain.* All awards (the "Awards") made to the owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises shall be made available by Lender to Borrower, except, however, if, in the reasonable judgment of Lender, the Premises cannot be completed after such eminent domain to create a complete economic unit having equivalent value to the Premises as it existed prior to the taking, then, at the option of Lender, the entire Indebtedness shall immediately become due.

10. *Restrictions on Transfer.* Subject to Sections 18 and 19 hereof, Borrower shall not, without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed, effect, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties, rights or interests shall constitute a "Prohibited Transfer":

10.1. The Premises or any part thereof or interest therein;

10.2. All or any portion of the beneficial interest or power of direction in or to the trust under which Borrower is acting, if Borrower is a Trustee;

10.3. Any shares of capital stock of a corporation which is a beneficiary of a trustee Borrower, a corporation which is a general partner in a partnership beneficiary of a trustee Borrower, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealer's Automated Quotation System); or

10.4. All or any part of the partnership or joint venture interest, as the case may be, of a partnership beneficiary of a Trustee Borrower;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Paragraph shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, or (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives.

11. *Defaults.* If one or more of the following events (herein called "Defaults") shall occur:

11.1. If Borrower shall, after the expiration of any applicable grace periods, fail to make payments of amounts owed under the Note or this Mortgage when due;

11.2. If any default shall, after the expiration of any applicable grace periods, exist under any other document or instrument regulating, evidencing, securing or guarantying any of the Indebtedness;

11.3. A Prohibited Transfer;

11.4. If default shall continue for thirty (30) days after notice thereof by Lender to Borrower in the punctual performance or observance of any other agreement or condition herein contained;

11.5. If (and for the purpose of this subparagraph 11.5 only, the term Borrower shall mean not only Borrower, but also any beneficiary of a trustee Borrower, any general partner in a partnership Borrower or in a partnership which is a beneficiary of a trustee Borrower, any owner of more than ten percent (10%) of the stock in a corporate Borrower or a corporation which is the beneficiary of a trustee Borrower and each person who, as guarantor, co-maker or otherwise, shall be or become liable for any part of the Indebtedness or any of the agreements contained herein);

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11.5.1. Borrower shall file a voluntary petition in bankruptcy or for relief under the Federal Bankruptcy Act or any similar state or federal law.

11.5.2. Borrower shall file a pleading in any proceeding admitting insolvency;

11.5.3. Within one hundred twenty (120) days after the filing against Borrower of any involuntary proceeding under the Federal Bankruptcy Act or similar state or federal law, such proceedings shall not have been vacated;

11.5.4. A substantial part of Borrower's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within one hundred twenty (120) days;

11.5.5. Borrower shall make an assignment for the benefit of creditors or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises; or

11.5.6. Any order appointing a receiver, trustee or liquidator of Borrower or all or a major part of Borrower's property or the Premises is not vacated within one hundred twenty (120) days following the entry thereof,

then Lender may, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Lender hereunder, to declare, without further notice, all Indebtedness to be immediately due with interest thereon at the Default Rate, whether or not such Default be thereafter remedied by Borrower, and Lender may immediately proceed to foreclose this Mortgage and to exercise any right provided by this Mortgage, the Note or otherwise.

12. *Foreclosure.* When the Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof in accordance with the Illinois Mortgage Foreclosure Act (the "Act") and to exercise any other remedies of Lender provided in the Note, this Mortgage, the Loan Agreement, or which Lender may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceedings affecting this Mortgage, the Note or the Premises, shall be so much additional Indebtedness and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

13. *Right of Possession.* When the Indebtedness shall become due, whether by acceleration or otherwise, or if Lender has a right to institute foreclosure proceedings, Borrower shall, forthwith upon demand of Lender, surrender to Lender, and Lender shall be entitled to be placed in possession of the Premises as provided in the Act and Lender, in its discretion and pursuant to court order, may reasonably, by its agent or attorneys, enter upon and take and maintain possession of all or any part of the Premises:

13.1. Hold, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises;

13.2. Make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Lender, to insure and reinsure the Property and all risks incidental to Lender's possession, operation, and management thereof, and to receive all rents,

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issues, deposits, profits, and avails therefrom; and

13.3 Lender may apply the net income to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness Hereby Secured in such order and manner as Lender shall select.

Without limiting the generality of the foregoing, Lender shall have all power, authority and duties as provided in the Act.

14. *Receiver.* Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint upon petition of Lender, and at Lender's sole option, a receiver of the Premises pursuant to the Act. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Borrower at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to make leases to be binding upon all parties, including the mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure, all as provided in the Act.

15. *Foreclosure Sale.* Except to the extent otherwise required by the Act, the proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, all items which under the terms hereof constitute Indebtedness additional to the principal and interest evidenced by the Note in such order as Lender shall elect with interest thereon as herein provided; and Second, all principal and interest remaining unpaid on the Note in such order as Lender shall elect; and lastly any surplus to Borrower and its successors and assigns, as their rights may appear.

16. *Waiver of Right of Redemption and Other Rights.* To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law.

17. *Rights Cumulative.* Each right herein conferred upon Lender is cumulative and in addition to every other right provided by law or in equity, and Lender may exercise each such right in any manner deemed expedient to Lender. Lender's exercise or failure to exercise any right shall not be deemed a waiver of that right or any other right or a waiver of any default. Except as otherwise specifically required herein, Lender is not required to give notice of its exercise of any of its right under this Mortgage.

18. Junior Mortgage Covenant.

18.1 This Mortgage is a Junior Mortgage, the lien of which is junior, subject and subordinate to the lien of the Mortgage dated September 14, 2004, made by Borrower in favor of Lakeside Bank ("Senior Lender") and recorded with the Cook County Recorder of Deeds on September 22, 2004, as document number 0426639087; and re-recorded on January 25, 2005, with the Cook County Recorder of Deeds as document number 0502503138; as modified by Modification of Mortgage dated September 9, 2005, and recorded with the Cook County Recorder of Deeds on September 20, 2005, as document number 0526339048; as modified by Modification of Mortgage dated March 14, 2007, and recorded with the Cook County Recorder of Deeds on April 27, 2007, as document number 0711718098; as modified by Modification of Mortgage dated June 14, 2007, and recorded with the Cook County

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Recorder of Deeds on July 24, 2007, as document number 0720544098; and Assignment of Leases and Rents, dated September 14, 2004, and recorded with the Cook County Recorder of Deeds on September 22, 2004, as document number 0426639088; and re-recorded on January 25, 2005, with the Cook County Recorder of Deeds as document number 0502503139 (all of the foregoing collectively referred to herein as the "Senior Mortgage"), and to all the terms and provisions thereof and to all advances made or to be made thereunder, and for all purposes specified therein, and to all amendments, modifications, replacements and renewals thereof, given to secure all advances heretofore made, and that may hereinafter be made pursuant to a loan evidenced by a promissory note to the Senior Lender in the original principal amount of One Million One Hundred Twenty Five Thousand and No/100 Dollars (\$1,125,000.00), as modified by Debt Modification agreements dated September 9, 2005, March 14, 2007, June 14, 2007 and September 14, 2007, modifying the principal amount of the Note to Nine Million Seven Hundred Fourteen Thousand Five Hundred Ninety-Four and No/100 Dollars (\$9,714,594.00) (Collectively referred to as the "Senior Note").

18.2 Borrower may, at any time and as many times as Borrower may determine, enter into new borrowing or future advances with Lakeside Bank under the Senior Note and Senior Mortgage, as the same may be modified or amended from time to time, and cause the Lender to subordinate the lien created hereby hereto, and Lender agrees to execute any and all documents as may be required by Borrower or the new lender to subordinate the interest of the Note and this Mortgage to the new borrowing.

19. Condominium Formation.

19.1 Consent to Condominium Declaration.

19.1.1 Lender acknowledges and agrees that Borrower intends to construct improvements on the Premises consisting of fifty-one (51) condominium units, in accordance with plans and specifications previously submitted to Lender for review. Lender further acknowledges and agrees that Borrower shall submit the Premises together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anywise pertaining thereto, to the provisions of the Illinois Condominium Property Act; and that Borrower desires to establish certain rights and easements in, over and upon said Premises for the benefit of itself and all future owners of any part of said Premises, and any condominium unit or units thereof or therein contained, and to provide for the harmonious, beneficial and proper use, conduct and maintenance of the Premises and all condominium units. Lender agrees that the Note and this Mortgage are and shall be junior, subject and subordinate to the submission of the Premises, by Borrower, to a Declaration of Condominium, and to all the terms and provisions thereof, and for all purposes specified therein, and to all amendments, modifications, replacements and renewals thereof ("Declaration"), and hereby consents to the recording of any Declaration against title to the Premises.

19.1.2 Borrower hereby expressly reserves the right and power to record the Declaration, and each and every amendment or modification thereto, as Borrower deems necessary or advisable for the formation of the condominium for the Premises pursuant to the Act. Lender hereby irrevocably constitutes and appoints the Borrower as its true and lawful attorney-in-fact in such Lender's name, place, and stead for the purpose of execution of and consent to the recording of the Declaration or any amendment or modification thereto, with the Cook County Recorder of Deeds, which shall be deemed a power coupled with an interest.

19.1.3 No provision of this Mortgage shall be construed to prevent or limit Borrower's rights to complete the development, construction, promotion, marketing, sale and leasing and creation of condominium units on the Premises; or to construct or alter improvements on the Premises; to maintain offices for construction, sales or leasing purposes or similar facilities on the Premises; or to post signs incidental to the development, construction, promotion, marketing, sale and leasing of the Premises.

19.2 Partial Releases.

19.2.1 Upon recording of the Declaration, Lender does hereby agree, without further consideration or act

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of Borrower, to execute and deliver a modification of this Mortgage and a partial release of this Mortgage from and against not less than forty-six (46) of the condominium units created pursuant to the Declaration. Such partial release shall be in form and content satisfactory to Borrower and its title company, to sufficiently release the lien of this Mortgage against title to such units. The modification of such mortgage shall modify the legal description of the Premises to be a lien against seven (7) condominium units currently referred to as Units: 504, 602, 604, 701, 702, 704, and 707 (individually "Collateral Unit," and collectively, "Collateral Units") of the 309-313 W. 23rd Street Condominiums. The name of the Condominium Declaration, its Association and unit numbers herein are for descriptive purposes only, and the exact legal description and number and names may be modified by Borrower.

19.2.2 Lender agrees to release from the lien of the Mortgage, from time to time, one or more of the Collateral Units, upon request by Borrower and payment by Borrower to Lender with respect to each Collateral Unit to be released, in the amount of set forth in the Loan Agreement executed between Borrower and Lender, of even date herewith. Such partial release shall be in form and content satisfactory to Borrower and its title company, to sufficiently release the lien of this Mortgage against title to such units.

20. *Successors and Assigns.*

20.1. *Holder of the Note.* This Mortgage and each provision hereof shall be binding upon Borrower and its successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of Lender and its successors and assigns. Wherever herein Lender is referred to, such reference shall be deemed to include the holder from time to time of the Note; and each such holder of the Note shall have all of the rights afforded hereby and may enforce the provisions hereof, as fully as if Lender had designated such holder of the Note herein by name.

20.2. *Covenants Run with Land: Successor Owners.* All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. If the ownership of Premises or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to Borrower, deal with such person with reference to this Mortgage and the Indebtedness in the same manner as with Borrower without in any way releasing Borrower from its obligations hereunder. Borrower will give immediate written notice to Lender of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph shall vary the provisions of Paragraph 12 hereof.

21. *Environmental Matters.* Borrower represents that it is currently in compliance with, and covenants and agrees that, it will manage and operate the Premises and will cause each tenant to occupy its demised portion of the Premises in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes).

22. *Subrogation.* If any part of the Indebtedness is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Premises or any part thereof, then Lender shall be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

22. *Option to Subordinate.* At the option of Lender, this Mortgage shall become subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any leases of all or any part of the Premises upon the execution by Lender and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Premises are situated, of a unilateral declaration to that effect.

23. *Governing Law.* The place of negotiation, execution, and delivery of this Mortgage and the location of the Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State.

24. *Time of the Essence.* Time is of the essence of the Note, this Mortgage, and any other document or instrument evidencing or securing the Indebtedness.

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25. *Captions and Pronouns.* The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

26. *Notices.* Any notice or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given when (i) personally delivered, (ii) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set forth above, or (iii) on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth above, or to such other address as the party to receive such notice may have designated to the other party by notice in accordance herewith.

27. *Trustee's Exculpatory Clause.* This Mortgage is executed by the undersigned, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants in its individual capacity that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, representation, agreement or condition, either express or implied herein contained, or with regard to any warranty contained in this Mortgage except the warranty made in this Paragraph, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder; provided that nothing herein contained shall be construed in any way so as to affect or impair the lien of this Mortgage or Lender's right to the foreclosure thereof, or construed in any way so as to limit or restrict any of the rights and remedies of Lender in any such foreclosure proceedings or other enforcement of the payment of the Indebtedness out of and from the security given therefor in the manner provided herein, or construed in any way so as to limit or restrict any of the rights and remedies of Borrower under any other document or instrument evidencing, securing or guarantying the Indebtedness.

BORROWER:

NORTH STAR TRUST COMPANY, as successor Trustee to
LAKESIDE BANK, as Trustee under
Trust Agreement dated September 8, 2004,
and known as Trust Number 10-2741,
not personally, but solely in its capacity as trustee

By: *Francis Lin*
As: *as agent for beneficiary*

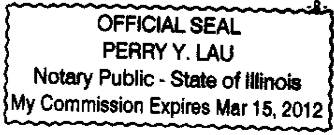
STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 20th day of August, 2008, before me a Notary Public for the state and county aforesaid, personally appeared *Francis Lin* known to me or satisfactorily proven to be the same person whose name is subscribed to the foregoing instrument, who acknowledged that s/he is the *as agent of beneficiary* of NORTH STAR TRUST COMPANY, as successor Trustee to LAKESIDE BANK, that s/he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal the day and year first above written.

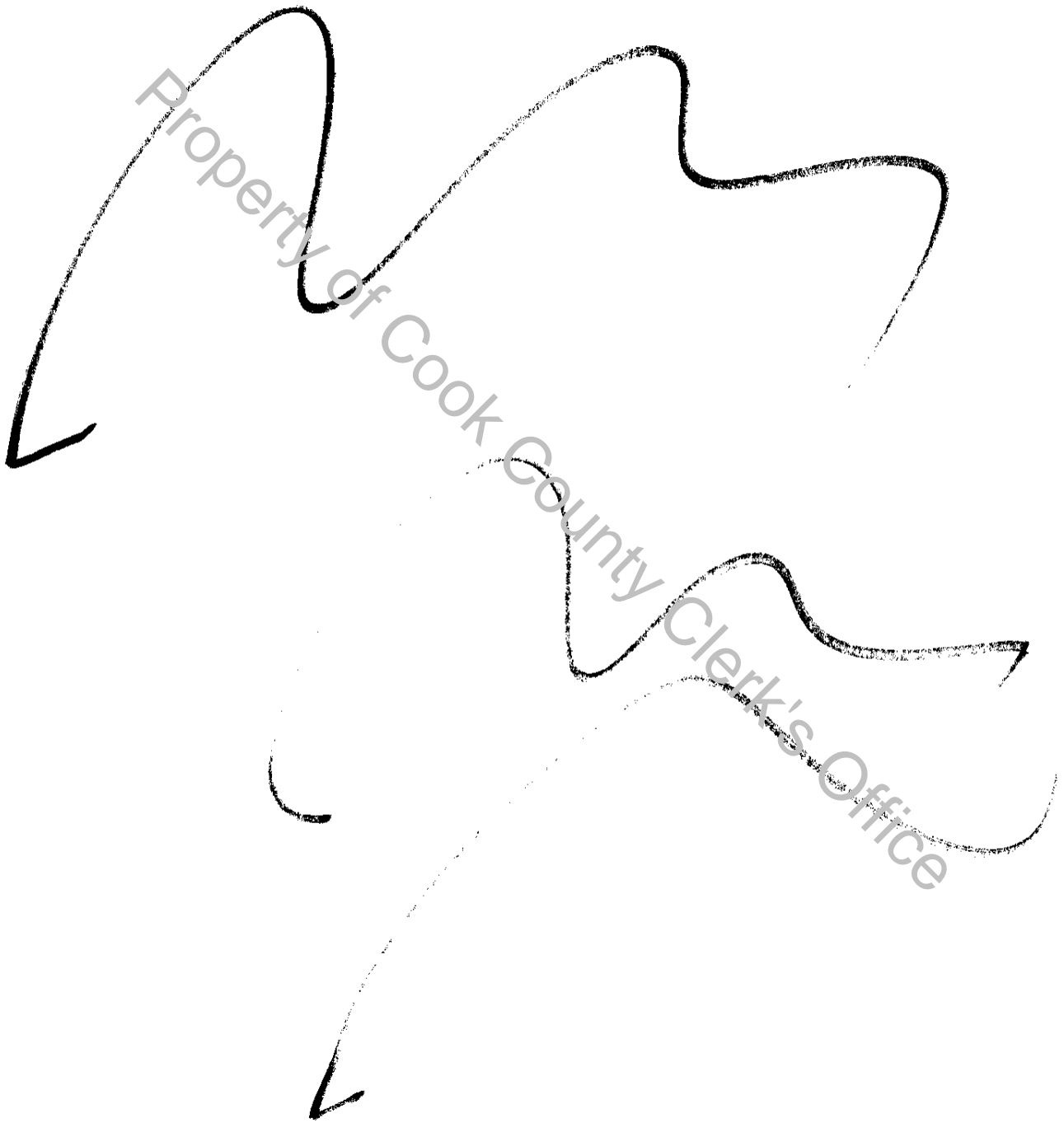
[Signature]
NOTARY PUBLIC

Initials *FL*



UNOFFICIAL COPY

(Seal)



Initiale _____