

2/3 2010-05250

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Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Doc#: 1031255051 Fee: \$78.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 11/08/2010 03:33 PM Pg: 1 of 22

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 22-27-300-080-1009

Address:

Street: 14232 McCarthy Rd. Unit 9

Street line 2:

City: Lemont

State: IL

ZIP Code: 60439

Lender: CMC Real Estate Holdings, LLC

Borrower: DJN Properties, LLC

Loan / Mortgage Amount: \$288,000.00

This property is located within the program area 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: 1C97D308-B93F-42EC-97CC-CA9671593F3A

Execution date: 10/27/2010

PROPERTY

Property of Cook County Clerk's Office

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2010-05250  
 This instrument prepared  
 by and return after  
 recording to:

Peter Coules, Jr.  
 Donatelli & Coules, Ltd.  
 15 Salt Creek Lane, Suite 312  
 Hinsdale, IL 60521  
 630-920-0406

THIS MORTGAGE SECURES A NOTE

THIS IS NOT HOMESTEAD PROPERTY

Address of Property: 14232 McCarthy Rd., Unit 9, Lemont, IL 60439  
 PIN: 22-27-300-080-1009

## FIRST MORTGAGE AND SECURITY AGREEMENT

1. **MAXIMUM LIEN**. At no time shall the principal amount of Indebtedness secured by the Mortgage, not including sums advanced to protect the security of the Mortgage, exceed \$288,000.00.

**THIS MORTGAGE AND SECURITY AGREEMENT** made as of this 27<sup>th</sup> day of October, 2010, between DJN Properties LLC, whose address is 653 Birchwood Drive, Bolingbrook, IL 60490 ("Mortgagor") and CMC Real Estate Holdings, LLC, whose address is 14600 W. 135<sup>th</sup> Street, Lemont, IL 60439 ("Lender").

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

**See Exhibit "A", which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.**

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The Real Property or its address is commonly known as 14232 McCarthy Rd., Unit 9, Lemont, IL 60439. The Real Property tax identification numbers are set forth on Exhibit "A".

4. **TOGETHER WITH** all right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to the following:

(a) All rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to the Mortgagor to collect and apply same; and

(b) All leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, including, but not limited to, all cash or security deposits, advance rentals, and deposits or payments of similar nature, and any and all guarantees of the lessee's obligations under any of such leases and subleases; and

(c) All privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which the Mortgagor now has or may hereafter acquire in the said real estate and improvements; and

(d) All easements, rights-of-way and rights used in connection with the said real estate and improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same, and

(e) Any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements; and

(f) Any and all buildings and improvements now or hereafter erected on the said real estate, including, but not limited to, all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements; and

(g) All materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate; and

(h) All fixtures attached to or contained in and used in connection with the said real estate and improvements, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing,

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heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property placed by the Mortgagor on and in the said real estate and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code of Illinois), this Mortgage is deemed to be a security agreement under the Uniform Commercial Code of Illinois for the purpose of creating hereby a security interest in such property, which the Mortgagor hereby grants to the Lender as secured party; and

(i) All the estate, interest, right, title and other claims or demands, including claims or demands with respect to any proceeds of insurance related thereto, in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property

The said real estate and improvements and the property and interests described herein above being collectively referred to herein as the "Project".

TO HAVE AND TO HOLD the same unto the Lender and its successors and assigns forever, for the purposes and uses herein set forth.

**5. NOTE.** The Mortgagor has, concurrently herewith executed and delivered to the Lender a Note in the amount of \$288,000.00, bearing even date herewith, payable to the order of the Lender, with the use of the funds to purchase 14232 McCarty Rd., Unit 9, Lemont, IL 60439.

**6. CROSS COLLATERALIZATION.** In addition to the Note as set forth in Section 5 above, this Mortgage secures all obligations, debts and liabilities plus interest thereon, of Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Mortgagor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

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## 7. TITLE, LIENS AND CONVEYANCES.

(a) The Mortgagor represents that it holds good and marketable title to the Project, subject only to Permitted Encumbrances;

(b) Except for Permitted Encumbrances, the Mortgagor shall not create, suffer or permit to be created or tiled against the Project, or any part thereof or interest therein, any mortgage lien or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage. The Mortgagor shall have the right to contest in good faith the validity of any such lien, charge or encumbrance, provided the Mortgagor shall first deposit with the Lender a bond, title insurance or other security satisfactory to the Lender in such amounts or form as the Lender shall require; provided further that the Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If the Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of the Lender, the Lender may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law and any amounts expended by the Lender in so doing shall be so much additional indebtedness secured by this Mortgage. Except for Permitted Encumbrances and liens, charges and encumbrances being contested as provided above, in the event that the Mortgagor shall suffer or permit any superior or junior lien, charge or encumbrance to be attached to the Project, the Lender, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest thereon to be immediately due and payable with notice to the Mortgagor;

(c) In the event title to the Project is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against the Project shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust;

(d) In the event that the Mortgagor shall sell, transfer, convey or assign the title to all or any portion of the Project, whether by operation of law, voluntarily, or otherwise, or the Mortgagor shall contract to do any of the foregoing, the Lender, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest thereon to be immediately due and payable with notice to the Mortgagor; and

(e) Any waiver by the Lender of the provisions of this Section shall not be deemed to be a waiver of the right of the Lender to insist upon strict compliance with the provisions of this Section in the future.

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THIS MORTGAGE, INCLUDING THE ASSIGNMENTS OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THIS MORTGAGE. THIS MORTGAGE IS INTENDED TO AND SHALL BE VALID AND HAVE PRIORITY OVER ALL SUBSEQUENT LIENS AND ENCUMBRANCES, INCLUDING STATUTORY LIENS, EXCEPTING SOLELY TAXES AND ASSESSMENTS LEVIED ON THE REAL PROPERTY, TO THE EXTENT OF THE MAXIMUM AMOUNT SECURED HEREBY. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

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

**9. MORTGAGOR'S REPRESENTATIONS AND WARRANTIES.** Mortgagor warrants that: (a) this Mortgage is executed at Mortgagor request and not at the request of Lender; (b) Mortgagor has the full power, right, and authority to enter into this Mortgage and to hypothecate the Property; and (c) the provisions of this Mortgage do not conflict with, or result in a default under any agreement or other instrument binding upon Mortgagor and do not result in a violation of any law, regulation, court decree order applicable to Mortgagor;

**10. DUE ON SALE - CONSENT BY LENDER** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any rights, title or interest in the Real Property; whether legal, beneficially or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, lease-option contract or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Illinois law.

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

**Payment.** Mortgagor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Mortgagor shall maintain the Property free of any liens having



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priority over or equal to the interest of Lender under this Mortgage, except of those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

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

**Evidence of Payment.** Mortgagor shall without demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender within fifteen (15) days after said amount is due and owing.

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

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

**Maintenance of Insurance.** Mortgagor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender, not insured by the Association. Mortgagor shall also procure and maintain:

(a) Comprehensive general liability insurance (and during any period of construction, contractor's liability and worker's compensation insurance), with liability under the comprehensive liability insurance together with any umbrella insurance policy with general liability coverage, to be not less than Two Million

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Dollars (\$2,000,000.00) combined single limit, and comprehensive casualty coverage in the amount of at least Two Million Dollars (\$2,000,000.00).

(b) During the course of any construction or repair at the Project, builder's risk insurance against all risks of physical loss, on a completed value basis, including collapse and transit coverage, with a deductible not to exceed \$2,500.00, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished, and containing the "permission to occupy upon completion of work" endorsement.

(c) Such other insurance, and in such amounts, as may from time to time be required by the Lender against the same or other hazards.

Policies shall be written by such insurance companies and in such form as may be reasonable acceptable to Lender. Mortgagor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of fourteen (14) days' prior notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Mortgagor or any other person. All policies must be in place before any work commences on the Real Property (Build out). Further if the Insurance Company can not reasonably meet the provisions of this Mortgage the Lender will reasonably amend terms of same.

**Application of Proceeds.** Mortgagor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$25,000.00. Lender may make proof of loss if Mortgagor fails to do so within fifteen (15) days of the casualty. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Mortgagor as Mortgagor's interests may appear.

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

**Delivery of Policies; Payment of Premiums.** All policies of insurance required by the terms of this Mortgage shall be issued by companies and in amounts in each company satisfactory to the Lender. All policies of insurance shall be maintained for and name the Mortgagor and the Lender as insureds, as their respective interests may appear, and the policies required by paragraphs (a), (b),



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(c), (d) and (e) of this Section (above) shall have attached thereto a mortgagee's loss payable endorsement for the benefit of the Lender in form satisfactory to the Lender. Upon request, the Mortgagor shall furnish the Lender with the original of all required policies of insurance. At least thirty (30) days prior to the expiration of each such policy, the Mortgagor shall furnish the Lender with evidence satisfactory to the Lender of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Mortgage. Each policy of insurance required by this Mortgage shall contain a provision that such policy will not be cancelled or materially amended, including any reduction in the scope or limits of coverage, without at least fourteen (14) days' prior written notice to the Lender.

**13. LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Mortgagor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Mortgagor's failure to discharge or pay when due any amounts Mortgagor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Mortgagor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Mortgagor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

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

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

**Defenses of Title.** Subject to the exception in the paragraph above, Mortgagor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceedings is commenced that questions Mortgagor's title or the interest of Lender under this Mortgage,

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Mortgagor shall defend the action at Mortgagor's expense. Mortgagor may be the nominal party in such proceedings, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Mortgagor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

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

**15. CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Mortgage:

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

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

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

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

**Security Interest.** Upon request by Lender, Mortgagor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Mortgagor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Mortgagor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Mortgagor shall not remove, sever or detach the Personal Property from the Property. Upon default, Mortgagor shall

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assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Mortgagor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

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

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

**Further Assurances.** At any time, and from time to time, upon request of Lender, Mortgagor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statement, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Mortgagor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by the Mortgage as first and prior liens on the Property, whether now owned or thereafter acquired by Mortgagor. Unless prohibited by law or Lender agrees to the contrary in writing, Mortgagor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Mortgagor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Mortgagor and at Mortgagor's expense. For such purposes, Mortgagor hereby irrevocably appoints Lender as Mortgagor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph. The term and rate of the loan will not change.

**18. PARTIAL RELEASES.** Lender shall execute partial releases of the lien of this Mortgage upon the following conditions: Lender shall release its' lien on individual lots being sold upon receipt of a principal paydown and costs as set forth in the Notes, and Mortgagor is not in default of this Mortgage and the related documents.

**19. FULL PERFORMANCE.** If Mortgagor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Mortgagor under this Mortgage, Lender shall execute and deliver to Mortgagor a suitable satisfaction and recordable Release of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal

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Property. Mortgagor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**20. REINSTATEMENT OF SECURITY INTEREST.** If payment is made by Mortgagor, whether voluntarily or otherwise, or by guarantor or by any third party, on the Indebtedness and thereafter Lender is forced to remit the amount of that payment (a) to Mortgagor's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, (b) by reason of any judgment, decree or order of any court of administrative body having jurisdiction over Lender or any of Lender's property, or (c) by reason of any settlement or compromise of any claim made by Lender with any claimant (including without limitation Mortgagor), the Indebtedness shall be considered unpaid for the purpose of enforcement of this Mortgage and this Mortgage shall continue to be effective or shall be reinstated, as the case may be, notwithstanding any cancellation of this Mortgage or of any note or other instrument or agreement evidencing the Indebtedness and the Property will continue to secure the amount repaid or recovered to the same extent as if that amount never had been originally received by Lender and Mortgagor shall be bound by any judgement, decree, order, settlement or compromise relating to the Indebtedness or to this Mortgage.

**21. EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

**Payment Default.** Mortgagor fails to make any payment when due under the Indebtedness.

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

**Other Defaults.** Mortgagor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Mortgagor.

**Default in Favor of Third Parties.** Should Mortgagor or any Mortgagor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Mortgagor's or any Mortgagor's property or Mortgagor's ability to repay the Indebtedness Mortgagor's ability to perform their respective obligations under this Mortgage or any related document.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Mortgagor or on Mortgagor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

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**Death or Insolvency.** The dissolution of Mortgagor's Limited liability company (regardless of whether election to continue is made); any other termination of Mortgagor's existence as a going business; the death of all Members of the Mortgagor; or the insolvency of Mortgagor; the appointment of a receiver for any part of Mortgagor's Property; my assignment of the benefit of creditors; any type of credit work out; or the Commencement of any Proceeding under any bankruptcy or insolvency laws against Mortgagor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Mortgagor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Borrower's or Mortgagor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Mortgagor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower or Mortgagor gives Lender written notice of the creditor forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

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

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies, or revokes or disputes the validity of, or liability under, any guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Right to Cure.** If such a failure is curable and if Mortgagor has not been given a notice of a breach of the same provision of the Mortgage within the preceding twelve months, it may be cured (and no Event of Default will have occurred) if Mortgagor, after Lender sends written notice demanding cure of such failure; (a) cures the failure within thirty (30) days; or (b) if the cure requires more than thirty (30) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonable practical.



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

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

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

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

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

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

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



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

**Sale of the Property.** To the extent permitted by applicable law, Mortgagor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

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

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Mortgagor under this Mortgage, after Mortgagor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way limit or restrict the rights and ability of Lender to proceed directly against Mortgagor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the indebtedness.

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

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

**23. NOTICES.** Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law) when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses as follows:

in the case of the Mortgagor: DJN Properties LLC  
Attn: Jean Garbolski  
653 Birchwood Drive  
Bolingbrook, IL 60490

with a copy to: Michelle Jacobs Caley  
310 State Street  
Lemont, IL 60439

in the case of Lender to: CMC Real Estate Holdings, LLC  
Attn: Chris Czupta  
14600 W. 135<sup>th</sup> Street  
Lemont, IL 60439

with a copy to: Peter Coules, Jr.  
Donatelli & Coules, Ltd.  
15 Salt Creek Lane, Suite 312  
Hinsdale, IL 60521

All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address as shown above. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Mortgagor agrees to keep Lender informed at all times of Mortgagor's current address. Unless otherwise provided or required by law, if there is more than one Mortgagor, any notice given by Lender to any Mortgagor is deemed to be notice given to all Mortgagors.

**24. UTILITIES.** The Mortgagor shall pay or cause to be paid when due all utility charges which are incurred by the Mortgagor or others for the benefit of or service to the Project or which may become a charge or lien against the Project for gas, electricity, water or sewer services furnished to the Project and all other assessments or charges of a similar nature, whether public or private, affecting the Project or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

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## **25. DAMAGE AND DESTRUCTION.**

(a) The Mortgagor shall give the Lender prompt notice of any damage to or destruction of any portion or all of the Project, and the provisions contained in the following paragraphs of this Section shall apply in the event of any such damage or destruction.

(b) The proceeds of insurance are to be applied to the repair and restoration of the Project, the Mortgagor hereby covenants promptly to repair and restore the same. Such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration, upon the Lender's being furnished with satisfactory evidence of the estimated cost of such repair and restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as the Lender may require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such repair or restoration as the Lender may require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of the Lender shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens.

**26. INSPECTION OF PROJECT.** The Lender, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Project for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage or any of the other Loan Documents.

## **27. ENVIRONMENTAL MATTERS.**

(a) The Mortgagor hereby represents to the Lender that neither the Mortgagor, nor, to the best of the Mortgagor's knowledge, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at (i) the Project or any part thereof, or (ii) any other real property in which the Mortgagor holds any estate or interest whatsoever, and that none of the property described above has ever been used by the Mortgagor, or, to the best of the Mortgagor's knowledge, by any other person or entity, as a treatment, storage or disposal site (whether permanent or temporary) for any Hazardous Material, and that there are no underground storage tanks located on the Project;

(b) Without limitation on any other provision hereof, the Mortgagor hereby agrees to indemnify and hold the Lender harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any of the following (collectively, "Environmental Laws"): the Comprehensive Environmental Response, Compensation, and Liability Act,

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any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material) paid, incurred, suffered by or asserted against the Lender as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of the Mortgagor: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any Hazardous Material from (A) the Project or any part thereof, or (B) any other real property in which the Mortgagor holds any estate or interest whatsoever, or (ii) any liens against the Project permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligations of the Mortgagor under any Environmental Laws, or (iii) any actual or asserted liability or obligations of the Lender or any of its affiliates or subsidiaries under any Environmental Law relating to the Project; and

(c) The representations, covenants, indemnities and obligations provided for in this Section shall be continuing and shall survive the payment, performance, satisfaction, discharge, cancellation, termination, release and foreclosure of this Mortgage; provided, however, that such representations, covenants, indemnities and obligations shall not apply with respect to Hazardous Materials which are first placed on the Project on or after the date on which the Lender or any other party obtains title to and possession of the Project pursuant to an exercise by the Lender of its remedies under this Mortgage or any of the other Loan Documents or as a result of a conveyance of title to the Project by the Mortgagor to the Lender or such other party in lieu of such exercise of remedies.

**28. ESTOPPEL LETTERS.** The Mortgagor shall furnish from time to time within 15 days after the Lender's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

**29. NO MORTGAGEE IN POSSESSION.** Nothing herein contained shall be construed as constituting the Lender a mortgagee in possession.

**30. WAIVER OF CERTAIN RIGHTS.** The Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but rather waives the benefit of such laws. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Project marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Project sold as an entirety. The Mortgagor hereby waives any and all rights of redemption from sale or from or under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Project subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Project are located.

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

**Financial Reports.** All Financial Reports as required by the Loan Agreements entered herewith, Mortgagor shall furnish to Lender.

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

**Governing Law.** This Mortgage will be governed by, construed and enforced in accordance with federal law and the laws of the State of Illinois. This Mortgage has been accepted by Lender in the State of Illinois.

**Choice of Venue.** If there is a lawsuit, Mortgagor agrees upon Lender's request to submit to the jurisdiction of the courts of Cook County, State of Illinois.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Mortgagor, shall constitute a waiver of any of Lender's rights or of any of Mortgagor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

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



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

**32. DEFINITIONS.** The terms defined in this Section (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Mortgage shall have the respective meanings specified in this Section.

**Mortgage.** The word "Mortgage" means this Mortgage between Mortgagor and Lender.

**Note.** The word "Note" means a Promissory Note dated October 27, 2010 in the original principal amounts of \$288,000.00 from Mortgagor to Lender (the "Note"), together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreements.

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

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

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

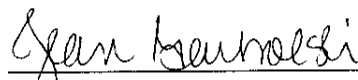
**Rents.** The word "Rents" means all rents and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.




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IN WITNESS WHEREOF, the Mortgagor has caused this instrument to be executed as of the date first above written.

MORTGAGOR:

  
 DJN Properties LLC  
 By: Jean Garbolski  
 Its: Managing Member

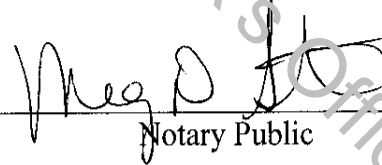
  
 DAVID R. VARGAS

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Jean Garbolski ~~is~~ personally known to me to be the same person whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her free and voluntary act and as the free and voluntary act and deed of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 27<sup>th</sup> day of October, 2010.



  
 Notary Public

PREMIER TITLE  
 1360 W. NORTHWEST HIGHWAY  
 ARLINGTON HEIGHTS, IL 60004  
 (847) 255-7100

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## **Exhibit A** **LEGAL DESCRIPTION**

### PARCEL 1:

UNIT 9 IN THE DERBY PLAZA CONDOMINIUMS AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE: LOTS 2, 3, 4, 5, OUTLOT "A" AND OUTLOT "B" IN DERBY PLAZA, BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 27, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN AND RECORDED FEBRUARY 27, 2008 AS DOCUMENT 0805803077 WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT 0814316038, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY PARKING, ACCESS, EASEMENT, UTILITIES, SIGNAGE, REFUSE, STORM WATER, MAINTENANCE AND RESTRICTED USE AGREEMENT DATED APRIL 30, 2008 AND RECORDED MAY 21, 2008 AS DOCUMENT 0814245100 FOR THE PURPOSE OF "PARKING AND ACCESS COMMON AREA", AS DEPICTED ON EXHIBIT ATTACHED TO SAID EASEMENT AGREEMENT.

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, 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.

THIS DEED IS SUBJECT TO ALL RIGHTS, EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS CONTAINED IN SAID DECLARATION THE SAME AS THOUGH THE PROVISIONS OF SAID DECLARATION WERE RECITED AND STIPULATED AT LENGTH HEREIN.

Commonly Known As: 14232 McCarthy Rd., Unit 9, Lemont, IL 60439  
PIN: 22-27-300-080-1009