

Illinois Anti-Predatory
Lending Database
Program

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Certificate of Exemption

Doc#: 1100634008 **Fee:** \$56.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/06/2011 09:05 AM Pg: 1 of 11

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 09-17-425-047-0000

Address:

Street: 751-761 Graceland

Street line 2:

City: Des Plaines

State: IL

ZIP Code: 60016

Lender: Barberr Investments, LLC

Borrower: 761 Graceland, LLC

Loan / Mortgage Amount: \$310,000.00

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

Certificate number: C60F8F9A-6A10-41FF-A438-159B1AB59968

Execution date: 01/06/2011

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MORTGAGE (ILLINOIS)

THIS MORTGAGE, made as of the 6th of January, 2011 by 761 Graceland, LLC, an Illinois limited liability company (hereinafter referred to as "Mortgagor"), in favor of Barberry Investments LLC, an Illinois limited liability company and its successors and assigns (hereinafter referred to as "Mortgagee"), witnesseth:

THAT WHEREAS, Mortgagor is now and may be from time to time hereafter justly indebted to the Mortgagee pursuant to the terms of that certain Mortgage Note of even date herewith executed and delivered by Mortgagor to Mortgagee in the original principal amount of \$310,000 (as amended, renewed or restated from time to time the "Note"). Capitalized terms used herein not otherwise defined herein are used herein as defined in the Note; and

WHEREAS, Mortgagor has agreed to execute and deliver this Mortgage to Mortgagee as a condition of the Mortgagee's agreement to provide the financial accommodations provided pursuant to the Note.

NOW THEREFORE, to secure the payment and performance of all liabilities, debts, covenants and agreements of Mortgagor to Mortgagee, including, without limitation, payment of all Indebtedness and the performance of the Covenants, and in consideration of the sum of One Dollar in hand paid, the receipt whereof is hereby acknowledged, the Mortgagor does by these presents WARRANT, GRANT, GIVE, BARGAIN, CONFIRM, ASSIGN, PLEDGE, SET OVER, TRANSFER, SELL, CONVEY, REMISE, RELEASE AND OTHERWISE MORTGAGE unto the Mortgagee, and the Mortgagee's successors and assigns, the following described Real Estate and all of its estate, right, title and interest therein, situated, lying and being in the CITY OF DES PLAINES, COUNTY OF COOK, STATE OF ILLINOIS, to wit:

Above Space for Recorder's Use Only

see Exhibit "A" attached hereto and made a part hereof for the legal description,

which, with the property hereinafter described, is referred to herein as the "Premises".

Permanent Real Estate Index Number(s): 09-17-425-047-0000 and 09-17-425-052-0000.

TOGETHER with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily) and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and

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windows, floor coverings, awnings, stoves and water heaters. All of the foregoing are declared to be a part of said real estate whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed in the Premises by Mortgagor or its successors or assigns shall be considered as constituting part of the real estate.

TO HAVE AND TO HOLD the Premises unto the Mortgagee, and the Mortgagee's successors and assigns, forever, for the purposes, and upon the uses herein set forth, to the extent permitted by law. THE MORTGAGOR HEREIN EXPRESSLY WAIVES AND RELEASES ANY AND ALL RIGHTS OF REDEMPTION. Mortgagor hereby covenants unto Mortgagee that no mortgage liens or other encumbrances shall be filed against the Premises other than the lien granted in this Mortgage.

The name of a record owner is: Barberry Investments LLC, an Illinois limited liability company.

ASSIGNMENT OF LEASES AND RENTS. Mortgagor grants, bargains, sells, conveys and warrants to Mortgagee as additional security for the liabilities, indebtedness and obligations, the right, title and interest in and to any and all:

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of any portion of the Premises, including any extensions, renewals, modifications or substitutions of such agreements (all referred to as "Leases").
- B. Rents, issues and profits (all referred to as "Rents"), including but not limited to security deposits, minimum rent, percentage rent, additional rent, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in way pertain to or are on account of the use or occupancy of the whole or any part of the Premises.

In the event any item listed as Leases or Rents is determined to be personal property, this Mortgage will also be regarded as a security agreement as to such personal property.

Mortgagor agrees that this assignment of Leases and Rents is immediately effective after a breach, default or event of default hereunder or under the Note or upon the failure of Mortgagor to make any payment of the Mortgagor's Indebtedness when due (an "Event of Default"), and is effective as to third parties on the recording of this Mortgage, and this assignment of Leases and Rents shall remain effective during any period of redemption by the Mortgagee until all indebtedness secured hereby is satisfied. Mortgagor agrees that Mortgagee is entitled to notify Mortgagor or Mortgagor's tenants to make payments of the Rents due or to become due directly to Mortgagee after such recording. However, Mortgagee agrees not to notify Mortgagor's tenants until the occurrence of an Event of Default and Mortgagee notifies Mortgagor of the Event of Default that Mortgagor and Mortgagor's tenants pay all Rents due or to become due directly to Mortgagee. On receiving the notice of default, Mortgagor will endorse and deliver to Mortgagee any payment of Rents. If Mortgagor becomes subject to a voluntary or involuntary bankruptcy, Mortgagor agrees that Mortgagee is entitled to receive relief from the automatic stay in bankruptcy for the purpose of making this assignment effective and enforceable under state and federal law.

Mortgagor hereby represents, warrants and covenants unto Mortgagee as set forth below:

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1. Mortgagor shall (1) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (2) keep said Premises in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien thereof; (3) pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Mortgagee; (4) complete within a reasonable time any building or buildings now or at any time in process of erection upon said Premises; and (5) comply with all requirements of law or municipal ordinances with respect to the Premises and the use thereof.

2. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises when due, and shall, upon written request, furnish to the Mortgagee duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

3. In the event of the enactment after this date of any law of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this mortgage or the debt secured hereby or the holder thereof, then and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable immediately after the giving of such notice.

4. If, by the laws of the United States of America or of any state having jurisdiction in the Premises, any tax is due or becomes due in respect of the issuance of the indebtedness hereby secured, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to hold harmless and agrees to indemnify the Mortgagee, and the Mortgagee's successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the indebtedness secured hereby.

5. Mortgagor shall keep all buildings and improvements now or hereafter situated on said Premises insured against loss or damage by fire, lightning and windstorm under policies providing for payment by the insurance companies of moneys sufficient either to pay the cost of replacing or repairing the same or to pay in full the indebtedness secured hereby, all in companies satisfactory to the Mortgagee, under insurance policies payable, in case of loss or damage, to Mortgagee, such rights to be evidenced by the standard mortgagee clause to be attached to each policy, and shall deliver all policies, including additional and renewal policies, to the Mortgagee, and in case of insurance about to expire, shall deliver renewal policies not less than ten days prior to the respective dates of expiration.

6. In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other moneys advanced by Mortgagee to protect the mortgaged Premises and the

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lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the lower of 18% per annum or the highest applicable rate of interest permitted by law (the "Default Rate"). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to the Mortgagor on account of any default hereunder on the part of the Mortgagor.

7. The Mortgagee making any payment hereby authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale forfeiture, tax lien or title or claim thereof.

8. At the option of the Mortgagee and without notice to Mortgagor, all unpaid indebtedness secured by this mortgage shall, notwithstanding anything in the Agreement or in this mortgage to the contrary, become due and payable (a) immediately in the case of a default in making payment of any installment of principal or interest or any other amount secured by this Mortgage, or (b) upon the occurrence of an Event of Default.

9. When the indebtedness hereby secured shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness hereby secured in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and 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 assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the Default Rate, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which the Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any actual or threatened suit or proceeding which might affect the Premises or the security hereof.

10. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all indebtedness secured hereby remaining unpaid; third, any overplus to Mortgagor, its legal representatives or assigns, as their rights may appear.

11. Upon or any time after the filing of a complaint to foreclose this Mortgage the court in which such complaint is filed may appoint a receiver of said Premises. Such appointment may be made either before or after the sale, without notice, without regard to the solvency or insolvency of Mortgagor 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 the Mortgagee may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents,

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issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The Court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (1) the indebtedness secured hereby, or by any decree foreclosing this mortgage, or any tax, special assessments or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (2) the deficiency in case of a sale and deficiency.

12. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the indebtedness hereby secured.

13. The Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

14. After the occurrence of an Event of Default, the Mortgagor shall periodically deposit with the Mortgagee such sums as the Mortgagee may reasonably require for payment of taxes, assessments and insurance on the Premises. No such deposit shall bear any interest.

15. If the payment of the indebtedness secured hereby or any part thereof be extended or varied or if any part of the security is released, all persons now or at any time hereafter liable therefor, or interested in said Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation or release.

16. Mortgagee shall release this Mortgage and lien thereof by proper instrument upon the full payment and discharge of all indebtedness secured hereby.

17. This Mortgage and all provisions hereof, shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein and the holder or holders, from time to time, of the indebtedness secured hereby.

18. This Mortgage shall secure not only presently existing indebtedness, but also future advances, whether such advances are obligatory, to be made at the option of Mortgagee, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The lien of this Mortgage shall be valid as to all indebtedness secured hereby, including future advances, from the time of its filing for record in the Cook County, Illinois Recorder's Office. The total amount of the indebtedness secured hereby, including, but not limited to, any disbursements which the Mortgagee may make under this Mortgage, at any one time outstanding shall not exceed twice the face amount of the Note, and any disbursements made for payment of taxes, special assessments, or insurance on the Premises, and any other costs, fees, expenses or other indebtedness owed by Mortgagor to Mortgagee, whether pursuant to this Mortgage, the Note or otherwise. This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Premises and other matters given priority by operation of law.

19. Mortgagor hereby represents, warrants and covenants unto Mortgagee that there are no, nor shall there hereafter be any, encumbrances, liens or charges against the Premises other than (i) the mortgage in favor of Mortgagee created by this Mortgage, (ii) liens for general real estate taxes that are

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not past due, and (iii) minor imperfections to fee simple title which would not cause the Premises to be unmarketable.

20. Mortgagor represents that this Mortgage is executed and delivered in furtherance of legitimate business purposes and is therefore not subject to regulation as a consumer transaction.

21. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section (1) Environmental Law means all federal, state and local laws, regulations, ordinances court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or hazardous substance under any Environmental Law.

Mortgagor represents and warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Mortgagee, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Premises, except in the ordinary course of business and in strict compliance with all applicable Environmental Laws.
- B. Except as previously disclosed and acknowledges in writing to Mortgagee, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Premises.
- C. Mortgagor will immediately notify Mortgagee if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Premises or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Premises. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Mortgagee, Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law and Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Premises; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Mortgagee in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such event, Mortgagee has the right, but not the obligation, to participate in any such proceeding including right to receive copies of any documents relating to such proceeding.
- E. Except as previously disclosed and acknowledged in writing to Mortgagee, there are no underground storage tanks, private dumps or open wells located on or under the Premises and no such tank, dump or well will be added unless Mortgagee first consents in writing.
- F. Mortgagor will permit, or cause any tenant to permit, Mortgagee or Mortgagee's agent to enter and inspect the Premises and review all records at any reasonable time to determine: (1) the existence, location and nature of any Hazardous Substance on, under or about the Premises; (2) the existence location, nature, and magnitude of any Hazardous Substance

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that has been released on, under or about the Premises; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

- G. Upon Mortgagee's request at any time after an Event of Default, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Premises and to submit the results of such audit to Mortgagee. The choice of environmental engineer who will perform such audit is subject to Mortgagee's approval.
- H. Mortgagee may perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- I. Mortgagor hereby agrees to defend, indemnify and hold the Mortgagee harmless from and against, and shall reimburse the Mortgagee for, any and all losses, claims, liabilities, damages, injunctive relief, injuries to person, property or natural resources, costs and expenses, or actions or causes of action arising or in connection with the release or presence of any Hazardous Substances or the violation or breach of any Environmental Laws, whether foreseeable or unforeseeable, irrespective of the source of such release or when such release occurred or is discovered. The foregoing indemnity includes, without limitation, all costs (a) of removal, remediation of any kind and disposal of such Hazardous Substances; (b) of determining whether the Premises are in compliance, and all costs associated with causing the Premises to be in compliance with all applicable Environmental Laws; (c) associated with any violation or compliance with any Environmental Laws; (d) associated with claims for damages to persons, property or natural resources; and (e) which any of the Mortgagee has incurred, including, but not limited to, attorneys' and consultants' fees and court costs.
- J. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Mortgagee or any disposition by Mortgagee of any or all of the Premises. Any claims and defenses to the contrary are hereby waived.

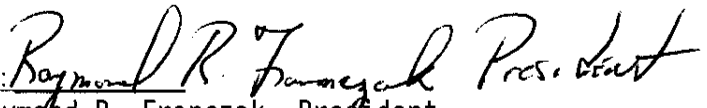
[signature page follows]

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Witness the hand of Mortgagor the day and year first above written.

761 GRACELAND, LLC,
an Illinois limited liability company

By: 761 GRACELAND I, INC. , an Illinois corporation,
Manager

By:  President
Raymond R. Franczak, President

Property of Cook County Clerk's Office

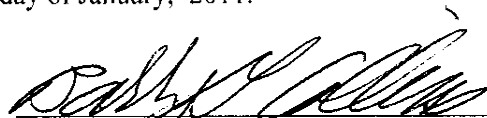
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STATE OF ILLINOIS)
)
COUNTY OF COOK)

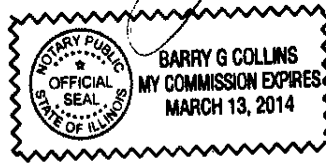
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Raymond R. Franczak, as President of 761 Graceland 1, Inc., an Illinois corporation, the Manager of 761 Graceland, LLC, an Illinois limited liability company, the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledge that he signed, sealed and delivered the said instrument as his free and voluntary act and the free and voluntary act for the company as Manager for the uses and purposes therein set forth.

Given under my hand and official seal, this 6th day of January, 2011.

My Commission Expires on 3-13-2014



Notary Public



This instrument was prepared by and after recording should be mailed to:

Barry G. Collins
Tuttle, Vedral & Collins, P.C.
733 Lee Street, Suite 210
Des Plaines, IL 60016
Phone: 847-824-0124

