

11-686185

**Illinois Anti-Predatory  
Lending Database  
Program**

**Certificate of Exemption**

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

The property identified as: **PIN: 10-16-424-064-0000**

**Address:**

**Street:** 8800-8818 Gross Point Road

**Street line 2:**

**City:** Skokie

**State:** IL

**ZIP Code:** 60077

**Lender:** Kettle Construction LLC, a Nevada limited liability company

**Borrower:** GPD, LLC, an Illinois limited liability company

**Loan / Mortgage Amount:** \$2,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7/70 et seq. because it is commercial property.

**Certificate number:** D62EE9B4-BA37-4F05-8354-6AE5B33914FD

**Execution date:** 09/25/2013

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Prepared by and upon recording  
please return to:

John T. Diamandis  
D2 Law Group P.L.  
3239 Henderson Boulevard  
Second Floor  
Tampa, FL 33609

**MORTGAGE,**  
**ASSIGNMENT OF RENTS AND LEASES,**  
**AND SECURITY AGREEMENT**

11/ 581789

This Mortgage, Assignment of Rents and Leases, and Security Agreement (this "Mortgage") is dated and effective as of the 27 day of September, 2013. The mortgagor is GPD, LLC, an Illinois limited liability company ("Borrower"). This Mortgage is given to and in favor of KETTLE CONSTRUCTION LLC, a Nevada limited liability company ("Lender"). Borrower owes Lender the principal sum of TWO MILLION DOLLARS (\$2,000,000.00). This indebtedness is evidenced by a Mortgage Note made by Borrower, payable to the order of Lender and dated as of the same date as this Mortgage (the "Note"). The Note requires the delivery of this Mortgage. The Note provides for a "Maturity Date" of November 1, 2018.

This Mortgage secures to Lender: (a) the repayment of the indebtedness evidenced by the Note (as it may be renewed, extended or otherwise modified); (b) future advances as provided for under Section 17 of this Mortgage; (c) the payment of all sums, with interest, advanced under Section 9 of this Mortgage; (d) all attorneys' fees provided for under the Note or this Mortgage and any other costs and expenses incurred in connection with the enforcement of or the exercise of any rights or remedies under the Note or this Mortgage; and (e) the payment of any other sums due and the performance of Borrower's covenants and agreements under the Note and this Mortgage.

For this purpose, Borrower does hereby mortgage, grant, transfer, convey and assign to Lender all of Borrower's estate, right, title and interest in and to the following (collectively referred to in this Mortgage as the "Property"):

The property located in Cook County, Illinois, being more particularly described on Exhibit A, which includes the land, all buildings and other improvements, and all fixtures and equipment (to the fullest extent that the fixtures and equipment may be considered part of the improvements and real property under applicable law) (the "Real Property");

**Together with:** all fixtures and equipment (to the extent not part of the improvements and real property under applicable law), and all furnishings and other personal property now or hereafter attached to, placed in or used in connection with the Real Property (the "Tangible Personal Property");

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**Together with:** all leases and other occupancy agreements (the “Leases”) from time to time affecting any portion of the Real Property and all rents and other sums paid or payable thereunder (the “Rents”); provided that, prior to a Default under this Mortgage, Borrower shall have the right to collect and use the Rents as they become due and payable, but not more than one month in advance of the due date under the Leases;

**Together with:** all easements, rights, privileges, appurtenances, rents, issues, income, proceeds, and royalties, of every kind and nature, belonging or appertaining to any of the Property described above.

Borrower warrants and covenants that Borrower is lawfully and indefeasibly seized with good and marketable title to the Property and has the right to mortgage, grant, transfer, convey and assign the Property to Lender, that the Property is unencumbered, exempt for liens, encumbrances and security interests, if any, previously agreed to by Lender in writing, and that it will protect and defend the title to the Property against all claims and demands whatsoever.

Borrower and Lender further covenant and agree as follows:

1. **Payments Under Note.** Borrower shall pay, on or before the due date, the principal and interest payments and all other sums due under the Note, all as and when provided for in the Note.
2. **Application of Payments.** Unless otherwise elected by Lender, all payments received by Lender shall be applied: first, to amounts advanced by Lender under Section 9 of this Mortgage and interest thereon, attorneys fees and other sums due hereunder or under the Note (other than the principal of and interest on the indebtedness evidenced by the Note); second, to accrued interest under the Note; and third, to principal under the Note. Borrower shall have no right to designate the manner of the application of payments among the amounts owed to Lender.
3. **Taxes, Assessments and Charges.** Borrower shall pay (i) all taxes, assessments, charges, fees, fines and impositions attributable to or imposed on the Property and (ii) all excise, documentary stamp, intangible and other governmental taxes and assessment imposed or assessed on or against the Note, this Mortgage or the indebtedness evidenced by the Note or secured by this Mortgage, together with any interest, fees or other charges assessed as a result of nonpayment or late payment of any of the foregoing. Borrower shall pay these obligations on time directly to the person or entity owed payment and in any event within ten (10) days following a demand from Lender. At Lender's request, Borrower shall furnish to Lender, within ten (10) days of Lender's request, receipts evidencing the payments required under this Section 3.
4. **Liens.** Borrower shall not allow any other mortgage, any mechanics or construction lien, or any other lien to encumber any portion of the Property. Borrower shall discharge any such lien within ten (10) days following notice from Lender. Any default (continuing beyond any applicable cure period) under any other mortgage or other lien encumbering the Property shall constitute a “Default” under Section 13 of this Mortgage

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5. **Insurance.** Borrower shall keep in place, during the entire time this Mortgage is outstanding, the following insurance (collectively, the “**Insurance**”): (I) Special Form (f/k/a “all risks”) insurance, on a replacement cost basis, with limits sufficient to cover the full replacement cost of the Real Property and including rent loss coverage to cover a minimum of twelve months of the Rents (the “**Property Insurance**”); (II) Commercial General Liability Insurance, on an occurrence basis, with a per occurrence limit of not less than \$2,000,000 and an annual aggregate for all claims of not less than \$5,000,000 (the “**Liability Insurance**”); (III) such additional insurance and such higher limits for the Liability Insurance as Lender may, from time to time, reasonably require and which are then customarily required by commercial lenders for similarly situated properties in the state in which the Property is located. The Property Insurance shall name Lender pursuant to a standard mortgagee clause. The Liability Insurance shall name Lender as an additional insured. All insurance policies and renewals shall be with insurance carriers and in a form and with a substance reasonably acceptable to Lender. Within ten (10) days of a request from Lender, Borrower shall deliver to Lender (i) evidence of payment for the Insurance and (ii) certificates (or if required by Lender, certified copies) of the required Insurance policies. Within ten (10) days of any accident or loss, Borrower shall give notice to Lender.

6. **Application of Insurance Proceeds.** Property Insurance proceeds shall be applied (in accordance with plans and specifications, a disbursement schedule, and procedures approved by Lender) to the restoration and repair of the Property damaged, if (a) there are sufficient insurance and other funds (to be escrowed, if requested by Lender) to fully complete the restoration and repair, (b) the restoration and repair can be completed within two hundred eighty (210) days from the date of the damage, (c) the value of the Property following the restoration and repair will be equal to or greater than the value prior to the damage, and (d) no Default exists under this Mortgage (the “**Restoration Conditions**”). Any proceeds remaining following the restoration and repair shall, at Lender’s option, be paid to Lender to be applied to reduce the principal balance due under the Note. If the Restoration Conditions are not met, the insurance proceeds shall, at Lender’s option, be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower. If the Maturity Date would occur during the period of restoration and repair, Lender may, at its option, but Lender is not required to, by notice to Borrower, extend the Maturity Date (for purposes of the Note and this Mortgage) by a period of up to one (1) year.

7. **Preservation and Maintenance of Property.** Borrower shall not damage or substantially change the Property, allow the Property to deteriorate or commit waste, but shall maintain the Property in good order, appearance, condition and repair and in compliance with all applicable laws, codes, regulations and other governmental and legal requirements.

8. **Leases.** Borrower shall, within ten (10) days of a request from Lender, provide Lender with a current rent roll for the Property, in such form as may be reasonably requested by Lender, together with complete and correct copies of all Leases. Borrower shall not collect any Rents under any Lease more than one month in advance of the due date (including, but not limited to, termination or similar fees or payments), nor may any Lease provide for the payment or deposit of more than six (6) months of rental in advance, in each instance without Lender’s

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prior written consent. At Lender's request, Borrower will request and use commercially reasonable efforts to obtain from the tenant under each Lease an estoppel certificate and a subordination, non-disturbance and attornment agreement, in such form as may be reasonably requested by Lender. If a Default is outstanding, no Lease may be amended or terminated, nor may any new Lease be entered into without Lender's prior written consent. Borrower shall timely and duly perform all of the obligations of the landlord under all of the Leases; a default by the Borrower, beyond the applicable notice and cure period, under any Lease or Leases constituting more than twenty percent (20%) of the leased area of the Property shall, at Lender's option, constitute a "Default" under Section 13 of this Mortgage.

9. **Protection of Lender's Rights in the Property.** If Borrower fails to perform or comply with any covenant or agreement contained in this Mortgage, if the Property is significantly damaged by fire or other hazard, or there is a legal proceedings that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation, or to enforce laws or regulations), then Lender may do and pay for whatever is, in Lender's opinion, reasonably necessary or desirable to remedy any failure by Borrower or to protect and monitor the value of the Property or Lender's rights under this Mortgage. Lender's actions may include, without limitation, paying taxes, assessments or any sums secured by a lien, securing insurance for the Property, appearing in court, paying reasonable attorneys' fees and costs, entering onto the Property to perform maintenance or to make repairs and paying costs to insure the maintenance or repair of the Property or the fulfillment of Borrower's obligations under this Mortgage. Although Lender may take action under this Section, Lender has no obligation to do so. Any amounts disbursed by Lender under this Section shall become additional indebtedness secured by this Mortgage. These amounts shall bear interest from the date of disbursement at the Default Rate (as defined in the Note) and shall be due and payable, with interest, within fifteen (15) days after notice from Lender to Borrower requesting payment.

10. **Inspection.** Lender or its agents may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice prior of the inspection, if the inspection would involve (i) any physical alteration to the Property or (ii) entering upon the roof or into any interior non-public area of any building.

11. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of all or any part of the Property (or access to or use of the Property), or any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. The proceeds from any taking shall be applied in the same manner as insurance proceeds under Section 6.

12. **Transfer of the Property or Interest in Borrower.** The following constitutes a "Default" under Section 13 this Mortgage, if it occurs without the Lender's prior written consent: (i) the sale or transfer (voluntarily or involuntarily) of all or any part of Borrower's interest in the Property (excluding the Personal Property), or (ii) the transfer of more than fifty percent (50%) of the ownership interests in the Borrower (or any sub-entity, of any tier) from the individuals who own the ultimate beneficial interest in the Borrower as of the date of this Mortgage. For purposes of item (ii) above, ownership by any lineal descendent of an individual (natural or by

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adoption), or in trust for any such lineal descendent, shall be considered the same as ownership by an individual.

13. **Default.** If Borrower fails to perform any of the covenants or agreements of this Mortgage or the Note, Lender shall give written notice to Borrower of such failure. The notice shall specify (a) the failure; (b) the action required to cure the failure; and (c) a date, not less than ten (10) days from the date the notice is given to Borrower, as to failures that can be cured by the payment of money, and not less than twenty (20) days from the date the notice is given to Borrower, as to all other failures, by which the failure must be cured (a single notice may serve as a default notice under both the Note and this Mortgage). If the failure is not cured on or before the date specified in the notice, the failure shall constitute a “**Default**” under this Mortgage. In the event of any Default under this Mortgage (as described above in this Section or elsewhere in this Mortgage), Lender, at its option, may (I) require immediate payment in full of all indebtedness secured by this Mortgage, without further demand; (II) proceed to foreclose this Mortgage by appropriate judicial proceeding; and (III) exercise all other rights and remedies available to Lender under the Note or this Mortgage or which Lender may have at law or in equity, including with respect to all personal property, all those rights and remedies granted to the Secured Party under the Uniform Commercial Code, as in effect in the state in which the Personal Property is located. Lender shall be entitled to collect all costs and expenses incurred in pursuing the remedies available to Lender, including, but not limited to, reasonable attorneys' fees, including, but not limited to, those incurred in connection with any arbitration, appellate or bankruptcy proceeding.

14. **Entitlement to Receiver.** Upon the occurrence of a Default, Lender shall be entitled (by judicially appointed receiver) to enter upon, take possession of and manage and maintain the Property and to collect the Rents of the Property, including those past due, and to exercise all other powers which may be available to the receiver under applicable law in connection with the protection, control, management, leasing, maintenance and operation of the Property. Any Rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of Rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then as described in Section 2.

15. **Rights and Remedies Cumulative.** The rights and remedies of Lender under the Note and this Mortgage are not intended as exclusive, but as cumulative with all rights and remedies available under applicable law (including statutory, common law and equitable remedies). To the extent permitted under applicable law, the rights and remedies of Lender may be exercised concurrently or in such order as Lender may elect and the exercise of any right or remedy shall not be deemed a waiver of the right to exercise any other right or remedy,

16. **Forbearance / Waiver.** Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy during the continuance of any default. No waiver of any of the terms of this Mortgage or the Note shall be enforceable unless in writing and signed by the party against whom enforcement of the waiver is sought. No waiver by Lender of any default shall be a waiver of or consent to similar subsequent defaults.

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17. **Future Advance.** In addition to all other indebtedness secured by this Mortgage, this Mortgage shall also secure all future advances made by Lender to the Borrower for any purpose while this Mortgage is outstanding, so long as within twenty (20) years after the date of this Mortgage. Any future advance shall be secured to the same extent as if the future advances were made on the date of this Mortgage. Future advances are not obligatory, but are at the sole option of the Lender. The total amount of the indebtedness that may be secured by this Mortgage may increase or decrease from time to time, but the total unpaid principal balance secured at any one time by this Mortgage shall not exceed Three Million Dollars (\$3,000,000.00).

18. **Notices.** Any notice to be given under this Mortgage or the Note shall be given (i) by hand delivery, with a receipt evidencing delivery; (ii) by nationally recognized overnight delivery service with the ability to confirm delivery; or (iii) by certified mail, return receipt requested. Any notice shall be deemed given upon the first to occur of (a) receipt, (b) refusal to accept by the addressee, or (c) inability to deliver due to the address not being a valid delivery address for the party. Any notice to Borrower or Lender shall be directed to the address set forth below or any other address or addresses (up to three) within the continental United States as such party designates to the other by notice in accordance with this Section.

**Borrower:**

GPD, LLC  
c/o FOG Capital, Inc.  
6040 Winterthur Drive  
Atlanta, Georgia 30328  
Attention: Mark O. Hackner  
Phone: (404) 840-4049

**Lender:**

Kettle Construction LLC  
400 Perimeter Center Terrace  
Suite 800  
Atlanta, GA 30346-1235  
Attention: Peter Weitzner  
Phone: (678) 475-0499

19. **Governing Law.** This Mortgage shall be governed by and construed in accordance with the laws of the State of Florida, except that the creation, perfection, and enforcement of the liens of this Mortgage and process for the realization upon the security provided for by this Mortgage shall be governed by the laws of the state in which the Property is located.

20. **Severability.** In the event that any provision of this Mortgage or the Note (or any particular application thereof) conflicts with applicable law, such conflict shall not affect any other provisions of this Mortgage or the Note or any valid part or application of any invalid provision.

21. **Financial Statements.** Within ten (10) days of a request by Lender, Borrower will provide Lender with the most recent annual operating statement for the Property and financial statements for the Borrower, all in such form as Lender may reasonable request.

22. **Modification.** No modification of this Mortgage or the Note shall be effective unless in writing and signed by both Borrower and Lender.

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23. **Successors and Assigns Bound.** Subject to Section 12, the covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of Lender and Borrower.

24. **Release.** Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage. Borrower shall pay any recordation costs and other expenses in connection with the release.

**IN WITNESS WHEREOF,** Borrower has signed this Mortgage and accepts and agrees to the terms and covenants contained in this Mortgage.

Signed in the presence of:

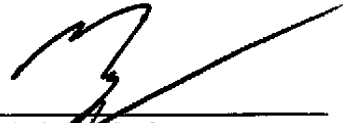
**BORROWER:**

*R Hackner*

GPD, LLC,  
an Illinois limited liability company

Print Name: MARK O. HACKNER

*Jennifer Spiegel*

By: 

Print Name: \_\_\_\_\_

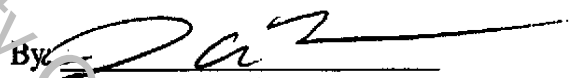
Mark O. Hackner  
One of Two Managers

*Laurie Levin*

and

Print Name: Laurie Levin

*Cynthia Lukey*

By: 

Print Name: Cynthia Lukey

Joshua A. Mintzer  
One of Two Managers

[Notary Page Follows]



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STATE OF GEORGIA )  
 )  
COUNTY OF FULTON )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of September, 2013, by Mark O. Hackner, as one of two Managers of GPD, LLC, an Illinois limited liability company, for and on behalf of the limited liability company.

Jessica Poole  
NOTARY PUBLIC  
Cherokee County, GEORGIA  
My Comm. Expires  
02/10/2017  
(Notary Seal)

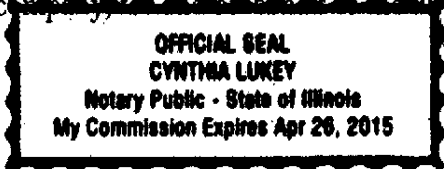
Jessica Poole  
{Signature of Notary Public}  
Printed Name: Jessica Poole  
{Name to be printed or stamped}

personally known to me or  produced identification. {applicable box to be checked}

Identification produced: Georgia Drivers License  
{if identification was produced, type of identification provided to be inserted}

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of September, 2013, by Joshua A. Mintzer, as one of two Managers of GPD, LLC, an Illinois limited liability company, for and on behalf of the limited liability company.



Cynthia Lukey  
{Signature of Notary Public}  
Printed Name: Cynthia Lukey  
{Name to be printed or stamped}

personally known to me or  produced identification. {applicable box to be checked}

Identification produced: \_\_\_\_\_  
{if identification was produced, type of identification provided to be inserted}

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## Exhibit A

### Legal Description of the Real Property

LOT 3 IN GROSS POINT CROSSING SUBDIVISION BEING A SUBDIVISION OF THAT PART OF THE SOUTH HALF OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 26, 2008 AS DOCUMENT 0808616026, IN COOK COUNTY, ILLINOIS.

8800 - 8818 GROSS POINT ROAD  
SKOKIE, IL

PN: 10-16 424-064-0000