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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1336522144 Fee: \$50.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/31/2013 10:07 AM Pg: 1 of 7

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 17-16-245-009-0000

Address:

Street: 500 SOUTH DEARBORN STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60605

Lender: BLUEGREEN VACATIONS UNLIMITED, INC.

Borrower: VACATION TRUST, INC.

Loan / Mortgage Amount: \$26,850.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7/70 et seq. because it is not owner-occupied.

Certificate number: 5A1C13AD-6655-45F3-81AF-605AB94822CB

Execution date: 09/23/2013

UNOFFICIAL COPY**This Instrument Prepared by:**

Christina Moore, Esq.
Taylor English Duma, LLP
1600 Parkwood Circle, Suite 400
Atlanta, GA 30339

After Recording Return to:

Resort Title Agency, Inc.
4960 Conference Way North, Suite 100
Boca Raton, FL 33431

Send Subsequent Tax Bills to:

Association Accounting
4960 Conference Way North, Suite 100
Boca Raton, FL 33431

This space reserved for Recorder's use only.

Permanent Real Estate Index Numbers:

17-16-245-009-0000, 17-16-245-010-0000,
17-16-245-011-0000, 17-16-245-012-0000, 17-16-245-017-0000

Address of Property:

500 South Dearborn Street
Chicago, Illinois 60605

MORTGAGE AGREEMENT

THIS MORTGAGE AGREEMENT ("**Mortgage**") is effective as of the 23 day of September, 2013, by and between VACATION TRUST, INC., a Florida corporation, whose address is 4950 Communication Ave., Suite 900, Boca Raton, Florida 33431 ("**Mortgagor**") and BLUEGREEN VACATIONS UNLIMITED, INC., a Florida corporation, whose address is 4960 Conference Way North, Suite 100, Boca Raton, Florida 33431, as Mortgagee (said party, its successors and assigns, is herein called "**Lender**" or "**Mortgagee**").

Pursuant to agreement, CHARLES WAYNE ASHBY and COURTNEY CHRISTINE ASHBY, whose address is 350 PEABODY RD, CHARLOTTE, TN 37036 (hereinafter the "**Indebted Party**") has requested, directed and authorized the Mortgagor to mortgage the following described property to Mortgagee to secure the payment by Indebted Party of the following described promissory note. Indebted Party is indebted to Mortgagee in the initial principal sum of Twenty Six Thousand Eight Hundred Fifty and 00/100 U.S. Dollars (\$26,850.00) which indebtedness is evidenced by Indebted Party's Promissory Note with the same effective date as this Mortgage Agreement, as may be amended, modified, or renewed from time to time, ("**Note**"), providing for certain monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on 09/23/2023, and which indebtedness was advanced by Mortgagee to Indebted Party as purchase money financing for the purchase of the following undivided interest in real property (the "**Property**"):

A TWO 3/7; TWO 2/7 /52nds Timeshare Interest of an undivided fee simple common ownership interest as tenant-in-common in the applicable Timeshare Unit 1003, 1003, 1003, 1003, Week 42M, 44M, 45S, 46S F according to and as defined in the Declaration of Condominium for the Hotel Blake, a Condominium recorded August 23, 2013 in the records of the Cook County Recorder of Deeds as Document No. 1323519050, as amended and supplemented ("**Condominium Declaration**") and that certain Declaration of Timeshare Plan for The Hotel Blake Timeshare Plan August 23, 2013 in the records of the Cook County Recorder of Deeds as Document No. 1323519052, as amended and supplemented from time to time ("**Timeshare Declaration**," and together with the Condominium Declaration, collectively the "**Declarations**"); less and except all oil, gas and mineral rights; TOGETHER with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining to the property, especially those benefits, rights and obligations provided by the Declarations. *Sec 16, TRSP 39 N, Rev 14*

In consideration of Mortgagee advancing purchase money financing to Indebted Party for the purchase of the Property, in order to secure in favor of Mortgagee: (i) the performance of the covenants and agreements of Mortgagor contained in this Mortgage and the Note; (ii) the repayment of the indebtedness evidenced by the Note, with interest on

CHARLES WAYNE ASHBY Contract No.: 792422

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such indebtedness and the payment of all other sums, with interest on such other sums, due to Mortgagee in accordance with this Mortgage or Note; and (iii) the repayment of any future advances, with interest, made to or for the benefit of Indebted Party by Mortgagee pursuant to the terms of this Mortgage ("**Future Advances**"), Indebted Party has by agreement requested, directed, and authorized Mortgagor to grant this Mortgage and Mortgagor does hereby mortgage, grant and convey to Mortgagee and Mortgagee's successors and assigns the Property.

Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to mortgage, grant and convey the Property to Mortgagee, that the Property is not encumbered by any financial liens, and that Mortgagor will warrant and defend generally the title to the Property against all claims and demands whatsoever subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in the title insurance policy issued on or prior to the date of this Mortgage and insuring Mortgagee's interest under this Mortgage in the Property.

Mortgagor and Mortgagee covenant and agree as follows:

1. **Payment of and Interest.** Mortgagor shall cause the Indebted Party to promptly pay when due the principal and interest on the indebtedness evidenced by the Note, late charges as provided in the Note, and the principal of and interest on any future advances, with interest on such future advances, made to or for the benefit of Indebted Party by Mortgagee ("**Future Advances**"), all of which are secured by this Mortgage. Unless applicable law provides otherwise, all payments received by Mortgagee shall be applied by Mortgagee first to any unpaid costs or expenses payable by Mortgagee under the Note (in the following order of payment: collection costs, return items fees, late charges, and insurance premiums, if applicable), then to interest accrued and due on the Note, and then to the outstanding principal amount of the Note. If any further note or mortgage agreement is given by or at the direction of Indebted Party in favor of Mortgagee, any payments received by Mortgagee from Indebted Party in respect of any indebtedness owed by Indebted Party to Mortgagee shall, at Mortgagee's sole option and discretion, be applied first to the indebtedness evidenced by that note first executed and delivered by Indebted Party in favor of Mortgagee, and thereafter in the successive chronological order of execution and delivery of each of the further notes or mortgage agreements, all in accordance with the payment terms of this paragraph.

2. **Charges; Liens.** Mortgagor shall promptly pay, or cause Indebted Party to pay, when due all assessments imposed by the governing body of the Condominium ("**Condominium Association**"), the governing body of the Timeshare Plan ("**Timeshare Association**") or otherwise imposed against the Property. Mortgagor shall pay, or cause Indebted Party to pay, when due all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage. Mortgagor shall promptly discharge, or cause to be discharged, any lien which has priority over this Mortgage; provided, however, that Mortgagor shall not be required to discharge, or cause to be discharged, any such lien so long as Mortgagor shall agree in writing to cause Indebted Party to pay the obligation required by such lien in a manner acceptable to Mortgagee and, at Mortgagee's request, immediately post, or cause Indebted Party to post, with Mortgagee an amount, or other security acceptable to Mortgagee, necessary to satisfy such obligation. Alternatively, Mortgagor shall not be required to discharge any such lien so long as Mortgagor, in legal proceedings, contests such lien in good faith, or defends against enforcement of such lien, and Indebted Party immediately posts with Mortgagee an amount, or other security acceptable to Mortgagee, necessary to satisfy the obligation, at Mortgagee's request.

3. **Insurance.** Mortgagor shall cause the improvements now existing or in the future erected on the Property to be kept insured against loss by fire, hazards included within the term "extended coverage" and such other hazards as Mortgagee may require and in such amounts and for such periods as Mortgagee may require, including public liability insurance; provided, however, that Mortgagee shall not require that the amount of such coverage exceed the sums secured by this Mortgage. This obligation shall be deemed satisfied so long as the Condominium Association and/or the Timeshare Association maintains insurance policies which otherwise satisfies the terms of this Mortgage and of the Declarations. If there is a distribution of insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to a Timeshare Unit (as defined in the Timeshare Declaration) or to the common areas or the limited common areas, any such proceeds payable to Mortgagor are deemed automatically assigned to Mortgagee and shall be paid to Mortgagee for application to the sums secured by this Mortgage, with the excess, if any, thereafter paid to Mortgagor.

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4. **Preservation and Maintenance of Property.** Mortgagor shall cause the Property to be kept in good repair and shall not commit waste or permit impairment or deterioration of the Property. Mortgagor shall cause the Indebted Party to perform all of Indebted Party's obligations under the Condominium Declaration, the Timeshare Declaration and the bylaws and rules and regulations of the Condominium Association and/or the Timeshare Association and all Condominium and Timeshare Plan documents. Mortgagor shall take such actions as may be reasonable to insure that the Timeshare Association maintains a public liability insurance policy acceptable to Mortgagee in form, amount and extent of coverage.
5. **Protection of Mortgagee's Security.** If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Mortgagee's interest in the Property, including eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option, upon notice to Mortgagor, may make such appearances, disburse such sums and take such actions as are necessary to protect Mortgagee's interest, including disbursement of funds to pay reasonable attorneys' fees and to make repairs and entry upon the Property to make such repairs. Any amounts disbursed by Mortgagee pursuant to this paragraph, with interest, shall become additional indebtedness of Indebted Party secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amounts shall be payable upon notice from Mortgagee to Mortgagor requesting payment by Indebted Party, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to Illinois law, in which event such amounts shall bear interest at the highest rate permissible under Illinois law. Nothing contained in this paragraph shall require Mortgagee to incur any expense or take any action under hereunder.
6. **Inspection.** Mortgagee may make or cause to be made reasonable entries upon and inspections of the Property, provided that Mortgagee shall give Mortgagor prior notice and specify reasonable cause for such inspection.
7. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Mortgagor in connection with any condemnation or other taking of all or any part of the Property, whether of a Timeshare Unit or the common areas, limited common areas, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Mortgagee for application to the amounts secured by this Mortgage, with the excess, if any, paid to Mortgagor. Unless Mortgagor and Mortgagee otherwise agree in writing, any such application of proceeds to indebtedness under the Note secured by this Mortgage shall not extend or postpone the due date of the monthly installments due under the Note or change the amount of any such installments.
8. **Indebted Party Not Released.** Any extension of time for payment or modification of amortization of the amounts secured by this Mortgage, granted by Mortgagee to Indebted Party or any successor-in-interest to Indebted Party shall not operate to release, in any manner, the liability of the Indebted Party or the Indebted Party's successors-in-interest. Mortgagee shall not be required to commence proceedings against such successors or to refuse to extend time for payment or otherwise to modify amortization of the sums secured by this Mortgage by reason of any demand made by Indebted Party or Indebted Party's successors-in-interest.
9. **Forbearance by Mortgagee Not Waived.** Any forbearance by Mortgagee in exercising any right or remedy under this Mortgage or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage.
10. **Remedies Cumulative.** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.
11. **Successors and Assigns Bound; Captions.** Subject to the terms and provisions of paragraph 26 below, the covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor. The captions and headings of the paragraphs of this Mortgage are

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for convenience only and are not to be used to interpret or define the provisions hereof.

12. **Notice.** Except for any notice required under applicable law to be given in another manner, any notice to Mortgagor provided for in this Mortgage shall be given by mailing such notice by U.S. Mail, postage prepaid, addressed to Mortgagor at the Mortgagor's address as set forth above or at such other address as Mortgagor may designate by written notice to Mortgagee. Any notice to Mortgagee shall be given by certified mail, return receipt requested, to Mortgagee's address stated herein or to such other address as Mortgagee may designate by written notice to Mortgagor. Any notice provided for in this Mortgage shall be deemed to be severable.

13. **Transfer of the Property.** If all or any interest in the Property is sold or transferred by Mortgagor or if any mortgage, lien or other encumbrance shall, during the term of this Mortgage, be recorded against or otherwise attach upon the Property without Mortgagee's prior written consent, excluding (i) a transfer by devise, descent or by operation of law upon the death of a joint tenant, or (ii) the creation of a lien or encumbrance subordinate to this Mortgage, then Mortgagee may, at Mortgagee's option, declare all the sums secured by this Mortgage to be immediately due and payable.

Mortgagee shall have waived such option to accelerate if, and only if: (a) prior to the sale or transfer, Mortgagee shall have waived in writing or failed to timely exercise its right of consent; (b) Mortgagee and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Mortgagee and that the interest payable on sums secured by this Mortgage shall be at such rate as Mortgagee shall request; (c) if applicable, Mortgagee has received an assumption fee, which fee shall be determined by Mortgagee in its sole discretion; and (d) Mortgagor's successor-in-interest has executed a written assumption agreement accepted in writing by Mortgagee. If Mortgagee exercises such option to accelerate, Mortgagee shall mail to Mortgagor notice of acceleration which shall provide a period of not less than fifteen (15) days from the date the notice is mailed within which Mortgagor shall cause Indebted Party to pay the sums declared due. If Indebted Party fails to pay such sums prior to the expiration of such period, Mortgagee may, without further notice or demand on Mortgagor or Indebted Party, invoke any remedies pursuant to paragraphs 14 and 15 hereof or otherwise provided at law or in equity.

14. **Event of Default; Acceleration; Remedies.** An "Event of Default" shall be deemed to exist hereunder upon the occurrence of any of the following: (i) if a default occurs under the Note; (ii) Indebted Party shall become insolvent as defined in the Uniform Commercial Code; (iii) a proceeding under the Federal Bankruptcy Code is commenced by or against Indebted Party; or (iv) if Mortgagor breaches any covenant or agreement in this Mortgage. Upon the occurrence of an Event of Default, including the covenant to pay when due any amounts secured by this Mortgage, Mortgagee may at its option, subject to any right of reinstatement to which Mortgagee is entitled under applicable law, accelerate, without further demand on Mortgagor or Indebted Party, this Mortgage and the Note and foreclose this Mortgage by appropriate legal proceedings.

15. **Assignment of Rents, Appointment of Receiver.** As additional security hereunder, Mortgagor hereby assigns to Mortgagee any rents derived from the Property, including those past due. Alternatively, Mortgagee may seek the appointment of a receiver to manage and collect rents generated from the Property. If a receiver is so appointed, any rents derived from the Property shall be applied first to the costs of receivership and then to the amounts secured by this Mortgage. Upon Mortgagee's exercising any of the remedies provided under paragraph 13 or paragraph 14 hereof, or upon abandonment of the Property, Mortgagee shall be entitled without notice, to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All rents collected shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, management fees, court costs and reasonable attorneys' fees and then to the sums secured by this Mortgage. The Mortgagee shall be liable to account only for those rents actually received. Mortgagor shall not be entitled to possession or use of the Property after abandonment or after the Mortgagee has accelerated the balance due in accordance with paragraph 13 or paragraph 14 hereof.

16. **Future Advance.** Upon request by Indebted Party, Mortgagee, at Mortgagee's sole option, may make Future Advances to Indebted Party. Such Future Advances, with interest on such Future Advances, shall be secured by this Mortgage when evidenced by a promissory note stating that such note is secured by this Mortgage. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced to protect the security of this Mortgage, exceed one hundred fifty percent (150%) of the original principal amount of the

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Note.

17. **No Recourse Against Mortgagor.** Any other provision of this Mortgage to the contrary notwithstanding, the parties hereto agree that Mortgagor shall be liable only to the extent of its interest in the collateral given to secure the payment of the indebtedness under the Note, the same being all property described in this Mortgage. If default occurs on the timely and proper payment of the indebtedness hereunder, any proceeding brought against Mortgagor shall be limited to the preservation, enforcement and foreclosure of the liens, security titles, estates, property rights and security interests securing the obligations hereunder and no other attachment, execution, judgment or other process shall be sought, issued or levied upon any other assets, properties or funds of Mortgagor. In event of Mortgagee's exercise of its rights hereunder, no judgment for any deficiency upon such indebtedness shall be sought or obtained against Mortgagor. The foregoing shall not relieve the Indebted Party, as the maker of the Note for which this instrument has been provided by Mortgagor as collateral, from any obligations pursuant to the terms of such Note. Nothing contained in this paragraph shall be deemed to constitute a release or impairment of the indebtedness or the lien and validity of this instrument upon the property described herein or to preclude any foreclosure or other exercise of Mortgagee's rights hereunder in case of default.

18. **Mortgagee's Prior Consent.** Mortgagor shall not, except after written notice to Mortgagee and with Mortgagee's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Timeshare Plan or the Property, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Declarations which are for the express benefit of Mortgagee; or (iii) any action which would have the effect of rendering the insurance coverage maintained by the Timeshare Association unacceptable to Mortgagee.

19. **Attorneys' Fees.** As used in this Mortgage and in the Note, "attorneys' fees" shall include, but is not limited to, attorneys' fees, if any, which may be awarded by an appellate court.

20. **Defined Terms.** All terms beginning with initial capital letters that are not defined in this Mortgage shall have the meanings ascribed to them in the Timeshare Declaration and, if not in the Timeshare Declaration, in the Condominium Declaration.

21. **Release.** Upon payment of all sums secured by this Mortgage, Mortgagee shall execute a release of this Mortgage without charge to Mortgagor or Indebted Party; however, Mortgagor shall cause Indebted Party to pay all costs of recording such release.

22. **Mortgagor's Waivers.** Mortgagor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Illinois as to all indebtedness secured by this Mortgage. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY IN THIS MORTGAGE, MORTGAGOR HEREBY WAIVES, TO THE EXTENT PERMITTED UNDER 735 ILCS 5/15.16(C)(B) OR ANY SIMILAR LAW EXISTING AFTER THE DATE OF THIS MORTGAGE, ANY AND ALL RIGHTS OR REDEMPTION ON MORTGAGOR'S BEHALF AND ON BEHALF OF ANY OTHER PERSONS PERMITTED TO REDEEM THE PROPERTY.

23. **Entire Agreement.** The Note and this Mortgage constitute the entire understanding and agreement of the Indebted Party, Mortgagor and Mortgagee with regard to the subject matter of the Note and Mortgage, and supersede all oral agreements, understandings or representations of the parties.

24. **Time.** Time is of the essence in the performance by Indebted Party and Mortgagor of each and every obligation of Indebted Party and Mortgagor set forth in the Note and this Mortgage, especially with respect to the payment of monies.

25. **Further Assurances.** Indebted Party and Mortgagor shall, from time to time, execute such additional documents as may reasonably be requested by Mortgagee, to carry out and fulfill the intents and purposes of the Note and this Mortgage.

