

2003 107763

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
RECORDS & CLERK
2003 JUL 10 10:40 AM
MORTGAGE

[This Space For Recorder's Use Only]

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the 1st day of July, 2003, by EUGIN O. KIM ("Mortgagor"), and GEORGE NOVOGRODER, having an office at 875 North Michigan Avenue, Chicago, Illinois 60611 ("Lender").

WITNESSETH:

WHEREAS, Mortgagor has executed and delivered to Lender that certain series of six (6) Notes of even date herewith, payable to the order of Lender in the total principal amount of Three Hundred Nine Thousand One Hundred Fifty (\$309,150.00) Dollars (the "Note"), which Notes bear interest and is payable to Lender as more fully described therein; and

WHEREAS, Lender is desirous of securing the prompt payment of the Notes, and of any replacement notes (together with the Notes, referred to collectively herein as the "Notes"), together with interest and any premium thereon in accordance with the terms of the Notes, and any additional indebtedness accruing to Lender on account of any future payments, advances or

THIS DOCUMENT PREPARED BY
AND AFTER RECORDATION SHOULD
BE RETURNED TO:

Peter G. Koransky
Koransky & Bouwer, P.C.
425 Joliet Street, Suite 425
Dyer, IN 46311

923-5708
TICOR MO

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expenditures made by Lender pursuant to, or any other obligation of Mortgagor arising under, any of the Notes (all of the foregoing, the "Secured Obligations");

NOW, THEREFORE, to secure the payment, performance and observance by Mortgagor all of the terms, covenants and conditions contained herein and by Mortgagor of all of the terms, covenants and conditions contained in the Notes, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Mortgagor has executed and delivered this Mortgage and does hereby grant a lien and/or security interest, as applicable, in, and grant, convey, assign, mortgage and warrant and confirm, to Lender and Lender's successors and assigns forever, all of the property now or hereafter owned by Mortgagor described in the following GRANTING CLAUSES (the "Mortgaged Property"):

A. All those certain tracts, pieces or parcels of land legally described in **Exhibit A** attached hereto and hereby made a part hereof and all surface and subsurface soils, minerals and water located thereon and thereunder (the "Land"); and

B. All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all furnishings, furniture, fixtures, machinery, inventory, equipment, appliances, systems, building materials, vehicles and personal property of every kind and nature whatsoever including, without limitation, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures and systems, carpeting and other floor coverings, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus and systems, refrigerating plant, refrigerators, computers and all hardware and software therefor, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be attached to said buildings, structures or improvements, or which are or shall be located in, on or about the Land, or which, wherever located (including, without limitation, in warehouses or other storage facilities or in the possession of or on the premises of vendors or manufacturers thereof), are used or intended to be used in or in connection with the construction, fixturing, equipping, furnishing, use, operation or enjoyment of the Land or the improvements thereon, now or hereafter owned by Mortgagor, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing, together with all warehouse receipts or other documents of title relating to any of the foregoing and the benefit of any deposits or payments now or hereafter made by Mortgagor in connection with any of the foregoing; and

C. All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, licenses, privileges, liberties, tenements, hereditaments and appurtenances whatsoever in any way belonging, relating or appertaining to the Mortgaged Property, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor and the reversion and reversions, remainder and remainders thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same; and

D. Each and every lease, license and other document or instrument, including, without limitation, those described in Granting Clause C above, granting to any person or entity

any right to use or occupy, and any other agreement with respect to the use or occupancy of, all or any portion of the Land or the improvements of any type or nature located thereon (the "Improvements"), whether heretofore, now or hereafter entered into (the "Leases"); and

E. The rents, deposits, issues, profits, proceeds, revenues, awards and other benefits of the Mortgaged Property from time to time accruing (including, without limitation, all payments under the Leases, licenses and documents described in Granting Clause D above, proceeds of insurance, condemnation awards and payments in lieu thereof, tenant security deposits, advance room deposits and escrow funds, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Mortgaged Property, or personalty located thereon, or rendering of services by Mortgagor or any operator or manager of the Mortgaged Property or acquired from others including, without limitation, from the rental of any space, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same) (collectively, the "Rents"); and

F. All proceeds and avails from rentals, mortgages, sales, conveyances or other dispositions or realizations of any kind or character of or from the foregoing Rents now or hereafter existing, all of which shall constitute proceeds of collateral pursuant to Section 9-306 of the Uniform Commercial Code ("UCC"), as adopted in the state in which the Mortgaged Property is located (the "State"); and

G. All of the aforementioned personal property and any and all other personal property, whether tangible or intangible, not otherwise described herein and now or at any time hereafter owned by the Mortgagor and now or at any time hereafter located in or on or otherwise utilized in any one or more of the ownership, use, enjoyment, construction, occupancy, management, maintenance, repair and operation of the Land, the Improvements or the equipment located thereon, including, without limitation, trade names, trademarks, service marks, copyrights, patents and other intellectual property and any and all funds of Mortgagor from time to time in Lender's possession, all of which shall constitute proceeds of collateral pursuant to Section 9-306 of the UCC (the "Personalty"); and

H. All of the aforementioned contracts and agreements and any and all other contracts or agreements, whether written or oral, to which Mortgagor is or hereafter becomes a party, to the extent assignment is permitted therein, including, without limitation, purchase contracts for the sale of all or any portion of the Land, contracts pertaining to architectural services, contracts pertaining to engineering services, and contracts relating in any manner to the ownership, use, enjoyment, construction, occupancy, management, maintenance, operation or repair of all or any portion of the Land, the Improvements, the equipment located thereon or the Personalty or otherwise related to all or any part of the real and personal property described elsewhere herein (the "Contracts"); and

I. To the extent assignment thereof is legally permissible, all franchises, permits, licenses, entitlements and rights therein respecting the ownership, use, enjoyment, occupation, management, maintenance, repair and operation of any of the foregoing; and

J. Any and all rights, titles, interests, estates and other claims, at law or in equity, that Mortgagor now has or may hereafter acquire in or to any proceeds from the sale, assignment, conveyance, hypothecation, grant, pledge or other transfer of any or all of the foregoing real or personal property; and

K. Any and all refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally registered credits (such as emissions reduction credits) and payments of any kind due from or payable by any governmental authority or any insurance or utility company relating to any or all of the Mortgaged Property; and

L. All refunds, rebates, reimbursements and payments of any kind due from or payable by any governmental authority for any taxes, assessments or governmental or quasi-governmental charges or levies imposed upon Mortgagor with respect to the Mortgaged Property or upon any or all of the Mortgaged Property; and

M. All monies relating to the Mortgaged Property held in any cash collateral or operating account maintained with Lender or any Affiliate of Lender now or at any time hereafter, all monies held in any capital expenditure escrows or other operational escrows or reserve funds and any other escrows, reserves or letters of credit benefiting or relating to the Mortgaged Property; and

N. All right, title and interest of Mortgagor arising from the operation of the Mortgaged Property in and to all payments for goods or property sold or leased or for services rendered, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper including, without limiting the generality of the foregoing, all accounts, accounts receivable, contract rights, book debts, and notes arising from the operation of the Mortgaged Property and Mortgaged Property-related services on the Mortgaged Property or arising from the sale, lease or exchange of goods or other property and/or the performance of services.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Lender, its successors and assigns, to their own proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions herein contained.

WITHOUT LIMITATION OF THE FOREGOING, Mortgagor hereby further grants unto Lender, pursuant to the provisions of the UCC, a security interest in all of the Mortgaged Property, which property includes, without limitation, goods which are or are to become fixtures, the Leases and the Rents.

THIS MORTGAGE IS GIVEN TO SECURE payment of the principal and interest evidenced by the series of twelve (12) Notes totaling \$578,700.00 executed of even date herewith, each of which shall be equally secured by this Mortgage without priority or preference to one over another, and performance of each and every of the covenants, conditions and agreements of the Borrower Parties and Mortgagor contained in this Mortgage and the Notes (all of which obligations are included in the Secured Obligations).

PROVIDED, HOWEVER, THE FOREGOING PRESENTS are made upon the condition that, if Mortgagor (i) shall pay or cause to be paid to Lender all of the Secured Obligations, (ii) shall pay or cause to be paid all amounts to be paid by Mortgagor under this Mortgage, and (iii) shall keep, perform and observe (or cause to be kept, performed and observed) each and every one of the covenants and promises in this Mortgage expressed to be kept, performed and observed by and on the part of Borrower or the Borrower Parties, then this Mortgage shall cease, terminate and be void; however, if such conditions are not all satisfied, this Mortgage shall otherwise remain in full force and effect.

MORTGAGOR FURTHER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

1. MORTGAGOR'S COVENANTS, REPRESENTATIONS AND WARRANTIES.

1.1. Warranty of Title. At the time of the recordation of this Mortgage, Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Property which constitutes real property and owns good title to the portion of the Mortgaged Property which constitutes personal property, and Mortgagor has good right, full power and lawful authority to convey, mortgage and grant a security interest in all of the same in the manner and form contemplated and provided under this Mortgage and the Notes. Said title of Mortgagor in the Mortgaged Property is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, other than liens expressly permitted under the Loan Agreement, including, as to the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature. Mortgagor shall and will forever defend the title to the Mortgaged Property against the claims of all persons whomsoever.

1.2. Taxes. Mortgagor shall pay, or direct to be paid from the Tax Escrow held by Lender, all installments of taxes, assessments and other similar charges which are assessed, levied, confirmed, imposed, or which become a lien upon or against the Mortgaged Property, or any portion thereof, or which become payable with respect thereto or with respect to the occupancy, use or possession of the Mortgaged Property before the same become delinquent, and shall promptly deliver to Lender receipt therefor. In the event Mortgagor desires to contest the validity of any such taxes or assessments, Mortgagor shall (i) prior to the due date thereof, notify Lender in writing that Mortgagor intends to so contest the same, (ii) if requested by Lender, pay the entire amounts of such taxes or assessments when due or, if a contest is permitted by law without such payment on or before the due date thereof, deposit with Lender security in form and content and amounts satisfactory to Lender for the payment of one hundred twenty-five percent (125%) of such tax or assessment, or provide to Lender such other indemnity or assurance of timely payment as may be acceptable to Lender, and (iii) if requested by Lender, deposit additional security or indemnity, from time to time, so that, at all times, adequate security or indemnity will be available for the payment of the full amount of the taxes or assessments together with all interest, penalties, costs and charges accrued or accumulated thereon. If the foregoing deposits are made and Mortgagor continues, in good faith, to contest the validity of such taxes or assessments by appropriate legal proceedings which shall operate to prevent the collection thereof and the sale of the Mortgaged Property, or any part thereof, to satisfy the same,

Mortgagor shall be under no obligation to pay such tax or assessment until such time as the same has been decreed, by unappealable court order, to be a valid lien on the Mortgaged Property. Lender shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to the payment of any unpaid tax or assessment to prevent the sale or forfeiture of the Mortgaged Property, without any liability on Lender's part for any failure to apply the security or indemnity so deposited, unless Mortgagor requests, in writing, the application thereof to the payment of the particular tax or assessment for which such deposit was made. Any surplus deposit retained by Lender, after the payment of the tax or assessment for which the same was made, shall be repaid to Mortgagor, unless an Event of Default (as hereinafter defined) exists, or an event has occurred or condition exists which, with the giving of notice or the passage of time, or both, could give rise to an Event of Default, in which event such surplus shall be applied by Lender to the Secured Obligations such order and manner as Lender may determine.

Notwithstanding anything to the contrary herein, Mortgagor shall pay to Lender, with the principal and interest payments of the Notes, a monthly real estate tax deposit in the amount of Six Hundred Seventy Seven and 82/100 (\$677.82) Dollars. Upon presentment of the tax bills by Mortgagor to Lender together with a direction to pay said tax bills from the escrow, Lender shall to the extent said funds are available in the escrow pay said tax bills. Any deficiency or shortfall in the escrow to pay said tax bills shall be paid to Lender by Mortgagor prior to the Delinquency Date of said tax bills. Any tax proration given to the Mortgagor as credit at time of Closing shall also be placed in said real estate tax escrow.

1.3. [Intentionally Deleted]

1.4. **No Tax Credits.** Mortgagor shall not claim or demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Notes or on any other sums secured hereby, for so much of the taxes, assessments or similar charges assessed against the Mortgaged Property, or any part thereof, as are applicable to the Secured Obligations or to Lender's interest in the Mortgaged Property.

1.5. **Utilities.** Mortgagor shall pay or cause to be paid when due any and all charges for utilities, whether public or private, with respect to the Mortgaged Property or any part thereof, and all license fees, rents or other charges for the use of any appurtenance to the Mortgaged Property.

1.6. **Liens.** The Mortgaged Property shall be kept free and clear of all liens and encumbrances (unless the same are bonded or insured over in a manner satisfactory to Lender) of every nature or description, including, without limitation, liens and encumbrances arising from past due taxes or assessments and from charges for labor, materials, supplies or services, other than liens expressly permitted under the Loan Agreement.

1.7. **Subrogation.** Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of any indebtedness secured hereby.

1.8. Insurance. Mortgagor shall, at its expense, maintain insurance policies in accordance with the terms and conditions, as follows:

1.8.1 [Intentionally Deleted]

1.8.1.1. All Risk. An “All Risk” policy form covering, in each case, insurance risks of all physical loss “Causes of Loss – Special Form”, including theft, fire and casualty damage, not covered by insurance provided by the condo association pursuant to the condo association declaration of Horizontal Regime and the condo by-laws reasonably acceptable to Lender. Such policy shall be in an amount equal to the full replacement cost of the Mortgaged Property and the Lender shall be named as a Loss Payee under said coverage.

1.8.1.2. Public Liability. Commercial general public liability insurance against death, bodily injury, and property damage arising in connection with the Mortgaged Property with limits of not less than One Million (\$1,000,000.00) Dollars per occurrence. Such policy shall be written on an occurrence form and shall list Mortgagor and Lender as named insureds, and shall designate thereon the location of the Mortgaged Properties and shall have such limits as Lender may reasonably require.

1.8.1.3. Policy Requirements. All insurance shall be carried in companies acceptable to Lender. Furthermore, all insurance shall be in form and content reasonably acceptable to Lender, provide thirty (30) days’ advance written notice to Lender before any cancellations, adverse material modification or notice of non-renewal and, to the extent limits are not otherwise specified herein, contain deductibles which are in amounts acceptable to Lender. All physical damage policies and renewals shall contain a standard mortgage clause naming Lender as mortgagee, which clause shall expressly state that any breach of any condition or warranty by Mortgagor shall not prejudice the rights of Lender under such insurance, as well as a loss payable clause in favor of Lender for personal property, contents, inventory and equipment. No additional parties shall appear in the mortgage or loss payable clause with respect to the Mortgaged Property without Lender’s prior written consent. All evidence of insurance shall reference the specific projects being covered by name and address and shall otherwise be in form and substance acceptable to Lender. All deductibles shall be in amounts acceptable to Lender.

1.8.1.4. Notice; Evidence of Renewal. Any notice pertaining to insurance and required pursuant to this Section shall be given in the manner provided in Section 4.3 and at any additional address of which Lender gives Mortgagor prior written notice. Mortgagor shall use its best efforts to deliver to Lender evidence of renewal satisfactory to Lender at least five (5) business days before the expiration of existing policies or any prior renewal thereof. If Lender has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Lender shall have the right, but not the obligation, to purchase such insurance without prior notice to Mortgagor. Any amounts so disbursed by Lender pursuant to this Section shall be a part of the Loan and shall bear interest at the Default Rate provided in the Note. Nothing contained in this Section shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Section.

1.8.1.5. Separate Insurance. Mortgagor shall not carry any separate insurance on the Mortgaged Property concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Lender's prior written consent and, in the event Lender grants its consent, any such policy shall nevertheless have attached thereto a standard non-contributing mortgagee clause, with loss payable to Lender, and shall otherwise meet all other requirements set forth in this Section.

1.9. Casualty. Mortgagor shall give immediate notice to Lender of any damage to or loss of the Mortgaged Property or any portion thereof in excess of Five Thousand Dollars and No/100 (\$5,000.00). In case of such damage or loss in excess of Five Thousand Dollars and No/100 (\$5,000.00) which is covered by any of the insurance policies maintained by Mortgagor, Lender is hereby authorized to adjust, collect and compromise all claims thereunder during the continuance of an Event of Default hereunder; and in such case, Mortgagor shall sign immediately upon demand by Lender, or, in the event Mortgagor fails to do so, Lender may sign or endorse on Mortgagor's behalf, all necessary proofs of loss, receipts, releases and other papers required by the insurance companies to be signed by Mortgagor. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. In all other cases, Mortgagor shall have the right to adjust and compromise such insurance claims and any proceeds shall be payable to Lender and Mortgagor jointly.

1.10. Condemnation. In the event that the Mortgaged Property or any part of it shall be condemned and taken under power of eminent domain, the proceeds of any award of claim for damages shall be assigned by Mortgagor to Lender and shall be paid to Lender. Such amount shall be credited to the sums due upon the Promissory Note or Notes secured by this Mortgage of the specific unit or units condemned, and the balance, if any, shall be paid to Mortgagor.

1.11. Restoration. If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged, Mortgagor shall promptly and with all due diligence restore and repair the Mortgaged Property whether or not the Insurance Proceeds are available or sufficient to pay the cost of such restoration or repair. Lender may require that all plans and specifications for such restoration or repair be submitted to and approved by Lender in writing prior to commencement of the work. Lender may require evidence of the estimated cost of completion of such restoration or repair satisfactory to Lender and, thereafter, such architect's certificates, conditional waivers of lien, contractors' sworn statements, title insurance endorsements, plats of survey and other evidence of cost, payment and performance relating to such restoration or repair work which is satisfactory to Lender.

1.12. [Intentionally Deleted]

1.13. Governmental Authority Payments. Mortgagor agrees with respect to the collateral described in Granting Clauses K and L hereof (the "Governmental Authority Payments") as follows: (i) that Mortgagor shall, at Mortgagor's sole expense, promptly take all actions necessary to obtain all proceeds to which Mortgagor is entitled in connection with the Governmental Authority Payments, including, without limitation, the filing of applications or claims and the prosecution of appeals or litigation, if reasonably necessary and cost effective, (ii)

that, in the event of an Event of Default by Mortgagor under this Mortgage, Mortgagor shall direct the payor with regard to any of the Governmental Authority Payments to remit same directly to Lender when due, (iii) that Mortgagor shall forward promptly to Lender all notices and correspondence relating in any manner to any of the Governmental Authority Payments and any proceeds received by Mortgagor in connection with any of the Governmental Authority Payments, (iv) that, during the continuance of an Event of Default hereunder, the proceeds of any of the Governmental Authority Payments received by Lender shall be applied toward the repayment of the Secured Obligations in a manner determined by Lender in its sole discretion or, at the request of Mortgagor and with the consent of Lender, said proceeds shall be deposited in a secured deposit account maintained with Lender or an Affiliate of Lender, as designated by Lender, and applied from time to time toward the payment of any expenses relating to the Mortgaged Property, in a manner determined by Lender in its sole discretion, and (v) that, in the event of an Event of Default by Mortgagor under this Mortgage, Lender shall be and hereby is appointed as Mortgagor's agent with respect to any of the Governmental Authority Payments and in that capacity Lender shall have the right to take all such actions that Lender deems necessary and expedient in order to obtain all proceeds to which Mortgagor is entitled with respect to any of the Governmental Authority Payments.

1.14. General Care of the Property. Mortgagor shall preserve and maintain or cause to be preserved and maintained the Mortgaged Property in good condition and repair, shall not commit or suffer any waste thereof, and shall keep the same in a clean, orderly and attractive condition. Mortgagor shall not do or suffer to be done anything which will increase the risk of fire or of any other hazard to the Mortgaged Property or any part thereof. No buildings, structures, improvements, fixtures, personal property or other part of the Mortgaged Property shall be removed, added to, demolished or altered structurally to any extent or altered non-structurally in any material respect without the prior written consent of Lender. Mortgagor shall promptly comply, and cause the Mortgaged Property to comply, and shall use commercially reasonable efforts to cause the occupants or users thereof to comply, with all present and future laws, ordinances, orders, rules and regulations and other requirements of any governmental authority affecting the Mortgaged Property or any part thereof or the use or occupancy thereof. Lender and its representatives are hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours during the term of this Mortgage upon reasonable prior written notice to Mortgagor.

1.15. Leases and Other Agreements Affecting the Mortgaged Property. Mortgagor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon Mortgagor or the Mortgaged Property under any lease or any other agreement or instrument of any nature whatsoever which involves or affects the Mortgaged Property or any part thereof and which is binding on Mortgagor. Mortgagor represents and warrants that Mortgagor has heretofore furnished Lender with true and complete copies of all such leases, agreements and instruments existing on the date of this Mortgage. Mortgagor agrees to furnish Lender with executed copies of all leases hereafter entered into with respect to all or any part of the Mortgaged Property. If Lender so requests, Mortgagor shall cause the tenant under each or any of such leases to enter into subordination and attornment agreements with Lender which are satisfactory to Lender. Mortgagor shall not accept payment of advance rents or security deposits equal, in the aggregate, to more than one month's rent without the express written consent of

Lender. In order to further secure payment of the Secured Obligations, Mortgagor hereby assigns, transfers and sets over to Lender all of Mortgagor's right, title and interest in, to and under all of the leases now or hereafter affecting the Mortgaged Property or any part thereof and in and to all of the rents, issues, profits, revenues, awards and other benefits now or hereafter arising from the Mortgaged Property or any part thereof. Unless and until an Event of Default occurs, Mortgagor shall be entitled to collect the rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property (except as otherwise provided in this Mortgage) as and when they become due and payable. Lender shall be liable to account only for rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property actually received by Lender pursuant to any provision of this Mortgage.

1.16. Impairment of Security. Without limitation of any other provision hereof, Mortgagor shall not assign, in whole or in part, the rents, issues, profits, revenues, awards and other benefits from the Mortgaged Property without the prior written consent of Lender; any such assignment made without Lender's prior written consent shall be null and void and of no force and effect and the making thereof shall constitute an Event of Default under this Mortgage. Without limitation of the foregoing, Mortgagor shall not in any other manner impair the security of this Mortgage for the payment of any Secured Obligations.

1.17. Prohibition of Further Encumbrance. Except as expressly permitted in the Loan Agreement, Mortgagor shall not, without the prior written consent of Lender, further mortgage, hypothecate, pledge or otherwise encumber, whether by operation of law or otherwise, any interest in the Mortgaged Property. Any such encumbrance made without Lender's prior written consent shall be null and void and of no force or effect, and any mere attempt to create or cause an encumbrance in default of the terms hereof shall constitute an Event of Default under this Mortgage.

1.18. Prohibition of Transfer. Subject to the terms of the Loan Agreement, Mortgagor shall not, without the prior written consent of Lender, sell, assign or otherwise transfer, whether directly or indirectly, by operation of law or otherwise, all or any portion of any interest in the Mortgaged Property, except replacements of personal property in the ordinary course of business. Any such transfer made without Lender's prior written consent shall be null and void and of no force and effect, and any mere attempt to create or cause a transfer in default of the terms hereof shall constitute an Event of Default under this Mortgage.

1.19. Further Assurances; After Acquired Property. At any time and from time to time, upon request from Lender, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, to cause to be recorded or filed, or both, and from time to time thereafter to be re-recorded or refiled, or both, at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further mortgages, security agreements, financing statements, continuation statements, instruments of further assurances, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (i) the obligations of the Borrower Parties under this Mortgage and the Notes, and (ii) the lien and security interest of this Mortgage as a first and prior lien and security interest upon all of the Mortgaged Property, whether now or hereafter acquired by Mortgagor. Upon any

failure by Mortgagor to so make, execute and deliver each of such documents after written demand, Lender may make, execute, record, file, re-record and refile, as appropriate, any and all such mortgages, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender as its agent and attorney-in-fact in connection therewith. The lien and security interest hereof will automatically attach, without further act, to all after-acquired property owned by Mortgagor attached to or used in connection with the operation of the Mortgaged Property or any part thereof.

2. MORTGAGOR'S DEFAULT.

2.1. Mortgagor's Defaults and Lender's Remedies.

2.1.1. Events of Default. Each of the following shall constitute an "Event of Default" under this Mortgage:

2.1.2. Mortgagor fails to pay, when due, any interest or installment of principal on the Notes; or

2.1.2.1. Mortgagor fails to pay, when due, any amount payable under this Mortgage other than principal or interest, and such failure continues for a period of five (5) Business Days after notice thereof from Lender to Mortgagor; or

2.1.2.2. Mortgagor fails to keep or perform any of the agreements, undertakings, obligations, covenants or conditions under this Mortgage not expressly referred to in another clause of this Section and (A) such failure continues for a period of thirty (30) days after notice thereof from Lender to Mortgagor, or (B) if such failure cannot, because of its nature, be cured within said thirty (30) day period, then, if Mortgagor commences curing such failure within said thirty (30) day period and diligently continues such cure, such failure continues for an additional thirty (30) day period after an additional notice; or

2.1.2.3. Any "Event of Default" occurs, period; or

2.1.2.4. Any representation, warranty or certification made in this Mortgage or any of the Notes by Mortgagor or otherwise made in writing in connection with or as contemplated by this Mortgage or any of the Notes by Mortgagor proves to be false or materially misleading; or

2.1.2.5. The recording of any claim of lien against any portion of the Mortgaged Property and the continuance of such claim of lien for twenty (20) days without discharge, satisfaction or provision for payment being made by Mortgagor in a manner satisfactory to Lender, provided that the foregoing shall not be deemed to be an Event of Default to the extent Mortgagor is diligently contesting any such lien or claim of lien in good faith and Mortgagor has deposited security with Lender which is acceptable to Lender in Lender's sole and absolute discretion; or the sequestration or attachment of, or any levy or execution upon any portion of the Mortgaged Property, which sequestration, attachment, levy or execution is not

released, expunged or dismissed prior to the earlier of thirty (30) days or the sale of the assets affected thereby, provided that the foregoing shall not be deemed to be an Event of Default to the extent Mortgagor is diligently contesting any such sequestration, attachment, levy or execution in good faith and Mortgagor has deposited security with Lender acceptable to Lender in Lender's sole and absolute discretion; or

2.1.2.6. The filing of a petition by Mortgagor for relief under the Bankruptcy Code (as defined in the Loan Agreement), or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; the filing of any pleading or an answer by Mortgagor in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding Mortgagor's insolvency; a general assignment by Mortgagor for the benefit of creditors; or Mortgagor applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Mortgagor or any property of Mortgagor; or

2.1.2.7. The failure of Mortgagor to effect a full dismissal of any involuntary petition under the Bankruptcy Code or any other debtor relief law that is filed against Mortgagor or in any way restrains or limits Mortgagor or Lender regarding the Loan, or all or any portion of the Mortgaged Property, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or thirty (30) days after the date of filing of such involuntary petition; or

2.1.2.8. The failure at any time of the Mortgage to be a valid first lien upon the Mortgaged Property or any portion thereof other than as a result of any release or reconveyance of the Mortgage with respect to all or any portion of the Mortgaged Property pursuant to the terms and conditions of the Loan Agreement; or

2.1.2.9. Other than the replacement of furniture, fixtures or equipment, the Mortgaged Property or any part thereof is sold, conveyed, transferred, assigned, disposed of, or is further encumbered, or an agreement for any of the foregoing is entered into, without the prior written consent of Lender; or

2.1.2.10. Mortgagor enters into any secondary or additional financing agreements or arrangements of any kind whatsoever secured, in whole or in part, by all or any part of or interest in the Mortgaged Property; or

2.1.2.11. Any order or decree is entered by any court of competent jurisdiction directly or indirectly enjoining or prohibiting Lender or Mortgagor from performing any of their obligations under this Mortgage or any of the Notes, and such order or decree is not vacated, and the proceedings out of which such order or decree arose are not dismissed, within thirty (30) days after the granting of such decree or order.

2.1.3. Lender's Remedies. Upon the happening of any Event of Default, Lender shall have the right, if such Event of Default shall then be continuing, in addition to all the remedies conferred upon Lender by law or equity or the terms of the Notes, to do any or all of the following, concurrently or successively, without notice to Mortgagor:

2.1.3.1. Declare any and all amounts due under the Notes to be, and they shall thereupon become, immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding; or

2.1.3.2. [Intentionally Deleted]

2.1.3.3. Enter upon and take possession of the Mortgaged Property and do anything necessary or desirable to fulfill the obligations of Mortgagor under this Mortgage and the Notes and to sell, manage, maintain, repair and protect the Mortgaged Property, and, without restricting the generality of the foregoing and for the purposes aforesaid, Mortgagor hereby authorizes Lender (A) to pay, settle or compromise all existing bills and claims which may be liens or security interests, or to avoid such bills and claims becoming liens or security interests against the Mortgaged Property or as may be necessary or desirable for the clearance of title or otherwise, (B) to use any funds of Mortgagor, including, without limitation, any loan balance which might not have been disbursed and customer deposits, for the purpose of completing said improvements (C) to make such changes to the plans and specifications for said improvements as Lender may deem desirable to complete same, (D) to execute all applications and certifications which may be required to carry out the intent and purposes hereof, (E) to employ such contractors, subcontractors, architects and others as Lender may deem appropriate for the purpose of completing and improvements, (F) to make necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty or other property, (G) insure or keep the Mortgaged Property insured, (H) to manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor to the same extent as Mortgagor could in the name of Mortgagor or otherwise with respect to the same, (I) to do any and every act which Mortgagor might do, including, without limitation, to enter into leases of any portion of the Mortgaged Property and to enter into contracts for the sale of, and to sell and convey title to, the Mortgaged Property or any portion thereof and Mortgagor agrees to execute and deliver such contracts, deeds, leases and other instrument as may be required by Lender or Lender's title company to carry out the intent of this Section, (J) to prosecute or defend any and all actions or proceedings involving the Mortgaged Property or any fixtures, equipment or other installations thereon, and (K) to exclude Mortgagor and the representatives of Mortgagor from the Mortgaged Property or any portion thereof, and Lender shall have joint access with Mortgagor to the books and accounts of Mortgagor; furthermore, in connection with an exercise by Lender of the foregoing remedy:

2.1.3.4. Lender and its representatives shall be entitled to the entry, possession and use contemplated herein upon demand and without the consent of any party and without any legal process or other condition precedent whatsoever; however, if Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring the delivery of immediate possession of all or part of the Mortgaged Property to Lender, and Mortgagor hereby specifically consents to the entry of such judgment or decree;

2.1.3.5. Mortgagor acknowledges that any denial of such entry, possession and use by Lender will cause irreparable injury and damage to Lender and agrees that Lender may forthwith sue for any remedy to enforce the immediate enjoyment of such right, and Mortgagor hereby waives the posting of any bond as a condition for granting such remedy; and

2.1.3.6. Mortgagor shall pay to Lender, upon demand, all expenses (including, without limitation, attorneys' fees and expenses) of obtaining such judgment or decree or of otherwise seeking to enforce its rights under this Mortgage or any of the Notes; and all such expenses shall, until paid, be secured by this Mortgage and shall bear interest at the Default Rate; or

2.1.3.7. Offset and apply any indebtedness now or hereafter owing from Lender to Mortgagor (including, without limitation, any amounts on deposit in any demand, time, savings, passbook, certificate of deposit or like account maintained by Mortgagor with Lender or any affiliate of Lender) against any and all amounts due from Mortgagor to Lender hereunder or under the Notes; or

2.1.3.8. Collect and receive all the rents, issues, profits and revenues of the Mortgaged Property, including those past due as well as those accruing thereafter, after deducting therefrom (A) all expenses of taking, holding, managing and operating the Mortgaged Property (including, without limitation, compensation for the services of all persons employed for such purposes), (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, (C) the cost of such insurance, (D) such taxes, assessments and other similar charges as Lender may determine to pay, (E) other proper charges upon the Mortgaged Property or any part thereof, and (F) Lender's attorneys' fees and expenses.

2.2. Protective Advances. If an Event of Default occurs, Lender may (but shall in no event be required to) cure any such Event of Default and any amounts expended by Lender in so doing shall (i) be deemed advanced by Lender under an obligation to do so regardless of the identity of the person or persons to whom such funds are furnished, (ii) constitute additional advances hereunder, the payment of which is additional indebtedness evidenced by the Notes, and (iii) become due and owing, at Lender's demand, with interest accruing from the date of disbursement thereof until fully paid at the Default Rate.

2.3. Other Remedies. If any Event of Default shall occur and be continuing, Lender may, in addition to any other rights and remedies hereunder, exercise any and all remedies provided in any of the Notes.

2.4. No Lender Liability. To the extent permitted by law, Lender shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission by it, or any of its representatives, which was taken, omitted or made in good faith except losses, damages, injuries, costs or expenses resulting from Lender's gross negligence.

2.5. Attorneys' Fees. In the event either party is required to take action to enforce its rights and remedies under this Mortgage, the prevailing party shall be entitled to

recover from the non-prevailing party, reasonable attorneys' fees and expenses in connection with the enforcement of this Mortgage or any of the notes.

2.6. Receiver. If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the occupancy or value of any security for the Secured Obligations or the insolvency of any party bound for its payment to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits, revenues, awards and other benefits thereof. The receiver shall have all of the rights and powers to the fullest extent permitted by law. Mortgagor shall pay to Lender upon demand all of Lender's costs and expenses, including, without limitation, receiver's fees and expenses and attorneys' fees and expenses, incurred pursuant to this Section plus interest thereon accruing at the Default Rate, and all such amounts shall be additional indebtedness comprising Secured Obligations.

2.7. Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Secured Obligations or the performance of any term, covenant, condition or agreement of this Mortgage or any other right, (ii) to foreclose this Mortgage and to sell the Mortgaged Property as an entirety or otherwise, as Lender may determine, and (iii) to pursue any other remedy available to it, including, without limitation, any remedy available to it under any of the Notes, all as Lender shall deem most effectual for such purposes. Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine. Lender may elect to pursue any one or more or all of the foregoing.

2.8. Purchase by Lender. Upon any foreclosure sale, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of any indebtedness secured hereby as a credit to the purchase price.

2.9. Fees and Expenses; Application of Proceeds of Sale. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness secured hereby (and part of the Secured Obligations) in the decree for sale, to the extent permitted by law, all costs and expenses which may be paid or incurred by or on behalf of Lender or the holder of the Notes for attorneys' fees and expenses, appraiser's fees and expenses, receiver's fees and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication cost and costs of procuring all abstracts of title, title searches and examinations, and similar data and assurances with respect to title as Lender or the holder of the Notes may deem to be 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 value of the Mortgaged Property, or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the decree for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby (and part of the Secured Obligations) in the decree for sale. In the event of a foreclosure sale of the Mortgaged Property, the proceeds of said sale shall

be applied first to the expenses of such sale and of all proceedings in connection therewith, including, without limitation, attorneys' fees and expenses, then to insurance premiums, liens, assessments, taxes and charges, including, without limitation, utility charges, then to payment of the outstanding principal balance of any indebtedness secured hereby, then to the accrued interest on all of the foregoing, and, finally, the remainder, if any, shall be paid to Mortgagor.

2.10. Waiver of Appraisement, Valuation, Stay, Extension and Redemption

Laws. Mortgagor agrees, to the fullest extent permitted by law, that if an Event of Default occurs hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim by, through or under it, hereby waives and releases, to the fullest extent permitted by law, the benefit of all such laws and any and all rights to have the assets comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof.

2.11. Leases. Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by Lender to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.12. Discontinuance of Proceedings and Restoration of the Parties. In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case, Mortgagor and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken. The prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and expenses incurred with regard to the aforementioned proceedings.

2.13. Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.14. Suits to Protect the Mortgaged Property. Upon the occurrence of an Event of Default hereunder, Lender shall have the power (i) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (ii) to preserve or protect its interest in the Mortgage Property and in the rents, issues, profits, revenues, awards and other benefits arising therefrom; and (iii) to restrain the enforcement of or compliance with any

legislation or other governmental enactment, regulation, rule, order or other requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, regulation, rule, order or other requirement would impair the security hereunder or be prejudicial to the interest of Lender, and all costs and expenses incurred by Lender in connection therewith (including, without limitation, attorneys' fees and expenses) shall be paid by Mortgagor to Lender on demand with interest at the Default Rate, and all such amounts shall be additional indebtedness secured hereby (and part of the Secured Obligations).

2.15. Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

3. ASSIGNMENT OF LEASES AND RENTS.

3.1. Assignment. For Ten Dollars and No/100 (\$10.00) and other good and valuable consideration, including the indebtedness evidenced by the Notes, the receipt and sufficiency of which are hereby acknowledged, Mortgagor has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey absolutely unto Lender the Leases and the Rents, subject only to the hereinafter referenced License, to have and to hold the Leases and the Rents unto Lender, forever, and Mortgagor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Leases and the Rents unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof by or through Mortgagor; provided, however, if Mortgagor shall pay or cause to be paid and shall perform and discharge or cause to be performed and discharged, the Secured Obligations on or before the date same is to be paid, performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles and interests conveyed pursuant to this assignment shall become revested in Mortgagor without the necessity of any further act or requirement by Mortgagor or Lender.

3.2. Limited License. Lender hereby grants to Mortgagor a limited license (the "License"), nonexclusive with the rights of Lender reserved in this Mortgage, to exercise and enjoy all incidences of ownership of the Leases and the Rents, including specifically but without limitation the right to collect, demand, sue for, attach, levy, recover and receive the Rents, and to give proper receipts, releases and acquittances therefor. Mortgagor hereby agrees to receive all Rents and hold the same as a trust fund to be applied, and to apply the Rent so collected, to the payment, satisfaction and discharge of the indebtedness described in the Notes as and when the same shall become due and payable. Thereafter, Mortgagor may use the balance of the Rents collected in any manner not inconsistent with this Mortgage.

3.3. Enforcement of Leases. Subject to and in accordance with the terms and conditions of **Section 1.15** of this Mortgage, Mortgagor shall (a) duly and punctually perform

and comply with any and all representations, warranties, covenants and agreements expressed as binding upon the landlord under any Lease, (b) maintain each of the Leases in full force and effect during the term thereof, (c) to the extent commercially reasonable, appear in and defend any action or proceeding in any manner connected with any of the Leases, (d) deliver to Lender copies of executed counterparts of all Leases and (e) deliver to Lender such further information, and execute and deliver to Lender such further assurances and assignments, with respect to the Leases as Lender may from time to time reasonably request. Without Lender's prior written consent, Mortgagor shall not materially discount any future accruing Rent, or assign or grant a security interest in or to the License or any of the Leases.

3.4. Suits; Attornment. Subject to the License and the provisions of Section 2.1.3 of this Mortgage, Lender hereby reserves and may exercise the right and Mortgagor hereby acknowledges that Lender has the right (but not the obligation), upon the occurrence and during the continuance of an Event of Default, to collect, demand, sue for, attach, levy, recover and receive any Rent, to give proper receipts, releases and acquittances therefor and, after deducting the expenses of collection, to apply the net proceeds thereof as a credit upon any portion of any indebtedness secured hereby selected by Lender, notwithstanding that such portion selected may not then be due and payable or that such portion is otherwise adequately secured. Mortgagor hereby authorizes and directs any lessee of the Mortgaged Property to deliver any such payment to, and otherwise to attorn all other obligations under the Leases direct to, Lender. Mortgagor hereby ratifies and confirms all that Lender shall do or cause to be done by virtue and in compliance with the terms of this assignment. No lessee shall be required to inquire into the authority of Lender to collect any Rent, and any lessee's obligation to Mortgagor shall be absolutely discharged to the extent of its payment to Lender.

Notwithstanding any other provision of this Mortgage and/or the promissory notes it secures, all rents so collected by Lender shall be applied to cure any default in the payment of principle, interest, real estate taxes, and other monetary obligations of Mortgagor arising pursuant to this Mortgage and promissory notes, and if said rents so collected are sufficient to cover said obligations in full, the said default shall be deemed satisfied, cured, and remedied. Lender shall so collect and apply said rents to the Mortgage and promissory notes obligations for up to three (3) months prior to exercising any other remedy granted to it under this Mortgage or the promissory notes it secures.

3.5. Remedies. Upon or at any time after the occurrence of any Event of Default, Lender, at its option and in addition to the remedies provided in this Mortgage, shall have the complete, continuing and absolute right, power and authority to terminate the License solely by the giving of written notice of termination to Mortgagor. Upon Lender's giving of such notice, the License shall immediately terminate without any further action being required of Lender. Thereafter, as long as any Event of Default shall exist, Lender shall have the exclusive right, power and authority to take any and all action as described above, regardless of whether a foreclosure sale of the remainder of the Mortgaged Property has occurred under this Mortgage, or whether Lender has taken possession of the remainder of the Mortgaged Property or attempted to do any of the same. No action referred to above or in this Section taken by Lender shall constitute an election of remedy. Notwithstanding any term to the contrary herein, in the event of

such a termination of Mortgagor's License, such License shall be reinstated when and if the applicable Event of Default shall have been cured or waived.

3.6. No Obligation of Lender. Neither the acceptance by Lender of the assignment granted in this Mortgage, nor the granting of any other right, power, privilege or authority in this Mortgage, nor the exercise of any of the aforesaid, shall (a) prior to the actual taking of physical possession and operational control of the Mortgaged Property by Lender, be deemed to constitute Lender as a "mortgagee in possession" or (b) at any time thereafter, obligate Lender (i) to appear in or defend any action or proceeding relating to the Leases, the Rents or the remainder of the Mortgaged Property, (ii) to take any action hereunder, (iii) to expend any money or incur any expenses or perform or discharge any obligation, duty or liability with respect to any Lease, (iv) to assume any obligation or responsibility for any deposits which are not physically delivered to Lender or (v) for any injury or damage to person or property sustained in or about the Mortgaged Property, provided that nothing herein shall relieve Lender of liability for the willful misconduct or gross negligence or omissions of Lender.

3.7. Mortgagor's Indemnities. So long as the License is in effect, Mortgagor shall indemnify and hold Lender harmless from and against any and all liability, loss, cost, damage or expense which Lender incurs under or by reason of this assignment, or for any action taken by Lender hereunder in accordance with the terms hereof, or by reason of or in defense of any and all claims and demands whatsoever which are asserted against Lender arising out of the Leases. In the event Lender incurs any such liability, loss, cost, damage or expense, the amount thereof together with all reasonable attorneys' fees and interest thereon at the Default Rate specified in the Notes shall be payable by Mortgagor to Lender, within ten (10) days after demand by Lender, and shall be secured by this Mortgage, provided that Mortgagor shall have no duty or liability hereunder to indemnify and hold Lender harmless from matters resulting from the willful misconduct or gross negligence of Lender.

4. MISCELLANEOUS.

4.1. Time of the Essence. Time is of the essence of this Mortgage.

4.2. Severability. Any provision of this Mortgage which is unenforceable or invalid or contrary to law, or the inclusion of which would adversely affect the validity, legality or enforcement of this Mortgage, shall be of no effect and, in such case, all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage the same as though any such invalid portion had never been included herein. Notwithstanding any of the foregoing to the contrary, if any provisions of this Mortgage or the application thereof are held invalid or unenforceable only as to particular persons or situations, the remainder of this Mortgage, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law.

4.3. Notices. Any notice which either party hereto may be required or may desire to give hereunder shall be deemed to have been given if in writing and if delivered

personally, or if mailed, postage prepaid, by United States registered or certified mail, return receipt requested, or if delivered by a responsible overnight courier, addressed:

if to Mortgagor: Eugin O. Kim

with a copy to: Gary Matthews
Enslin, Enslin & Matthews
142 Rimbach
Hammond, Indiana 46320

in the case of Lender to: George Novogroder
875 North Michigan Avenue
Chicago, Illinois 60611

with a copy to: Peter G. Koransky
Koransky & Bouwer, P.C.
425 Joliet Street, Suite 425
Dyer, Indiana 46311

or to such other address or addresses as the party to be given notice may have furnished in writing to the party seeking or desiring to give notice, as a place for the giving of notice, provided that no change in address shall be effective until seven (7) days after being given to the other party in the manner provided for above. Any notice given in accordance with the foregoing shall be deemed given when delivered personally or, if mailed, three (3) business days after it shall have been deposited in the United States mails as aforesaid or, if sent by overnight courier, the business day following the date of delivery to such courier.

4.4. Documentation. All documents and other matters required by any of the provisions of this Mortgage to be submitted or furnished to Lender shall be in form and substance satisfactory to Lender.

4.5. Additional Assurances. Mortgagor agrees that, at any time or from time to time, upon the written request of Lender, Mortgagor will execute all such further documents and do all such other acts and things as Lender may request to effectuate the transaction herein contemplated.

4.6. Choice of Law. This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Indiana. Nothing herein shall be deemed to limit any rights, powers or privileges which Lender may have pursuant to any law of the United States of America or any rule, regulation or order of any department or agency thereof and nothing herein shall be deemed to make unlawful any transaction or conduct by Lender which is lawful pursuant to, or which is permitted by, any of the foregoing.

4.7. No Third Party Beneficiary. This Mortgage is made for the sole benefit of Mortgagor, Borrower and Lender, and no other person shall be deemed to have any privity of contract hereunder nor any right to rely hereon to any extent or for any purpose whatsoever, nor shall any other person have any right of action of any kind hereon or be deemed to be a third party beneficiary hereunder.

4.8. Interpretation. All references herein to a party's best knowledge shall be deemed to mean the best knowledge of such party based on all appropriate and thorough inquiry. Unless specified to the contrary herein, all references herein to an exercise of discretion or judgment by Lender, to the making of a determination or designation by Lender, to the application of Lender's discretion or opinion, to the granting or withholding of Lender's consent or approval, to the consideration of whether a matter or thing is satisfactory or acceptable to Lender, or otherwise involving the decision making of Lender, shall be deemed to mean that Lender shall decide unilaterally using its sole and absolute discretion or judgment.

4.9. No Waiver.

4.9.1. General Waiver Provisions. No waiver of any term, provision, condition, covenant or agreement herein contained shall be effective unless set forth in a writing signed by Lender, and any such waiver shall be effective only to the extent set forth in such writing. No failure by Lender to exercise or delay by Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right or remedy provided by law. The rights and remedies provided in this Mortgage are cumulative and not exclusive of any right or remedy provided by law or equity. No notice or demand on Mortgagor in any case shall, in itself, entitle Mortgagor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lender to any other or further action in any circumstances without notice or demand.

4.9.2. Specific Waiver Provisions. If Lender (i) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (ii) takes other or additional security for the payment of any indebtedness secured hereby; (iii) waives or does not exercise any right granted herein or in the Notes or in any other document or instrument securing the Secured Obligations; (iv) releases with or without consideration any of the Mortgaged Property from the lien of this Mortgage or any other security for the payment of the indebtedness secured hereby; (v) changes any of the terms, covenants, conditions or agreements of the Notes or this Mortgage or in any other document or instrument securing the Notes; (vi) consents to the filing of any map, plat or replat or condominium declaration affecting the Mortgaged Property; (vii) consents to the granting of any easement or other right affecting the Mortgaged Property; or (viii) makes or consents to any agreement subordinating the lien hereof; any such act or omission shall not release, discharge, modify, change or affect (except to the extent of the changes referred to in clause (v) above) the original liability under the Notes, this Mortgage or any other obligation of Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted upon the occurrence of an Event of Default then made or of any subsequent Event of

Default, except to the extent expressly agreed to in writing by Lender, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage or the priority thereof be altered thereby, whether or not there are junior lienors and whether or not they consent to any of the foregoing.

4.9.3. Sale or Transfer. In the event of the sale, assignment or other transfer, by operation of law or otherwise, of all or any part of the Mortgaged Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Secured Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings. The foregoing shall not limit the prohibition against transfer set forth in **Section 1.18** hereof.

4.9.4. Partial Releases. Upon full payment of Note 1 in the amount of \$51,525.00, Unit A22 shall be released from the terms and purview of this Mortgage. Upon full payment of Note 2 in the amount of \$51,525.00, Unit C70 shall be released from the terms and purview of this Mortgage. Upon full payment of Note 3 in the amount of \$51,525.00, Unit D94 shall be released from the terms and purview of this Mortgage. Upon full payment of Note 4 in the amount of \$51,525.00, Unit E99 shall be released from the terms and purview of this Mortgage. Upon full payment of Note 5 in the amount of \$51,525.00, Unit G147 shall be released from the terms and purview of this Mortgage. Upon full payment of Note 6 in the amount of \$51,525.00, Unit G158 shall be released from the terms and purview of this Mortgage. Upon full and complete payment of all six (6) Notes, parcel 13 set forth in Exhibit A attached hereto shall be released from the terms and purview of this Mortgage.

Without limitation of the foregoing, Lender hereby reserves the right to make partial release or releases of the Mortgaged Property, or of any other security held by Lender with respect to all or any part of the Secured Obligations, without notice to, or the consent, approval or agreements of, other parties in interest, including junior lienors, which partial release or releases shall not impair in any manner the validity or priority of this Mortgage on the portion of said property not so released.

4.10. Security Agreement. This Mortgage shall be construed as a "Security Agreement" within the meaning of and shall create a security interest under the UCC, with respect to any part of the Mortgaged Property which constitutes fixtures or personal property. Lender shall have the rights with respect to such fixtures and personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Lender by this Mortgage.

4.11. Fixture Filing. As to all of the Mortgaged Property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under Sections 9-313 and 9-402(6) of the UCC.

4.12. No Merger. It being the desire and the intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is

hereunder understood and agreed that, should Lender acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by Lender as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, such that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

4.13. Delivery of Summons, Etc. If any action or proceeding shall be instituted which (i) is intended to evict Mortgagor or recover possession of the Mortgaged Property or any part thereof, or (ii) could result in a money judgment in excess of Fifty Thousand Dollars and No/100 (\$50,000) for failure to pay any obligation relating to the Mortgaged Property or this Mortgage (which judgment would not be covered and fully paid by applicable insurance), Mortgagor shall immediately, upon service thereof on or by Mortgagor, deliver to Lender a true copy of each petition, summons, complaint, notice of motion, order to show cause and all other process, pleadings and papers, however designated, served in any such action or proceeding.

4.14. Successors and Assigns. This Mortgage shall be binding upon the Mortgagor and its legal representatives, successors and assigns.

4.15. Legal Tender of United States. All payments hereunder shall be made in coin or currency which at the time of payment is legal tender in the United States of America for public and private debts.


4.16. Compliance with Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the statutes or common law of the State governing the foreclosure of this Mortgage (collectively, the "Foreclosure Laws"), the provisions of the Foreclosure Laws shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Laws.

4.17. Definitions; Captions. With respect to any reference in this Mortgage to any defined term, (i) if such defined term refers to a person, or a trust, corporation, partnership or other entity, then it shall also mean all heirs, personal representatives, successors and assigns of such person or entity, and (ii) if such defined term refers to a document, instrument or agreement, then it shall also include any replacement, extension or other modification thereof. Captions contained in this Mortgage in no way define, limit or extend the scope or intent of their respective provisions.

4.18. WAIVER OF RIGHT TO JURY TRIAL. MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT MORTGAGOR MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, ANY OF THE NOTES OR ANY OTHER STATEMENTS OR ACTIONS OF LENDER. MORTGAGOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THE NOTES AND EACH OF THE OTHER LOAN DOCUMENTS IT EXECUTES, AND THAT THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF THE OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by its duly authorized representatives as of the date first above written.

MORTGAGOR:


EUGIN O. KIM

STATE OF INDIANA)
) ss
COUNTY OF LAKE)

This instrument was acknowledged before me, a notary public on the 2nd day of ~~October~~ ~~September~~, 2003 by **Eugin O. Kim** who is personally known to me [or] produced a drivers license as identification, and acknowledged the execution of the foregoing document as her free and voluntary act.



NOTARY PUBLIC

Document is NOT OFFICIAL! Paula Barrick

This Document is the property of the Lake County Recorder! Notary Public – Printed Name

My County of Residence Lake
My Commission Expires: 10/02/09

(SEAL)

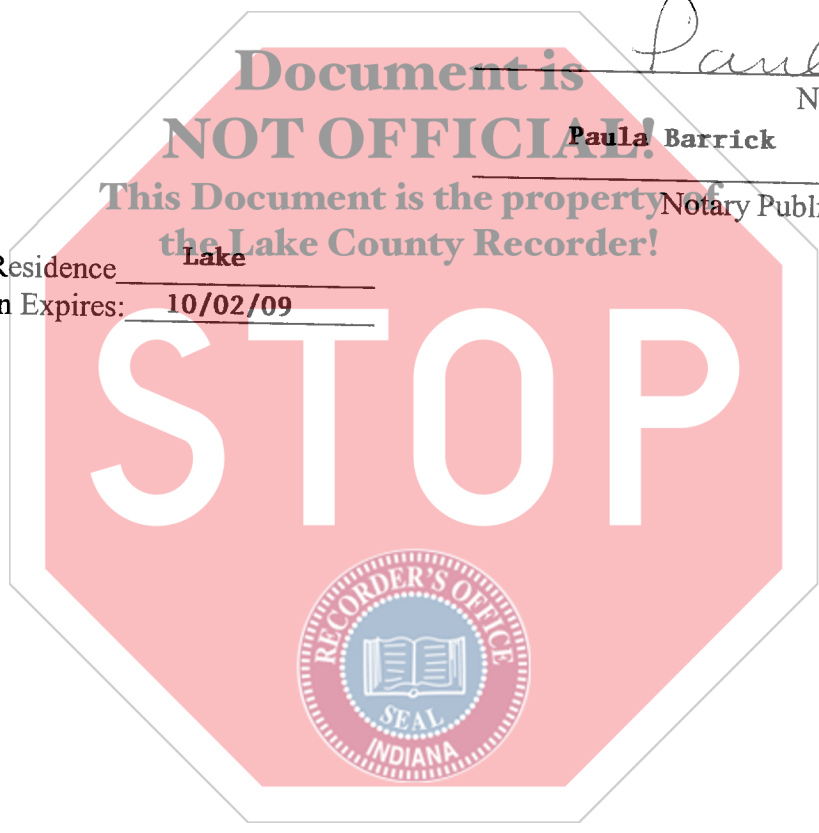


EXHIBIT A
Legal Descriptions of the Mortgaged Properties

Parcel 1:

Unit 7 in Building A in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 2:

Unit 83 in Building D in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 3:

Unit 89 in Building D in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 4:

Unit 104 in Building E in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 5:

Unit 109 in Building E in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 6:

Unit 110 in Building E in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 7:

Unit 113 in Building E in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 8:

Unit 117 in Building E in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 9:

Unit 133 in Building F in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 10:

Unit 137 in Building F in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 11:

Unit 152 in Building G in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 12:

Unit 161 in Building G in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 13:

Lot 14, Cline Meadows, Unit No. 1, in the Town of Schererville, as shown in Plat Book 44, page 55, in Lake County, Indiana

Parcel 14:

Unit 14 in Building A in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

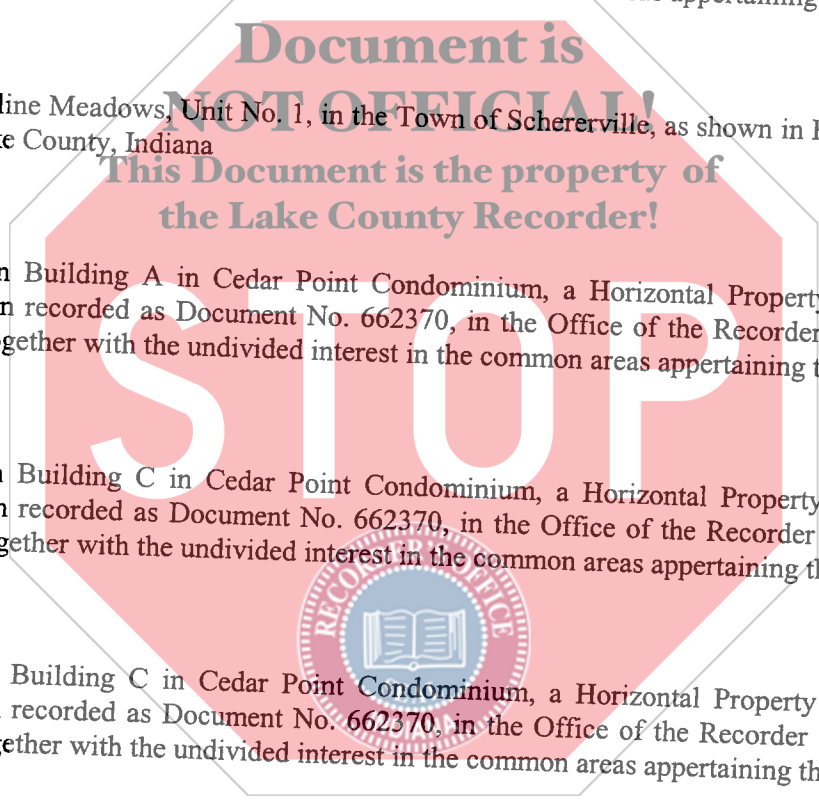
Parcel 15:

Unit 59 in Building C in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 16:

Unit 62 in Building C in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 17:



Unit 79 in Building D in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 18:

Unit 86 in Building D in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 19:

Unit 90 in Building D in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 20:

Unit 22 in Building A in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 21:

Unit 70 in Building C in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 22:

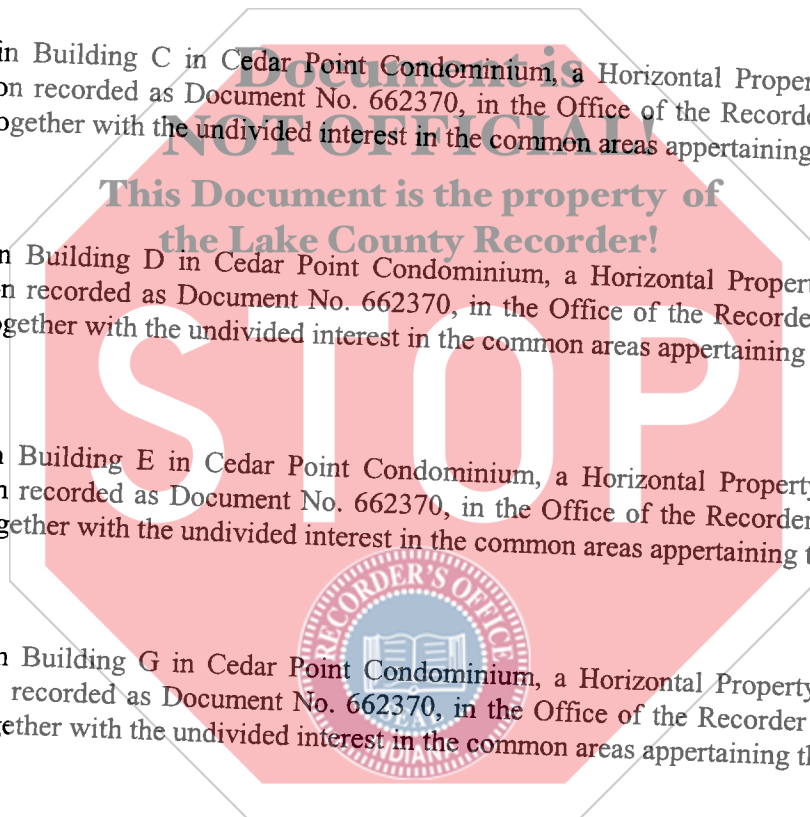
Unit 94 in Building D in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 23:

Unit 99 in Building E in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

Parcel 24:

Unit 147 in Building G in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.



Parcel 25:

Unit 158 in Building G in Cedar Point Condominium, a Horizontal Property Regime, as per Declaration recorded as Document No. 662370, in the Office of the Recorder of Lake County, Indiana, together with the undivided interest in the common areas appertaining thereto.

