

86

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2009 057444

2009 AUG 20 AM 9: 27

MICHAEL A. BROWN

REAL ESTATE MORTGAGE RECORDER

This Real Estate Mortgage ("Mortgage") is given on the 1st day of August, 2009, by Skozen Properties, LLC ("Borrower"), whose address is 2834 - 45th Street, Suite B, Highland, IN 46322, to The Joseph L. Skozen Family Trust ("Lender"), whose address is The Joseph L. Skozen Family Trust, c/o Wells Fargo Advisors, 30 South Wacker Street, Suite 4000, Chicago, IL 60606-3401, Borrower owes Lender the principal sum of Two Hundred Thousand and No/100s Dollars (\$200,000.00) together with simple interest on the principal amount outstanding at the rate of four and three-quarters percent (4.75%) per annum until this Note is paid in full. This debt is evidenced by Borrower's note or other indebtedness dated the 1st day of August, 2009 ("Note"), which provides for payment in full on or before the 15th day of August, 2016. This Mortgage secures to Lender: (a) the repayment of the Note, with interest, and all renewals, extensions, and modifications of the Note; and (b) the performance of Borrower's covenants and agreements under this Mortgage and the Note. For these purposes, Borrower mortgages and warrants to Lender, and to Lender's successors and assigns, the following described real estate ("Real Estate") located in Highland, Lake County, Indiana:

Unit 5B in Building 5 commonly described as 2834B-45th Street, Highland, Indiana, in Gordon Square Condominium, a Horizontal Property Regime created by a Declaration of Condominium recorded March 5, 1992 as Document No. 92013589, and amended by instrument recorded March 20, 1992 as Document No. 92016682 and further amended by instrument recorded June 22, 1992 as Document No. 92038181 and further amended by instrument recorded October 21, 1992 as Document No. 92066670 and further amended by instrument recorded April 7, 1993 as Document No. 93022015 and further amended by instrument recorded May 23, 2002 as Document No. 2002 048135 and re-recorded June 3, 2002 as Document No. 2002 050810, and further amended by instrument recorded June 24, 2004 as Document No. 2004 053615, in the Office of the Recorder of Lake County, Indiana. Together with n undivided 11.87 percent interest in the common areas and facilities pertaining thereto.

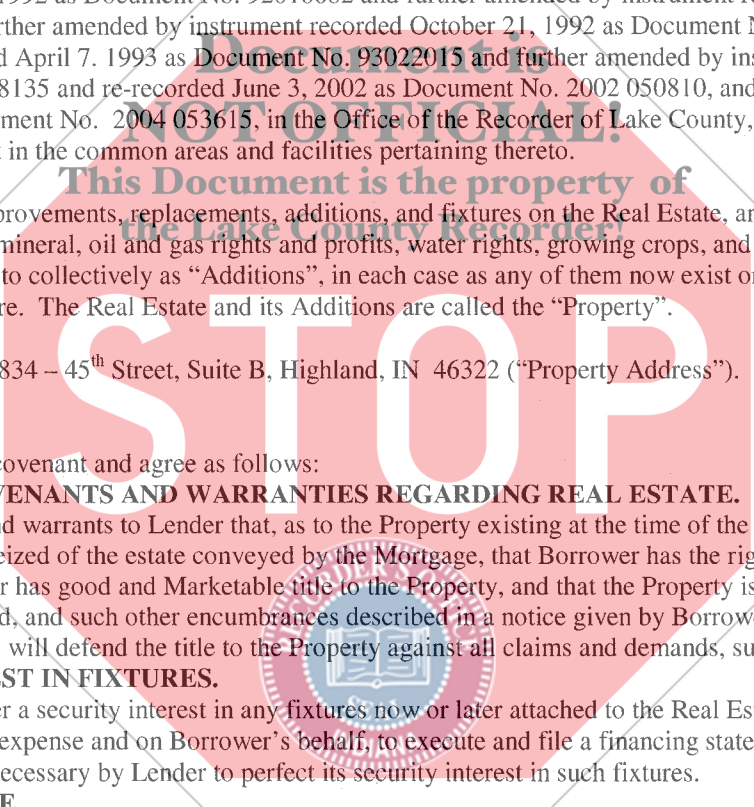
TOGETHER WITH (a) all improvements, replacements, additions, and fixtures on the Real Estate, and (b) all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights, growing crops, and timber relating to the Real Estate, all of which are referred to collectively as "Additions", in each case as any of them now exist or may be made, erected, attached, or acquired in the future. The Real Estate and its Additions are called the "Property".

The address of the Property is 2834 - 45th Street, Suite B, Highland, IN 46322 ("Property Address").

COVENANTS OF PARTIES.

Borrower and Lender covenant and agree as follows:

1. **BORROWER'S COVENANTS AND WARRANTIES REGARDING REAL ESTATE.**
Borrower covenants and warrants to Lender that, as to the Property existing at the time of the execution of this Mortgage, Borrower is lawfully seized of the estate conveyed by the Mortgage, that Borrower has the right to mortgage and grant the Property, that Borrower has good and Marketable title to the Property, and that the Property is unencumbered, except for encumbrances of record, and such other encumbrances described in a notice given by Borrower to Lender ("Encumbrances"). Borrower warrants and will defend the title to the Property against all claims and demands, subject to the Encumbrances.
2. **SECURITY INTEREST IN FIXTURES.**
Borrower grants Lender a security interest in any fixtures now or later attached to the Real Estate. borrower authorizes Lender, at Borrower's expense and on Borrower's behalf, to execute and file a financing statement or statements in each public office deemed necessary by Lender to perfect its security interest in such fixtures.
3. **PAYMENT OF NOTE.**



2400
5040

RW

Borrower shall pay, when due, all sums payable under the Note, including (but not being limited to) principal, interest, late charges, and prepayment penalty or premium.

4. **PAYMENT OF TAXES, ASSESSMENTS, AND INSURANCE.**

The Borrower shall begin, and then continue, to make payments for real estate taxes, assessments, and insurance for the subject property.

5. **APPLICATION OF SUMS.**

Unless applicable law or other provisions of this Mortgage or the Note provide otherwise, all payments received by Lender shall be applied in the following order: first, to costs incurred by Lender as a result of Borrower's default under this Mortgage or the Note; second, to late charges; third, to prepayment premium or charge; fourth, to payments for escrow items pursuant to section 4; fifth, to interest; and last, to principal; in each case, when due.

6. **PAYMENT OF PRIOR LIENS.**

6.1 Taxes, assessments, liens (and any obligations secured by them), and other charges, however called, that pertain to the Property and that may attain priority over, or otherwise adversely affect, this Mortgage or its lien are included within the term "Prior Lien". Borrower shall pay and perform all obligations related to each Prior Lien (except a Prior Lien for which Borrower makes payments for escrow items pursuant to section 4) on time and directly to the person owed payment. If requested by Lender, Borrower shall promptly give Lender receipts or other evidence of Borrower's payment. Borrower shall promptly give Lender all notices as to each Prior Lien Borrower receives.

6.2 Borrower need not pay any Prior Lien (or make payments pursuant to section 4 for any Prior Lien) IF, and only IF:

6.2.1 Borrower, in good faith, contests the Prior Lien, or defends against enforcement of it, in legal or equitable proceedings that in Lender's opinion operate to prevent enforcement of the Prior Lien or any taking of all or part of the Property to the detriment of this Mortgage or its lien;

6.2.2 Borrower obtains from the holder of a Prior Lien a subordination of the Prior Lien to this Mortgage or its lien, all in form and manner satisfactory to Lender; or

6.2.3 Borrower makes other arrangement(s) to the satisfaction of Lender.

6.3 If Lender determines that the Property (or any part of it) is subject to a Prior Lien, Lender may give Borrower written notice of the Prior Lien, with sufficient detail to enable Borrower to identify it. Within ten days after the giving of notice, Borrower will either pay the Prior Lien or take other action in the manner specified in sections 6.2.1, 6.2.2, or 6.2.3.

7. **HAZARD INSURANCE.**

7.1 Buyer shall keep the Property insured against loss by fire, by hazards included within the term "extended coverage" of policies, and by any other hazards for which Lender reasonably requires insurance. The policy or policies providing insurance shall be in amounts and for period that Lender reasonably requires, shall include a standard mortgage clause, and shall be issued by insurance carrier(s) chosen by Borrower, but approved by Lender, who shall not unreasonably withhold approval. When Lender requests in writing, Borrower shall give Lender (as Lender may choose) either a certificate of insurance (from the carrier), or the policy itself (or a true copy of it).

7.2 When the Property suffers an insured loss, Borrower shall promptly notify Lender and timely file proof of loss with the carrier. Lender also may file proof of loss.

7.3 Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property, if restoration or repair is economically feasible, and if Lender's security is not lessened. If restoration or repair is not economically feasible, or if Lender's security would be lessened, insurance proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower.

- 7.4 If Borrower abandons the Property, or if within 30 days after Lender gives Borrower written notice (mailed to the Property Address) as to the willingness of the insurance carrier to pay or settle a claim, Borrower does not contact Lender about such claim, Lender may collect insurance proceeds payable upon such claim. Lender then may either use such proceeds to restore or repair the Property, or to apply them to the sums secured by this Mortgage, whether or not then due. Lender shall pay Borrower any excess, by check mailed to the Property Address.
- 7.5 Unless Lender and Borrower otherwise agree in writing, application of proceeds to principal shall not extend or postpone the due date of monthly or periodic payments required by this Mortgage or the Note, or change the amount(s) of such payments.
- 7.6 If Lender acquires the Property by foreclosure, Lender also shall acquire Borrower's right to insurance policies and their proceeds, but only to the extent of unpaid sums secured by this Mortgage.

8. **PRESERVATION AND MAINTENANCE OF PROPERTY.**

- 8.1 Borrower shall:
- 8.1.1 Not commit waste or permit impairment or deterioration of the Property;
 - 8.1.2 Not abandon the Property;
 - 8.1.3 Restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury, or loss to the Property, whether or not insurance proceeds are available to cover the whole or any part of the costs of such restoration or repair;
 - 8.1.4 Keep the Property, including equipment, machinery, and appliances on it, in good repair; and shall replace them when necessary to keep them in good repair; and
 - 8.1.5 Comply with all laws, ordinances, regulations, and requirements of any governmental body applicable to the Property.
- 8.2 Neither Borrower nor any other person shall remove, demolish, or alter any improvements now existing or subsequently erected on the Real Estate, or any fixture, equipment, machinery, or appliance in or on the Real Estate except when incident to the replacement of fixtures, equipment, machinery, and appliances with items of like kind.

9. **PROTECTION OF LENDER'S RIGHTS IN PROPERTY.**

- 9.1 If Borrower fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation, or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property, including paying items which are Borrower's obligations under this Mortgage or the Note. Lender's actions may include paying any sums secured by a Prior Lien, appearing in court, paying reasonable attorneys' fees, paying hazard insurance premiums, and entering on the Property to make repairs or replacements. Although Lender may take action under this section 9, Lender is not required to do so.
- 9.2 Any amounts paid or disbursed by Lender under this section 9 shall become additional debt of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate, and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

10. **INSPECTION.**

Lender or its agent shall have the right to inspect the Property at all reasonable times. Lender shall give Borrower notice at the time of, or prior to, an inspection specifying reasonable cause for the inspection.

11. **CONDEMNATION.**

In the event that the Property or any part of it shall be condemned and taken under power of eminent domain, the proceeds of any award or claim for damages shall be assigned by Borrower to Lender, and shall be paid to Lender. Such amount shall be credited on the sums then secured by this Mortgage, and the balance, if any, shall be paid to Borrower.

12. **SUCCESSORS AND ASSIGNS BOUND.**

All terms of this Mortgage and the Note shall be jointly and severally binding upon Borrower and upon each and all of Borrower's successors in ownership of the Property, as well as upon all heirs and legal representative of Borrower.

13. **ENVIRONMENTAL REPRESENTATIONS, WARRANTIES, AND COVENANTS OF BORROWER.**

Borrower makes the following representations, warranties, and covenants to Lender:

13.1 To the best knowledge of Borrower, Borrower and Borrower's predecessors in title have complied at all times with all applicable federal, state, and local environmental laws and regulations including, without limitation, the Indiana Responsible Property Transfer Law (IC 13-7-22.5), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601, *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §1101, *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901, *et seq.*), the Toxic Substance Control Act of 1976 (15 U.S.C. §2601, *et seq.*) and all regulations under them, and any other federal statute, any state statute, and any municipal ordinance creating liability for treatment, storage, disposal, arranging, or existence on the Property of any hazardous or toxic substance, including their constituents ("Environmental Laws").

13.2 To the best knowledge of Borrower, there do not currently exist, and Borrower warrants there will not exist during the term of this Mortgage, (a) any actual or potential contamination of the soil, subsoil, groundwater, or any other portion of the Property by any hazardous or toxic substance or their constituents, or (b) any underground tanks on the Real Estate (other than for the use of motor fuel or heating oil for use and consumption of Borrower on the Real Estate), as such words and phrases are defined under applicable Environmental Laws.

13.3 Borrower covenants to comply at all times during the term of this Mortgage with all Environmental Laws.

13.4 To the best knowledge of Borrower, no environmental filings have been made concerning the Property with any governmental agency.

13.5 Borrower indemnifies Lender against, and holds Lender harmless from, any claim, action, loss, damage, liability, cost, or expense (including all reasonable attorneys' fees and environmental testing expenses) Lender incurs as a result of Borrower's breach of any representation, warranty, or covenant made in this section 13.

14. **NOTICES.**

14.1 Any notice, designation, consent, approval, offer, acceptance, statement, request, or other communication required or allowed under this Mortgage ("Notice") shall be in writing, and shall be given to a party at the address stated in this Mortgage, or at such other address as a party may designate in a Notice to the other party.

14.2 Notice shall be deemed given when:

14.2.1 Personal service of the Notice is made on the party to be notified (but the party need not be at the address designated under section 14.1);

14.2.2 The Notice is mailed to the party to be notified by means of first class U.S. mail, postage prepaid; or

14.2.3 The Notice is sent to the party to be notified by express courier such as "Federal Express", "UPS", or such other similar carrier guaranteeing next day delivery.

14.3 Refusal by a party to accept a Notice shall not affect the giving of the Notice.

15. **SEVERABILITY.**

A conflict of any provision in this Mortgage or in the Note with applicable law shall not affect other provisions which can be given effect without the conflicting provision. To this end, the provisions of this Mortgage and the Note are declared to be severable.

16. **TRANSFER OF THE PROPERTY.**

If all or any part of the Property or any interest in it is sold or transferred without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage.

17. **EVENT OF DEFAULT; ACCELERATION; REMEDIES; REINSTATEMENT RIGHTS.**

17.1 **Event of Default.** For the purposes of this Mortgage, the term "Event of Default" shall mean any of the following:

- 17.1.1 The making by Borrower of any false or inaccurate representations in this Mortgage, the Note, or any document related to them;
- 17.1.2 Borrower's breach of any warranty made in this Mortgage; or
- 17.1.3 Borrower's failure to observe or comply with any provision or covenant in this Mortgage, the Note, or any document related to them.

17.2 **Notice of Default.** Lender shall give Notice to Borrower prior to acceleration following an Event of Default (but not prior to acceleration under section 16 unless applicable law provides otherwise). The Notice shall specify:

- 17.2.1 The Event of Default;
- 17.2.2 The action required to cure the Event of Default;
- 17.2.3 A date, not less than 15 days from the date the Notice is given to Borrower, by which the Event of Default must be cured; and
- 17.2.4 That failure to cure the Event of Default on or before the date specified in the Notice may result in acceleration of the sums secured by this Mortgage and foreclosure of this Mortgage by judicial proceedings.

17.3 **Acceleration; Remedies.** If an Event of Default is not cured on or before the date specified in the Notice, Lender at its option, shall have the following remedies, which are cumulative and are not mutually exclusive:

- 17.3.1 May require immediate payment in full of all sums secured by this Mortgage;
- 17.3.2 May foreclose this Mortgage by judicial proceedings;
- 17.3.3 May collect all costs incurred in pursuing any remedies including, but not limited to, reasonable attorneys' fees, costs of title evidence and survey, and expenses for environmental testing (which testing Lender reasonably believes is necessary to protect Lender's interest in the Property); and
- 17.3.4 May require payment of escrow items as provided in section 4.7.

17.4 **Joint Liability.** If Borrower consists of more than one person, each person who is a party shall be jointly and severally liable for Events of Default.

17.5 **Borrower's Right to Reinstate.** Borrower shall have the right to reinstate this Mortgage after an Event of Default at any time prior to the entry of judgment upon satisfaction of the following requirements:

- 17.5.1 Borrower pays Lender all sums due and owing pursuant to this Mortgage or the Note, had acceleration not occurred;
- 17.5.2 Borrower cures any default of any other covenants or agreements related to the Property; and
- 17.5.3 Borrower pays all costs incurred in enforcing this Mortgage.

18. **BORROWER NOT RELEASED; FORBEARANCE BY LENDER NOT A WAIVER.**

Any forbearance by Lender in exercising any right or remedy under this Mortgage or the Note shall not be a waiver, or preclude the exercise, of any right or remedy.

19. **LENDER IN POSSESSION; RECEIVERSHIP.**

If Lender accelerates pursuant to section 17, or Borrower abandons the Property, Lender also shall be entitled to take possession of the Property, and to have a receiver appointed to enter upon, take possession of, and manage the Property, and to collect the rents and profits of the Property (including those past due). Any rents collected by Lender or the receiver shall

be applied first to payment of the costs of management of the Property and collection of rents including, but not limited to, receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Mortgage.

20. **RELEASE.**

Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower (except for recording fees, which shall be Borrower's expense).

21. **WAIVER OF VALUATION AND APPRAISEMENT.**

Borrower waives all right of valuation and appraisal laws.

22. **AUTHORITY TO SIGN.**

Each person signing this Mortgage in a representative capacity on behalf of Borrower warrants and represents to Lender that:

22.1 The person signing this Mortgage has the actual authority and power to so sign, and to bind Borrower to this Mortgage; and

22.2 All LLC action necessary for the making of this Mortgage has been duly taken.

23. **MISCELLANEOUS.**

23.1 **Governing Laws.** This Mortgage shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise, by the laws of the State of Indiana.

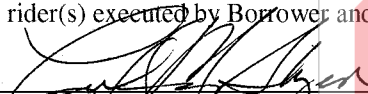
23.2 **Headings.** Section headings are included solely for convenience, and in no event shall affect or be used in connection with the interpretation of this Mortgage.

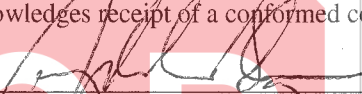
23.3 **Time of Essence.** Time is of the essence in this Mortgage.

23.4 **Computation of Time.** In computing a time period prescribed in this Mortgage, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Indiana Law, in which case the period is to be extended to the next day that is not a weekend day or a legal holiday.

24. **ADDITIONAL COVENANTS.**

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Mortgage and in any rider(s) executed by Borrower and recorded with it, and Borrower acknowledges receipt of a conformed copy of this Mortgage.


Lisa K. Misner-Skozen, on behalf of SKOZEN
PROPERTIES, LLC
STATE OF INDIANA,
COUNTY OF LAKE, SS:


Joseph M. Skozen, on behalf of SKOZEN
PROPERTIES, LLC

The undersigned, a Notary Public in and for the above County and State, residing in Lake County, Indiana, certifies and witnesses that the above signed individuals, Lisa K. Misner-Skozen and Joseph M. Skozen of Skozen Properties, LLC, who are personally know to me to be the same person whose name is subscribed to this instrument, appeared before me in person and acknowledged his/her signature and delivered the instrument as a free and voluntary act, for the uses and purposes named in the instrument.

Date: 8.1.2009


Notary Name

My Commission Expires: 01-15-2012



"I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW."
PREPARED BY: 