

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2012 060661

2012 SEP -7 AM 9:35

MIKE JAJMAN  
RECORDER

Mortgage Recording Document Number: 2012-060660

Mortgage Recording Document Date: September 7, 2012

**FIRST AMENDMENT TO MORTGAGE**

This First Amendment to Mortgage ("Amendment") is made effective as of September 6, 2012 by and between **REARDEN INDUSTRIAL REAL ESTATE, LLC**, an Ohio limited liability company, having its principal office at 94 H. Street Ampoint, Perrysburg, Ohio 43551 ("Grantor") and **KEYBANK NATIONAL ASSOCIATION**, a national banking association, having an office at Three SeaGate, Toledo, Ohio 43604 ("Lender").

**RECITALS**

**WHEREAS**, on September 6, 2012, Lender extended a loan to Grantor in the original principal amount of One Million Sixty Thousand and 00/100 Dollars (\$1,060,000 00) (the "Loan") as evidenced by that certain Business Loan Agreement executed by and between Grantor and Lender on September 6, 2012 (the "Agreement"),

**WHEREAS**, as security for the Loan, Grantor granted and conveyed onto Lender a mortgage (the "Mortgage") on certain real property legally described on Exhibit A, attached hereto and made apart hereof.

**WHEREAS**, Lender and Grantor now desire to amend the Mortgage on the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Lender mutually agree to modify the Mortgage as follows:

1. **Incorporation of Recitals.** The Recitals of this Amendment are hereby incorporated by this reference, and the affirmative statements set forth in the Recitals shall be deemed to be representations of Grantor to Lender, which are hereby ratified and confirmed by Grantor.

2. **Defined Terms.** All defined terms used in this Amendment shall have the same meaning as set forth in the Mortgage unless otherwise indicated.

SLK\_TOL #1757620v3

**FIDELITY NATIONAL  
TITLE COMPANY**

92012-2680

Ref 1

26  
AMOUNT \$ \_\_\_\_\_  
CASH \_\_\_\_\_ CHARGE FD  
CHECK# \_\_\_\_\_  
OVERAGE \_\_\_\_\_  
COPY \_\_\_\_\_  
NON-CONF \_\_\_\_\_  
DEPUTY \_\_\_\_\_ W



3. **Due on Sale – Consent by Lender.** Grantor and Lender agree that the paragraph titled “DUE ON SALE – CONSENT BY LENDER” located on page 3 and 4 of the Mortgage shall be deleted in its entirety and replaced with the following:

**DUE ON SALE – CONSENT BY LENDER.** Lender may, at Lender’s option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, except if the transfer is in connection with valid estate planning purposes, without Lender’s prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A “sale or transfer” means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in the ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or Indiana law.

4. **Notice of Construction.** Grantor and Lender agree that the subparagraph titled “Notice of Construction” located on page 4 of the Mortgage shall be deleted in its entirety and replaced with the following:

**Notice of Construction** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic’s lien, materialmen’s lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$50,000.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

5. **Application of Proceeds.** Grantor and Lender agree that the subparagraph titled “Application of Proceeds” located on page 5 of the Mortgage shall be deleted in its entirety and replaced with the following:

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$50,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. If an Event of Default has occurred or is continuing, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used to first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

6. **Tax and Insurance Reserves.** Grantor and Lender agree that the first sentence of the paragraph titled "TAX AND INSURANCE RESERVES" located on page 5 of the Mortgage shall be deleted in its entirety and replaced with the following:

"Subject to any limitations and consistent with any requirements set by applicable law, and upon the occurrence of an Event of Default, Lender may require Grantor to maintain with Lender reserves for payment of annual taxes, assessments, and insurance premiums, which reserves shall be created by an initial deposit and subsequent monthly payments, or payments at such other interval as payments under the Note may be due, of a sum estimated by Lender to be sufficient to pay the total annual taxes, assessments, and insurance premiums Lender reasonably anticipates to be paid from these reserves."

7. **Payment Default.** Grantor and Lender agree that the subparagraph titled "Payment Default" located on page 8 of the Mortgage is hereby deleted and replaced in its entirety with the following:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness and such payment remains unpaid ten (10) days after the due date

8. **Adverse Change.** Grantor and Lender agree that the subparagraph titled "Adverse Change" located on page 8 of the Mortgage shall be deleted in its entirety and replaced with the following:

**Adverse Change.** A material adverse change occurs in Grantor's financial condition.

9. **Insecurity.** Grantor and Lender agree that the subparagraph titled "Insecurity" located on page 8 of the Mortgage shall be deleted in its entirety.

10. **Right to Cure.** Grantor and Lender agree that the subparagraph titled "Right to Cure" located on page 8 and 9 of the Mortgage is hereby deleted and replaced in its entirety with the following.

**Right to Cure.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Grantor demanding cure of such default, (1) cure the default within thirty (30) days, or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

11. **Effect of Amendment.** Except as expressly modified and amended herein, or by separate written instrument, the Mortgage, as amended, is hereby ratified and confirmed and shall be carried out as originally written and executed.

12. **No Waiver.** Grantor hereby agrees that any previous, current or future failure by Lender to insist upon the strict performance of any of the covenants and agreements set forth in the Mortgage or to exercise any rights or remedies upon default by Grantor under the Mortgage shall not be construed or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandamus or other appropriate legal or equitable remedy strict compliance by Grantor with all the covenants and conditions thereof, or of the rights to exercise any such rights or remedies, if such default by Grantor is continued or repeated, or of the right to recover possession of the Property by reason thereof.

13. **Authority of Grantor.** Grantor hereby represents and warrants to Lender that: (a) it has the legal authority to execute and deliver this Amendment; (b) the manager executing this Amendment has been duly authorized to execute and deliver the same and bind the Grantor with respect to the provisions hereof; (c) the execution and delivery hereof by Grantor and the performance and observance by Grantor of the provisions hereof does not violate or conflict with the organizational agreements of the Grantor or any law applicable to the Grantor, nor does it result in a breach of any provisions of or constitute a default under any other agreement, document or instrument binding upon or enforceable against Grantor; and (d) this Amendment constitutes a valid and binding obligation of Grantor in every respect.

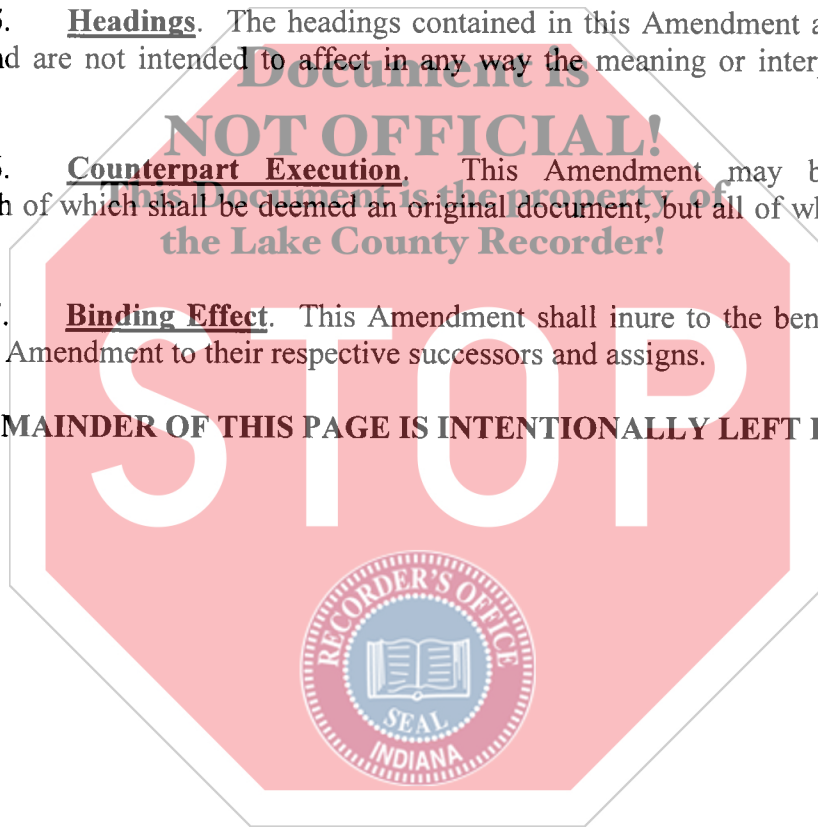
14. **Ratification.** This Amendment shall be construed as a revision of the aforementioned Mortgage only and not a novation, and, except as herein provided, all the terms and conditions of the Mortgage shall remain in full force and effect according to the original terms, conditions and provisions thereof as subsequently modified or amended by the consent and agreement of all parties.

15. **Headings.** The headings contained in this Amendment are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Amendment.

16. **Counterpart Execution.** This Amendment may be executed in counterparts, each of which shall be deemed an original document, but all of which constitute a single document.

17. **Binding Effect.** This Amendment shall inure to the benefit of and bind the parties to this Amendment to their respective successors and assigns.

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IN WITNESS WHEREOF, Grantor has caused this Amendment to be executed effective as of the date first set forth above.

**GRANTOR:**

**REARDEN INDUSTRIAL REAL ESTATE,  
LLC**



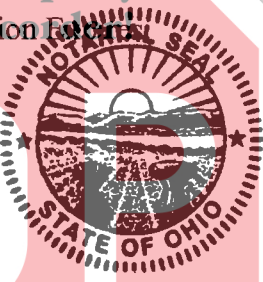
\_\_\_\_\_  
Timothy I. Martindale, Manager

STATE OF OHIO            )  
                                          ) SS  
COUNTY OF LUCAS        )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of September, 2012 by Timothy I. Martindale, Manager of Rearden Industrial Real Estate, LLC, an Ohio limited liability company, on behalf of the company.

Document is  
**NOT OFFICIAL!**  
*Linda Langston*  
\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

**This Instrument Prepared by:**  
**Beth M. Eckel, Esq.**  
**Shumaker, Loop & Kendrick, LLP**  
1000 Jackson Street  
Toledo, Ohio 43654-5573



LINDA LANGSTON  
NOTARY PUBLIC - OHIO  
MY COMMISSION EXPIRES 12-04-2016



"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."

*Daianna Tarton*  
\_\_\_\_\_

**Exhibit A**  
**Legal Description**



920122680

**EXHIBIT A**

Lot 2 in Crown Point Ventures II, as per plat thereof, recorded in Plat Book 100 page 61, in the Office of the Recorder of Lake County, Indiana.

