



MISC 2014011801



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Fee amount: 184.00
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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
02/14/2014 11:27:13.00



2014011801

The above space is for Register of Deeds Recording Data

Return to:
Michael F. Kivett
Valentine O'Toole McQuillan & Gordon, L.L.P.
PO Box 540125
Omaha NE 68154-0125

**NINTH AMENDMENT TO LAND ACQUISITION LOAN AGREEMENT,
PROMISSORY NOTE AND
DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES
AND RENTS AND FIXTURE FILING STATEMENT**

This Agreement is made and entered into effective this 1 day of January, 2014, by and between **AVG-CFM 204Q, LLC**, a Delaware limited liability company, Attn: CFM Realty Advisors, 1823 Harney Street, Suite 301, Omaha NE 68102 (the "Borrower"), and **UNION BANK AND TRUST COMPANY**, a Nebraska state banking corporation, and its successors and/or assigns, c/o Commercial Real Estate Lending Division's principal lending office, 2720 South 177th Street, Omaha NE 68130, Attn: Samantha Mosser (the "Lender").

PRELIMINARY STATEMENT

WHEREAS, on the 2nd day of November, 2006, the parties made and entered into certain Loan Documents as defined in the Land Acquisition Loan Agreement ("**Loan Agreement**"), including but not limited to the Loan Agreement, Promissory Note, and a Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement (the "**Mortgage**") recorded November 3, 2006, at Instrument No. 2006126164 in the office of the Register of Deeds of Douglas County, Nebraska together with certain other agreements under which Lender was granted a first lien security interest in and to the Mortgaged Property as described in the Mortgage and as also described on the attached and incorporated Exhibit A hereto, the purpose of which was to secure the indebtedness of the Promissory Note, in the original principal amount of Nineteen Million Two Hundred Thousand and no/100 Dollars (\$19,200,000.00) (the "**Note**"); and

WHEREAS, on the 1st day of November, 2009, the parties made and entered into that certain First Amendment to the Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded February 17, 2010, at Instrument No. 2010014467 in the office of the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein; and

WHEREAS, on the 1st day of May, 2010, the parties made and entered into that certain Second Amendment to the Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded June 14, 2010, at Instrument No. 2010051849 in the office of the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein; and

WHEREAS, on the 1st day of July, 2010, the parties made and entered into that certain Third Amendment to the Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded August 2, 2010, at Instrument No. 2010068278 in the office of the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein; and

WHEREAS, on the 1st day of August, 2010, the parties made and entered into that certain Fourth Amendment to the Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded November 1, 2010, at Instrument No. 2010101437 in the office of the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein; and

WHEREAS, on the 1st day of August, 2011, the parties made and entered into that certain Fifth Amendment to the Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded November 14, 2011, at Instrument No. 2011097161 in the office of the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein; and

WHEREAS, on the 1st day of November, 2011, the parties made and entered into that certain Sixth Amendment to the Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded December 9, 2011, at Instrument No. 2011106201 in the office of the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein; and

WHEREAS, on the 26th day of June, 2013, the parties made and entered into that certain Seventh Amendment to Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded September 25, 2013, at Instrument No. 2013098182 in the office of

the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein;

WHEREAS, on the 27th day of September, 2013, the parties made and entered into that certain Eighth Amendment to Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded October 4, 2013, at Instrument No. 2013101447 in the office of the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein; and

WHEREAS, the Lender has agreed to consent to the following requested actions (the "**Requested Actions**"): modify the interest rate to a fixed rate of 4.50%; require the Borrower to make a principal payment in the amount of Two Million and no/100 Dollars (\$2,000,000.00) on or before January 25, 2014 in connection with the sale of the residential portion of the secured real property; provide for monthly interest payments together with semiannual principal payments based upon a 10-year amortization with a 5-year balloon payment; extend the Maturity Date; require Borrower to provide a One Million and no/100 Dollars (\$1,000,000.00) irrevocable standby letter of credit as additional collateral; amend the release prices for the real property; require Borrower to pay all delinquent installments of special assessments and thereafter to pay all special assessments before an installment becomes delinquent; and other matters.

NOW, THEREFORE, the parties agree:

ARTICLE 1

ACKNOWLEDGMENTS, WARRANTIES AND REPRESENTATIONS

As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, Borrower acknowledges, warrants, represents and agrees to and with Lender as follows:

1.1 **Incorporation of Recitals.** All of the facts set forth in the Preliminary Statement of this Agreement are true and correct and incorporated into this Agreement by reference.

1.2 **Authority of Borrower.** Borrower is a duly organized and validly existing limited liability company in good standing under the laws of the State of Delaware, and authorized to do business in Nebraska. The execution and delivery of, and performance under, this Agreement by Borrower has been duly and properly authorized pursuant to all requisite company action and will not (i) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower or the Articles of Organization or Operating Agreement or any other organizational document of Borrower or (ii) result in a breach of or constitute or cause a

default under any indenture, agreement, lease or instrument to which Borrower is a party or by which the Mortgaged Property may be bound or affected.

1.3 **Compliance with Laws.** To Borrower's knowledge, all permits, licenses, franchises or other evidences of authority to use and operate the Project as it is presently being operated and as contemplated by the Loan Documents are current, valid and in full force and effect. Borrower has not received any written notice from any governmental entity claiming that Borrower or the Project is not presently in compliance with any laws, ordinances, rules and regulations bearing upon the use and operation of the Project, including, without limitation, any notice relating to any violations of zoning, building, environmental, fire, health, or other laws, ordinances, rules, codes or regulations.

1.4 **Title to Project and Legal Proceedings; Pledges of Equity in Borrower.** Borrower is the current owner of fee title in the Project. There are no pending or threatened suits, judgment, arbitration proceedings, administrative claims, executions or other legal or equitable actions or proceedings against Borrower or the Project, or any pending or threatened condemnation proceedings or annexation proceedings affecting the Project, or any agreements to convey any portion of the Project, or any rights thereto to any person, entity or government body or agency not disclosed in this Agreement. The Project is not encumbered by any mortgage lien other than the lien created by the Loan Documents. The membership interests in Borrower are not encumbered by any mortgage, pledge, security interest or hypothecation.

1.5 **Loan Documents.** The Loan Documents, as modified herein, constitute valid and legally binding obligations of Borrower enforceable against Borrower and the Project in accordance with their terms. Borrower acknowledges and agrees that nothing contained in this Agreement, nor the Requested Actions, shall release or relieve Borrower from its obligations, agreements, duties, liabilities, covenants and undertakings under the Loan Documents arising prior to the date hereof. All provisions of the Loan Documents not expressly modified herein or in other executed agreements between the parties are ratified and confirmed.

1.6 **Bankruptcy.** Borrower has no intent to (i) file any voluntary petition under any Chapter of the Bankruptcy Code, Title 11, U.S.C.A. ("**Bankruptcy Code**"), or in any manner to seek any proceeding for relief, protection, reorganization, liquidation, dissolution or similar relief for debtors ("**Debtor Proceeding**") under any local, state, federal or other insolvency law or laws providing relief for debtors, (ii) directly or indirectly to cause any involuntary petition under any Chapter of the Bankruptcy Code to be filed against Borrower or any partners thereof or (iii) directly or indirectly to cause the Mortgaged Property or any portion or any interest of Borrower in the Mortgaged Property to become the property of any bankrupt estate or the subject of any Debtor Proceeding.

1.7 **No Default.** To Borrower's knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both, could constitute a default or Event of Default under the Loan Documents, except (i) the prior maturity of the Note on January 1, 2014 and (ii) the failure to pay special

assessments which have been levied and assessed against the Mortgaged Property and which remain delinquent and unpaid.

1.8 **Reaffirmation.** Borrower reaffirms and confirms the truth and accuracy of all representations and warranties set forth in the Loan Documents, in all material respects, as if made on the date hereof.

ARTICLE 2

ADDITIONAL PROVISIONS

2.1 **Consent of Lender.** Subject to the terms of this Agreement, Lender hereby consents to the Requested Actions, as follows:

(a) **Amendment to the Promissory Note.** The Promissory Note is amended as follows:

- (i) Change the Note Rate to a fixed rate of 4.50% per annum, effective January 1, 2014. Borrower shall pay to Lender interest as it accrues on the outstanding Principal Balance of this Note, at the Note Rate, on the 1st day of each month commencing on February 1, 2014.
- (ii) On or before January 25, 2014, Borrower shall pay to Lender a principal payment of Two Million and no/100 Dollars (\$2,000,000.00) in connection with the sale of a portion of the Land consisting of Lot 92, 82.60% of Lot 93, Lot 94, Lot 95, Coventry, a subdivision in Douglas County, Nebraska and 43.29% of Parcel 01-0539-0011 in Douglas County, Nebraska; upon receipt of the Two Million and no/100 Dollars (\$2,000,000.00) payment, Lender shall execute and deliver to Borrower a partial deed of reconveyance of the Mortgage and a partial release of any other Loan Documents encumbering said lots, but only as to said lots and the Lender's Mortgage and other Loan Documents and the liens and security interests granted pursuant thereto shall remain in full force and effect as to all other real property or personal property encumbered thereby.
- (iii) Commencing on July 1, 2014 and semiannually thereafter, Borrower shall pay to Lender the following semiannual principal payments from cash flow or other funds available to Borrower or from the sale of parcels of the Land in accordance with the release price provisions of the Loan Agreement, as amended herein:

Date	Payment Required
July 1, 2014	\$ 497,546.00
January 1, 2015	\$ 497,546.00
July 1, 2015	\$ 497,546.00
January 1, 2016	\$ 497,546.00
July 1, 2016	\$ 497,546.00
January 1, 2017	\$ 497,546.00
July 1, 2017	\$ 497,546.00
January 1, 2018	\$ 497,546.00
July 1, 2018	\$ 497,546.00

The entire unpaid Principal Balance, together with accrued interest and any other sums due hereunder if not sooner paid, shall be paid in full on the Maturity Date, January 1, 2019. THIS NOTE REQUIRES A BALLOON PAYMENT.

(iv) To extend the Maturity Date to January 1, 2019.

All other provisions of the Promissory Note are ratified and confirmed hereby and shall remain in full force and effect.

(b) **Amendment to the Loan Agreement.** The Loan Agreement is hereby amended as follows:

- (i) In the "Definitions" section the definition of "Maturity Date" is amended to January 1, 2019.
- (ii) On or before January 10, 2014, Borrower shall deliver to Lender an irrevocable standby letter of credit in the principal amount of One Million and no/100 Dollars (\$1,000,000.00) issued to Lender as beneficiary by a bank and in form and content reasonably acceptable to Lender; Lender shall return the letter of credit to Borrower and the letter of credit shall terminate upon Lender's receipt of a principal payment of One Million and no/100 Dollars (\$1,000,000.00) from sources other than the sale of parcels of the Land or if net sales proceeds received by Lender from the sale of parcels of the Land described on Exhibit "B" attached hereto exceed the authorized release prices in the aggregate by One Million and no/100 Dollars (\$1,000,000.00); the letter of credit shall mature one (1)

year from the date of its issuance but shall automatically renew continuously for successive one (1) year terms unless the issuing bank notifies Lender at least thirty (30) days prior to the then applicable maturity date of the letter of credit that the issuing bank will not renew the letter of credit in which event Lender shall be entitled to immediately draw upon the letter of credit for the amount which will result in Lender receiving the amount necessary to satisfy the required One Million and no/100 Dollars (\$1,000,000.00) principal payment (unless Borrower has previously replaced the expiring letter of credit with a new comparable one (1) year letter of credit at least thirty (30) days prior to the expiration of the then existing letter of credit).

- (iii) Paragraph 2.1(b)(ii)(v) is hereby amended in its entirety as follows:

“(v) Borrower shall have paid to Lender a sum equal to the net sales proceeds from the sale of the respective parcel or the “Minimum Release Price” as set forth in Exhibit “B” attached hereto, whichever is the greater, of such parcel at or before the time of closing on the sale of each parcel;”

All other provisions of the Loan Agreement are ratified and confirmed hereby and shall remain in full force and effect.

- (c) **Amendment to the Mortgage.** The Mortgage is hereby amended as follows:

- (i) All references to “Maturity Date” or references to when the Loan matures or is due and payable in full, however stated, are amended to January 1, 2019.

All other provisions of the Mortgage are ratified and confirmed hereby and shall remain in full force and effect.

2.2 **No Consent to Other Modifications.** Borrower agrees that this Agreement shall not be deemed an agreement by Lender to consent to any other modification of the Loan Documents, or a consent to any additional financing, secondary financing or secondary encumbrance on the Project, or financing of any kind on any future phases of the Project or any other project.

2.3 **References to Loan Documents.** All references to the term Loan Documents in the Mortgage and the other Loan Documents shall hereinafter be modified to include this

Agreement and all documents executed and/or required in connection with the Requested Actions.

2.4 **Filing for Record.** This document may be filed for record in the Register of Deeds of Douglas County, Nebraska by Lender.

2.5 **Waiver of Existing Defaults.** Lender shall waive any existing Events of Default with respect to the prior maturity of the Note on January 1, 2014 and with respect to the nonpayment of special assessments provided that Borrower has, on or before the effective date of this Agreement, paid all delinquent installments of special assessments and Borrower shall thereafter pay all installments of special assessments before the same become delinquent.

ARTICLE 3

MISCELLANEOUS PROVISIONS

3.1 **Defined Terms.** All capitalized or defined terms shall have the meaning as set forth in the Loan Agreement unless the context of this Agreement clearly requires otherwise.

3.2 **Borrower's Claims.** To the best of Borrower's knowledge, Borrower has no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature whatsoever against Lender or any of Lender's predecessors in interest, and any subsidiary or affiliate of Lender and all of the past, present and future officers, directors, contractors, employees, agents, attorneys, representatives, participants, successors and assigns of Lender and Lender's predecessors in interest (collectively, "**Lender Parties**") or with respect to (i) the Loan, (ii) the Loan Documents, or (iii) the Project. To the extent Borrower would be deemed to have any such defenses, setoffs, claims, counterclaims or causes of action as of the date hereof of which the Borrower has knowledge, Borrower knowingly waives and relinquishes them.

3.3 **No limitation of Remedies.** No right, power or remedy conferred upon or reserved to or by Lender in this Agreement is intended to be exclusive of any other right, power or remedy conferred upon or reserved to or by Lender under this Agreement, the Loan Documents or at law, but each and every remedy shall be cumulative and concurrent, and shall be in addition to each and every other right, power and remedy given under this Agreement, the Loan Documents or now or subsequently existing at law.

3.4 **No Waivers.** Except as otherwise expressly set forth in this Agreement, nothing contained in this Agreement shall constitute a waiver of any rights or remedies of Lender under the Loan Documents or at law. No delay or failure on the part of any party hereo in the exercise of any right or remedy under this Agreement shall operate as a waiver, and no single or partial exercise of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action or forbearance by any party hereto contrary to the provisions of this Agreement shall be construed to constitute a waiver

of any of the express provisions. Any party hereto may in writing expressly waive any of such party's rights under this Agreement without invalidating this Agreement.

3.5 **Successors or Assigns.** Whenever any party is named or referred to in this Agreement, the heirs, executors, legal representatives, successors, successors-in-title and assigns of such party shall be included. All covenants and agreements in this Agreement shall bind and inure to the benefit of the heirs, executors, legal representatives, successors, successors-in-title and assigns of the parties, whether so expressed or not.

3.6 **Construction of Agreement.** Each party hereto acknowledges that it has participated in the negotiation of this Agreement and no provision shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Borrower at all times has had access to an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement and has had the opportunity to review and analyze this Agreement for a sufficient period of time prior to execution and delivery. No representations or warranties have been made by or on behalf of Lender, or relied upon by Borrower pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. All prior statements, representations and warranties relating to this Agreement and its subject matter, if any, are totally superseded and merged into this Agreement, subject to the reaffirmations set forth herein, and this Agreement represents the final and sole agreement of the parties with respect to the subject matter. All of the terms of this Agreement were negotiated at arm's length, and this Agreement was prepared and executed without fraud, duress, undue influence or coercion of any kind exerted by any of the parties upon the others. The execution and delivery of this Agreement is the free and voluntary act of Borrower. THIS WRITTEN AGREEMENT TOGETHER WITH THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS OF THE PARTIES.

3.7 **Fees and Costs of Lender.** Borrower agrees to pay all fees and costs incurred by Lender in connection with this Agreement, including, without limitation, reasonable attorney's fees, title premiums, recording costs, escrow fees, mortgage or deed tax, and inspection or survey costs.

3.8 **Invalid Provision to Affect No Others.** If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any related transaction at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. If any clause or provision operates or would prospectively operate to invalidate this Agreement, in whole or in part, then such clause or provision only shall be deemed deleted, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

3.9 **Notices.** Any notice, demand, consent, approval, request, or other communication or document required or permitted to be given by a party hereto to another party shall be deemed to have been given when (i) delivered personally (with written confirmation of receipt); (ii) sent by telefacsimile to a fax number as designated in writing by the party to whom the communication is addressed (with written confirmation of receipt), provided that a confirmation copy also is promptly mailed by certified mail, return receipt requested; (iii) received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested); or (iv) received by the addressee, if sent by certified mail, return receipt requested, to the address set forth below:

If to Borrower:	AVG-CFM 204Q, LLC CFM Realty Advisors 1823 Harney Street, Suite 301 Omaha NE 68102 Attn: Terrance L. Fangman Jr.
If to Lender:	Union Bank and Trust Company 2720 South 177 th Street Omaha NE 68130 Attn: Samantha Mosser
With copy to:	Valentine O'Toole McQuillan & Gordon, L.L.P. 11240 Davenport Street Omaha NE 68154-0125 Attn: Michael F. Kivett

Each party may change its address for notice from time to time by delivering written notice as above provided at least ten (10) days prior to the effective date of such change.

3.10 **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Nebraska.

3.11 **Headings; Exhibits.** The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part of this Agreement and shall not be used to construe, limit or otherwise affect this Agreement.

3.12 **Modifications.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the Party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted. Lender's consent to the Requested Actions shall not be deemed to constitute Lender's consent to any provisions of the organizational documents that would be in violation of the terms and conditions of any of the Loan Documents.

3.13 **Time of Essence; Consents.** Time is of the essence of this Agreement and the Loan Documents. Any provisions for consents or approvals in this Agreement shall mean that such consents or approvals shall not be effective unless in writing and executed by Lender.

3.14 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT YOU AND US FROM ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT, PROMISE, UNDERTAKING, OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, OR ANY AMENDMENT OF, CANCELLATION OF, WAIVER OF, OR SUBSTITUTION FOR ANY OR ALL OF THE TERMS OR PROVISIONS OF ANY INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, MUST BE IN WRITING TO BE EFFECTIVE.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first above written.

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LENDER:

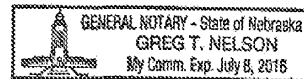
UNION BANK & TRUST COMPANY,
a Nebraska state banking corporation

By: *Samantha Mosser*
Samantha Mosser,
Regional President-Omaha

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

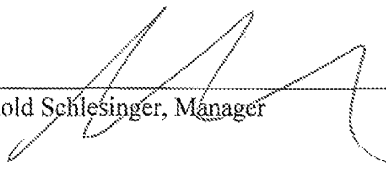
The foregoing instrument was acknowledged before me this 21st day of January, 2014, by Samantha Mosser, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the entity upon behalf of which she acted, executed the instrument. She is the Regional President-Omaha of Union Bank and Trust Company, a Nebraska state banking corporation, for and on behalf of said Union Bank and Trust Company, and she acknowledged, signed and delivered the instrument as her free and voluntary act, for the uses and purposes therein set forth.

Greg T. Nelson
Notary Public



BORROWER:

AVG-CFM 204Q, LLC,
a Delaware limited liability company

By: 
Arnold Schlesinger, Manager

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On this _____ day of January, 2014, before me, _____,
personally appeared Arnold Schlesinger, who proved to me on the basis of satisfactory
evidence to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized capacity, and that by his
signature on the instrument the person, or the entity upon behalf of which the person acted,
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

By: [Signature]
D. Gregory Scott, Manager
AVG-CFM 2010, LLC

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On this _____ day of January, 2014, before me, _____, personally appeared D. Gregory Scott, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Handwritten signature]

Notary Public

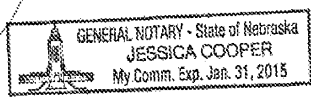
By: *Terrance L. Fangman Jr.*
Terrance L. Fangman Jr., Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

December 2013

The foregoing instrument was acknowledged before me this 30 day of ~~January~~, *December* 2013, by Terrance L. Fangman Jr., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the Manager of AVG-CFM 204Q, LLC, a Delaware limited liability company, for and on behalf of said AVG-CFM 204Q, LLC, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

Jessica Cooper
Notary Public



VERA GUERIN, TRUSTEE OF
THE VERA GUERIN SEPARATE
PROPERTY TRUST 1992

By: *Vera Guerin*
Vera Guerin, Trustee

STATE OF CALIFORNIA)
Los Angeles) ss.
COUNTY OF ~~SAN DIEGO~~)
MB

On this 10th day of January, 2014, before me, Mark Anthony Borland, Notary Public, personally appeared Vera Guerin, as Trustee of the Vera Guerin Separate Property Trust 1992, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Mark Anthony Borland
Notary Public

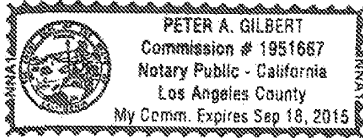
[Signature]
Arnold Schlesinger, Individually

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO) Los Angeles CA

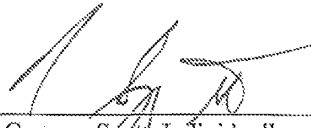
On this 9th day of January, 2014, before me, Peter A. Gilbert,
Notary Public, personally appeared Arnold Schlesinger, who
proved to me on the basis of satisfactory evidence to be the person whose name is subscribed
to the within instrument and acknowledged to me that he executed the same in his authorized
capacity, and that by his signature on the instrument the person, or the entity upon behalf of
which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]
Notary Public


D. Gregory Scott, Individually

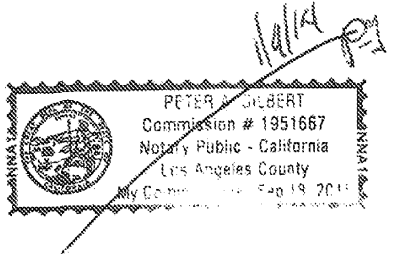
STATE OF CALIFORNIA)

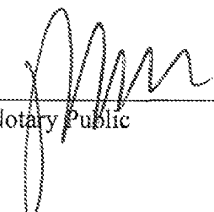
COUNTY OF ~~SAN DIEGO~~) ss. Los Angeles Co., CA

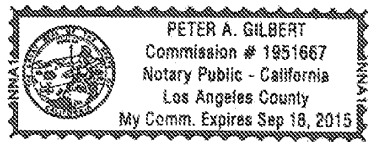
On this 9th day of January, 2014, before me, Peter A Gilbert,
W. B. P. J. D. K. personally appeared D. Gregory Scott, who proved to
me on the basis of satisfactory evidence to be the person whose name is subscribed to the
within instrument and acknowledged to me that he executed the same in his authorized
capacity, and that by his signature on the instrument the person, or the entity upon behalf of
which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.




Notary Public

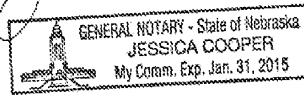


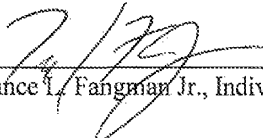
Joseph F. Carter
Joseph F. Carter, Individually

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30th day of ~~January~~ ^{December} 2013, by Joseph F. Carter, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

Jessica Cooper
Notary Public





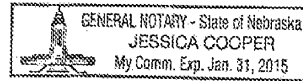
Terrance L. Fangman Jr., Individually

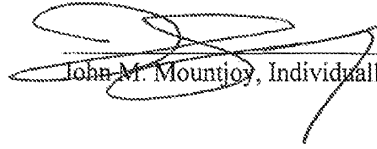
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30 day of ^{December 2013} ~~January~~, 2014, by Terrance L. Fangman Jr., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.



Notary Public




John M. Mountjoy, Individually

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30 day of ^{December} ~~January~~, ²⁰¹³ ~~2014~~, by John M. Mountjoy, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

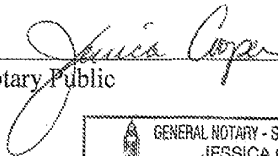
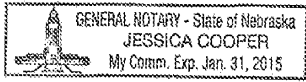

Notary Public


EXHIBIT A
Mortgaged Property

A TRACT OF LAND LOCATED IN THE NE1/4 OF SECTION 12, AND ALSO THE SE1/4 OF SAID SECTION 12; ALL LOCATED IN TOWNSHIP 14 NORTH, RANGE 10 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 12; THENCE S87°37'25"W (ASSUMED BEARING) ALONG THE SOUTH LINE OF SAID SE1/4 OF SECTION 12, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S87°37'25"W ALONG SAID SOUTH LINE OF THE SE1/4 OF SECTION 12, A DISTANCE OF 1316.16 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HARRISON STREET; THENCE N02°22'35"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF HARRISON STREET, A DISTANCE OF 50.00 FEET TO THE POINT OF INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF SAID HARRISON STREET AND THE EASTERLY RIGHT-OF-WAY LINE OF SPENCE STREET; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF SPENCE STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE N47°25'32"W, A DISTANCE OF 7.08 FEET; THENCE N02°28'29"W, A DISTANCE OF 207.19 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 300.00 FEET, A DISTANCE OF 242.74 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N25°39'28"W, A DISTANCE OF 236.20 FEET; THENCE N48°50'03"W, A DISTANCE OF 397.64 FEET TO THE POINT OF INTERSECTION OF SAID EASTERLY RIGHT-OF-WAY LINE OF SPENCE STREET AND THE EASTERLY RIGHT-OF-WAY LINE OF JEFFERSON STREET; THENCE N03°50'03"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF JEFFERSON STREET, A DISTANCE OF 7.07 FEET; THENCE N41°09'57"E ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF JEFFERSON STREET, A DISTANCE OF 1241.37 FEET TO THE POINT OF INTERSECTION OF SAID EASTERLY RIGHT-OF-WAY LINE OF JEFFERSON STREET AND THE EASTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE ON THE FOLLOWING DESCRIBED COURSES; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 450.00 FEET, A DISTANCE OF 59.04 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N52°35'34"W, A DISTANCE OF 59.00 FEET; THENCE N48°50'03"W, A DISTANCE OF 128.86 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 750.00 FEET, A DISTANCE OF 419.80 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N32°47'56"W, A DISTANCE OF 414.35 FEET; THENCE S73°14'11"W, A DISTANCE OF 10.00 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 760.00 FEET, A DISTANCE OF 89.60 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N13°23'11"W, A DISTANCE OF 89.54 FEET; THENCE N65°29'13"E, A DISTANCE OF 75.10 FEET;

THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 460.00 FEET, A DISTANCE OF 482.12 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N01°08'57"E, A DISTANCE OF 460.36 FEET; THENCE N31°10'29"E, A DISTANCE OF 60.19 FEET TO THE WESTERLY CORNER OF LOT 86, COVENTRY, A SUBDIVISION LOCATED IN THE NE1/4 OF SAID SECTION 12, AND THE SE1/4 OF SAID SECTION 12, AND THE EAST 1/2 OF THE NW1/4 OF SAID SECTION 12; THENCE S58°49'31"E ALONG THE SOUTHWESTERLY LINE OF SAID LOT 86, COVENTRY, A DISTANCE OF 290.00 FEET TO THE SOUTHERLY CORNER OF SAID LOT 86, COVENTRY; THENCE N31°10'29"E ALONG THE SOUTHEASTERLY LINE OF SAID LOT 86, COVENTRY, A DISTANCE OF 260.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF GEORGE B. LAKE PARKWAY; THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF GEORGE B. LAKE PARKWAY ON THE FOLLOWING DESCRIBED COURSES; THENCE S58°49'31"E, A DISTANCE OF 243.35 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 550.00 FEET, A DISTANCE OF 323.54 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S75°40'38"E, A DISTANCE OF 318.89 FEET; THENCE N87°28'15"E, A DISTANCE OF 188.10 FEET; THENCE S43°59'38"E, A DISTANCE OF 39.73 FEET TO THE POINT OF INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE OF GEORGE B. LAKE PARKWAY AND THE WESTERLY RIGHT-OF-WAY LINE OF 204TH STREET; THENCE SOUTHERLY ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF 204TH STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE S04°32'29"W, A DISTANCE OF 246.68 FEET; THENCE S00°56'28"E, A DISTANCE OF 1500.54 FEET; THENCE S05°57'26"E, A DISTANCE OF 824.89 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 3,301,220 SQUARE FEET OR 75.786 ACRES, MORE OR LESS.

AND

DISTRICT ANNEXATION, DOUGLAS COUNTY S. & LD. NO. 524

A TRACT OF LAND LOCATED IN THE NE1/4 OF SECTION 12, TOWNSHIP 14 NORTH, RANGE 10 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 98, COVENTRY, A SUBDIVISION LOCATED IN SAID NE1/4 OF SECTION 12, AND THE SE1/4 OF SAID SECTION 12, AND THE EAST 1/2 OF THE NW1/4 OF SAID SECTION 12, SAID POINT ALSO BEING ON THE WESTERLY RIGHT-OF-WAY LINE OF 204TH STREET; THENCE S86°51'38"W (ASSUMED BEARING) ALONG THE NORTH LINE OF SAID LOT 98, COVENTRY, A DISTANCE OF 276.50 FEET TO THE NORTHWEST CORNER OF SAID LOT 98, COVENTRY; THENCE S02°15'09"E ALONG THE WEST LINE OF SAID LOT 98, COVENTRY, A DISTANCE OF 34.57

FEET TO THE NORTHEAST CORNER OF LOT 97, SAID COVENTRY; THENCE S87°45'24"W ALONG THE NORTH LINE OF SAID LOT 97, COVENTRY AND ALSO THE NORTH RIGHT-OF-WAY LINE OF COVENTRY DRIVE, A DISTANCE OF 405.21 FEET TO THE POINT OF INTERSECTION OF SAID NORTH RIGHT-OF-WAY LINE OF COVENTRY DRIVE AND THE WESTERLY RIGHT-OF-WAY LINE OF SAID COVENTRY DRIVE; THENCE S02°15'09"E ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE, A DISTANCE OF 382.62 FEET; THENCE S42°44'51"W ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE, A DISTANCE OF 7.07 FEET TO THE POINT OF INTERSECTION OF SAID WESTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE AND THE NORTHERLY RIGHT-OF-WAY LINE OF "V" STREET; THENCE SOUTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF "V" STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE S87°44'51"W, A DISTANCE OF 275.36 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 801.39 FEET, A DISTANCE OF 489.99 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S70°13'53"W, A DISTANCE OF 482.39 FEET; THENCE N85°45'54"W, A DISTANCE OF 7.47 FEET TO THE POINT OF INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE OF "V" STREET AND THE EASTERLY RIGHT-OF-WAY LINE OF 207TH STREET; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF 207TH STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 335.00 FEET, A DISTANCE OF 50.73 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N48°49'57"W, A DISTANCE OF 50.68 FEET; THENCE NORTHERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 465.55 FEET, A DISTANCE OF 431.12 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N26°38'29"W, A DISTANCE OF 415.88 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 765.00 FEET, A DISTANCE OF 342.57 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N12°42'59"E, A DISTANCE OF 339.71 FEET; THENCE N25°32'42"E, A DISTANCE OF 180.99 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 200.00 FEET, A DISTANCE OF 54.94 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N33°24'55"E, A DISTANCE OF 54.77 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 200.00 FEET, A DISTANCE OF 54.94 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N33°24'55"E, A DISTANCE OF 54.77 FEET; THENCE N25°32'42"E, A DISTANCE OF 154.76 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 945.72 FEET, A DISTANCE OF 140.48 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N21°17'22"E, A DISTANCE OF 140.36 FEET TO THE POINT OF INTERSECTION OF SAID EASTERLY RIGHT-OF-WAY LINE OF 207TH STREET AND THE SOUTHERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE ON THE FOLLOWING DESCRIBED COURSES; THENCE N60°51'34"E, A DISTANCE OF 7.20 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 602.97 FEET, A DISTANCE OF 177.34 FEET, SAID

CURVE HAVING A LONG CHORD WHICH BEARS S83°49'36"E, A DISTANCE OF 176.71 FEET; THENCE N87°44'51"E, A DISTANCE OF 50.87 FEET TO THE POINT OF INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE AND THE EASTERLY RIGHT-OF-WAY LINE OF SAID COVENTRY DRIVE; THENCE N02°15'09"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE, AND ALSO THE EASTERLY LINE OF LOT 79, SAID COVENTRY, A DISTANCE OF 350.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 79, COVENTRY, SAID POINT ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF "Q" STREET; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF "Q" STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE N87°44'51"E, A DISTANCE OF 138.90 FEET; THENCE S02°15'40"E, A DISTANCE OF 21.53 FEET; THENCE S85°58'44"E, A DISTANCE OF 359.77 FEET; THENCE N87°28'59"E, A DISTANCE OF 552.62 FEET TO THE POINT OF INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE OF "Q" STREET AND SAID WESTERLY RIGHT-OF-WAY LINE OF 204TH STREET; THENCE SOUTHERLY ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF 204TH STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE S02°11'10"E, A DISTANCE OF 780.54 FEET; THENCE S04°29'01"W, A DISTANCE OF 69.76 FEET; THENCE S03°08'25"E, A DISTANCE OF 104.99 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 1,740,401 SQUARE FEET OR 39.954 ACRES, MORE OR LESS.

AND

0c-08150

Lots 79, 80, 81, 82, 86, 90, 92, 93, 94, 95, 96, 97, 98, and Outlots C, D, and E, Coventry, a Subdivision, in Douglas County, Nebraska.

EXHIBIT "B"

Minimum Release Prices

204Q Release Prices			
Lot	Parcel	Bulk Value	Release Price (85%)
80	09-0001-3158	191,330	162,630
81	09-0001-3160	216,677	184,175
82	09-0001-3162	205,909	175,023
86	09-0001-3170	240,344	204,293
96	09-0001-3204	453,198	385,218
	01-0530-0010	459,583	390,646
	01-0530-0011	1,766,195	1,501,266
	01-0530-0012	900,730	765,620
	01-0530-0014	1,003,236	852,751
	01-0530-0030	1,522,694	1,294,290
	01-0530-0032	3,150,467	2,677,897
	01-0539-0011	471,799	401,029
79	09-0001-3156	163,146	138,674
93	09-0001-3198	268,663	228,363
98	09-0001-3208	309,404	262,994
97	09-0001-3206	461,360	392,156
90	09-0001-3180	506,931	430,891
90	09-0001-3184	312,407	265,546
90	09-0001-3182	528,717	449,409
		13,132,792	11,162,873