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2003-01-30 14:07:28

Cook County Recorder 42.50



0030143569

Permanent Real Estate

Tax Index No.: 13-06-403-016

See Exhibit A

Address: 6010 N. Newburg  
Chicago, Illinois

## JUNIOR MORTGAGE

The parties to this Mortgage, made as of January 2, 2003, are TIMOTHY HICKS ("Mortgagor"), and EMMA LAWSON DUTIN ("Mortgagee").

### 1. Grant and Secured Obligations

1.1 **Grant.** For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2, and subject to prior recorded mortgages, Mortgagor hereby irrevocably and unconditionally grants, conveys, mortgages and warrants to Mortgagee, with right of entry and possession, all estate, right, title and interest with Mortgage now has or may later acquire in and to the real estate described in Exhibit A (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

### 1.2 Secured Obligations

Subject to any prior recorded mortgages, Mortgagor makes the grant, conveyance, and mortgage set forth in Section 1.1 for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Mortgagee may choose:

(i) Payment of all obligations at any time owing under a promissory note (the "Note") dated as of even date herewith, payable by Mortgagor as maker in the stated principal amount of Twenty Four Thousand Four Hundred Seventy-Five Dollars (\$24,475) to the order of Mortgagee; and

(ii) Payment and performance of all obligations of Mortgagor under this Mortgage.

**3. Rights and Duties of the Parties.**

**3.1 Taxes and Assessments.** Mortgagor shall pay prior to delinquency all taxes, levies, charges and assessments, imposed by any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it. If any such taxes, levies, charges or assessments become delinquent, Mortgagee may require Mortgagor to present evidence that they have been paid in full, on ten (10) days' written notice by Mortgagee to Mortgagor.

**3.2 Liens, Charges and Encumbrances.** Mortgagor shall immediately discharge any lien on the Property which Mortgagee has not consented to in writing. Mortgagor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which may encumber or appear to encumber all or part of the Property or any interest in it, whether the lien, charge or encumbrance is or would be senior or subordinate to this Mortgage.

**3.3 Damages and Insurance and Condemnation Proceeds.**

(a) Subject to the rights of prior mortgagees, Mortgagor hereby absolutely and irrevocably assigns to Mortgagee, and authorizes the payor to pay to Mortgagee, the following claims, causes of action, awards, payments and rights to payment, all proceeds of any insurance policies payable because of loss sustained to all or part of the Property.

(b) Mortgagor shall immediately notify Mortgagee in writing if: any damage occurs or any injury or loss is sustained in the amount of \$25,000 or more to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced.

**3.4 Maintenance and Preservation of Property.**

(a) Mortgagor shall insure the Property and keep the Property in good condition and repair.

(b) Mortgagor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affect the Property or any part of it, except as permitted or required by the Loan Agreement or with Mortgagee's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Mortgagor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices.

(d) Mortgagor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable law or order or any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Mortgagor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Mortgagor on the Property or any part of it under the Loan Agreement.

(e) Mortgagor shall not commit or allow waste of the Property, including those act or omission which arise out of hazardous substances.

(f) Mortgagor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

**3.5 Release.** When all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor under Section 4.9 have been received, Mortgagee shall release this Mortgage, the lien created thereby, and all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay any costs of recordation of such release.

**3.6 Compensation, Exculpation, Indemnification.**

(a) Mortgagor agrees to pay or reimburse Mortgagee for all costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under the terms hereof, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including attorneys' fees and other legal costs, costs of any foreclosure sale and any cost of evidence of title. If Mortgagee chooses to dispose of Property through more than one foreclosure sale, Mortgagor shall pay all costs, expenses or other advances that may be incurred or made by Mortgagee in each of such foreclosure sales.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) Mortgagee's exercise of or failure to exercise any rights, remedies or powers granted to Mortgagee in this Mortgage;

(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in

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managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify Mortgagee against and hold it harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur:

(i) In performing any act required or permitted by this Mortgage or by law;

(ii) Because of any failure of Mortgagor to perform any of its obligations hereunder or pursuant to the First Mortgage; or

(iii) Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property.

This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 4.9 immediately upon demand by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at an interest rate three percent in excess of the annual interest rate then being applied to the principal balance of the Note.

## 4. Accelerating Transfers, Default and Remedies

### 4.1 Accelerating Transfers

(a) "Accelerating Transfer" means any sale, contract to sell, conveyance, encumbrance, lease not expressly permitted under the Loan Agreement, or other transfer of all or any material part of the Property or any interest in it, whether voluntary, involuntary, by operation of law or otherwise. If Mortgagor is a corporation, "Accelerating Transfer" also means any transfer or transfers of shares possessing, in the aggregate, more than fifty percent (50%) of the voting power. If Mortgagor is a partnership, "Accelerating Transfer" also means withdrawal or removal of any general partner, dissolution of the partnership under applicable law, or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the partnership interests. If Mortgagor is a limited liability company, "Accelerating Transfer" also means

dissolution of the limited liability company under applicable law, or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the membership interests. If Mortgagor is a land trust, "Accelerating Transfer" also means a transfer of all or any portion of the beneficial interest in such land trust.

(b) Mortgagor shall not make any Accelerating Transfer, unless the transfer is preceded by Mortgagee's express written consent to the particular transaction and transferee. Mortgagee may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Mortgagee in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Mortgagee may invoke any rights and remedies provided by Section 4.3 of this Mortgage.

**4.2 Event of Default.** Mortgagor will be in default under this Mortgage upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default"; any one singly, an "Event of Default").

(a) Mortgagor fails to perform any obligation to pay money which arises under this Mortgage, and does not cure that failure within fifteen (15) days after written notice from Mortgagee; or

(b) Mortgagor fails to perform any obligation arising under this Mortgage other than one to pay money, and does not cure that failure either within thirty (30) days ("Initial Cure Period") after written notice from Mortgagee, or within ninety (90) days after such written notice, so long as Mortgagor begins within the Initial Cure Period and diligently continues to cure the failure, and Mortgagee, exercising reasonable judgment, determines that the cure cannot reasonably be completed at or before expiration of the Initial Cure Period; or

**4.3 Remedies.** At any time after an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) **Acceleration.** Mortgagee may declare any or all of the Secured Obligations to be due and payable immediately.

(b) **Receiver.** Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not

oppose any such appointment. Such receiver shall have all powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Mortgagee would have, upon entering and taking possession of the Property under subsection (c) below.

(c) **Entry.** Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Mortgagee may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possession all of Mortgagor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Mortgagee; completing any unfinished renovation or repair; and/or contracting for and making repairs and alterations. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

(d) **Cure; Protection of Security.** Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien, or claim of lien which in Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee or to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted under this subsection 5.3(d) either with or without giving notice to any person. Any amounts expended by Mortgagee under this Section 5.3(d) shall be secured by this Mortgage.

(e) **Foreclosure; Lawsuits.** Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Mortgagee or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Mortgagee's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein



granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction.

(f) **Other Remedies.** Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor.

**4.4 Application of Foreclosure Sale Proceeds.** Mortgagee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee under Section 4.9;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

## **5. Miscellaneous Provisions.**

**5.1 Additional Provisions.** The Note and Mortgage fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage.

**5.2 No Waiver or Cure.** Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

## **5.3 Powers of Mortgagee.**

From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this

Mortgage. Mortgagee may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

5.4 **Merger.** No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

5.5 **Applicable Law.** This Mortgage shall be governed by Illinois law.

5.6 **Successors in Interest.** The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 6.7 does not waive the provisions of Section 5.1.

5.7 **Interpretation.**

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage.

5.8 **Waiver of Statutory Rights.** To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through agrees that any court having jurisdiction to foreclosure such lien may order the Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage.

5.9 **Severability.** If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any



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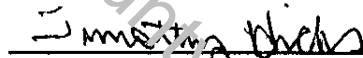
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monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

5.10 **WAIVER OF TRIAL BY JURY.** MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR MORTGAGEE. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (I) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (II) THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, ENTER INTO THIS MORTGAGE AND EACH OF THE OTHER LOAN DOCUMENTS, AND (III) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year first above written.

**MORTGAGOR:**



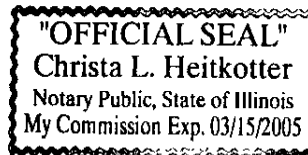
**TIMOTHY HICKS**

STATE OF ILLINOIS       )  
                                      ) SS  
COUNTY OF COOK        )

Before me, a Notary Public in and for said County and State, personally appeared Timothy Hicks, who acknowledged that he did sign the foregoing instrument as his free act and deed individually.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Northbrook, Illinois, this 29<sup>th</sup> day of January, 2003.

Christa L. Heitkotter  
Notary Public



This instrument prepared by:

Howard C. Goode  
707 Skokie Boulevard, Suite 410  
Northbrook, IL 60062

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## EXHIBIT A

### Legal Description

Lot 19 (except the West 10 feet) and Lot 20 (except the Southeasterly 1 ¼ feet) in Block 6 in Wilson's Resubdivision of Blocks 75, 76, 77, 83 to 86 and 92, 93 and 94 in Norwood Park in the North ½ of the Northeast ¼ of Section 6, Township 40 North, Range 13, East of the Third Principal Meridian, (except the East 30 acres) in Cook County, Illinois.

Property of Cook County Clerk's Office

PROMISSORY NOTE SECURED BY MORTGAGE

\$24,475

January 2 2003

Chicago, Illinois

1. FOR VALUE RECEIVED, TIMOTHY HICKS ("Borrower") promises to pay to the order of EMMA LAWSON DUNN, 5535 West Bryn Mawr, Chicago, Illinois, 60646, or at such other place as Payee from time to time may designate, the principal sum of TWENTY FOUR THOUAND THOUSAND, FOUR HUNDRED SEVENTY-FIVE DOLLARS (\$24,475), plus interest on the unpaid balance from time to time at the rate of five percent (5%) per annum.

2. This Note is secured by a Mortgage ("Mortgage") covering certain real and personal property, as therein described (the "Property").

3. This note may be prepaid together with accrued interest to date at any time without penalty.

4. This note shall be payable on demand together with accrued interest except that during the first one hundred eighty (180) days, interest shall be paid quarterly commencing 90 days after closing.

5. If: (i) this Note or any Loan Document is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (ii) an attorney is retained to represent Payee in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Note; (iii) an attorney is retained to protect or enforce the lien of the Mortgage; or (iv) an attorney is retained to represent Payee in any other proceedings whatsoever in connection with this Note or the Mortgage, or any property subject thereto, the Borrower shall pay to Payee all reasonable attorneys' fees, costs and expenses incurred in connection therewith, in addition to all other amounts due hereunder. From the time(s) incurred until payment in full to Payee, all such sums shall bear interest at the Default Rate.

6. This Note is governed by the laws of the State of Illinois.

7. If Payee delays in exercising or fails to exercise any of its rights under this Note, that delay or failure shall not constitute a waiver of any of Payee's rights, or of any breach, default or failure of condition of or under this Note. No waiver by Payee of any of its rights, or of any such breach, default or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by Payee. All of Payee's remedies in connection with this Note or under applicable law shall be cumulative, and Payee's exercise of any one or more of those remedies shall not constitute an election of remedies.

8. This Note inures to and bind the heirs, legal representatives, successors and assigns of Borrower and Payee in its sole discretion may transfer this Note, on the terms and

subject to the conditions of the Loan Documents, all without notice to or the consent of Borrower.

9. BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS NOTE, THE MORTGAGE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN, OR ANY OTHER STATEMENTS OR ACTIONS OF BORROWER OR PAYEE. BORROWER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. BORROWER FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR PAYEE TO MAKE THE LOAN AND ENTER INTO THIS NOTE AND EACH OF THE OTHER LOAN DOCUMENTS; AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF THE LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

**BORROWER:**

Timothy Hicks  
TIMOTHY HICKS