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Doc#: 0505448123
Eugene "Gene" Moore Fee: \$38.50
Cook County Recorder of Deeds
Date: 02/23/2005 01:29 PM Pg: 1 of 8

Property of Cook County Clerk's Office

SUBORDINATED MORTGAGE

DAVID A. HARBIN and **JOHN F. BASH** (collectively, "Mortgagor"), mortgage and warrant to **GEORGIA HARBIN** ("Mortgagee"), whose address is 1801 Lake Avenue, No. 4, Whiting, Indiana 46394, the real estate situated in Cook County, Illinois, described as follows:

PARCEL 1: UNIT NO. 3120-205 IN THE MICHIGAN INDIANA PLACE CONDOMINIUM (AS HEREINAFTER DESCRIBED), TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, WHICH UNIT AND COMMON ELEMENTS ARE COMPRISED OF:

(A) THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1(H) OF THE CONDITIONS AND STIPULATIONS OF THE POLICY), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY: ILLINOIS INSTITUTE OF TECHNOLOGY, AN ILLINOIS NOT-FOR-PROFIT CORPORATION, AS LESSOR, AND MICHIGAN PLACE LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, AS LESSEE, DATED DECEMBER 7, 1999, WHICH LEASE WAS RECORDED FEBRUARY 29, 2000 AS DOCUMENT 00147967, AND ASSIGNMENT THERETO RECORDED SEPTEMBER 5, 2002 AS DOCUMENT NUMBER 0020974036 WHICH LEASE DEMISES THE LAND (AS HEREINAFTER DESCRIBED) FOR A TERM OF YEARS ENDING DECEMBER 31, 2098 (EXCEPT THE BUILDINGS AND IMPROVEMENTS LOCATED ON THE LAND); AND

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(B) OWNERSHIP OF THE BUILDING AND IMPROVEMENTS LOCATED ON THE FOLLOWING DESCRIBED LAND:

CERTAIN PARTS OF BLOCK 1 IN CHARLES WALKER'S SUBDIVISION OF THAT PART NORTH OF THE SOUTH 60 ACRES OF THE WEST ½ OF THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AS DELINEATED ON A SURVEY IS ATTACHED AS EXHIBIT "B" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0010205852, AS AMENDED FROM TIME TO TIME, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2: THE EXCLUSIVE RIGHT TO THE USE OF P-71 AND LCE-60, LIMITED COMMON ELEMENTS AS DELINEATED ON THE SURVEY ATTACHED TO THE DECLARATION AFORESAID

Commonly known as: 3120 South Indiana Avenue, Unit 205
Chicago, Illinois

Tax Number: 17-34-102-051-1060

together with all buildings, improvements, appurtenances, and fixtures attached, erected or used in connection with the real estate or hereafter acquired, attached, erected, appurtenant or used in connection with the real estate, and together with all rents, issues, income, profits, rights, privileges, interests, easements and hereditaments thereof (hereinafter collectively referred to as the "Real Estate").

This Mortgage is given to secure full and complete payment of a certain Promissory Note of even date herewith executed and delivered by Mortgagor to the order of Mortgagee in the principal amount of \$50,000.00, with a final payment due on or before May 1, 2034, and all future modifications, extensions, and renewals thereof (the "Obligations").

Subordinated Mortgage. It is expressly understood and agreed that the mortgage interest granted hereunder is and will be subordinate and inferior to the mortgage interest granted or to be granted by Mortgagor to Irwin Mortgage Corporation (the "Primary Mortgagee"), pursuant to that certain Mortgage of even date herewith, and all modifications, extensions, renewals and replacements thereof.

Mortgagor, for itself, and for its successors and assigns, covenants and agrees with Mortgagee, and his successors and assigns, as follows:

1. **Default.** The occurrence of any one or more of the following events will constitute an Event of Default under this Mortgage:

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- (a) any default in the payment or performance of the Obligations;
- (b) any abandonment of the Real Estate;
- (c) the attachment, levy upon, or seizure of the Real Estate or any part thereof; or
- (d) if Mortgagor should become bankrupt or insolvent or make an assignment for the benefit of creditors, or if a receiver should be appointed for Mortgagor or otherwise with respect to the Real Estate.

Upon the occurrence of any Event of Default, then the entire indebtedness aforesaid will, at Mortgagee's option, become immediately due and payable, without notice or demand, and the Real Estate will be subject to foreclosure of this Mortgage, and Mortgagee, if it elects to foreclose the same, will become entitled to the immediate possession of the Real Estate together with the rents, issues, income and profits therefrom and all amounts due are payable without relief from valuation or appraisal laws and Mortgagor will pay all costs and attorneys' fees incurred by Mortgagee in the enforcement of the terms hereof. Without limiting the foregoing, Mortgagor will pay to Mortgagee, as additional amounts due hereunder and under the Note, the amount of any and all reasonable costs and expenses, including but not limited to attorneys' fees, incurred by Mortgagee in enforcing any of his rights under this Mortgage or under the Note or otherwise with respect to any obligations secured by this Mortgage.

2. **Condition and Use of Real Estate.** For the duration of any indebtedness hereby secured, Mortgagor will use the Real Estate for residential purposes and for no other purposes without the written consent of Mortgagee. All uses of the Real Estate will be in accordance with all applicable laws, statutes, ordinances, regulations, and rules, including but not limited to zoning requirements.

For the duration of any indebtedness hereby secured, Mortgagor will keep the Real Estate in a good state of repair, normal wear and tear excepted.

3. **Application of Payments.** All payments received by Mortgagee hereunder and/or under the Note will be applied first to the Obligations, and second to all costs of enforcement of this Subordinated Mortgage.

4. **Taxes and Other Payments.** Mortgagor will make full and timely payment of all taxes, assessments, insurance premiums, and property owners' association assessments and dues payable with respect to the Real Estate. Mortgagor will promptly furnish to Mortgagee all notices of amounts to be paid under this paragraph

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and will promptly furnish to Mortgagee receipts evidencing the payments, upon the request or requests of Mortgagee.

5. **Taxes, Assessments, and Liens**. With the exception of the mortgage interest in favor of the Primary Mortgagee, Mortgagor will promptly discharge any lien which has priority over this Mortgage unless Mortgagor: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Mortgagee; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in Mortgagee's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the Real Estate; or (c) secures from the holder of the lien an agreement satisfactory to Mortgagee subordinating the lien to this Mortgage. If Mortgagee determines that any part of the Real Estate is subject to a lien which may attain priority over this Mortgage, Mortgagee may give Mortgagor a notice identifying the lien. Mortgagor will satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

6. **Insurance**. Mortgagor will maintain full and adequate insurance with respect to the Real Estate. The policies will be issued by insurance companies and will contain terms reasonably acceptable to Mortgagee.

7. **Inspection**. Mortgagee and agents thereof may make reasonable entries upon and inspections of the Real Estate. Mortgagee will give Mortgagor notice at the time of or prior to an inspection.

8. **Performance by Mortgagee**. If Mortgagor fails to make any payment or to obtain any insurance, service or materials necessary for the performance of any of Mortgagor's covenants above set forth, or if Mortgagor otherwise fails to take any action required hereunder, then Mortgagee at its option may do so, and its expenditures for any such purpose will be added to and become part of the indebtedness hereby secured. Any amounts disbursed by Mortgagee pursuant to this paragraph 8, with interest thereon, will become additional indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amount will be immediately due and payable and will bear interest from the date of disbursement at the rate stated in the Note unless collection from Mortgagor of interest at such rate would be contrary to applicable law, in which event such amount will bear interest at the highest rate which may be collected from Mortgagor under applicable law. Mortgagor hereby covenants and agrees that Mortgagee will be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this paragraph 8 will require Mortgagee to incur any expense or take any action hereunder.

9. **Limitation on Waivers**. Mortgagee at its option may extend the time for the payment of any indebtedness hereby secured, or reduce the payments thereon, or accept a note or renewal note therefor, or release any part of the security, or any

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person liable for the indebtedness, without consent of any junior lienholder, and without the consent of Mortgagor. No such extension, reduction, renewal or release will effect the priority of this Mortgage or impair the security hereof in any manner whatsoever, or release, discharge or affect in any manner the personal liability of Mortgagor to Mortgagee. No delay by Mortgagee in the exercise of any of his rights hereunder will preclude the exercise thereof so long as Mortgagor is in default hereunder and no failure of Mortgagee to exercise any of his rights because of one default will preclude the exercise thereof for a subsequent default. Mortgagee may enforce any one or more of his rights or remedies hereunder successively or concurrently.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential in connection with any condemnation or other taking of any part of the Real Estate, or for conveyance in lieu of condemnation are hereby assigned and will be paid to Mortgagee, subject to any and all rights of the Primary Mortgagee.

In the event of a total taking of the Real Estate, the proceeds will be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Mortgagor. In the event of a partial taking of the Real Estate, unless Mortgagor and Mortgagee otherwise agree in writing, the sums secured by this Mortgage will be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Real Estate immediately before the taking. Any balance will be paid to Mortgagor. All rights of Mortgagee under this Paragraph 10 are and will be subject and subordinate to all rights of the Primary Mortgagee.

If the Real Estate is abandoned by Mortgagor or if after notice by Mortgagee to Mortgagor that the condemnor offers to make an award or settle a claim for damages, Mortgagor fails to respond to Mortgagee within 30 days after the date the notice is given, Mortgagee is authorized to collect and apply the proceeds, at his option, either to restoration or repair of the Real Estate or to the sums secured by this Mortgage, whether or not then due.

Unless Mortgagee and Mortgagor otherwise agree in writing, any application of proceeds to principal will not extend or postpone the due date of the payments referred to herein or in the Note, or change the amount of such payments.

11. **Transfer of Interests.** If Mortgagor, without Mortgagee's prior written consent, sells or transfers any interest in the Real Estate (including the right to possession thereof) or abandons the Real Estate, then at the option of Mortgagee this Mortgage and all amounts payable under the Note will become immediately due and payable in full. In such event, Mortgagee may immediately foreclose this Mortgage, all without any notice or demand whatsoever.

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12. **Notices.** All notices under this Mortgage will be in writing and will be personally delivered or sent by certified mail, return receipt requested. Notices will be deemed to have been given when personally delivered or when deposited in the United States mail, with all postage prepaid. Notices hereunder to Mortgagor will be given at the Real Estate, or such other address as Mortgagor designates by notice to Mortgagee. Notices hereunder to Mortgagee will be given at the address provided at the beginning of this document or any other address Mortgagee designates by notice to Mortgagor.

Notwithstanding the foregoing, if any party attempts to give notice by certified mail and the addressee fails to claim or accept such mail, such notice to such party may be given by first class mail.

13. **Governing Law.** This Mortgage will be governed by federal law and the law of the State of Illinois. If any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict will not affect other provisions of this Mortgage or the Note 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.

14. **Foreclosures.** If Mortgagor meets the conditions specified in this paragraph 14, subject to all rights of Primary Mortgagee, Mortgagor will have the right to have enforcement of this Mortgage discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Real Estate pursuant to any power of sale contained in this Mortgage; or (b) entry of a judgment enforcing this Mortgage. Those conditions are that Mortgagor: (a) pays Mortgagee all sums which then would be due under this Mortgage and the Note had no acceleration occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Mortgage, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Mortgagee may reasonably require to assure that the lien of this Mortgage, Mortgagee's rights in the Real Estate, and Mortgagor's obligation to pay the sums secured by this Mortgage will continue unchanged. Upon reinstatement by Mortgagor, this Mortgage and the obligations secured hereby will remain fully effective as if no acceleration had occurred. However, this right to reinstate will not apply in the case of acceleration pursuant to paragraph 1 hereof.

15. **Rights of Mortgagee upon Acceleration.** Upon default with respect to the Obligations or abandonment of the Real Estate, Mortgagee (by judicially appointed receiver) will be entitled to enter upon, take possession and manage the Real Estate and to collect the rents of the Real Estate including those past due. Any rents collected by Mortgagee or the receiver will be applied first to payment of the costs of management of the Real Estate 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. All rights of Mortgagee under this

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Paragraph 16 are and will be subject and subordinate to all rights of the Primary Mortgagee.

16. **Release.** Upon termination of the Obligations, Mortgagee will deliver a duly executed and recordable Release of this Mortgage to Mortgagor without charge to Mortgagor.

17. **Waivers.** Mortgagor waives all right of valuation and appraisal and any homestead rights and exemptions which may accrue with respect to the Real Estate.

18. **Miscellaneous Provisions.** The covenants, agreements, and conditions hereof will be binding upon Mortgagor and the heirs, personal representatives, successors, and assigns of Mortgagor, and will inure to the benefit of Mortgagee and his successors and assigns. Whenever used, the singular number will include the plural, and the use of any gender will include all genders. All obligations of Mortgagor hereunder will be joint and several. The captions and headings contained herein are inserted for convenient reference only, are not a part hereof and the same will not limit or construe the provisions to which they apply.

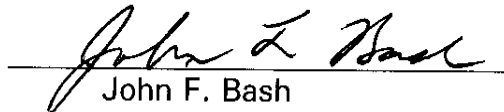
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IN WITNESS WHEREOF, this Mortgage has been executed by Mortgagor as of April 21, 2004.

Mortgagor:



David A. Harbin



John F. Bash

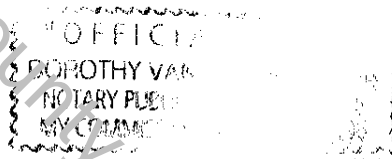
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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

BEFORE ME, the undersigned, a Notary Public, on April 21, 2004, personally appeared David A. Harbin and John F. Bash, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, and being first duly sworn by me upon oath, acknowledged that they have read and understand the foregoing document and that they have affixed their names to and delivered this document as their own free and voluntary acts for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Dorothy Van Szentbrack
Notary Public



This instrument was prepared by: Demetri J. Retson
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