



Doc#: 0606844140 Fee: \$48.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 03/09/2006 04:26 PM Pg: 1 of 13

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The above space for Recorder's use only.

SECOND MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

This Second Mortgage is made this 15th day of March, 2006 between Kristen N. Janko and Michelle M. Janko (herein, whether one or more, and if more than one, jointly and severally, for convenience referred to as the "Mortgagor"), and Michael M. Janko (the "Mortgagee"):

WITNESSETH:

The Mortgagor is justly indebted to the Mortgagee upon its Promissory Note ("Note") of even date in the principal sum of One Hundred Fifty Five Thousand Twenty Five and No/100 Dollars (\$155,025.00) payable to the order of and delivered to the Mortgagee, and the Mortgagor promises to pay the principal sum and interest in accordance with the terms and provisions of said Note, with a final payment due as set forth in the Note.

1. **Senior Mortgage.** Mortgagee hereby subordinates all of Mortgagor's obligations to Mortgagee set forth hereunder to all of Mortgagor's obligations to The Private Bank (the "Senior Lender") set forth in that certain Mortgage in favor of the Senior Lender from the Mortgagor (the "Senior Mortgage"), provided that the amount borrowed by Mortgagor from Senior Lender does not exceed the total amount due to Senior Lender from Mortgagor as of the date hereof.

2. **Grant.** Now, therefore, the Mortgagor to secure the payment of the said principal sum of money and said interest in accordance with the terms, provisions and limitations of this Mortgage, and the performance of the covenants and agreements herein contained, by the Mortgagor to be performed, and also in consideration of the sum of One Dollar in hand paid, and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents CONVEY AND WARRANT unto the Mortgagee, and the Mortgagee's successors and assigns, a Second Mortgage to the following real

Box 195

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estate as described in Exhibit A attached hereto, which, with the property hereinafter described, is referred to herein as the "premises", or the "real estate."

Together with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily) and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, storm doors and windows, floor coverings, awnings, and water heaters. All of the foregoing are declared to be a part of said real estate whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed in the premises by Mortgagor or their successors or assigns shall be considered as constituting part of the real estate.

3. **Fixture Filing.** Mortgagor further grants, bargains, sells, releases, conveys, warrants, assigns, transfers, and confirms unto the Mortgagee, and grants a security interest in, the following property, estates and interests: all plans, specifications, contracts, leases, and proceeds from any of the foregoing related to the real estate.

This Mortgage is intended to serve as a fixture filing pursuant to the terms of the applicable provisions of the Uniform Commercial Code of the state in which the mortgaged premises is located. This filing is to be recorded in the real estate records of the appropriate city, town or county in which the mortgaged premises are located.

This Mortgage constitutes a Security Agreement as that term is defined and used in the Illinois Uniform Commercial Code.

4. **Waiver of Homestead.** Mortgagor does hereby grant the premises to the Mortgagee, and the Mortgagee's successors and assigns, forever, for the purposes, and upon the uses herein set forth, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the Mortgagor does hereby expressly release and waive.

5. **Mortgagor's Covenants with Respect to Senior Instruments.** (a) Mortgagor covenants and agrees to comply with all of the terms and provisions of the Senior Mortgage and any senior loan documents (collectively, "Senior Instruments"). If Mortgagor shall default in the performance of any term or provision contained in this Mortgage or in the Note, the Mortgagee may, but shall not be obligated to, pay any principal or interest due under the Senior Instruments. To the extent the Mortgagee pays any installment of principal or interest or any other sums due under the Senior Instruments, the said owner and holder shall become entitled to a lien on the premises covered by this Mortgage and by the Senior Instruments, equal in rank and priority to the Senior Instruments, and in addition to the extent necessary to make effective such rank and priority (i) the Mortgagor shall become subrogated to receive and enjoy all of the rights, liens, powers and privileges granted to the Mortgagee under the Senior Instruments and (ii) the Senior Instruments shall remain in existence for the benefit of and to further secure the debt and other sums secured, or hereafter to become secured hereunder.

(b) Mortgagor shall give Mortgagee a copy of all notices given Mortgagor with respect to any of the Senior Instruments within five (5) days after receiving such notice.

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(c) Mortgagor shall not, without the prior written consent of Mortgagee enter into any modification, extension, amendment, agreement or arrangement in connection with any of the Senior Mortgage or other Senior Instruments.

6. **Mortgagor Covenants.** Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may be damaged or be destroyed; (b) keep said premises in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien thereof; (c) pay when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Mortgagee; and (d) comply with all requirements of law or municipal ordinances with respect to the premises and the use thereof.

7. **Taxes.** Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall, upon written request, furnish to the Mortgagee duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

In the event of the enactment after this date of any law of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Mortgage, then the Mortgagor shall pay such taxes or assessments, or reimburse the Mortgagee therefore; provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by Illinois law, then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

If, by the laws of the United States of America or of any state having jurisdiction over the premises, any tax is due or becomes due in respect of the issuance of the Note hereby secured, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to hold harmless and agrees to indemnify the Mortgagee, and the Mortgagee's successors and assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note secured hereby.

8. **Use and Maintenance.** Mortgagor shall keep all buildings and improvements now or hereafter situated on said premises insured against loss or damage by fire, lightning and windstorm under policies providing for payment by the insurance companies of moneys sufficient either to pay the cost of replacing or repairing the same or to pay in full the indebtedness secured hereby, all in companies satisfactory to the Mortgagee, under insurance policies payable, in case of loss or damage, to Mortgagee, such rights to be evidenced by the standard mortgage clause to be attached to each policy, and shall deliver all policies, including additional and renewal policies, to the Mortgagee, and in case of insurance about to expire, shall deliver renewal policies not less than ten days prior to the respective dates of expiration.

9. **Mortgagee's Rights.** In addition to the rights set forth in Section 5 or Section 11 hereof, in case of default therein, Mortgagee may, but need not, make any payment or perform any act hereinbefore required by Mortgagor in any form and manner deemed expedient, and may, but need not, make full or

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partial payments of principal or on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Mortgagee to protect the mortgaged premises and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the default rate set forth in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to the Mortgagee on account of any default hereunder on the part of the Mortgagor.

The Mortgagee making any payment hereby authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale forfeiture, tax lien or title or claim thereof.

10. **Default.** Mortgagor shall be in default under this Mortgage in the event that Mortgagor or any guarantor of any of the Mortgagor's obligations:

- (a) Fails to pay any obligation to Mortgagee when due;
- (b) Fails to perform any obligation or breaches any warranty or covenant to Mortgagee contained in this Mortgage, the Note, or any other present or future written or oral agreement by and between Mortgagor and Mortgagee;
- (c) if Mortgagor fails to pay any other Indebtedness, including the Senior Indebtedness, when due and payable or declared due and payable or otherwise fails to perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in any of the loan documents regarding any other Indebtedness which is required to be performed, kept or observed by Mortgagor, and which causes a lien or encumbrance upon the real estate;
- (d) The occurrence of a default or an event of default or false representation or breach of a covenant or warranty under any mortgage instrument or document hereafter delivered by or on behalf of Mortgagor to any third party lender where the real estate is also serving collateral to that lender.
- (e) Allows the premises to be damaged or destroyed in any material respect;
- (f) Seeks to revoke, terminate, or otherwise limit its liability under any guaranty to Mortgagee;
- (g) Allows the premises to be used by anyone to transport or store goods the possession, transportation, or use of which is illegal; or
- (h) Causes the Mortgagee to deem itself insecure in good faith for any reason.

11. **Default under Senior Instruments; Mortgagee's Right to Cure.** In the event Mortgagor is declared by the holder of the Senior Instruments to be in default with respect to any requirement of any of the Senior Instruments, Mortgagor agrees that said default shall constitute a default hereunder. Upon the occurrence of such default, in addition to any other rights or remedies available to Mortgagee, Mortgagee may, but need not, make any payment or perform any act required to cure or attempt to cure any said default under any of the Senior Instruments in any manner and form deemed expedient by Mortgagee. Mortgagee shall not be responsible for determining the validity or accuracy of any claim of default made

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by the Mortgagee under the Senior Instruments and the payment of any sum by Mortgagee in curing or attempting to cure any alleged default or omission shall be presumed conclusively to have been reasonable, justified and authorized. Mortgagor hereby grants to Mortgagee an irrevocable power of attorney, which power of attorney is coupled with an interest, for the term of this Mortgage to cure any default or forfeiture which may occur under the Senior Mortgage. Mortgagor further agrees to execute a formal and recordable power of attorney granting such right at any time during the existence of this Mortgage if requested by Mortgagee. All monies paid by Mortgagee in curing any default under the Senior Instruments, including attorneys fees and costs in connection therewith, shall bear interest from the date or dates of such payment at the Default Rate, shall be paid by Mortgagor to Mortgagee on demand, and shall be deemed a part of the Indebtedness and recoverable as such in all respects. Any inaction on the part of the Mortgagee shall not be construed as a waiver of any right accruing to Mortgagee on account of any default hereunder.

12. **Lender's Right to Prepay Senior Instruments.** In the event of a default hereunder, Mortgagee may prepay the entire balance due under the Senior Instruments, and any prepayment fees or penalty incurred by Mortgagee in connection with such prepayment shall bear interest from the date of such payment at the Default Rate, shall be paid by Mortgagor to Mortgagee upon demand, and shall be deemed a part of the Indebtedness and recoverable in all respects.

13. **Rights of Mortgagee on Default.** Other than a default as to the Senior Indebtedness as set forth in Sections 11 and 12 above, when the indebtedness hereby secured shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches, and examinations, title insurance, policies, Torrens certificates, surveys, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders to any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the default rate set forth in the Note, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which the Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any actual or threatened suit or proceeding which might affect the premises or the security hereof.

14. **Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraphs hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, any overplus to Mortgagor, its heirs, legal representatives or assigns, as its rights may appear.

15. **Mortgagee in Possession; Receiver.** The Mortgagee shall have the right, but not the obligation, upon or at any time after the filing of a complaint to foreclose this Mortgage, to have itself appointed a Mortgagee in possession. Further, upon or at any time after the filing of a complaint to

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foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of said premises. Such appointment for a receiver may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not, and the Mortgagee may be appointed as such receiver. Such receiver shall have power to collect rents, issues and profits of said premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period. The Court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

16. **Mortgagor Waivers.** The Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension, homestead exemption, 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 rather waives the benefits of such laws. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the premises marshalled upon any foreclosure of the lien hereof and agrees that any Court having jurisdiction to foreclose such lien may order the premises sold as an entirety. The Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagor and all persons acquiring any interest in or title to the premises subsequent to the date of this Mortgage, and on behalf of all other persons. Mortgagor waives presentment, demand for payment, notice of dishonor and protest except as required by law.

17. **Environmental Representation.** The Mortgagor hereby represents to the Mortgagee that neither the Mortgagor, nor any of its affiliates or subsidiaries, nor, to the best of the Mortgagor's knowledge, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at (a) the premises or any part thereof, or (b) any other real property in which the Mortgagor, any of its affiliates or subsidiaries holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by the Mortgagor or any of its affiliates or subsidiaries), and that none of the property described above has ever been used by the Mortgagor, or any of its affiliates or subsidiaries, or, to the best of the Mortgagor's knowledge, by any other person or entity as a temporary or permanent dump or storage site for any Hazardous Material.

Without limitation on any other provision hereof, the Mortgagor hereby agrees to indemnify and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any of the following (collectively, "Environmental Laws"): the comprehensive Environmental Response, Compensation and Liability Act of 1989, as amended, any so called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, related to, or imposing liability or standards on conduct concerning any Hazardous Material paid, incurred, suffered by or asserted against the Mortgagee as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of, the Mortgagor: (a) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, discharge,

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emission, discharging or release of any Hazardous Material from (i) the premises or any part thereof, including from underground storage tanks, or (ii) any other real property in which the Mortgagor or any of its affiliates or subsidiaries holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by the Mortgagor or any of its affiliates or subsidiaries), or (b) any liens against the premises permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligations of the Mortgagor, or any of its affiliates or subsidiaries under any Environmental Laws, or (c) any actual or asserted liability or obligations of the Mortgagee or any of its affiliates or subsidiaries under any Environmental Law relating to the premises.

The representations, covenants, indemnities and obligations provided for in this paragraph shall survive the payment, performance, satisfaction, discharge, cancellation, termination, release, and foreclosure of this Mortgage; provided, however, that such representations, warranties, covenants, indemnities and obligations shall not apply with respect to Hazardous Materials which are first placed on the premises on or after the date on which the Mortgagor is no longer in possession and the Mortgagee or any other party obtains title to and possession of the premises pursuant to an exercise by the Mortgagee of its remedies under this Mortgage or any ancillary or related documents or as a result of a conveyance of title to the premises by the Mortgagor to the Mortgagee or such other party in lieu of such exercise of remedies.

18. **Inspection.** The Mortgagee shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.

19. **Collection of Rents.** So long as there shall exist no default by the Mortgagor in the payment of any indebtedness secured hereby or in the performance of any obligation of the Mortgagor herein, or any other instrument securing said indebtedness, the Mortgagor shall have the right to collect, but not more than thirty (30) days prior to accrual, all rents, issues and profits from the premises and to retain, use and enjoy the same. Upon default, the Mortgagor, to further secure the payment of any amounts due to the Mortgagee, does hereby assign, transfer, and said over unto the Mortgagee, all of the rents, issues, profits and income whatsoever arising from or which may be had under any leases or tenancies now existing or which may be hereafter created on all or any part of the real estate.

20. **Modification.** If the payment of said indebtedness evidenced by the Note or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in said premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation or release.

21. **Due on Sale.** If the Mortgagor sells, conveys, assigns or transfers, re-finances or promises or contracts to sell, convey, assign or transfer, or re-finance, all or any part of the premises or any interest therein, in each case without Mortgagee's prior written consent, Mortgagee shall be entitled to immediately accelerate the amounts due under the Note to declare all indebtedness secured by this Mortgage to be immediately due and payable.

22. **Release.** Mortgagee shall release this Mortgage and lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable document preparation fee to Mortgagee for the execution of such release.

23. **Right to Cure.** Notwithstanding any other provision to the contrary, in the event of a default under this Mortgage or the Note (other than a failure of the Mortgagor to pay the balance of the Note, plus

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accrued interest, in which case this provision shall not apply) the Mortgagee shall have seven (7) days after the mailing of written notice of the default or breach from the Mortgagee to the Mortgagor by registered or certified mail, return receipt requested, or in the event of facsimile mail or personal delivery, seven (7) days after the receipt thereof, to cure or correct any breach or default related to this Mortgage or the Note as set forth in the notice.


24. **Miscellaneous.** Time is of the essence with respect to this Mortgage and its obligations created hereunder. This Mortgage and all provisions hereof, shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein and the holder or holders, from time to time, of the note secured hereby. If any provision of this Mortgage violates the law or is unenforceable, the rest of this Mortgage shall continue to be valid and enforceable. This Mortgage shall be governed by the laws of the State of Illinois. Mortgagor consents to the jurisdiction and venue of any court located in Cook County, Illinois.

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Dated this 15th day of March, 2006.



Kristen N. Janko



Michelle M. Janko

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EXHIBIT A

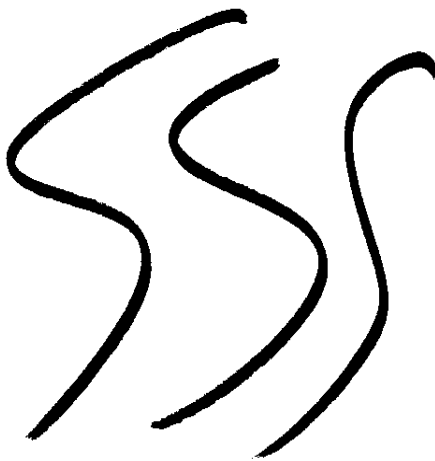
LEGAL DESCRIPTION

PARCEL 1: UNIT 1 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN 3450 NORTH SOUTHPORT CONDOMINIUM AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NO. 0020564471, AS AMENDED, IN THE SOUTHWEST ¼ OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: EXCLUSIVE USE FOR PARKING PURPOSES IN AND TO PARKING SPACE NO. P-1, A LIMITED COMMON ELEMENT, AS SET FORTH AND DEFINED IN SAID DECLARATION OF CONDOMINIUM AND SURVEY ATTACHED THERETO, IN COOK COUNTY, ILLINOIS.

PIN: 14-20-311-051-1002

ADDRESS: 3450 N. SOUTHPORT, UNIT 1
CHICAGO, IL 60657

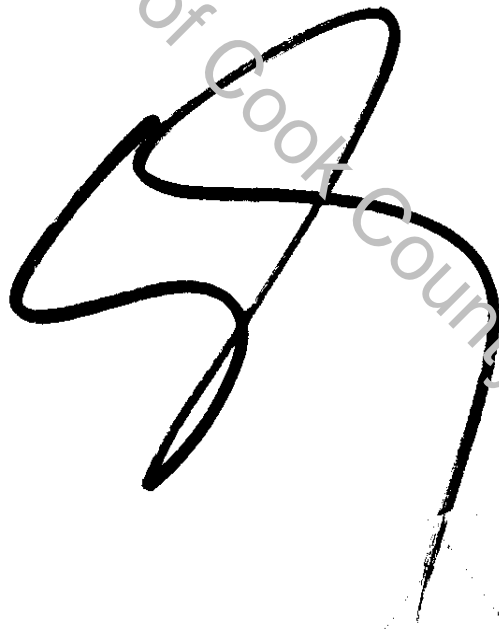
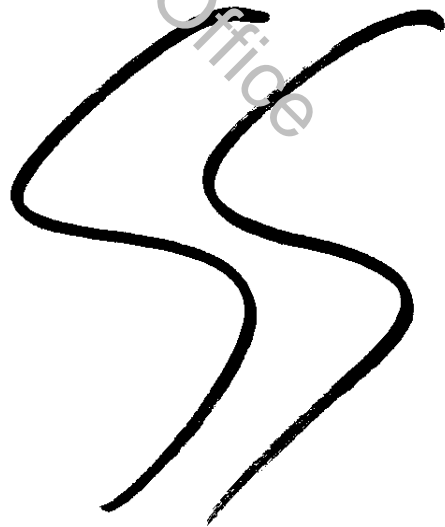


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This Instrument Prepared by and mail to:

Dean J. Leffelman
Wildman, Harrold, Allen & Dixon LLP
2300 Cabot Drive
Suite 455
Lisle, Illinois 60532

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A large, stylized handwritten signature in black ink, appearing to be 'S' followed by a flourish.A large, stylized handwritten signature in black ink, appearing to be 'S' followed by a flourish.