

UNOFFICIAL COPY



Doc#: 0623631094 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/24/2006 03:08 PM Pg: 1 of 19

Property of Cook County Clerk's Office

JUNIOR MORTGAGE

19

PREPARED BY AND
MADE TO:

WILLIAM WOLOSZYN
BERMANN SWERDLOVE LLP
161 N. CLARK STREET
SUITE 2600
CHICAGO, IL 60601



First American Title Order # NCS 247588

DEC 4 OF 4 AMK

UNOFFICIAL COPY

JUNIOR MORTGAGE

THIS JUNIOR MORTGAGE, (the "Mortgage") is made as of August 18, 2006.

THIS INSTRUMENT PREPARED BY AND AFTER RECORDING RETURN TO:	ADDRESS OF THE PREMISES:
William Woloshin	1222 Washington Court
Beermann Swerdlove LLP	Wilmette, Illinois 60091
161 North Clark Street, Suite 2600	
Chicago, Illinois 60601	P.I.N.: 05-34-102-017-0000

1222 WASHINGTON COURT, LLC (the "Borrower"), having an address at 1222 Washington Court, Wilmette, Illinois 60091, to NORMAN J. LANG and MARILYN V. LANG (the "Lender") having an address at 7390 Camelia Drive, Hanover Park, Illinois 60133.

This is a Purchase Money Junior Mortgage.

Borrower has executed and delivered to Lender a Note (the "Note") of even date herewith payable to the order of Lender in the principal sum of Two Hundred Thousand Dollars (\$200,000.00), bearing interest and payable as set forth in the Note, and due on February 28, 2008.

In order to secure the payment of the principal indebtedness under the Note and interest on the principal indebtedness under the Note (and all replacements, renewals and extensions thereof, in whole or in part) according to its tenor, and to secure the payment of all other sums which may be at any time due under the Note, or this Junior Mortgage (collectively such sums are sometimes referred to herein as "Indebtedness"); and to secure the performance and observance of all the covenants, agreements and provisions contained in this Junior Mortgage and the Note; and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower DOES HEREBY MORTGAGE AND CONVEY unto Lender, its successors and assigns forever, the following described property, rights and interests (which are referred to herein as the "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the land (as hereinafter defined) and not secondarily subject to a first mortgage to FIRST BANK & TRUST OF EVANSTON:

THE LAND located in the State of Illinois and legally described in Exhibit "A" attached hereto (the "Land");

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Borrower and on, or used or intended to be used in connection with the land or the improvements, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing and all of the right, title and interest of Borrower in and to any such personal property or fixtures

UNOFFICIAL COPY

together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Borrower or on its behalf (the "Improvements");

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Borrower of, in and to the same;

TOGETHER WITH all income from the Premises to be applied against the Indebtedness, provided, however, that Borrower may, so long as no Default has occurred hereunder, collect income as it becomes due;

TOGETHER WITH all interest of Borrower in all leases now or hereafter on the Premises whether written or oral (the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Borrower to collect the rentals under any such Lease,

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Borrower and forming a part of or used in connection with the Land or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Borrower and placed on the Land or the Improvements shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Lender as a secured party and Borrower as Debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 14 hereof; and

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Borrower hereby appoints Lender its attorney-in-fact and authorizes Lender, at its option, on behalf of Borrower, or

UNOFFICIAL COPY

the successors or assigns of Borrower, to adjust, compromise, claim, collect and receive such proceeds, to give proper acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Lender, of the Indebtedness, notwithstanding the fact that the same may not then be due or that the Indebtedness is otherwise adequately secured.

TO HAVE AND TO HOLD the Premises, unto the Lender, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Default as hereinafter defined; the Borrower hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

BORROWER COVENANTS that it is lawfully seized of the Land, that the same is encumbered to **FIRST BANK & TRUST OF EVANSTON** as a first mortgage, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend the Land and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

PROVIDED, NEVERTHELESS, that if Borrower shall pay in full when due the Indebtedness and shall timely perform and observe all of the provisions herein and in the Note and the other Loan Documents provided to be performed and observed by the Borrower, then the lien of this Mortgage and the interest of Lender in the Premises shall be released at the cost of Borrower but shall otherwise remain in full force.

BORROWER FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. *Payment of Indebtedness and Performance of Covenants.* Borrower shall (a) pay the Indebtedness when due; and (b) punctually perform and observe all of the requirements of the Note and this Mortgage. Borrower shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note, but not otherwise.

2. *Maintenance, Repair, Compliance with Law, Use, etc.* Borrower shall (a) promptly repair or restore, any portion of the Improvements which may become damaged whether or not proceeds of insurance are available or sufficient for that purpose; (b) keep the Premises in good condition and free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any Improvements at any time in the process of erection upon the Premises; (e) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (g) comply with any restrictions of record with respect to the Premises and the use thereof; and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy; and (h) cause the Premises to be managed in a competent and professional manner. Without the prior written consent of Lender, Borrower shall not cause, suffer or permit any (i) material alterations of the Premises except as required by law or except as

UNOFFICIAL COPY

permitted or required to be made by the terms of any Leases approved by Lender; (ii) change in the intended use or occupancy of the Premises for which the Improvements were constructed; (iii) change in the identity of the person or firm responsible for managing the Premises; (iv) zoning reclassification with respect to the Premises; (v) unlawful use of, or nuisance to exist upon, the Premises; or (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Premises, other than use restrictions contained or provided for in Leases approved by Lender.

3. Liens.

3.1. *Prohibition.* Subject to the provisions of Paragraph 4 hereof, Borrower shall not create or suffer or permit any encumbrance to attach to or be filed against the Premises or any part thereof, excepting only (i) the lien of real estate taxes and assessments not due, (ii) any liens and encumbrances of Lender, and (iii) any other lien or encumbrance permitted by the terms hereof.

3.2. *Contest of Mechanic's Liens Claims.* Notwithstanding the foregoing prohibition against encumbrances, Borrower may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Lien and defer payment and discharge thereof during the pendency of such contest, provided that

3.2.1. such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Mechanic's Lien;

3.2.2. within ten (10) days after Borrower has been notified of the filing of such Mechanic's Lien, Borrower shall have notified Lender in writing of Borrower's intention to contest such Mechanic's Lien; and

3.2.3. Borrower shall have either obtained a title insurance endorsement over such Mechanic's Liens insuring Lender against loss by reason of the Mechanic's Liens or Borrower shall have deposited with Lender at such place as Lender may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money (the "Deposits") which shall be sufficient in the judgment of Lender to pay in full such Mechanic's Liens and all interest which might become due thereon. Borrower shall increase the Deposits whenever, in the judgment of Lender, such increase is advisable. The Deposits are to be held without any allowance of interest.

Lender may, at its option, pay the Deposits, or any part thereof, to the Mechanic's Lien claimant if Borrower (i) fails to maintain sufficient Deposits or (ii) fails to act in good faith or with reasonable diligence in contesting the Mechanic's Liens claims. If the Mechanic's Lien contest is resolved in favor of the claimant and Borrower is not in default hereunder, Lender shall pay the Deposits, or any part thereof, to the claimant upon Lender's receipt of evidence satisfactory to Lender of the amount to be paid. Lender shall pay any remaining Deposits to Borrower, provided Borrower is not in default hereunder,

UNOFFICIAL COPY

4. Taxes.

4.1. *Payment.* Borrower shall pay when due, all taxes, assessments and charges of every kind levied or assessed against the Premises or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Borrower, and Borrower shall furnish to Lender receipts therefor on or before the date the same are due; and shall discharge any claim or lien relating to taxes upon the Premises, other than matters expressly permitted by the terms hereof.

5. *Change in Tax Laws.* If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Lender, Borrower or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Borrower shall pay such tax in the manner required by such law.

6. *Insurance Coverage.* Borrower will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Lender may from time to time require, and in any event will continuously maintain all policies of insurance (the "Insurance Policies") as required by FIRST BANK & TRUST OF EVANSTON (the first mortgage lender).

7. *Insurance Policies.* All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Lender. All Insurance Policies shall (i) include, when available, non-contributing Lender endorsements in favor of and with loss payable to Lender and first mortgage holder as their interests may appear, (ii) include standard waiver of subrogation endorsements, (iii) provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Lender and (iv) provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Lender. Borrower will deliver all Insurance Policies premium prepaid, to Lender and, will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Borrower concurrent in form or contributing in the event of loss with the Insurance Policies. Insurance Policies maintained by tenants under the Leases may, if in conformity with the requirements of this Mortgage and if approved by Lender, be presented to Lender in satisfaction of Borrower's obligation to provide the insurance coverages provided by those Insurance Policies.

8. *Proceeds of Insurance.* Borrower will give Lender prompt notice of any loss or damage to the Premises, and:

8.1. In case of loss or damage covered by any of the Insurance Policies, Lender (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) may at its option either (i) settle and adjust any claim under such Insurance Policies without the consent of Borrower, or (ii) allow Borrower to settle and adjust such claim without the consent of Lender; provided that in either case Lender shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to Lender upon demand or may be deducted by Lender from said insurance proceeds prior to any other application thereof Each insurance company which has issued an Insurance Policy is hereby

UNOFFICIAL COPY

authorized and directed to make payment for all losses covered by any Insurance Policy to Lender alone, and not to Lender and Borrower jointly.

8.2. Lender shall, in its sole discretion, elect to apply the proceeds of Insurance Policies consequent upon any casualty either (i) to reduce the Indebtedness; or (ii) to reimburse Borrower for the cost of restoring or repairing the Premises subject to the conditions and in accordance with the provisions of Paragraph 10 hereof. In the event Lender applies the proceeds of Insurance Policies to the Indebtedness and such proceeds do not discharge that Indebtedness in full, the entire Indebtedness shall become immediately due and payable with interest thereon at the Default Rate specified in the Note (the "Default Rate").

8.3. Whether or not insurance proceeds are made available to Borrower, Borrower shall restore or repair the Improvements, to be of at least equal value, and of substantially the same character as prior to such casualty, all to be effected in accordance with plans, specifications and procedures approved in advance by Lender, and Borrower shall pay all costs of such restoring or repairing.

8.4. All of the matters contained in 8.1, 8.2 and 8.3 are subject to the rights of first mortgage holder.

9. *Disbursement of Insurance Proceeds.* Insurance proceeds held by Lender for restoration or repairing of the Premises shall be disbursed from time to time upon Lender being furnished with (i) evidence satisfactory to it of the estimated cost of the restoration or repair, (ii) funds sufficient in addition to the proceeds of insurance, to fully pay for the restoration or repair and to pay debt service on the Loan during the period of restoration or repair, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Lender may require and approve. No payment made prior to the final completion of the restoration or repair shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Lender in its sole judgment; funds deposited hereunder other than insurance proceeds shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited or irrevocably committed, to the satisfaction of Lender, by or on behalf of Borrower to pay the cost of such repair or restoration, shall be sufficient in the reasonable judgment of Lender to pay the entire unpaid cost of the restoration or repair, free of all liens or claims for lien. Any surplus remaining out of insurance proceeds held by Lender after payment of such costs of restoration or repair shall be paid to Borrower, provided Borrower is not in default hereunder. No interest shall be allowed to Borrower on account of any proceeds of insurance or other funds held by Lender.

10. *Condemnation and Eminent Domain.* All awards (the "Awards") made to the present, or any subsequent, owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, are hereby assigned by Borrower to Lender. Lender may collect the Awards from the condemnation authorities, and may give appropriate acquittances therefor. Borrower shall immediately notify Lender of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Premises and shall deliver to Lender copies of all papers served in connection with any

UNOFFICIAL COPY

such proceedings. Borrower shall make, execute and deliver to Lender, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by Lender for the purpose of assigning the Awards to Lender. If any portion of or interest in the Premises is taken by condemnation or eminent domain, and the remaining portion of the Premises is not, in the judgment of Lender, a complete economic unit having equivalent value to the Premises as it existed prior to the taking, then, at the option of Lender, the entire Indebtedness shall immediately become due. After deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including attorney's fees, Lender shall be entitled to apply the net proceeds toward repayment of such portion of the Indebtedness as it deems appropriate without affecting the lien of this Mortgage. In the event of any partial taking of the Premises or any interest in the Premises, which, in the judgment of Lender, leaves the Premises as a complete economic unit having equivalent value to the Premises as it existed prior to the taking, and provided Borrower is not in default hereunder, the Award shall be applied to reimburse Borrower for the cost of restoration and rebuilding the Premises in accordance with plans, specifications and procedures approved in advance by Lender, and such Award shall be disbursed in the same manner as is provided above for the application of insurance proceeds. If all or any part of the Award is not applied for reimbursement of such restoration costs, the Award shall at the option of Lender be applied against the Indebtedness, in such order or manner as Lender shall elect, or paid to Borrower.

11. *Assignment of Rents, Leases and Profits.* To further secure the Indebtedness, subject to the rights of first mortgage lender, Borrower hereby assigns unto Lender all of the rents, leases and income now or hereafter due under any Leases agreed to by Borrower or the agents of Borrower or which may be made or agreed to by Lender under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, rents and income thereunder, to Lender. Borrower hereby irrevocably appoints Lender its attorney-in-fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Lender) with or without taking possession of the Premises as provided in Paragraph 18 hereof, to lease any portion of the Premises to any party upon such terms as Lender shall determine, and to collect all rents due under each of the Leases, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession pursuant to the provisions of Paragraph 18 hereof. Borrower represents that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Borrower. Borrower waives any rights of set-off against any person in possession of any portion of the Premises. Borrower agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the taking of actual possession of the Premises by Lender pursuant to Paragraph 18 hereof. Borrower expressly waives all liability of Lender in the exercise of the powers herein granted Lender. Borrower shall assign to Lender all future leases upon any part of the Premises and shall execute and deliver, at the request of Lender, all such further assurances and assignments in the Premises as Lender shall from time to time require. Although the assignment contained in this paragraph is a present assignment, Lender shall not exercise any of the rights or powers conferred upon it by this paragraph until a Default shall exist under this Mortgage.

UNOFFICIAL COPY

Within thirty (30) days of Lender's written demand, Borrower will furnish Lender with executed copies of each of the Leases and with estoppel letters from each tenant in a form satisfactory to Lender. If Lender requires that Borrower execute and record a separate collateral assignment of rents or separate assignments of any of the Leases to Lender, the terms of those assignments shall control in the event of a conflict with the terms of this Mortgage.

12. *Security Agreement.* Borrower and Lender agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) all sums at any time on deposit for the benefit of Lender or held by the Lender (whether deposited by or on behalf of the Borrower or anyone else) pursuant to any of the provisions of the Mortgage and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), (which property is hereinafter referred to as "Personal Property") and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Lender, and the Collateral and all of Borrower's right, title and interest therein are hereby assigned to the Lender, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises.

12.1. The terms and provisions contained in this Paragraph 12 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

12.2. This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Borrower (Debtor) and Lender (Secured Party) are hereinabove set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located. Borrower is the record owner of the Premises.

13. *Restrictions on Transfer.* Borrower shall not, without the prior written consent of Lender, effect, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

13.1. The Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

UNOFFICIAL COPY

14. *Defaults.* If one or more of the following events (herein called "Defaults") shall occur:

14.1. If any default be made in the due and punctual payment of the monies required under the Note or under this Mortgage, when due;

14.2. If default shall exist for any reason other than the nonpayment of money hereunder or under any other document or instrument regulating, evidencing, securing or guarantying any of the Indebtedness, and in each case after the expiration of the applicable cure period or if no express cure period is provided then in each case if such default shall continue for ten (10) days after notice thereof by Lender to Borrower;

14.3. Borrower shall file a voluntary petition in bankruptcy or for relief under the Federal Bankruptcy Act or any similar state or federal law;

14.4. Borrower shall file a pleading in any proceeding admitting insolvency;

14.5. Within thirty (30) days after the filing against Borrower of any involuntary proceeding under the Federal Bankruptcy Act or similar state or federal law, such proceedings shall not have been vacated;

14.6. A substantial part of Borrower's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within thirty (30) days;

14.7. Borrower shall make an assignment for the benefit of creditors or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises;

14.8. Any order appointing a receiver, trustee or liquidator of Borrower or all or a major part of Borrower's property or the Premises is not vacated within thirty (30) days following the entry thereof; or

14.9. Failure to comply with the terms and provisions of the First Mortgage;

then Lender may, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Lender hereunder, declare, without further notice, all Indebtedness immediately due with interest thereon at the Default Rate, whether or not such Default be thereafter remedied by Borrower, and Lender may immediately proceed to foreclose this Mortgage and to exercise any right provided by this Mortgage, the Note, the other Loan Documents or otherwise.

15. *Foreclosure.* When the Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof in accordance with the Illinois Mortgage Foreclosure Act, Ill. Rev. Stat. ch. 110, para. 15-101, *et seq.* (1987) (the "Act") and to exercise any other remedies of Lender provided in the Note or this Mortgage, or which Lender may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed

UNOFFICIAL COPY

and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, 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, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

16. *Right of Possession.* When the Indebtedness shall become due, whether by acceleration or otherwise, or if Lender has a right to institute foreclosure proceedings, Borrower shall, forthwith upon demand of Lender, surrender to Lender, and Lender shall be entitled to be placed in possession of the Premises as provided in the Act, and Lender, in its discretion and pursuant to court order, may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Borrower or the then owner of the Premises relating thereto, and may exclude Borrower, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Borrower or such owner, or in its own name as Lender and under the powers herein granted:

16.1. hold, operate, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as Lender may deem necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;

16.2. cancel or terminate any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Borrower to cancel the same;

16.3. elect to disaffirm any Lease or sublease of all or any part of the Premises made subsequent to this Mortgage without Lender's prior written consent;

16.4. extend or modify any then existing Leases and make new Leases of all or any part of the Premises, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed to a purchaser at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be

UNOFFICIAL COPY

contained therein, shall be binding upon Borrower, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser at any foreclosure sale, notwithstanding any redemption from sale, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

16.5. make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Lender, to insure and reinsure the Property and all risks incidental to Lender's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

16.6. apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness in such order and manner as Lender shall select.

Without limiting the generality of the foregoing, Lender shall have all power, authority and duties as provided in the Act. Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Premises.

17. *Foreclosure Sale.* Except to the extent otherwise required by the Act, the proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, all items which under the terms hereof constitute Indebtedness additional to the principal and interest evidenced by the Note in such order as Lender shall elect with interest thereon as herein provided; and second, all principal and interest remaining unpaid on the Note in such order as Lender shall elect; and lastly any surplus to Borrower and its successors and assigns, as their rights may appear.

18. *Waiver of Right of Redemption and Other Rights.* To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in force to redeem the property or any part thereof, or relating to the marshalling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights to redemption and reinstatement under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right,

UNOFFICIAL COPY

power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrower acknowledges that the Premises do not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

19. *Rights Cumulative.* Each right herein or in the Note conferred upon Lender is cumulative and in addition to every other right provided by law or in equity, and Lender may exercise each such right in any manner deemed expedient to Lender. Lender's exercise or failure to exercise any right shall not be deemed a waiver of that right or any other right or a waiver of any default. Except as otherwise specifically required herein, Lender is not required to give notice of its exercise of any right given to it by this Mortgage.

20. *Successors and Assigns.*

20.1. *Holder of the Note.* This Mortgage and each provision hereof shall be binding upon Borrower and its successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of Lender and its successors and assigns. Wherever herein Lender is referred to, such reference shall be deemed to include the holder from time to time of the Note; and each such holder of the Note shall have all of the rights afforded hereby, and may enforce the provisions hereof, as frilly as if Lender had designated such holder of the Note herein by name.

20.2. *Covenants Run with Land; Successor Owners.* All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. If the ownership of Premises or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to Borrower, deal with such person with reference to this Mortgage and the Indebtedness in the same manner as with Borrower without in any way releasing Borrower from its obligations hereunder. Borrower will give immediate written notice to Lender of any conveyance, transfer or change of ownership of the Premises, but nothing in this paragraph shall vary the effectiveness of the provisions of Paragraph 13 hereof.

21. *Effect of Extensions and Amendments.* If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the hen, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Lender, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Lender to amend, modify, extend or release the Note or this Mortgage, in each case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

UNOFFICIAL COPY

22. *Environmental Matters.* Borrower represents that it is currently in compliance with, and covenants and agrees that, it will manage and operate the Premises and will cause each tenant to occupy its demised portion of the Premises in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). Borrower further covenants and agrees that it shall not install or permit to be installed in the Premises asbestos or any substance containing asbestos and deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders respecting such material. Borrower shall remove from the Premises and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulation or ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between Borrower, Lender and/or any third party with respect to hazardous or toxic materials. Borrower shall send to Lender within five (5) days of receipt thereof, any citation, notice of violation or other notice of potential liability from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. Borrower agrees to indemnify, defend with counsel reasonably acceptable to Lender (at Borrower's sole cost), and hold Lender harmless against any claim, response or other costs, damages, liability or demand (including, without limitation, reasonable attorneys' fees and costs incurred by Lender) arising out of any claimed violation by Borrower of any of the foregoing laws, regulations or ordinances or breach of any of the foregoing covenants or agreements. The foregoing indemnity shall survive repayment of the Indebtedness.

23. *Execution of Separate Security Agreements, Financing Statements, etc.; Estoppel Letter.* Borrower will do, execute, acknowledge and deliver all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Lender shall require for the better assuring, conveying, mortgaging, assigning and confirming unto Lender all property mortgaged hereby or property intended so to be, whether now owned by Borrower or hereafter acquired. Without limitation of the foregoing, Borrower will assign to Lender, upon request, as further security for the Indebtedness, its interests in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments satisfactory to Lender, but no such assignment shall be construed as a consent by the Lender to any agreement, contract, license or permit or to impose upon Lender any obligations with respect thereto. From time to time, Borrower will furnish within five (5) days after Lender's request a written and duly acknowledged statement of the Indebtedness and whether any alleged offsets or defenses exist against the Indebtedness.

24. *Governing Law.* The place of negotiation, execution, and delivery of this Mortgage and the location of the Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State. If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of the Borrower which are more limited than the rights that would otherwise

UNOFFICIAL COPY

be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

25. *Business Loan.* The proceeds of the Note will be used for the purposes specified in 111. Rev. Stat. ch. 17, para. 6404 (1987), and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

26. *No joint Ventures.* Borrower acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event shall Lender be deemed to be a partner or joint venturer with Borrower. Lender shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any other of the Loan Documents.

27. *Time of the Essence.* Time is of the essence of the Note, this Mortgage, and the other Loan Documents.

28. *Captions and Pronouns.* The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

29. *Separability.* If all or any portion of any provision of this Mortgage or the other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

30. *Notices.* Any notice or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given (i) when personally delivered, (ii) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set forth above, or (iii) on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth above, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, notice of the exercise of any right, power or option granted to Lender by this Mortgage is not required to be given.

31. *Jury Trial Waiver.* The Borrower waives, to the extent permitted by law, trial by jury in any actions brought by either the Borrower or Lender in connection with the Indebtedness.

32. *No Merger.* It is the desire and intention of the parties hereto that this Mortgage and the lien hereof shall not merge in fee simple title to the Premises, unless a contrary intent is ever manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded. Therefore, it is hereby understood and agreed that should Lender acquire any additional or other interests in or to the Premises or the ownership thereof, then this Mortgage

UNOFFICIAL COPY

and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly signed, sealed and delivered the day and year first above written.

BORROWER:

1222 WASHINGTON COURT, LLC

By: 

MICHAEL CHOOKASZIAN, Manager

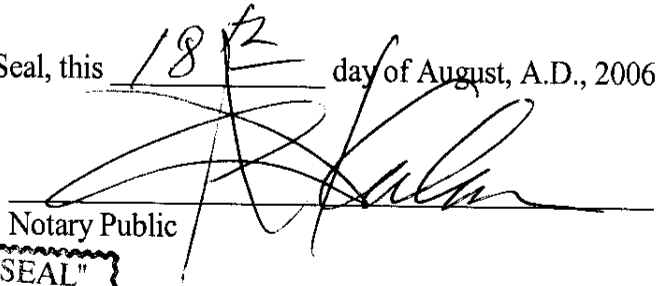
Property of Cook County Clerk's Office

UNOFFICIAL COPY

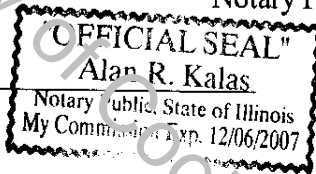
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, ALAN R. KALAS, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL CHOOKASZIAN, personally known to me to be the same person whose name is subscribed to the foregoing instrument as Manager of 1222 Washington Court, LLC, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 18th day of August, A.D., 2006.


Notary Public

My Commission expires: _____



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

TO
JUNIOR MORTGAGE

THE LAND

Property of Cook County Clerk's Office



UNOFFICIAL COPY

LEGAL DESCRIPTION

THAT PART OF LOTS 11, 12 AND 13 IN WESTERFIELD'S RESUBDIVISION OF BLOCK 27 IN WILMETTE VILLAGE IN THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE; BEGINNING AT A POINT IN THE SOUTH LINE OF SAID LOT 13 IN SAID WESTERFIELD'S RESUBDIVISION WHICH IS 113 FEET, 6 INCHES WEST OF THE SOUTHEAST CORNER OF LOT 15 IN SAID WESTERFIELD'S RESUBDIVISION; THENCE NORTHWESTERLY 178 FEET, 5 INCHES MORE OR LESS TO A POINT IN THE NORTH LINE OF SAID LOT 11 IN SAID WESTERFIELD'S RESUBDIVISION WHICH IS 51 FEET, 3 INCHES EAST OF THE NORTHWEST CORNER OF SAID LOT 11 EXCEPT THAT PART OF THE ABOVE DESCRIBED PARCEL LYING NORTH OF A LINE 38 FEET SOUTH OF (MEASURED AT RIGHT ANGLE) AND PARALLEL TO THE NORTH LINE OF SAID LOTS IN COOK COUNTY, ILLINOIS.

Commonly known as:

1222 Washington Court, Wilmette, Illinois 60091

Permanent Index No. (P.I.N.):

05-34-102-017-0000

Property of Cook County Clerk's Office