



Doc#: 0705950033 Fee: \$44.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/28/2007 11:32 AM Pg: 1 of 11

**This Document Prepared By  
and After Recording Return To:**

Deno Melchiorre, Trustee  
P.O. Box 169  
Glenview, IL 60025

## RESIDENTIAL MORTGAGE

THIS MORTGAGE (this "Mortgage") dated for reference purposes only as of December 23, 2006, is made by MICHAEL A. MELCHIORRE of Wheeling, Illinois ("Mortgagor") as mortgagor, in favor of DENO MELCHIORRE, not individually but as Trustee of the Deno Melchiorre Declaration of Trust dated December 20, 1989 ("Mortgage"), as mortgagee.

### RECITALS AND DEFINITIONS:

- A. Mortgagor is the owner of the real estate legally described on Exhibit A attached hereto.
- B. Mortgagor has incurred certain indebtedness to Mortgagee in the principal amount of \$ 49,827.00 (the "Loan"). The Loan is evidenced by a Demand Promissory Note of even date herewith (the "Note").
- C. To secure the obligations and liabilities of Mortgagor to Mortgagee in connection with the Loan, Mortgagee has requested and Mortgagor has agreed to execute and deliver this Mortgage.
- D. This Mortgage, together with all such agreements, documents, and instruments given to evidence or secure the indebtedness evidenced by the Note and all other written matter and all amendments, modifications, supplements, extensions and restatements thereof and thereto, and all agreements, documents or instruments delivered in substitution therefor or in lieu thereof, whether heretofore, now or hereafter executed by or on behalf of Mortgagor (collectively referred to herein as the "Loan Documents"). Mortgagor is referred to as a "Loan Party". Reference to this Mortgage or any other Loan Document contained in any of the foregoing documents shall be deemed to include all modifications of any such document.
- E. As used in this Mortgage, the term "Secured Obligations" collectively means: (i) the principal of and interest on the Note; (ii) all other indebtedness of any kind arising under, and all amounts of any kind which at any time become due or owing to Mortgagee under or with respect to the Note, this Mortgage or any of the other Loan Documents; (iii) all costs incurred by Mortgagee to protect any or all of the Collateral (as defined below), perform any obligation of Mortgagor hereunder or under any other Loan Document, or collect any amount owing to Mortgagee whether before or after an Event of Default; (iv) all fees due and payable by Mortgagor to Mortgagee; and (v) interest on all of the foregoing to the extent it accrues under the Note or any other Loan Document, including, without limitation, interest accruing after an Event of Default, acceleration and/or judgment at the Default Rate and all interest, fees and costs that, but for commencement of an insolvency proceeding would have accrued.

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## GRANT

NOW THEREFORE, for and in consideration of Mortgagee and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Mortgagor, and in order to secure the full, timely and proper payment and performance of the Loan.

MORTGAGOR HEREBY MORTGAGES, CONVEYS, TRANSFERS, HYPOTHECATES, AND ASSIGNS TO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS, FOREVER, AND HEREBY GRANTS TO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER A CONTINUING SECURITY INTEREST IN, TO, AND UNDER ALL OF THE FOLLOWING, WHETHER NOW OWNED OR HEREAFTER ACQUIRED OR ARISING:

All of the real estate described on Exhibit A attached hereto, together with all tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in any-wise appertaining to the land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the land; all estate, claim, demand, right, title or interest of Mortgagor in and to any street, road, highway, or alley (vacated or otherwise) adjoining the land or any part thereof; all strips and gores belonging, adjacent or pertaining to the land; and any after-acquired title to any of the foregoing (all of the foregoing is herein referred to collectively as the "Property");

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

THIS MORTGAGE IS GRANTED TO SECURE FUTURE ADVANCES.

### **1. Covenants and Agreements of Borrower.**

To secure the payment and performance of the Secured Obligations, Mortgagor hereby covenants and agrees with Mortgagee as follows:

1.1 MAINTENANCE AND REPAIR; PROTECTION OF SECURITY. Mortgagor will: (a) not abandon the Property; (b) not do or suffer anything to be done which would depreciate or impair the value of the Collateral or the security of this Mortgage; (c) not remove or demolish any of the Improvements; (d) pay promptly for all labor and materials for all construction, repairs and improvements to or on the Property; (e) maintain, preserve and keep the Improvements in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction; (f) promptly restore and replace any of the Improvements which are destroyed or damaged; (g) not commit, suffer, or permit waste of any part of the Property; (h) maintain all grounds and abutting sidewalks in good and neat order and repair; and (i) take all action necessary to maintain this Mortgage as a perfected security interest and lien upon the Collateral, subject to no liens or exceptions other than those liens and encumbrances described on Exhibit B attached hereto (the "Permitted Encumbrances").

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1.2 **SALES; LIENS.** At all times during the term hereof, Mortgagor shall be the fee title owner of the Property, subject to no lien or encumbrance, except the Permitted Encumbrances, and Mortgagor shall not, without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole and exclusive discretion, directly or indirectly sell, contract to sell (if possession of the Property is to be transferred prior to the closing date, such as an installment agreement for deed), assign, transfer, convey, or dispose of the Property or any other Collateral, or any portion thereof or any interest or estate therein, whether legal, equitable, beneficial or possessory, subject or permit the Property or any other Collateral, or any portion thereof or interest therein (whether legal, equitable, beneficial or otherwise) or estate in any thereof (including the right to receive the rents and profits therefrom) directly or indirectly, to any mortgage, deed of trust, lien, claim, security interest, encumbrance or right (whether senior or junior to, or on a parity with, this Mortgage).

## 2. **Default.**

Each of the following shall constitute an event of default ("Event of Default") hereunder:

2.1. **DEFAULT UNDER ANY OTHER LOAN DOCUMENT.** Any Event of Default occurs under the terms of the Note. With respect to any Event of Default which is an Event of Default hereunder by reason of being an Event of Default under any other Loan Document, the period for grace, notice, or opportunity to cure, set forth in such other Loan Document, and only such period, shall be applicable thereto.

2.2. **PERFORMANCE.** Except as provided in any other section of this Section 2 or any other provision of this Mortgage, failure by Mortgagor to promptly perform any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under this Mortgage for a period of thirty (30) days after notice thereof; provided that: (i) if such default, in the reasonable discretion of Mortgagee, creates a hazardous condition or materially, adversely and imminently affects the value of the Property, such default shall be cured immediately; and (ii) subject to the provisions of subsection (i) above, to the extent that such default is of such a character which reasonably requires more than thirty (30) days to cure, Mortgagor shall have such reasonable additional time to cure the default, if Mortgagor has commenced to cure the same within said thirty (30) day period and is diligently and continuously pursuing such cure, which default shall in all circumstances be cured within ninety (90) days after delivery of the above-required written notice.

2.3. **DEFAULT IN CERTAIN COVENANTS.** Default in the performance of any covenant or agreement set forth in Sections 1.1 or 1.2 herein.

2.4. **REPRESENTATIONS AND WARRANTIES.** Any representation, warranty, or disclosure made to Mortgagee by Mortgagor in this Mortgage, proving to be false or misleading in any material respect as of the time the same was made or deemed made.

2.5. **ABANDONMENT.** Mortgagor abandons the Property.

## 3. **Remedies.**

3.1. **ACCELERATION.** Upon the occurrence of any Event of Default, Mortgagee may declare the unpaid principal balance of the Note, the Loan Agreement, this Mortgage, and all interest thereon to be immediately due and payable.

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3.2. REMEDIES UNDER OTHER LOAN DOCUMENTS. Upon the occurrence of an Event of Default, Mortgagee shall have all remedies set forth in this Mortgage, and at law or in equity. It is the intention of the parties that this Mortgage shall confer upon Mortgagee the fullest rights, remedies and benefits available under applicable law.

3.3. FORECLOSURE. Upon the occurrence of any Event of Default, Mortgagee shall have the right immediately or at any time thereafter to foreclose the lien of this Mortgage. As part of the foreclosure, Mortgagee in its discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Property, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable law. Upon the completion of any such sale or sales, Mortgagee shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers of the property so sold, in the manner and form as provided by applicable Law, and Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose Mortgagee may execute and deliver, for and in the name of Mortgagor, all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof.

3.4. JUDGMENT. In the case of any sale of the Property pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Note and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all reasonable expenses of every kind paid or incurred by Mortgagee for the enforcement, protection or collection of this security, including court costs, reasonable attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by Mortgagor.

3.5. NO LIABILITY ON MORTGAGEE. Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor and Mortgagor shall and does hereby agree to indemnify against and hold Mortgagee harmless of and from any and all liabilities, losses or damages which Mortgagee may incur or pay under or with respect to any of the Collateral or under or by reason of its exercise of rights hereunder and any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Collateral or in any of the contracts, documents or instruments evidencing or creating any of the Collateral, unless such liability, claim, cost or demand is caused solely by Mortgagee's gross negligence, fraud or willful misconduct. Mortgagee shall not have responsibility for the control, care, management or repair of the Property or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss, injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against Mortgagee in its exercise of the powers herein granted to it, and Mortgagor expressly waives and releases any such liability, except liability arising from Mortgagee's gross negligence, fraud or willful misconduct. Should Mortgagee incur any such liability, loss or damage under or by reason hereof, or in the defense

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of any claims or demands, then any such amount expended by Mortgagee shall be payable by Mortgagor in accordance with the Loan Agreement.

3.6. REMEDIES CUMULATIVE. No remedy or right of Mortgagee hereunder or under the Note, or any of the other Loan Documents or otherwise, or available under applicable Law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable Law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee. All obligations of Borrower, and all rights, powers and remedies of Mortgagee, expressed herein shall be in addition to, and not in limitation of, those provided by Law or in the Note, any other Loan Documents or any other written agreement or instrument relating to any of the Secured Obligations or any security therefor.

3.7. COMPLIANCE WITH THE ILLINOIS MORTGAGE FORECLOSURE ACT. In the event that any provision of this Mortgage shall be inconsistent with any provision of the Mortgage Foreclosure Act, the provision of the Mortgage Foreclosure Act shall take precedence over the provision 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 Mortgage Foreclosure Act. Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Mortgage Foreclosure Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Mortgage Foreclosure Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Mortgage Foreclosure Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Mortgage Foreclosure Act to the full extent permitted by Law.

## 4. General.

4.1. PERMITTED ACTS. Mortgagor agrees that, without affecting or diminishing in any way the liability of Mortgagor or any other person (except any person expressly released in writing by Mortgagee) for the payment or performance of any of the Secured Obligations or for the performance of any obligation contained herein or affecting the lien hereof upon the Collateral or any part thereof, Mortgagee may at any time and from time to time, without notice to or the consent of any person or release any person or entity liable for the payment or performance of any of the Secured Obligations; extend the time for, or agree to alter the terms of payment of, any indebtedness under the Note or any of the Secured Obligations; modify or waive any obligation; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind; release any Collateral or other property securing any or all of the Secured Obligations; make releases of any portion of the Property; consent to the making of any map or plat of the Property; or to the granting of easements on the Property or of any covenants restricting the use or occupancy thereof; or exercise or refrain from exercising, or waive, any right Mortgagee may have hereunder or under any of the other Loan Documents.

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4.2. NOTICES. Any and all notices given in connection with this Mortgage shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by Federal Express or other nationally recognized overnight messenger service, first class registered or certified mail, postage prepaid, return receipt requested. A written notice shall be deemed to have been given to the recipient party on the earlier of: (a) the date it shall be delivered to the address required by this Mortgage; (b) the date delivery shall have been refused at the address required by this Mortgage; or (c) with respect to notices sent by mail, the date as of which the postal service shall have indicated such notice to be undeliverable at the address required by this Mortgage. Any and all notices referred to in this Mortgage, or which either party desires to give to the other, shall be addressed as follows:

If to Mortgagor: Deno Melchiorre, Trustee  
P.O. Box 169  
Glenview IL 60025

If to Mortgagee: Michael A. Melchiorre  
1159 Buckingham Court, D-1  
Wheeling, IL 60090

Any party hereto may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. In addition to the foregoing, any notice of default shall be delivered to such other persons or entities as may be identified in the Loan Agreement from time to time.

4.3. CARE BY MORTGAGEE; STANDARDS FOR APPROVAL. Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as Mortgagor request in writing, but failure of Mortgagee to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of Mortgagee to preserve or protect any rights with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by Mortgagor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral. Unless otherwise specifically provided herein, any and all discretion, determination, verification, waiver, consent or approval to be exercised, granted, provided or made by Mortgagee herein, shall be exercised, made, granted or withheld, or continued to be exercised, made, granted or withheld, in Mortgagee's sole, absolute and exclusive discretion (including without limitation any approval to be granted or withheld under Section 1.3 and the exercise or any right or remedy granted pursuant to Article 3). MORTGAGEE SHALL HAVE NO DUTY TO MORTGAGOR TO MAKE ANY DETERMINATION, TO PROVIDE ANY WAIVER OR CONSENT, OR TO EXERCISE ANY JUDGMENT OR DISCRETION UNDER THE TERMS OF THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT FOR THE BENEFIT OF MORTGAGOR, GUARANTOR, ANY OTHER LOAN PARTY, THE PROJECT OR THE PROPERTY. FOR GREATER CERTAINTY, AND NOT IN LIMITATION OF THE FOREGOING, ANY REFERENCE IN THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT TO "MORTGAGEE'S APPROVAL OR "MORTGAGEE'S CONSENT" OR "MORTGAGEE'S DISCRETION" OR WORDS OF SUCH IMPORT, SHALL BE DEEMED TO MEAN SUCH APPROVAL, CONSENT OR DISCRETION, IN MORTGAGEE'S SOLE, EXCLUSIVE AND ABSOLUTE DISCRETION, UNLESS SUCH PROVISION SHALL EXPRESSLY PROVIDE THAT SUCH DISCRETION, CONSENT OR APPROVAL SHALL NOT BE UNREASONABLY WITHHELD.

4.4. RELEASE OF MORTGAGE. When the Loan has been paid and performed in full, Mortgagee covenants, upon request by Mortgagor at Mortgagor's sole cost and expense, to file

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a release of this Mortgage (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof).

4.5. NO WAIVER; WRITING. No delay on the part of Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Mortgagee of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

4.6. NO MERGER. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Property, it is hereby understood and agreed that should Mortgagee acquire an additional or other interests in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage 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.

4.7. FUTURE ADVANCES. This Mortgage is given to secure, in part, future advances under the Note, and shall secure not only the initial advance under the Note, but also subsequent advances. The total amount of the Secured Obligations may increase or decrease from time to time. This Mortgage shall be valid and shall, to the fullest extent permitted by Law, have priority over any and all liens and encumbrances arising after this Mortgage is recorded in the Recorder's office in the county in which the Land is located, including (to the extent permitted by applicable Law) statutory liens except taxes and assessments levied on the Collateral.

4.8. ILLINOIS CREDIT AGREEMENT ACT. Mortgagee expressly agrees that for purposes of this Mortgage and each and every other Loan Document: (i) this Mortgage and each and every other Loan Document shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1, *et seq.* (the "Act"); (ii) the Act applies to this transaction including, but not limited to, the execution of this Mortgage and each and every other Loan Document; and (iii) any action on or in any way related to this Mortgage and each and every other Loan Document shall be governed by the Act.

4.9. Waiver of Homestead and Redemption. Borrower releases and waives all rights under the homestead and exemption laws of the State of Illinois. Pursuant to 735 ILCS 5/15-1601(b) Borrower waives any and all rights of redemption from sale under any order of foreclosure of this Mortgage or other rights of redemption which may run to Borrower or any other "Owner of Redemption", as that term is defined in 735 ILCS 5/15-1212. Borrower waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law.

*The remainder of this page is intentionally left blank.*

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IN WITNESS WHEREOF, the undersigned have executed and delivered this Mortgage dated for reference purposes only DECEMBER 29, 2006

  
MICHAEL A. MELCHIORRE

Property of Cook County Clerk's Office




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STATE OF ILLINOIS )  
COUNTY OF LAKE ) SS:

The Undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 29<sup>th</sup> day of DECEMBER, 2006, personally appeared before me MICHAEL A. MELCHIORRE, to me personally known to be the persons who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he signed and delivered the same, as his free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

  
\_\_\_\_\_  
Notary Public

My commission expires: 12/27/10



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## EXHIBIT A

### LEGAL DESCRIPTION

Common Address: 1159 Buckingham Court, Unit D-1  
Wheeling, IL 60090

Permanent Index Number: 03-03-100-054-1423

Unit 1-20-34-R-D-1 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN LEXINGTON COMMONS COACH HOUSE CONDOMINIUM AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NUMBER 24759029, AND AMENDED BY DOCUMENT NUMBER 27004256 IN THE NORHTWEST QUARTER OF SECTION 3 TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## EXHIBIT B

### PERMITTED ENCUMBRANCES

1. General taxes not yet due and payable.
2. Mortgagee: Banc One Mortgage Corporation, Recorded in the office of the Recorder of Deeds of Cook County, IL, as Document No. 92880694

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