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Doc#: 0717011188 Fee: \$46.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/19/2007 04:12 PM Pg: 1 of 12

**This Document Prepared By And
When Recorded Return To:**
Barbara Condit Canning, Esq.
Burke, Warren, MacKay &
Serritella, P.C.
330 N. Wabash Street
22nd Floor
Chicago, Illinois 60611
(312) 840-7000

For Recorder's Use Only

CONSTRUCTION MORTGAGE

THIS INDENTURE, made May 30, 2007, between Stuart Nitzkin, an individual, and Howard Harris, an individual (collectively, "**Individual Borrower**"), and 1000 Pine Tree Lane LLC, an Illinois limited liability company, whose principal place of business is 320 North Frontage Road, Northfield, Illinois 60093 ("**Mortgagor**"), and Metropolitan Capital Bank, (herein referred to as "**Mortgagee**").

WITNESSETH:

First American Title
Order # 1611599
2003

THAT WHEREAS, Mortgagor and the Individual Borrower (collectively, "**Borrower**") have concurrently herewith executed a Construction Loan Agreement ("**Loan Agreement**"), the terms and provisions of which are incorporated herein by reference a though fully set forth herein, providing for a loan from Mortgagee to Borrower (as such term is defined in the Loan Agreement) in the aggregate amount of \$2,750,000.00 ("**Loan**"), evidenced by a Secured Promissory Note in the amount of \$2,750,000.00 ("**Note**"). All capitalized terms not defined herein shall have the meaning set forth in the Loan Agreement. The Loan is payable with interest at a rate equal to the Prime Rate plus one percent (1.0%) per annum ("**Interest Rate**"), and the entire remaining balance of principal and interest is due and payable on or before May 29, 2009, unless otherwise extended as provided in the Loan Agreement.

All such payments on account of the indebtedness evidenced by the Note shall be applied to interest on the unpaid principal balance only. Interest after default or maturity, whether by reason of acceleration or otherwise, shall accrue at rate equal to the Prime Rate plus five percent (5.0%) per annum ("**Default Rate**"). Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed. All of said principal and interest shall be payable at Mortgagee's principal office at Nine East Ontario, Chicago, Illinois 60611, or at such other place as Mortgagee shall from time to time designate in writing.

As used herein, the term "**Prime Rate**" at any time shall mean the highest rate of interest published in the "Money" Section of The Wall Street Journal then in effect (which rate is not intended to be Mortgagee's lowest or most favorable rate); provided, however, that if Mortgagee ceases to use the term "Prime Rate" in setting a base rate of interest for commercial loans, then the Prime Rate shall be determined by reference to such base rate as designated in writing by

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Mortgagee to Mortgagor at its discretion. Mortgagee makes no representation or warranty that the Prime Rate is the lowest or best rate of interest offered by the Mortgagee to commercial or other borrowers.

"Indebtedness" means all obligations of Mortgagor to Mortgagee for payment of any and all amounts due under the Note, the Loan Agreement, this Mortgage or any other Loan Documents, together with any and all other indebtedness now or at any time due and owing from Mortgagor to Mortgagee, howsoever and whensoever arising or created. **"Indebtedness"** also includes all amounts so described herein and all costs of collection, legal expenses and in-house or reasonable outside attorneys' fees incurred or paid by Mortgagee in attempting the collection or enforcement of the Note or this Mortgage, or any extension or modification of this Mortgage or the Note, or in any legal proceeding occurring by reason of Mortgagee's being the mortgagee under this Mortgage or any extension or modification thereof or the Payee under the Note or any extension or modification thereof, including but not limited to any declaratory judgment action, or in the repossession, custody, sale, lease, assembly or other disposition of any collateral for the Note. This Mortgage also secures all loans from Mortgagee to each and every Borrower or any Affiliate of each and every Borrower under the Loan and Indebtedness includes all such obligations. Notwithstanding anything contained herein to the contrary, in no event shall the lien of this Mortgage secure outstanding liabilities in excess of two hundred percent (200%) of the principal amount of the Note.

NOW, THEREFORE, 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 also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents, grant, remise, release and convey unto the Mortgagee, its successors and assigns, the following described real estate situate, lying and being in the County of Cook and the State of Illinois, to wit:

LEGAL DESCRIPTION - SEE EXHIBIT "A" ATTACHED HERETO which, collectively with the property hereinafter described, is referred to herein as the **"Premises."**

This Mortgage shall also secure any and all renewals or extensions of the whole or any part of the Indebtedness hereby secured however evidenced, with interest at such lawful rate as may be agreed upon, and any such renewals or extensions or any change in the terms of rate of interest shall not impair in any manner the validity or priority of this Mortgage, nor release the Mortgagor from personal liability for the Indebtedness hereby secured.

TOGETHER with all improvements thereon situate and which may hereafter be erected or placed thereon, and all and singular tenements, hereditaments and appurtenances and easements thereunto belonging and the rents, issues and profits thereof, which are hereby expressly conveyed and assigned to the Mortgagee as additional security and as an equal and primary fund with the property herein conveyed for the repayment of the Indebtedness secured by this Mortgage, and any and all appurtenances, fixtures and equipment in or that may at any time be placed in any building now or hereafter standing on said Premises.

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It is mutually covenanted and agreed, by and between the parties hereto that, in addition to all other things which at law or by convention are regarded as fixtures, and specifically but not by way of limitation, all shades and awnings, screens and carpets, shrubbery, gas and electric fixtures, radiators, heaters, engines and machines, boilers, ranges, elevators and motors, bathtubs, sinks, water-closets, basins, pipes, faucets and other plumbing and heating fixtures, mirrors, mantels, refrigerating plants, iceboxes, electric refrigerators, air conditioning apparatus, cooking apparatus and appurtenances, and such other goods and chattels as may ever be furnished by a landlord in letting and operating an unfurnished building, similar to any building now or hereafter standing on said Premises, whether or not the same are or shall be attached to said building by nails, screws, bolts, pipe connections, masonry, or in any other manner whatsoever, which are now or hereafter to be used upon said described Premises shall be conclusively deemed to be the "fixtures" and an accession to the freehold and a part of the realty, whether affixed or annexed or not, and conveyed by this Mortgage; and all the estate, right, title or interest of the said Mortgagor in and to said Premises, property, improvements, furniture, apparatus, furnishings and fixtures are hereby expressly conveyed, assigned and pledged; and as to any of the property aforesaid, which does not so form a part and parcel of the real estate or does not constitute a "fixture" as such term is defined in the Uniform Commercial Code. This Mortgage is hereby deemed to be as well a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as Secured Party (as such term is defined in the Uniform Commercial Code).

TO HAVE AND TO HOLD the above described Premises with the appurtenances and fixtures thereto appertaining or belonging unto the Mortgagee, its successors and assigns, forever, for the purposes herein set forth and for the security of the Indebtedness evidenced by the Note hereinbefore described, and interest thereon and 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 said Mortgagor does hereby expressly release and waive.

In addition, the Mortgagor covenants with the Mortgagee as follows:

1. **Care and Condition of Premises.** Mortgagor shall (1) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or destroyed, so long as insurance proceeds are sufficient therefor; (2) keep said Premises in good condition and repair, without waste, and free from mechanics' or other liens or claims for lien not expressly subordinated to the lien hereof; (3) 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 Mortgagee; (4) complete within a reasonable time any building or buildings now or at anytime in process of erection upon said Premises; (5) comply with all requirements of law or municipal ordinances with respect to the Premises and the use thereof; and (6) perform all obligations of the Borrower under the terms of the Loan Agreement and not cause or permit a default to occur or exist under the terms of the Loan Agreement which shall not be cured as provided in the Loan Agreement.

2. **Payment of Indebtedness, Taxes and Other Charges.** Mortgagor shall pay the principal and interest on the Indebtedness secured hereby and shall pay before any penalty

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

3. **Insurance.** Mortgageor shall obtain and maintain insurance as provided in Sections 5.4 and 5.5 of the Loan Agreement and in any requirement set forth in the Loan Documents.

4. **Security Agreement.** This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code of Illinois ("UCC"), and any other applicable law. To the extent any of the Property consists of personal property under the UCC, whether tangible or intangible in nature, Borrower by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Indebtedness and all of Borrower's obligations, a security interest in the Premises. Such portion of the Premises subject to the UCC shall be referred to in this section as "Collateral." If any Default shall occur, Mortgagee, in addition to any other rights and remedies which it might have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. If any Default then exists, without notice, demand or legal process of any kind, Mortgagee may take possession of any or all of the Collateral, wherever it might be found and for that purpose, Mortgagee shall have the right, without breaching the peace, to enter upon the premises of Borrower where the Collateral is located (or is believed to be located) without any obligation to pay rent to Borrower, or any other place or places under the control of Borrower where the Collateral is believed to be located and kept, and remove the Collateral therefrom to the premises of Mortgagee or any agent of Mortgagee, for such time as Mortgagee may desire, in order to effectively collect or liquidate the Collateral, and/or Mortgagee may require Borrower to assemble the Collateral and make it available to Mortgagee at a place or places to be designated by Mortgagee. In addition to all such rights and remedies, the sale, lease or other disposition of the Collateral, or any part thereof, by Mortgagee after a Default may be for cash, credit or any combination thereof, and Mortgagee may purchase all or any part of the Collateral at public or, if permitted by law, private sale, and in lieu of actual payment of such purchase price, may set-off the amount of such purchase price against the Indebtedness and any obligations then owing. Any sale of the Collateral may be adjourned from time to time with or without notice. Mortgagee may, in its sole discretion, cause any Collateral to remain on Borrower's premises, at Borrower's expense, pending sale or other disposition of such Collateral. Mortgagee shall have the right to conduct such sales on a Borrower's premises, at Borrower's expense, or elsewhere on such occasion or occasions as Mortgagee may see fit. Borrower hereby irrevocably authorizes Mortgagee to prepare, execute and file or record on its behalf any UCC financing statements or any other security instruments, forms or documents. If requested by Mortgagee, Borrower shall execute and deliver to Mortgagee, in form reasonably satisfactory to Mortgagee, additional security agreements, financing statements and/or other instruments covering all personal property or fixtures of Borrower pledged hereunder, whether now existing or hereafter acquired, placed on, or annexed or made appurtenant to the Real Estate, including delivery of any and all

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instruments (together with endorsements in blank) delivered to Mortgagee, which instruments constitute or constituted proceeds of any personal property pledged herein.

5. **Protection of Security by Mortgagee.** In case of default herein, Mortgagee may, but need not, make any reasonable payment or perform any reasonable act hereinbefore required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim therefor, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies 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. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to Mortgagee on account of any default hereunder on the part of 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.

6. **Lien.** Mortgagor shall protect the lien and security interest of this Mortgage and the Loan Documents and shall not place, or permit to be placed, or otherwise mortgage, pledge, hypothecate or encumber the Premises with any other lien, attachment, levy, or security interest of any nature whatsoever (whether mechanics, judgment, delinquent tax, statutory, contractual or other) regardless of whether the same is allegedly or expressly subordinate and inferior to the liens and security interest created by this Mortgage and the Loan Documents, and if any such lien or security interest is asserted against the Premises, Borrower shall promptly, and at its own cost and expense, pay the underlying claim in full, or appear in and defend any action or claim, or take such other action so as to cause the same to be released within thirty (30) days of when asserted, made or filed. In determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Individual Borrower and Mortgagor in owning and operating property such as the Premises, found it acceptable, and relied and continues to rely on the same as the means of maintaining the value of the Premises which is Mortgagee's security for repayment of the Indebtedness. Individual Borrower and Mortgagor are well-experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan, and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor recognizes that any secondary junior financing placed upon the Premises (i) may divert funds which would otherwise be used to pay the Indebtedness secured hereby; (ii) could result in acceleration and foreclosure by such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; (iii) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; (iv) would result in the existence of a potentially adverse party in any bankruptcy or liquidation proceeding, and (v) would impair Mortgagee's right to accept a deed-in-lieu of foreclosure. In accordance with the foregoing and for the purposes of (a) protecting Mortgagee's security, both of repayment and of value of the Premises as security for the Loan, (b) giving Mortgagee the full benefit of its bargain and contract with its Borrower; and

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(c) keeping the Premises free of subordinate financing liens, Borrower agrees that, even if this section be deemed a restraint on alienation, it is a reasonable one. Nothing herein shall imply that Mortgagee is ever, under any circumstances, under any obligation or duty to consent to any transaction which would otherwise be prohibited hereunder and that Mortgagee may withhold its consent in its sole and complete discretion.

7. **Default and Acceleration.** The Mortgagor shall pay each item of Indebtedness herein mentioned, both principal and interest, when due according to the terms of the Note, and shall perform each and every covenant and provision of this Mortgage. At the option of Mortgagee, upon such notice as required under the terms of the Loan Agreement, all unpaid Indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable (a) immediately in the case of default under the terms of the Loan Agreement, the Note or this Mortgage; (b) immediately in the event Mortgagor shall, without the prior consent of Mortgagee, sell, transfer, convey, encumber, or assign the title to all or any portion of the Premises, or the rents, issues, or profits therefrom in violation of the provisions of the Loan Agreement, whether by operation of law, voluntarily or otherwise, or shall contract to do any of the foregoing unless the Note will be repaid as part of that transaction; or (c) immediately upon the occurrence of a default in the performance of any covenant or agreement of the Mortgagor contained in this Mortgage or in the Note secured hereby, whereupon Mortgagee, at its option, shall then have the unqualified right to accelerate the maturity of the Note, causing the full principal balance, accrued interest, and other charges, if any, to be immediately due and payable without notice to Mortgagor.

8. **Foreclosure.** When the Indebtedness hereby secured shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the judgment for sale all expenditures and expenses which may be reasonably paid or incurred by or on behalf of Mortgagee for attorneys' fees, special process server fees, Mortgagee's 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 judgment) of procuring all such abstracts of title, title searches and examination, guarantee policies 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 at any sale which may be had pursuant to such judgment the true condition of the title to or the value of the Premises. Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee to the extent reimbursable under the Illinois Mortgage Foreclosure Law, as amended from time to time, whether or not enumerated herein, shall be added to the Indebtedness secured by this Mortgage, and included in such judgment of foreclosure. All expenditures and expenses in this paragraph mentioned shall become so much additional Indebtedness secured hereby and immediately due and payable, with interest thereon at the rate stated above, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which Mortgagor or Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any Indebtedness hereby secured; (b) preparation 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 threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced. In addition to the foregoing, in any such foreclosure proceeding, the Mortgagee shall be entitled to exercise any

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and all rights and remedies provided in the Illinois Mortgage Foreclosure Law, as amended from time to time, in such order as Mortgagee may lawfully elect.

9. **Application of Proceeds.** Except as otherwise set forth in the Loan Agreement, the proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: (1) first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; (2) second, on account of all other items which under the terms hereof, constitute secured Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; (3) third, on account of all principal and interest remaining unpaid on the Note; and (4) fourth, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

10. **Receiver.** Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of said Premises. Such appointment 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 during the pendency of such foreclosure suit. Such receiver shall have all 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 or any part of the pendency of such foreclosure suit and any period of redemption. Any amounts received by such receiver from such management and operation of the Premises shall be applied as follows: (1) first, to the Indebtedness secured hereby, or 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; and (2) second, to the deficiency in case of a sale and deficiency.

11. **Waiver of Redemption.** In the event of a judicial proceeding to foreclose this Mortgage, Mortgagor does hereby expressly waive any and all rights of redemption from any judgment of foreclosure of this Mortgage on its own behalf, and on behalf of its successors and assigns and each and every person acquiring any interest in or title to the Premises, subordinate or subsequent hereto, and on behalf of all other persons to the extent permitted by the applicable provisions of the statutes and laws of the State of Illinois.

12. **Inspection.** Mortgagee shall have the right to inspect the Premises at all reasonable times and access shall be permitted for that purpose.

13. **Examination of Title, Location, etc.** Mortgagee has no duty to examine the title, location, existence, or condition of the Premises, nor shall Mortgagee be obligated to record this Mortgage or to exercise any right herein given unless expressly obligated by the terms hereof, nor be liable for any acts or omissions hereunder, except in case of its own gross negligence or misconduct or that of the agents or employees of Mortgagee.

14. **Condemnation.** If all or any part of the Premises is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire proceeds of the award of compensation payable in respect of the part so taken or damaged are hereby assigned to

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and shall be paid directly to Mortgagee. The proceeds of any award or compensation actually received by Mortgagee after deduction therefrom of all reasonable costs and expenses including reasonable attorney's fees incurred by Mortgagee in connection with the taking, at Mortgagee's option, shall be applied, without premium, in part or entirely to payment of the Indebtedness secured hereby or to restoration of the Premises, as provided in the Loan Agreement.

15. **Release.** Mortgagee shall release this Mortgage and the lien thereof by proper instrument in accordance with the terms of the Loan Agreement.

16. **No Exclusive Remedy.** Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any Event of Default or any acquiescence therein. If any provisions of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Illinois Mortgage Foreclosure Law, as amended, in the absence of said provision, Mortgagee shall be vested with the rights granted in the Illinois Mortgage Foreclosure Law, as amended, to the full extent permitted thereby.

17. **Provisions Severable.** In the event any one or more of the provisions of this Mortgage for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Mortgage. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law, as amended, the provisions of the Illinois Mortgage Foreclosure Law, as amended, 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 Illinois Mortgage Foreclosure Law, as amended.

18. **Incorporation of Provisions of Loan Agreement.** This Mortgage is executed by Mortgagor pursuant to the terms and provisions of the Loan Agreement. The terms and provisions of the Loan Agreement, including the definitions contained therein, are hereby incorporated herein by reference. In the event of any conflict between this Mortgage and the Loan Agreement and except as otherwise provided in Section 22 hereof, the terms and conditions of the Loan Agreement shall govern and prevail.

19. **Hold Harmless.** To the extent permitted by law, in addition to the agreements of Borrower under the Note or other Loan Documents, Mortgagor and Individual Borrower hereby indemnify and will defend and hold Mortgagee harmless from and against any and all proceedings, claims, actions, causes of action, suits, proceedings, investigations, losses, costs, liabilities, damages, punitive damages, penalties and expenses, including reasonable attorneys' and paralegals' fees and disbursements arising out of, affecting or relating to the Premises or the Loan Documents.

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20. **Notices.** All notices pursuant to this Mortgage shall be in writing and shall be deemed to be sufficiently given for all purposes when given in accordance with the terms of the Loan Agreement.

21. **Successors and Assigns.** This Mortgage shall (a) run with the land, (b) apply and extend to, be binding upon and inure to the benefit of Mortgagor, Mortgagor's subsidiaries, affiliates, successors and assigns and all persons claiming under or through Mortgagor, and the word "**Mortgagor**" shall include all such persons, and (c) shall apply and extend to, be binding upon and inure to the benefit of Mortgagee and Mortgagee's successors and assigns. The word "**Mortgagee**" shall include the successors and assigns of Mortgagee, and the holder or holders, from time to time, of the Note and any other Indebtedness instruments.

22. **Miscellaneous.** The captions in this Mortgage are for convenience only and do not define or limit the provisions of this Mortgage. Time is of the essence. All changes to this Mortgage must be in writing signed by Mortgagee and, if this Mortgage is recorded, shall not be effective until being recorded. Wherever used, the singular number shall include the plural, the plural, the singular, and use of any gender shall be applicable to all genders. In the event of any inconsistency among the terms and conditions of this Mortgage (including incorporated terms), or between such terms and the terms of any other Loan Document, Mortgagee may elect which terms shall govern and prevail.


(Signature Page Follows)

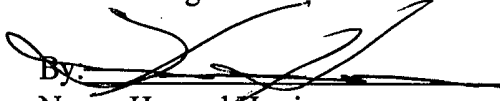
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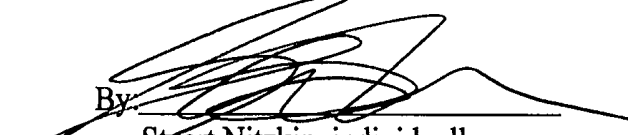
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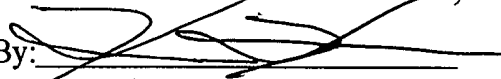
IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed as of the day and year first above written.

1000 PINE TREE LANE, LLC,
an Illinois limited liability company

By: 
Name: Stuart Nitzkin
Title: Manager

By: 
Name: Howard Harris
Title: Manager

By: 
Stuart Nitzkin, individually

By: 
Howard Harris, individually

Property of Cook County Clerk's Office

(SIGNATURE PAGE TO CONSTRUCTION MORTGAGE)

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that STUART NITZKIN and HOWARD HARRIS, individually and as Managers of 1000 Pine Tree Land, LLC, personally known to me to be the Managers of 1000 PINE TREE LANE, LLC, an Illinois limited liability company, and the same person whose names are subscribed to the foregoing instrument individually and as such Managers, appeared before me this day and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said limited liability company acting in their capacity as the Managers of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30th day of May, 2007.

Esmeralda Ramirez

NOTARY PUBLIC

My Commission Expires:



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EXHIBIT A

LEGAL DESCRIPTION

LOT 2 IN A RESUBDIVISION OF LOTS 18 TO 28, BOTH INCLUSIVE, IN BLIETZ' WINNETKA SUBDIVISION, BEING A SUBDIVISION OF THAT PART OF THE EAST ½ OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 18, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF A LINE LYING MIDWAY BETWEEN THE CENTER LINE OF ASHBURY AVENUE AND EDGEWOOD LANE EXTENDED WEST OF GROVE STREET; AND THAT PART OF THE WEST HALF OF THE SOUTHEAST ¼ OF THE NORTH WEST ¼ LYING NORTH OF THE CENTER LINE OF EDGEWOOD LANE EXTENDED WEST, IN SECTION 18, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common address: 1000 Pine Tree Lane, Winnetka, Illinois

PIN: 05-18-107-030-0000