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Doc#: 0722206001 Fee: \$48.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/10/2007 08:20 AM Pg: 1 of 13

Barbara Condit Canning, Esq.
Burke, Warren & Mackay, P.C.
IBM Plaza - 22nd Floor
330 North Wabash Avenue
Chicago, Illinois 60611

JUNIOR MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT

THIS JUNIOR MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT is made as of May 30, 2007 by and between HOWARD HARRIS ("Howard") and JULIE K. HARRIS ("Julie"), his wife (Howard and Julie are collectively referred to herein as the "Mortgagor"), and METROPOLITAN CAPITAL BANK (the "Mortgagee") with offices at Nine East Ontario Street, Chicago, Illinois 60611.

This Mortgage is entered into pursuant to that certain Construction Loan Agreement dated as of May 30, 2007 (the "Loan Agreement") between STUART NITZKIN, HOWARD HARRIS, 1000 PINE TREE LANE, LLC, an Illinois limited liability (the "Borrower"), and the Mortgagee.

Pursuant to the terms of the Loan Agreement, the Mortgagee has extended credit to the Borrower in the form of Secured Promissory Note in the amount of \$2,750,000.00 (together with all extensions, replacements, or amendments thereto, the "Note").

Pursuant to the Loan Agreement, Howard is a Borrower under the Note.

All capitalized terms not herein defined shall have the meaning set forth in the Loan Agreement.

All capitalized terms not herein defined shall have the meaning set forth in the Loan Agreement.

The Mortgagor MORTGAGES, GRANTS CONVEYS AND WARRANTS to the Mortgagee certain real property located in the County of Cook, State of Illinois and all the buildings, structures and improvements on it commonly known as 734 Brookdale Terrace, Glencoe, Illinois, and more specifically described as:

See Exhibit A attached

(the "Premises").

Tax Parcel Identification Numbers: See Exhibit A attached.

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The Premises also includes, without limitation, all of the Mortgagor's right, title and interest in the following:

- (1) All easements, rights-of-way, licenses, privileges and hereditaments.
- (2) Land lying in the bed of any road, or the like, opened, proposed or vacated, or any strip or gore, adjoining the Premises.
- (3) All machinery, apparatus, equipment, fittings, and articles of personal property of every kind and nature whatsoever located now or in the future in or upon the Premises and used or useable in connection with any present or future operation of the Premises (all of which is called "Equipment"). It is agreed that all Equipment is part of the Premises and appropriated to the use of the real estate and, whether affixed or annexed or not, shall for the purposes of this Mortgage unless the Mortgagee shall otherwise elect, be deemed conclusively to be real estate and mortgaged and warranted to the Mortgagee.
- (4) All mineral, oil, gas and water rights, royalties, water and water stock, if any.
- (5) All awards or payments including interest made as a result of the exercise of the right of eminent domain; the alteration of the grade of any street, any loss of or damage to any building or other improvement on the Premises, any other injury to or decrease in the value of the Premises, any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the Premises, and the reasonable attorneys' and paralegals' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of any such award or payment.
- (6) All of the rents, issues and profits of the Premises under present or future leases, or otherwise.

The Premises are unencumbered except for those permitted exceptions set forth on Exhibit B attached ("Permitted Encumbrances").

If the Premises are encumbered by Permitted Encumbrances, the Mortgagor shall perform all obligations and make all payments as required by the Permitted Encumbrances. The Mortgagor shall provide copies of all writings pertaining to Permitted Encumbrances, and the Mortgagee is authorized to request and receive that information from any other person without the consent or knowledge of the Mortgagor.

This Mortgage secures the following (the "Debt"):

- (i) The obligations and liabilities of the Borrower under the Note and Loan Agreement;
- (ii) The obligations and liabilities of the Mortgagor under this Mortgage; and
- (iii) Any extensions, renewals, modifications or replacements of the Note, Loan Agreement or this Mortgage.

FUTURE ADVANCES, CROSS-LIEN AND LIMITATION ON AMOUNT OF MORTGAGE:
Notwithstanding anything to the contrary contained in this Mortgage, the amount secured by this Mortgage, including all other present and future, direct and indirect obligations and liabilities of the Mortgagor, with or without others, shall not exceed 200% at any one time outstanding under the Note.

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RELEASE. Mortgagee shall release this Mortgage upon the sale of the Premises; provided that, (i) the Mortgagor executes a new mortgage (in a form similar to this Mortgage) with respect to the Mortgagor's new Principal Residence, or (ii) in the event that the Mortgagor does not purchase a new Principal Residence, the Mortgagor executes a security agreement granting a security interest to the Mortgagee in other collateral reasonably satisfactory to the Mortgagee after consultation with the Mortgagor.

JUNIOR MORTGAGE. This Mortgage shall be junior and subordinate to each mortgage recorded prior to the date hereof ("Senior Mortgage"). Without limiting the foregoing, this Mortgage shall also be junior and subordinate to each of the Permitted Encumbrances.

CONSIDERATION. The Mortgagor acknowledges and agrees as follows: (i) the Mortgagee entered into the Loan Agreement and other related agreements based on the Borrower's representation that the Mortgagor would execute and deliver this Mortgage on or before May 30, 2007, (ii) the Mortgagee is relying on this Mortgage in continuing to extend credit to the Borrower, and (iii) the Mortgagor has received good, valuable and sufficient consideration for executing this Mortgage and performing its obligations hereunder.

The Mortgagor promises and agrees as follows:

1. **PAYMENT OF DEBT; PERFORMANCE OF OBLIGATIONS:** The Mortgagor shall promptly pay when due, whether by acceleration or otherwise, the Debt for which the Mortgagor is liable, and shall promptly perform all obligations to which the Mortgagor has agreed under the terms of this Mortgage and any documents evidencing the Debt.
2. **TAXES:** The Mortgagor shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions, and other charges which may become a lien prior to this Mortgage. Should the Mortgagor fail to make those payments, the Mortgagee may at its option and at the expense of the Mortgagor pay the amounts due for the account of the Mortgagor. Upon the request of the Mortgagee, the Mortgagor shall immediately furnish to the Mortgagee all notices of amounts due and receipts evidencing payment. The Mortgagor shall promptly notify the Mortgagee of any lien on all or any part of the Premises and shall promptly discharge any unpermitted lien or encumbrance.
3. **CHANGE IN TAXES:** In the event of the passage of any law or regulation, state, federal or municipal, subsequent to the date of this Mortgage, which changes or modifies the laws now in force governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting those taxes, the Debt shall become due and payable immediately at the option of the Mortgagee, unless the Mortgagor executes a security agreement granting a security interest to the Mortgagee in other collateral reasonably satisfactory to the Mortgagee after consultation with the Mortgagor.
4. **INSURANCE:** Subject to the rights of any Senior Mortgage holder, until the Debt is fully paid, the Mortgagor shall keep the Premises and the present and future buildings and other improvements on the Premises constantly insured for the benefit of the Mortgagee against fire and such other hazards and risks customarily covered by the standard form of extended coverage endorsement available in the State where the Premises is located, including risks of vandalism and malicious mischief, and shall further provide flood insurance (if the Premises are situated in an area designated as a flood risk area by the Director of the Federal Emergency Management Agency or as otherwise required by the Flood Disaster Protection Act of 1973 and

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regulations issued under it), and such other appropriate insurance as the Mortgagee may require from time to time. All insurance policies and renewals must be acceptable to the Mortgagee, must provide for payment to the Mortgagee in the event of loss, must require thirty (30) days notice to the Mortgagee in the event of nonrenewal or cancellation, and must be delivered to the Mortgagee within thirty (30) days prior to their respective effective dates. Should the Mortgagor fail to insure or fail to pay the premiums on any insurance or fail to deliver the policies or certificates or renewals to the Mortgagee, then the Mortgagee at its option may have the insurance written or renewed and pay the premiums for the account of the Mortgagor. In the event of loss or damage, the proceeds of the insurance shall be paid to the Mortgagee alone. No loss or damage shall itself reduce the Debt. The Mortgagee is authorized to adjust and compromise a loss without the consent of the Mortgagor, to collect, receive and receipt for any proceeds in the name of the Mortgagee and the Mortgagor and to endorse the Mortgagor's name upon any check in payment of proceeds. The proceeds shall be applied first toward reimbursement of all costs and expenses of the Mortgagee in collecting the proceeds and then toward payment of the Debt or any portion of it, whether or not then due or payable, or the Mortgagee at its option may apply the proceeds, or any part to the repair or rebuilding of the Premises provided that the Mortgagor is not then or at any time during the course of restoration of the Premises in default under this Mortgage and has complied with all requirements for application of the proceeds to restoration of the Premises as Mortgagee, in its sole discretion may establish.

5. RESERVES FOR TAXES AND INSURANCE: [INTENTIONALLY OMITTED]

6. WASTE: The Mortgagor shall not commit or permit waste on the Premises nor do any other act causing the Premises to become less valuable. Mortgagor will keep the Premises in good order and repair and in compliance in all material respects with any law, regulation, ordinance or contract affecting the Premises and, from time to time, make all needful and proper replacements so that fixtures, improvements and Equipment will at all times be in good condition, fit and proper for their respective purposes. Should the Mortgagor fail to effect any necessary repairs, the Mortgagee may at its option and at the expense of the Mortgagor make the repairs for the account of the Mortgagor. The Mortgagor shall use the Premises in conformance with all applicable laws, ordinances and regulations. The Mortgagee or its authorized agent shall have the right to enter upon and inspect the Premises at all reasonable times. The Mortgagor unconditionally agrees to timely pay all fees with respect to inspections of the Premises.

7. ALTERATIONS, REMOVAL: [INTENTIONALLY OMITTED]

8. PAYMENT OF OTHER OBLIGATIONS: The Mortgagor shall also perform all of Mortgagor's obligations and pay all other obligations which are or may become liens or charges against the Premises for any present or future repairs or improvements made on the Premises, or for any other goods, services, or utilities furnished to the Premises and shall not permit any lien or charge of any kind securing the repayment of borrowed funds (including the deferred purchase price for any property) to accrue and remain outstanding against the Premises other than those set forth in Exhibit B hereto.

9. ASSIGNMENT OF LEASES AND RENTS: As additional security for the Debt, the Mortgagor collaterally assigns to the Mortgagee all oral or written leases, and the rents, issues, income and profits under all leases or licenses of the Premises, present and future. The Mortgagor will comply with all terms of all leases.

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10. ASSIGNMENT OF INTEREST AS TENANT OR PURCHASER: If the Mortgagor's interest in the Premises is that of a tenant or a purchaser, the Mortgagor also assigns, mortgages and warrants to the Mortgagee, as additional security for the Debt, all of the Mortgagor's title and interest in and to the agreements by which it is leasing or purchasing any part or all of the Premises, including all modifications, renewals and extensions and any purchase options contained in that or any other agreement. The Mortgagor agrees to pay each installment of rent, principal and interest required to be paid by it under the lease, land contract or other agreement when each installment becomes due and payable whether by acceleration or otherwise. The Mortgagor further agrees to pay and perform all of its other obligations under the lease, land contract or other agreement.

If the Mortgagor defaults in the payment of any installment of rent, principal, interest or in the payment or performance of any other obligation under the agreements, the Mortgagee shall have the right, but not the obligation, to pay the installment or installments and to pay or perform the other obligations on behalf of and at the expense of the Mortgagor. If the Mortgagee receives a written notice of the Mortgagor's default under the lease, land contract or other agreement, it may rely on that notice as cause to take any action it deems necessary or reasonable to cure a default even if the Mortgagor questions or denies the existence of such default.

11. SECURITY AGREEMENT: This Mortgage also constitutes a security agreement within the meaning of the Illinois Uniform Commercial Code (the "UCC") and the Mortgagor grants to the Mortgagee a security interest in any personal property included within the definition of Premises. Accordingly, the Mortgagee shall have all of the rights and remedies available to a secured party under the UCC. Upon the occurrence of an event of default under this Mortgage, the Mortgagee shall have, in addition to the remedies provided by this Mortgage, the right to use any method of disposition of collateral authorized by the UCC with respect to any portion of the Premises subject to the UCC.

12. REIMBURSEMENT OF ADVANCES: If the Mortgagor fails to perform any of its obligations under this Mortgage or if any action or proceeding is commenced which materially adversely affects the Mortgagee's interest in the Premises (including but not limited to a lien priority dispute, eminent domain, code enforcement, insolvency, bankruptcy or probate proceedings), then the Mortgagee at its sole option may make appearances, disburse sums and take any action it deems necessary to protect its interest (including but not limited to disbursement of reasonable attorneys' and paralegals' fees and entry upon the Premises to make repairs). Any amounts disbursed shall become additional Debt, shall be immediately due and payable upon notice from the Mortgagee to the Mortgagor, and shall bear interest at the highest rate permitted under any of the instruments evidencing any of the Debt.

13. DUE ON TRANSFER: If all or any part of the Premises or any interest in the Premises is transferred, sold or conveyed without the Mortgagee's prior written consent, it may, at its sole option, declare the Debt to be immediately due and payable unless either (i) the Mortgagor executes a new mortgage (in a form similar to this Mortgage) with respect to the [Mortgagor's] new Principal Residence, or (ii) in the event that the [Mortgagor] does not purchase a new Principal Residence, the Mortgagor executes a security agreement granting a security interest to the Mortgagee in other collateral reasonably satisfactory to the Mortgagee after consultation with the Mortgagor.

14. NO ADDITIONAL LIEN: The Mortgagor covenants not to execute any mortgage, security agreement, assignment of leases and rentals or other agreement granting a lien against

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the interest of the Mortgagor in the Premises without the prior written consent of the Mortgagee, and then only when the document granting that lien expressly provides that it shall be subject to the lien of this Mortgage for the full amount secured by this Mortgage and shall also be subject and subordinate to all present and future leases affecting the Premises.

15. DOMAIN: Notwithstanding any taking under the power of eminent domain, alteration of the grade of any road, alley, or the like, or other injury or damage to or decrease in value of the Premises by any public or quasi- public authority or corporation, the Mortgagor shall continue to pay the Debt in accordance with the terms of the underlying documents until any award or payment shall have been actually received by the Mortgagee. By executing this Mortgage, the Mortgagor signs the entire proceeds of any award or payment and any interest to the Mortgagee. The proceeds shall be applied first toward reimbursement of all costs and expenses of the Mortgagee in collecting the proceeds, including reasonable attorneys' and paralegals' fees, and then toward payment of the Debt whether or not then due or payable, or the Mortgagee at its option may apply the proceeds, or any part to the alteration, restoration or rebuilding of the Premises.

16. ENVIRONMENTAL PROVISIONS: From time to time the Mortgagor and/or members of Mortgagor have or will execute and deliver an Environmental Indemnification Agreement to the Mortgagee, which include representations, warranties, covenants, indemnifications and a right of entry. The Environmental Indemnification Agreement and its provisions are incorporated into this Mortgage.

17. EVENTS OF DEFAULT: Upon the occurrence of any of the following events of default, the Mortgagee shall be entitled to exercise its remedies under this Mortgage or as otherwise provided by law: (i) an amount due and owing under the Guaranty is not paid within three (3) days of when due, (ii) any representation or warranty in the Guaranty or the Mortgage is untrue or inaccurate in any material respect when made or at any time, (iii) any failure to perform or default in the performance of any covenant in the Guaranty or this Mortgage, and if capable of being cured, such failure or default in performance continues for a period of ten (10) days after the Mortgagor receives notice or knowledge from any source of such failure to perform or default in performance, and (iv) any default or event of default under the First Mortgage, [Second Mortgage] or any other Permitted Encumbrances.

18. REMEDIES ON DEFAULT: Upon the occurrence of any event of default, the Mortgagee may exercise all of the rights, powers and remedies expressly or impliedly conferred on or reserved to it under this Mortgage or any other related document, or now or later existing at law or in equity, including without limitation the following: (i) declare the Debt to be immediately due, (ii) proceed at law or in equity to collect the Debt and proceed to foreclose this Mortgage, or otherwise pursue any of its rights or remedies, and (iii) exercise any of its rights, powers or remedies pursuant to the UCC.

The Mortgagee in any suit to foreclose this Mortgage shall be entitled to the appointment of a receiver of the rents, leases and profits of the Premises as a matter of right and without notice (without regard to the value of the Premises), and the Mortgagor specifically consents to that appointment without notice. The Premises may be sold in one parcel as an entirety or in such parcels, manner and order as the Mortgagee may elect. By executing this Mortgage, the Mortgagor waives, in the event of a foreclosure of this Mortgage or the enforcement by the Mortgagee of any other rights and remedies in this Mortgage, any right otherwise available in respect to marshalling of assets which secure the Debt or to require the Mortgagee to pursue its

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remedies against any other such assets. The Mortgagor waives all errors and imperfections in any proceedings instituted by the Mortgagee to enforce any of its rights and remedies.

19. **PLEDGE:** If the Mortgagor is not liable for all or any part of the Borrower's obligations to the Mortgagee, then it agrees that: (a) If any monies become available to the Mortgagee from the Borrower that it can apply to any debt, the Bank may apply them to debt not secured by this Mortgage. (b) Without notice to or the consent of the Mortgagor, the Mortgagee may (i) take any action it chooses against any Borrower, against any collateral for the Debt, or against any other person liable for the Debt; (ii) release any Borrower or any other person liable for the Debt, release any collateral for the Debt, and neglect to perfect any interest in any collateral; (iii) forbear or agree to forbear from exercising any rights or remedies, including any right of setoff, that it has against the Borrower, any other person liable for the Debt, or any other collateral for the Debt; (iv) extend to any Borrower additional Debt to be secured by this Mortgage; or (v) renew, extend, modify or amend any Debt, and deal with any Borrower or any other person liable for the Debt as it chooses. (c) None of the Mortgagor's obligations under this Mortgage are affected by (i) any act or omission of the Mortgagee; (ii) the voluntary or involuntary liquidation, sale or other disposition of all or substantially all of the assets of any Borrower; (iii) any receivership, insolvency, bankruptcy, reorganization or other similar proceedings affecting any Borrower or any of its assets; or (iv) any change in the composition or structure of any Borrower or any Mortgagor, including a merger or consolidation with any other entity. (d) The Mortgagor's rights under this section and this Mortgage are unconditional and absolute, even if all or any part of any agreement between the Borrower and the Mortgagor is unenforceable, voidable, void or illegal, and regardless of the existence of any defense, setoff or counterclaim that a Borrower may be able to assert against the Mortgagor. (e) It waives all rights of subrogation, contribution, reimbursement, indemnity, exoneration, implied contract, recourse to security, and any other claim (as that term is defined in the federal Bankruptcy Code, as amended from time to time) that it may have or acquire in the future against any Borrower, any other person liable for the Debt, or any collateral for the Debt, because of the existence of this Mortgage, the Borrower's performance under this Mortgage, or the Mortgagor's availing itself of any rights or remedies under this Mortgage. (f) If any payment to the Mortgagor on any of the Debt is wholly or partially invalidated, set aside, declared fraudulent or required to be repaid to the Borrower or anyone representing the Borrower or the Borrower's creditors under any bankruptcy or insolvency act or code, under any state or federal law, or under common law or equitable principles, then this Mortgage shall remain in full force and effect or be reinstated, as the case may be, until payment in full to the Bank of the repaid amounts, and of the Debt. If this Mortgage must be reinstated, the Mortgagor agrees to execute and deliver to the Mortgagee new mortgages, if necessary, in form and substance acceptable to the Mortgagee, covering the Premises.

20. **REPRESENTATIONS BY MORTGAGOR:** Each Mortgagor represents that: (a) the execution and delivery of this Mortgage and the performance of the obligations it imposes do not violate any law, conflict with any agreement by which it is bound, or require the consent or approval of any governmental authority or any third party; (b) this Mortgage is a valid and binding agreement enforceable according to its terms; and (c) any balance sheets, profit and loss statements, and other financial statements furnished to the Mortgagee are accurate and fairly reflect the financial condition of the organizations and persons to which they apply on their effective dates, including contingent liabilities of every type, which financial condition has not changed materially and adversely since those dates.

21. **ATTORNEYS' FEES; EXPENSES:** If Mortgagee institutes any suit or action to enforce any of the terms of this Mortgage, Mortgagee shall be entitled to recover such sum as

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the court may adjudge reasonable as attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Mortgagee that in Mortgagee's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the rate provided for in the Note. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Mortgagee's attorneys' fees and Mortgagee's legal expenses whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports and appraisal fees, and title insurance, to the extent permitted by applicable law. Mortgagor also will pay any court costs, in addition to all other sums provided by law.

22. NOTICES: Notice from one party to another relating to this Mortgage shall be deemed effective if made in writing (including telecommunications) and delivered to the recipient's address, telex number or telecopier number set forth above by any of the following means: (a) hand delivery, (b) registered or certified mail, postage prepaid, with return receipt requested, (c) first class or express mail, postage prepaid, (d) Federal Express, Purolator Courier or like overnight courier service, or (e) telecopy, telex or other wire transmission with request for assurance of receipt in a manner typical with respect to communications of that type. Notice made in accordance with this paragraph shall be deemed delivered upon receipt if delivered by hand or wire transmission, three (3) business days after mailing if mailed by first class registered or certified mail or one (1) business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier. This notice provision shall be inapplicable to any judicial or non-judicial proceeding where state law governs the manner and timing of notices in foreclosure or receivership proceedings.

23. COMPLIANCE WITH SENIOR MORTGAGE.

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

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

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

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B. In the event Mortgagor is declared by the holder of the Senior Mortgage to be in default with respect to any requirement of the Senior Mortgage, Mortgagor agrees that said default shall constitute a default hereunder. Upon the occurrence of such default, in addition to any other rights or remedies available to Mortgagee, Mortgagee may, but need not, make any payment or perform any act required to cure or attempt to cure any said default under the Senior Mortgage in any manner and form deemed expedient by Mortgagee. Mortgagee shall not be responsible for determining the validity or accuracy of any claim of default made by the Mortgagee under the Senior Mortgage and the payment of any sum by Mortgagee in curing or attempting to cure any alleged default or omission shall be presumed conclusively to have been reasonable, justified and authorized. Mortgagor agrees to grant Mortgagee all powers, instruments and materials reasonably necessary for Mortgagee to cure, or to attempt to cure, any default hereunder. All monies paid by Mortgagee in curing any default under the Senior Mortgage, including attorneys' fees and costs in connection therewith, shall bear interest from the date or dates of such payment at interest rate, as defined in the Note, shall be paid by Mortgagor to Mortgagee on demand, and shall be deemed a part of the Indebtedness and recoverable as such in all respects. Any inaction on the part of the Mortgagee shall not be construed as a waiver of any right accruing to Mortgagee on account of any default hereunder.

C. In the event of a default with respect to the Senior Note, Mortgagee may prepay the entire balance due under the Senior Mortgage, and any prepayment fees or penalty incurred by Mortgagee in connection with such prepayment shall bear interest from the date of such payment at the interest rate payable under the Note, shall be paid by Mortgagor to Mortgagee upon demand, and shall be deemed a part of the indebtedness and recoverable in all respects.

D. Mortgagee acknowledges that this Junior Mortgage is junior and subordinate to the lien of the Senior Mortgage.

24. MISCELLANEOUS: If any provision of this Mortgage is in conflict with any statute or rule of law or is otherwise unenforceable for any reason whatsoever, then that provision is void to the extent of the conflict or unenforceability, and severed from but does not invalidate any other provision of this Mortgage. No waiver by the Mortgagee of any right or remedy granted or failure to insist on strict performance by the Mortgagor, waives any right or remedy of the Mortgagee, nor does the subsequent exercise of the same right or remedy by the Mortgagee for any subsequent default by the Mortgagor, and all rights and remedies of the Mortgagee are cumulative. Mortgagor shall pay or reimburse the Mortgagee for fees and expenses arising from the filing and recording of this Mortgage.

These promises and agreements bind and these rights benefit the parties and their respective successors, and assigns. If there is more than one Mortgagor, the obligations under this Mortgage are joint and several.

To the fullest extent permitted by Federal law and the laws of the Commonwealth of Illinois, this Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois. Notwithstanding the foregoing, the laws of the Commonwealth of Illinois shall govern the perfection and effectiveness of the grant and conveyance of mortgage, lien, and security interest hereunder, and the exercise of remedies with respect thereto.

25. WAIVER OF HOMESTEAD RIGHT: To the fullest extent permitted by law, the Mortgagor expressly waives all rights, and benefits under and by virtue of the homestead


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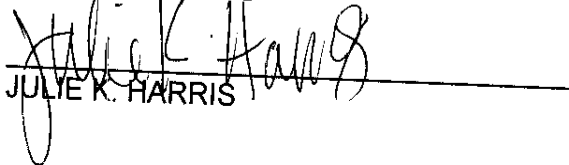
exemption laws of the State of Illinois. To the fullest extent permitted by law, the Mortgagor expressly waives any and all rights in respect to marshalling of assets which secure the Debt or to require the Mortgagee to pursue its remedies against any other assets.

26. WAIVER OF RIGHT OF REDEMPTION: EXCEPT AS MAY OTHERWISE BE PROHIBITED OR IN THE EVENT THE PREMISES ARE AND CONTINUE TO QUALIFY AS RESIDENTIAL PROPERTY AS DEFINED BY THE LAWS OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, THE MORTGAGOR WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF THE MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

27. WAIVER OF JURY TRIAL: THE MORTGAGEE AND THE MORTGAGOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS MORTGAGE OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS MORTGAGE, OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER OF THEM. NEITHER THE MORTGAGEE NOR THE MORTGAGOR SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY EITHER THE MORTGAGEE OR THE MORTGAGOR EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY BOTH OF THEM. MORTGAGOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND MORTGAGOR AGREES TO ITS TERMS.

MORTGAGOR:

By: 
HOWARD HARRIS

By: 
JULIE K. HARRIS

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EXHIBIT A

LOT 18 IN BROOKVALE UNIT NO. 2, BEING A SUBDIVISION OF PARTS OF GORMLEY'S ADDITION TO GLENCOE SECTION 18, TOWNSHIP 2 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO PLAT THEREOF RECORDED OCTOBER 13, 1955 AS DOCUMENT NUMBER 16389977 IN COOK COUNTY, ILLINOIS.

PIN: 05-18-103-028-0000

Commonly known as: 734 Brookdale Terrace, Glencoe, Illinois

Property of Cook County Clerk's Office

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EXHIBIT B

PERMITTED ENCUMBRANCES

1. GENERAL REAL ESTATE TAXES FOR THE YEARS 2006 AND SUBSEQUENT YEARS THAT ARE NOT YET DUE AND PAYABLE.
2. ANY MORTGAGE OF RECORD AS OF THE DATE HEREOF.
3. ANY OTHER ENCUMBRANCES OF RECORD AS OF THE DATE HEREOF.

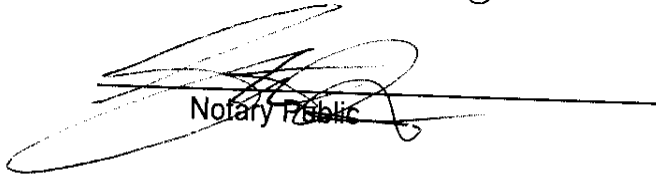
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UNOFFICIAL COPY

STATE OF _____ }
COUNTY OF _____ } ss.
_____ }

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that HOAWARD HARRIS and JULIE K. HARRIS, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and official seal, this 30th day of May, 2007.


Notary Public

[NOTARIAL SEAL]

My Commission Expires: October 24, 2010

