

# UNOFFICIAL COPY

This document prepared by:

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Doc#: 0807950118 Fee: \$48.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/19/2008 03:31 PM Pg: 1 of 7

After Recording, return to:  
Howard A. Balikov  
555 Skokie Blvd., Suite 400  
Northbrook, Illinois 60062

## MORTGAGE

THIS MORTGAGE (his "Mortgage") is dated as of March 14, 2008. The mortgagor are **GARY FISHKIN**, ("Mortgagor"), whose address is 688 Greenwood Avenue, Northbrook, IL 60062. This Mortgage is given to **VMV ASSET MANAGEMENT-II, LLC**, an Illinois limited liability company ("**Mortgagee**"), whose address is 3045 MacArthur Blvd., Northbrook, Illinois 60062.

This Mortgage is given in favor of Lender to secure the repayment of the following (collectively "Borrower's Liabilities"):

- (a) all amounts due under that certain Guaranty dated March 14, 2008 ("Guaranty") guaranteeing the obligations of EAG CAPITAL DEVELOPMENT II, LLC, an Illinois limited liability company ("Borrower"), under that certain Promissory Note in the original principal amount of One Million and No/00 Dollars (\$1,000,000.00) March 14, 2008 made in favor of Lender and payable on or before December 31, 2008 (the "Note"), which is payable to Mortgagee at 3045 MacArthur Blvd., Northbrook, Illinois 60062; and
- (b) the payment of all other sums, with interest, advanced under the terms of the Note, the Guaranty or this Mortgage,

provided, however, that the total amount of Borrower's Liabilities hereunder shall at no time exceed twice the original principal balance of the Note.

For this purpose, and in consideration of Ten and No/00 Dollars (\$10.00), in hand paid, the receipt and sufficiency whereof is hereby acknowledged, Mortgagor does hereby mortgage, grant and convey to Lender the property located at 688 Greenwood Avenue, Northbrook, IL 60062, which is legally described on EXHIBIT A to this Mortgage, and whose property index number is 04-04-302-016-0000, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing property is referred to in this Mortgage as the "Mortgaged Property".

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MORTGAGOR REPRESENTS AND COVENANTS that Mortgagor holds fee simple title to the Mortgaged Property, free and clear of any and all liens and encumbrances. Mortgagor has the right to mortgage, grant and convey the Mortgaged Property. Mortgagor warrants and will defend generally the title to the Mortgaged Property against all claims and demands.

UNIFORM COVENANTS. Mortgagor and Lender covenant and agree as follows:

1. Charges; Liens. Mortgagor shall pay all taxes, assessments, charges, fines and impositions attributable to the Mortgaged Property which may attain priority over this Mortgage. Mortgagor shall pay these obligations on time directly to the person owed payment. Upon request from Lender, Mortgagor shall promptly furnish to Lender receipts evidencing the payments. Notwithstanding the foregoing, Mortgagor shall have the right to contest the validity, priority, amount or other matter related to the aforementioned taxes, assessments, charges, fines and impositions provided the following conditions are met: (a) Mortgagor provides Lender with all other information relating thereto which is reasonably requested by Lender; (b) Mortgagor uses its best efforts and vigorously contests such taxes, assessments, charges, fines and impositions; (c) Mortgagor provides Lender with suitable protection of its interests granted hereunder.

2. Hazard or Mortgaged Property Insurance.

(a) Mortgagor shall keep the improvements now existing or hereafter erected on the Mortgaged Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender reasonably requires. The insurance carrier providing the insurance shall be chosen by Mortgagor. If Mortgagor fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Mortgaged Property in accordance with paragraph 3.

(b) All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause.

3. Preservation, Maintenance and Protection of the Mortgaged Property. Mortgagor shall maintain or cause to be maintained the Mortgaged Property in good repair, working order, and condition and make or cause to be made, when necessary, all repairs, renewals, and replacements, structural, non-structural, exterior, interior, ordinary and extraordinary. Mortgagor shall refrain from and shall not permit the commission of waste in or about the Mortgaged Property. Mortgagor covenants and agrees that in the ownership, operation and management of the Mortgaged Property, Mortgagor will observe and comply with all applicable federal, state and local statutes, ordinances, regulations, orders and restrictions.

4. Protection of Lender's Rights in the Mortgaged Property. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Lender's rights in the Mortgaged Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Mortgaged Property and Lender's rights in the Mortgaged Property. Lender's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys' fees, maintaining insurance coverage for the Mortgaged Property and entering on the Mortgaged Property to make repairs. Although Lender may take action under this paragraph 4, Lender does not have to do so.

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5. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Mortgaged Property. Lender shall give Mortgagor notice prior to an inspection specifying reasonable cause for the inspection.

6. Condemnation. Mortgagor shall promptly give notice to Lender of any condemnation or eminent domain proceeding affecting the Mortgaged Property. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Mortgaged Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender and held by Lender in escrow until all amounts secured hereunder are repaid to Lender or are applied pursuant to the Note, with any excess paid to Mortgagor. Provided, however, that Lender may at its option, allow Mortgagor to use such award, or any part thereof, as Lender may deem appropriate in its reasonable discretion.

7. Transfer of the Mortgaged Property. If all or any part of the Mortgaged Property or any interest in it is sold or transferred without Lender's prior written consent (hereinafter a "Prohibited Transfer"), Lender may, at its option, require immediate payment in full of all of Borrower's Liabilities. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage. Notwithstanding anything to the contrary contained in this Section 7: (a) Lender hereby consents to the transfer by Mortgagor of all or any portion of the Mortgaged Property (or any interest therein) into a living trust or any other commonly recognized estate planning vehicle, provided such vehicle is not intended to abrogate the effect of this Mortgage; and (b) Lender consents to Mortgagor's obtaining standard "home equity" financing secured by a mortgage against the Mortgaged Property provided that such mortgage is junior and subordinate in all respects to the lien of this Mortgage and all of Lender's rights hereunder. If a Prohibited Transfer occurs and Lender exercises its right to accelerate the payment of Borrower's Liabilities, Lender shall give Mortgagor notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Borrower or Mortgagor must pay all of Borrower's Liabilities.

8. Hazardous Substances. Mortgagor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Mortgaged Property. Mortgagor shall not do, nor allow anyone else to do, anything affecting the Mortgaged Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Mortgaged Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Mortgaged Property. If Mortgagor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Mortgaged Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with Environmental Law. As used herein, "Hazardous Substances" are those substances defined as toxic or hazardous substances under any federal, state or local law, rule or regulation that relate to health, safety or environmental protection.

9. Default. The following occurrences or acts shall constitute an event of default (a "Default") under this Mortgage: if Mortgagor fails or neglects to perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Mortgage, which is required to be performed, kept or observed by Mortgagor and Mortgagor shall fail to remedy such within thirty (30) days of being served with written notice from Lender; provided, however, that if Mortgagor commences efforts to cure such default within the initial 30-day period and is diligently pursuing such cure, Mortgagor shall be granted such additional time as may be reasonably required to effect a cure of such default.

10. Remedies, Acceleration. If any such Default shall have occurred, then, to the extent permitted by applicable law, then Lender shall give notice to Mortgagor prior to acceleration following

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Mortgagor's default under this Mortgage (but not prior to acceleration under Paragraph 7 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is given to Mortgagor, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Mortgaged Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Mortgagor to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all of Borrower's Liabilities without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 10, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

11. Mortgagor's Right to Reinstate. If Mortgagor meets certain conditions, Mortgagor shall have the right to have enforcement of this Mortgage discontinued at any time pursuant to the provisions of Section 15-1602 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1602). Those conditions are that Borrower or Mortgagor: (a) pays Lender all sums which then would be due under and the Borrower's Liabilities as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Mortgage, including, but not limited to, reasonable attorneys' fees. Upon reinstatement by Mortgagor, this Mortgage and the obligations secured hereby shall remain fully effective as if no acceleration had occurred.

12. Remedies Cumulative and Non-Exclusive. The lien and remedies granted to Lender in this Mortgage are in addition to and exclusive of any other liens or security interests granted to Lender in any other agreement now or from time to time given to Lender to secure the repayment of the Borrower's Liabilities. Lender is under no obligation to seek enforcement of any other security interest or lien prior to its enforcement of the remedies accorded to Lender under this Mortgage.

13. Notices. All notices under this Mortgage shall be sent via hand delivery or certified U.S. mail, return receipt requested and shall be deemed served on the date hand delivered or five (5) days after mailing the notice if served by certified mail. Notices to Mortgagor shall be sent to the Mortgaged Property and notices to Lender shall be sent to c/o Mark Gordik, whose address is 3045 MacArthur Blvd., Northbrook, Illinois 60062 (with a copy to Howard A. Balkov, 555 Skokie Blvd., Suite 400, Northbrook, Illinois 60062) (or any different address specified by Mortgagor or Lender in writing to other party).

14. Mortgagor Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of Borrower's Liabilities granted by Lender to Mortgagor shall not operate to release the liability of Mortgagor. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

15. Successors and Assigns Bound, Joint and Several Liability. The covenants and agreements of this Mortgage shall bind and benefit the successors, assigns, heirs and personal representatives of Lender and Mortgagor. In the event more than one person is executing this Mortgage on behalf of Mortgagor, then all persons so executing this Mortgage as a Mortgagor shall be jointly and severally liable hereunder.

16. Governing Law. This Mortgage shall be governed by the laws of the state of Illinois. In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision.

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17. Release. Upon payment of all of Borrower's Liabilities, Lender shall release this Mortgage without charge to Mortgagor. Mortgagor shall pay any recordation costs.

18. Waiver of Homestead. Mortgagor waives all right of homestead exemption in the Mortgaged Property.

19. Modification, Waiver, etc. No modification, waiver, estoppel, amendment, discharge or change of this Mortgage or any related instrument shall be valid unless the same is in writing and signed by Mortgagor and Lender.

20. Subordination. This Mortgage shall be subordinate and junior to any other mortgage recorded prior to the date of recording of this mortgage.

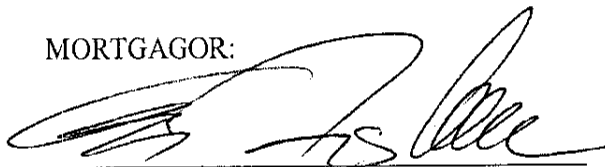
**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

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BY SIGNING BELOW, Mortgagor accepts and agrees to the terms and covenants contained in this Mortgage.

MORTGAGOR:



Gary Fishkin, individually

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 Alex Field, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged before me that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 14<sup>th</sup> day of March, 2008.



*Tatyana Furman*  
\_\_\_\_\_  
Notary Public

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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 16IN OLIVER SALINGER AND COMPANY'S DUNDEE ROAD ACRES, BEING A SUBDIVISION OF THE EAST 36 RODS OF THE WEST 74 RODS OF THE SOUTH 120 RODS OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. 04-04-302-016-0000

COMMONLY KNOWN AS 688 GREENWOOD, NORTHBROOK, IL 60062

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