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**THIS INSTRUMENT WAS PREPARED
BY**

**Bennett L. Cohen, Esq.
Cohen, Salk & Huvard, P.C.
630 Dundee Road-Suite 120
Northbrook, Illinois 60062**



Doc#: 0808534087 Fee: \$70.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 03/25/2008 11:38 AM Pg: 1 of 18

**AFTER RECORDATION
RETURN TO:**

**Barry R. Katz
Arnstein & Lehr LLP
120 South Riverside Plaza-Suite 1200
Chicago, Illinois 60606-3910**

ASSIGNMENT AND ASSUMPTION OF LOAN DOCUMENTS

This **ASSIGNMENT AND ASSUMPTION OF LOAN DOCUMENTS** ("Assignment") is made as of March 21, 2008, by **VAIL CAPITAL, L.L.C.**, an Arizona limited liability company ("Assignor") to and in favor of **AMPMS MIDWEST LLC**, a Delaware limited liability company ("Assignee").

RECITALS

A. Assignor has previously made a junior mortgage loan (the "Loan") to Palatine Commons, LLC, an Illinois limited liability company ("Borrower") in the original principal amount of Two Million and No/100 Dollars (\$2,000,000.00) for the development of the real estate (the "Real Estate") legally described on **Exhibit "A"** to this Assignment and made a part hereof. The Real Estate and the improvements located thereon are collectively referred to in this Assignment as the "Development". The Loan is subject to terms and conditions of that certain Subordination and Intercreditor Agreement dated as of March 23, 2006 by and between MB Financial Bank, N.A. ("Senior Lender") and Assignor (the "Intercreditor Agreement").

B. The Loan is evidenced by a Mortgage Note dated March 23, 2006, given by Borrower in favor of Assignor (the "Note"), secured by a Junior Mortgage, Security Agreement and UCC Fixture Filing on the Development dated as of March 23, 2006, given by Borrower in favor of Assignor (the "Mortgage"), and recorded as document number 0608334057 on March 24, 2006, in the Office of the Recorder of Deeds of Cook County (the "Recorder's Office"), a Junior Assignment of Rents and of Lessor's Interest in Leases dated as of March 23, 2006, given by Borrower in favor of Assignor (the "Assignment of Rents"), and recorded as document number 0608334057 on March 24, 2006, in the Recorder's Office, and such other agreements,

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instruments and documents executed by or on behalf of Borrower or any guarantor and delivered to Assignor in connection with the Loan, which are hereinafter collectively referred to as the "Other Security Documents". The Note, Mortgage, Assignment of Rents and Other Security Documents are hereinafter collectively referred to as the "Loan Documents", and include such documents set forth on **Exhibit "B"** attached hereto.

C. Assignor desires to assign said Loan Documents, and the debt therein described, to Assignee.

D. Assignee desires to receive and hold said Loan Documents, and the debt therein described, from Assignor.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and promises contained herein, and for other good and valuable consideration (including payment of the Assumption Price), the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment. Assignor sells, assigns and transfers to Assignee, and its successors and assigns, all of Assignor's rights, duties, obligations under and interest in the Loan Documents.

2. Assumption. Assignee, for itself and for its successors and assigns, purchases and accepts the assignment of such rights, duties and obligations of Assignor under the Loan Documents and the Intercreditor Agreement and agrees to be bound by and perform all of the obligations, if any, of Assignor under the Loan Documents and the Intercreditor Agreement. To Assignor's actual knowledge, it has not been declared in default under the Intercreditor Agreement.

3. Assumption Price. Assignee shall pay to Assignor, concurrently with the execution and delivery hereof, the amount of Two Hundred Fifty Eight Thousand One Hundred Seventy and 46/100 (\$258,170.46) Dollars as and for consideration of the assignment hereunder (the "Assumption Price"). The Assumption Price was calculated based on Assignor's receipt of the Assumption Price in good funds no later than 2:00 p.m. Chicago time on March 21, 2008. The Assumption Price is detailed in the pay-off statement attached hereto and made a part hereof as **Exhibit "C"**. Notwithstanding anything contained in this Assignment to the contrary, the assignment and assumption described in this Assignment shall not become effective until Assignor receives the Assumption Price in good funds. If Assignor does not receive the Assumption Price in good funds by 2:00 p.m. Chicago time on March 21, 2008, the Assumption Price shall be increased by the applicable per diem set forth in **Exhibit "C"**. Upon Assignor's receipt of the Assumption Price in good funds, Assignor shall deliver to Assignee the originals of the signed Loan Documents to the Assignee.

4. Representations, Warranties or Covenants of Assignor. The Assignor's sale, assignment and transfer provided for in Section 1 hereof is without recourse, representation or warranty of any kind or nature, kind or description, except as set forth in the following sentence. Assignor hereby represents, warrants and covenants to Assignee, as of the date hereof, that: (i) Assignor is a limited liability company duly organized and validly existing under the laws of the State of Arizona; (ii) Assignor has full power and authority to enter into and carry out the terms

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of this Assignment; (iii) this Assignment constitutes the legal, valid and binding obligation of Assignor enforceable in accordance with its terms; and (iv) neither the entry into nor the performance of and compliance with this Assignment has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Assignor is bound.

Upon Assignor's receipt of the Assumption Price and Assignor's delivery of the Loan Documents to Assignee, Assignee hereby fully and forever releases and waives any and all claims, rights, demands, damages, causes of action, judgments or liabilities which Assignee has, or may ever in the future have, against Assignor with regard to the Loan or the Loan Documents or the assignment and assumption set forth in this Assignment, except for breach of Assignor's representations or warranties set forth in the preceding paragraph.

To induce Assignor to enter in this Assignment, as opposed to being paid off in full and releasing its liens against the Development and canceling the Loan Documents, Assignee hereby agrees to indemnify, defend and hold harmless Assignor of and from any and all claims, liabilities, suits, judgments, costs and expenses (including legal fees and court costs) hereafter incurred by Assignor, arising out of (i) this Assignment, or (ii) the fact that Assignor assigned the Loan Documents to Assignee rather than being paid off, or (iii) the loan relationship between Borrower and/or the guarantor of the Loan and the Assignee, its successors, assigns and/or participants.

By accepting the foregoing assignment described in Section 2 above, the Assignee hereby acknowledges and agrees that the Assignor shall continue to be a beneficiary of any environmental certificate or similar instrument and any environmental representations, warranties, indemnities or undertakings delivered to it related to the Loan or included in any Loan Documents and shall, without limitation of any rights or remedies of Assignee, have full right, power and authority to enforce the terms and provisions of said environmental certificate and Loan Documents against the other parties thereto. Nothing in the preceding sentence shall be deemed a warranty or guaranty by Assignee that Assignor shall be able to enjoy or otherwise enforce any of the rights or benefits described in the preceding sentence.

5. Representations, Warranties or Covenants of Assignee. Assignee hereby represents, warrants and covenants to Assignor, as of the date hereof, that: (i) Assignee is a limited liability company duly organized and validly existing under the laws of the State of Delaware; (ii) Assignee has full power and authority to enter into and carry out the terms of this Assignment; (iii) this Assignment constitutes the legal, valid and binding obligation of Assignee enforceable in accordance with its terms; and (iv) neither the entry into nor the performance of and compliance with this Assignment has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Assignee is bound.

5A. Acknowledgments and Confirmations by Assignee. As a material inducement to the Assignor to sell the Loan and the Loan Documents to the Assignee, the Assignee acknowledges and confirms to the Assignor as follows:

- (A) the Assignee has made Assignee's own independent investigation and review of the value, validity, enforceability and collectibility of the Loan

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and the Loan Documents, and has not and is not relying upon any representation, warranty, indemnity or other statement by the Assignor, whether written, oral, express or implied, with respect thereto, except as may be expressly set forth in Section 4 hereof;

(B) the Assignee is acquiring the Loan and the Loan Documents for the purpose of investment and not with a view to the resale or other distribution thereof and has no present intention of selling, negotiating or otherwise disposing of the Note (except that Assignee reserves the right to sell participations in the Loan being acquired by Assignee); and

(C) the Assignee agrees that the Assignor has made no representations or warranties to the Assignee regarding the occupancy, physical or other condition of the mortgaged premises described in the Mortgage and that the Assignee has made its own investigation and review of same and is relying upon that investigation and not relying upon any representation, warranty, indemnity or other statement by the Assignor, whether written, oral, express or implies, with respect thereto in entering into this Assignment

6. Full Force and Effect. All of the terms and conditions of the Loan Documents shall remain in full force and effect as to the Borrower. The Development shall remain subject to the lien of the Mortgage and nothing in, or done pursuant to, this Assignment shall affect or be construed to affect the lien, charge, or encumbrance of the Mortgage or its priority.

7. Amendment of this Assignment. This Assignment shall not be altered or amended without the prior written approval of both parties hereto.

8. Partial Invalidity. If a court of competent jurisdiction determines that any term, covenant, condition or provision of this Assignment, or its application to any circumstance, at any time or to any extent, is invalid or unenforceable, the remainder of this Assignment, or the application of it to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such determination and each term, covenant, condition and provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

9. Successors. This Assignment shall bind, and the benefits shall inure to, the parties to this Assignment, and their successors, assigns, heirs and personal representatives.

10. Captions. The captions used in this Assignment are used only as a matter of convenience and for reference and in no way define, limit or describe its scope or intent.

11. Notices. Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Assignment shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

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If to Assignor: Vail Capital, L.L.C.
2441 N. Leavitt Street
Chicago, Illinois 60647
Attn: Sheldon J. Mandell

With a copy to: Bennett L. Cohen
Cohen, Salk & Huvad, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

If to Assignee: AMPMS Midwest LLC
c/o Barry R. Katz
Arnstein & Lehr LLP
120 South Riverside Plaza
Suite 1200
Chicago, Illinois 60606-3910

Such addresses may be changed by notice to the other party given in the same manner as provided in this Assignment. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

12. Counterparts. This Assignment may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Assignment must be produced or exhibited, be the Assignment, but all such counterparts shall constitute one and the same instrument.

13. Further Assurances. Each party hereto agrees to execute such additional instruments or notices and/or take such actions as the other party may reasonably require to effectuate the terms and intent of this Assignment.

14. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois (exclusive of choice of law principles).

15. Construction. Each party hereto acknowledges that it has participated in the negotiation of this Assignment and that no provision shall be construed against or interpreted to the disadvantage of any party.

16. Recitals. The recitals set forth at the beginning of this Assignment are made a part of this Assignment.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

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IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption of Loan Documents to be executed as of the date first written above.

ASSIGNOR:

VAIL CAPITAL, L.L.C, an Arizona limited liability company

By: *Sheldon J. Mandell*
Name: Sheldon J. Mandell
Its: Manager

ASSIGNEE:

AMPMS MIDWEST LLC, a Delaware limited liability company

By: _____
Name: Anne Marie Branco
Its: Manager

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption of Loan Documents to be executed as of the date first written above.

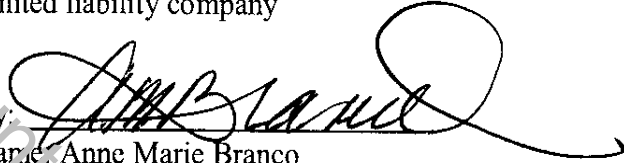
ASSIGNOR:

VAIL CAPITAL, L.L.C, an Arizona limited liability company

By: _____
Name: Sheldon J. Mandell
Its: Manager

ASSIGNEE:

AMPMS MIDWEST LLC, a Delaware limited liability company

By: 
Name: Anne Marie Branco
Its: Manager

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AGREEMENT OF BORROWER AND GUARANTOR

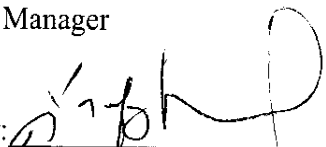
To induce Assignor to enter into the Assignment, each of Borrower and Edward I. Biskind ("Guarantor") hereby fully and forever releases and waives any and all claims, rights, demands, damages, causes of action, judgments or liabilities which Borrower or Guarantor has, or may ever in the future have, against Assignor with regard to the Loan or the Loan Documents (including but not limited to any claims under the Loan Documents), or the assignment and assumption set forth in the Assignment. Capitalized terms used herein and not defined shall have the meaning set forth in the attached Assignment.

To induce Assignor to enter in the Assignment, as opposed to being paid off in full and releasing its liens against the Development and canceling the Loan Documents, each of Borrower and Guarantor hereby agrees, jointly and severally, to indemnify, defend and hold harmless Assignor of and from any and all claims, liabilities, suits, judgments, costs and expenses (including legal fees and court costs) hereafter incurred by Assignor, arising out of (i) the Assignment, or (ii) the fact that Assignor assigned the Loan Documents to Assignee rather than being paid off, or (iii) the loan relationship between Borrower and/or the Guarantor and the Assignee, its successors, assigns and/or participants.

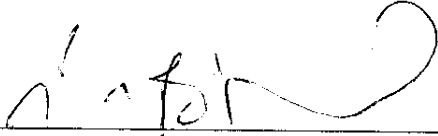
BORROWER:

PALATINE COMMONS, LLC
an Illinois limited liability company

By: InterCapital Commons, Inc.
an Illinois corporation
its Manager

By: 

Edward I. Biskind
Title: President



Edward I. Biskind, Guarantor

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EXHIBIT "A"

LEGAL DESCRIPTION

LOTS 1-1 THROUGH 1-7 BOTH INCLUSIVE, AND LOTS 2-1 THROUGH 2-7 BOTH INCLUSIVE, AND LOTS 3-1 THROUGH 3-7 BOTH INCLUSIVE, AND LOTS 4-1, 4-3, 4-4, 4-5 AND 4-7 AND LOTS 5-1 THROUGH 5-7 BOTH INCLUSIVE, LOTS 6-1 THROUGH 6-7, BOTH INCLUSIVE, LOTS 7-1 THROUGH 7-7 BOTH INCLUSIVE, LOTS 8-1, 8-3, 8-4, 8-5 AND 8-7, LOTS 9-1, 9-2, 9-3, 9-5, 9-6 AND 9-7, LOTS 10-1, 10-2, 10-3, 10-5, 10-6 AND 10-7, LOTS 11-1, 11-2, 11-3, 11-5, 11-6 AND 11-7, LOTS 12-1, 12-2, 12-3, 12-5, 12-6 AND 12-7, AND OUTLOTS A, B, C, D, E, F, G, H, J, K, L AND M IN PALATINE COMMONS SUBDIVISION OF PART OF THE NORTHWEST ¼ OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 21, 2004 AS DOCUMENT NUMBER 0411219128, IN COOK COUNTY, ILLINOIS.

P.I.N's.:

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 02-15-209-020-0000
 02-15-209-021-0000
 02-15-209-022-0000
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02-15-210-030-0000

02-15-210-031-0000

02-15-210-032-0000

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10.53 acres located west of Smith Road and south of Northwest Highway, Palatine, Illinois

Property of Cook County Clerk's Office

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EXHIBIT "B"

LOAN DOCUMENTS

1. Note
2. Mortgage
3. Assignment of Rents
4. Unconditional Guaranty dated March 23, 2006 executed by Edward I. Biskind.
5. Environmental/ADA Indemnity Agreement dated March 23, 2006 executed by Borrower and Edward I. Biskind.
6. Certificate of Manager dated March 23, 2006 executed by the manager of the Borrower.
7. Certificate of Resolutions and Incumbency dated March 23, 2006 of Intercapital Commons, Inc.
8. Certification of Secretary of Intercapital Commons, Inc.
9. Borrower's Opinion of Counsel dated March 23, 2006 issued by Schain, Burney, Ross & Citron, Ltd.
10. UCC1 Financing Statement filed by Assignor against Assignee in office of the Illinois Secretary of State on March 22, 2006 as Filing No. 10774535.
11. Indemnity Agreement executed by Edward I. Biskind.
12. Subordination and Intercreditor Agreement dated as of March 23, 2006 between MB Financial Bank, N.A. and Vail Capital, L.L.C.
13. ALTA Loan Policy issued by Ticor Title Insurance Company.

UNOFFICIAL COPY**EXHIBIT "C"**

Vail Capital, L.L.C.
2441 N. Leavitt St.
Chicago, Illinois 60647-2005

March 18, 2008

Mr. Edward L. Biskind
 InterCapital Partners Ltd.
 858 W. Armitage, Suite 404
 Chicago, Illinois 60614

Re: Second Mortgage Loan to Palatine Commons LLC (the "Borrower")

Dear Mr. Biskind:

Enclosed is a breakdown of the total indebtedness (the "Borrower Debt") owed by Borrower to Vail Capital, L.L.C. ("Vail"):

Aggregate Principal and Interest Due as of March 20, 2008	\$206,457.02
Loan Commitment Fee	\$ 50,000.00
Vail's Attorney's Fees	\$ <u>1,600.00</u> (estimate)
Total Amount Due on March 20, 2008	\$258,057.02

If the funds are not received by Vail by 2:00 p.m. on March 20, 2008, but are received by Vail by 2:00 p.m. on any other business day after March 20, 2008 to and including March 23, 2008, an additional per diem interest charge of \$113.44 should be added to the above amount due for each calendar day the Borrower Debt remains unpaid. If funds are not received by Vail by 2:00 p.m. on March 23rd, 2008, this letter shall become null and void and a new updated letter must be issued by Vail to Borrower. All references to time in this letter are to Central Standard Time. Please contact Vail on the funding date to confirm the exact Borrower Debt.

Upon receipt by Vail of the full Borrower Debt itemized above, Vail will sell and assign its loan and collateral for the loan to purchaser pursuant to an assignment and assumption agreement in form and substance acceptable to Vail.

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Vail Capital, L.L.C.
2441 N. Leavitt St.
Chicago, Illinois 60647-2005

March 18, 2008

Mr. Edward I. Biskind
InterCapital Partners Ltd.
Page Two

Re: Second Mortgage Loan to Palatine Commons LLC (the "Borrower")

The Borrower Debt should be wired as follows:

Receiving Bank: LaSalle Bank National Association
135 South LaSalle Street
Chicago, Illinois 60603
ABA Routing Number: 071000505
Further Credit to: Vail Capital, LLC
Acct No. 5800171661
Contact: Ursula Slotkus
Phone number: (312) 904-8129

On funding date, please phone in fed. reference number for the wire to Ursula Slotkus at LaSalle by 2:00 p.m. on such funding date. Her phone number: (312) 904-8129.

VAIL CAPITAL L.L.C.

By: _____
Sheldon J. Mandell, Manager

Cc: VIA MESSENGER
1920 N. Lincoln, Suite R-2
Chicago, IL

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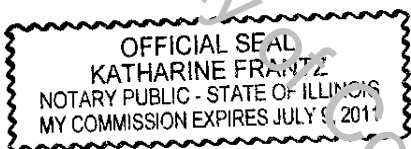
ACKNOWLEDGMENT OF SIGNATURE

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby that Anne Marie Branco, the Manager of AMPMS Midwest LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, as his own and free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20th day of March, 2008.



Kath Frantz

Notary Public

My Commission Expires: July 9, 2011

Cook County Clerk's Office

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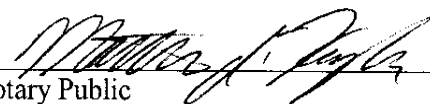
ACKNOWLEDGMENT OF SIGNATURE

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Sheldon J. Mandell, the Manager of Vail Capital, L.L.C., an Arizona limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, as his own and free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 21st day of March, 2008.



 Notary Public

My Commission Expires: _____



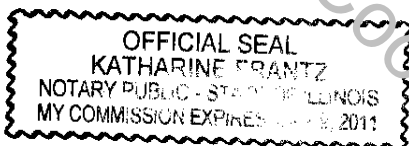
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ACKNOWLEDGMENT OF SIGNATURE

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 Edward J. Birkind, the President of InterCapital Commons, Inc., an Illinois corporation ("InterCapital"), the manager of PALATINE COMMONS, LLC, an Illinois limited liability company (the "Borrower"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, as his own and free and voluntary act, and as the free and voluntary act of InterCapital, on behalf of and as the manager of the Borrower, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20th day of March, 2008.



Kat Frantz
 Notary Public

My Commission Expires: July 9, 2011

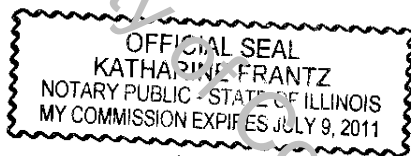
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ACKNOWLEDGMENT OF SIGNATURE

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 Edward I. Biskind, 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 that he signed, sealed and delivered the said instrument, as his own and free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20th day of March, 2008.



Katharine Frantz

 Notary Public

My Commission Expires: July 9, 2011

County Clerk's Office