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THIS INSTRUMENT PREPARED BY:
Christyl L. Marsh
Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

Doc#: 0828940177 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/15/2008 02:24 PM Pg: 1 of 13

AND AFTER RECORDING MAIL TO:
Marc N. Gryzlo
Oxford Bank & Trust
1111 W. 22nd Street, Suite 800
Oak Brook, Illinois 60523

THIRD MODIFICATION AGREEMENT

THIS THIRD MODIFICATION AGREEMENT (hereinafter referred to as this "Modification Agreement") made as of this 1st day of September, 2008, by and among BROCKWAY PLACE, LLC, an Illinois limited liability company ("Borrower"), TIMOTHY SCHMITT, ROBERT KIRK, GARY WRONKIEWICZ (all of the foregoing, except Borrower, are collectively, the "Guarantors") (Borrower and Guarantors are hereinafter collectively referred to as the "Obligors") and OXFORD BANK & TRUST ("Lender").

WITNESSETH:

WHEREAS, Borrower has executed and delivered to Lender that certain promissory note dated December 30, 2004 in the original principal sum of One Million Four Hundred Ninety-Two Thousand Five Hundred Thirty and 00/100 Dollars (\$1,492,530.00) (as increased to \$1,565,410.00, and as modified pursuant to that certain change in terms agreement dated August 1, 2005 made by Borrower in favor of Lender, as modified, restated and replaced from time to time, the "Original Note") which Original Note is secured by the following documents (as modified from time to time, the "Initial Loan Documents"):

- (i) construction mortgage dated as of December 30, 2004, recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office"), as Document No. 0506249225 (as modified by that certain modification of mortgage dated August 1, 2005 between Borrower and Lender, and recorded in the Recorder's Office as Document No. 0525005327, the "49 S. Brockway Mortgage") on property commonly known as 49 S. Brockway, Palatine, Illinois and legally described on Exhibit "A" attached hereto and made a part hereof (the "49 S. Brockway Premises");
- (ii) mortgage dated as of December 30, 2004, recorded in the Recorder's Office as Document No. 0506249223 (as modified by that certain modification of mortgage dated August 1, 2005 between Borrower and Lender, and recorded in the Recorder's Office as Document No. 0525005326, the "35 S. Brockway Mortgage") (the 49 S. Brockway Mortgage and the 35 S. Brockway Mortgage are hereinafter collectively referred to as the "Mortgage") on property commonly known as 35-41 S. Brockway,

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Palatine, Illinois and legally described on Exhibit "B" attached hereto and made a part hereof (the "35 S. Brockway Premises") (the 49 S. Brockway Premises and the 35 S. Brockway Premises are hereinafter collectively referred to as the "Premises");

- (iii) assignment of rents dated as of December 30, 2004 made by Borrower in favor of Lender, encumbering the 49 S. Brockway Premises, recorded in the Recorder's Office as Document No. 0506249226 (the "49 S. Brockway Assignment of Rents");
- (iv) assignment of rents dated as of December 30, 2004 made by Borrower in favor of Lender, encumbering the 35 S. Brockway Premises, recorded in the Recorder's Office as Document No. 0506249224 (the "35 S. Brockway Assignment of Rents") (the 49 S. Brockway Assignment of Rents and the 35 S. Brockway Assignment of Rents are hereinafter sometimes individually and collectively referred to as the "Assignment of Rents");
- (v) commercial guaranties dated as of December 30, 2004 made by each of the Guarantors in favor of Lender (collectively, the "Guaranty");
- (vi) hazardous substances certificate and indemnity agreement concerning the 49 S. Brockway Premises dated as of December 30, 2004 made by Obligor in favor of Lender (the "Indemnity"); and
- (vii) construction loan agreement dated as of August 1, 2005 between Borrower and Lender.

WHEREAS, the Original Note and the Initial Loan Documents were previously modified pursuant to that certain modification agreement dated as of February 22, 2006, by and among Borrower, Guarantors and Lender, recorded in the Recorder's Office as Document No. 0606610066, whereby (i) the Original Note was amended, restated and replaced with that certain amended and restated promissory note dated as of February 22, 2006 in the original principal amount of Three Million One Hundred Thirty-Four Thousand Four Hundred Ten and 00/100 Dollars (\$3,134,410.00) (the "First Replacement Note"), (ii) the Maturity Date of the First Replacement Note was extended to March 1, 2007 (with an option to extend the maturity date by six (6) months), and (iii) the following additional documents were executed as additional security for the First Replacement Note (the "Additional Loan Documents") (the Initial Loan Documents and Additional Loan Documents, and any and all other instruments executed by any Obligor, as previously, concurrently herewith or hereafter amended, restated or replaced, are hereinafter collectively referred to as the "Loan Documents"):

- (i) amended and restated construction loan agreement dated as of February 22, 2006 between Borrower and Lender (the "Loan Agreement");
- (ii) environmental indemnity agreement concerning the 35 S. Brockway Premises dated as of February 22, 2006 made by Obligor in favor of Lender;
- (iii) security agreement and assignment of contractual agreements affecting real estate dated as of February 22, 2006 made by Borrower in favor of Lender; and

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- (iv) assignment of sales contracts and security agreement dated as of February 22, 2006 made by Borrower in favor of Lender.

WHEREAS, the First Replacement Note was further modified pursuant to that certain note modification agreement dated December 1, 2006 between Borrower and Lender, whereby the payment terms were modified.

WHEREAS, the First Replacement Note and the Loan Documents were subsequently modified pursuant to that certain second modification agreement dated as of August 31, 2007, by and among Borrower, Guarantors and Lender, recorded in the Recorder's Office as Document No. 07282390063, whereby, among other modifications, (i) the principal sum of the First Replacement Note was reduced to \$388,864.00 and was amended, restated and replaced with that certain second amended and restated promissory note dated as of August 31, 2007 in the original principal amount of Three Hundred Eighty-Eight Thousand Eight Hundred Sixty-Four and 00/100 Dollars (\$388,864.00) (the "Second Replacement Note"), and (ii) the Maturity Date of the Second Replacement Note was extended to March 1, 2008 (with an option to extend the maturity date by six (6) months).

WHEREAS, Borrower properly exercised its option to extend the maturity date of the Second Replacement Note from March 1, 2008 to September 1, 2008;

WHEREAS, Obligors are desirous of (i) reducing the principal sum of the Second Replacement Note to \$326,164.00, (b) extending the maturity date of the Second Replacement Note to March 1, 2009 (with an option to extend the maturity date by six (6) months), and (c) making certain other changes thereto, and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, first and subsisting lien on the Premises (as defined in the Mortgage) and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there is no existing second mortgage or other liens subsequent to the lien of the Mortgage held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions, or either of them, this Modification Agreement shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct.
2. As of September 1, 2008, the total outstanding principal balance of the Second Replacement Note is \$298,888.88. Concurrent with the execution of this Modification Agreement, the Borrower shall execute and deliver to Lender a third amended and restated promissory note of even date herewith in the principal amount of Three Hundred Twenty-Six Thousand One Hundred Sixty-Four and 00/100 Dollars (\$326,164.00), payable to the order of Lender on March 1, 2009 (subject to one six (6) month extension) (the "Amended Note"). Each reference in the Loan Documents to the term "Note" shall hereafter be deemed to be a reference to the Amended Note. Each reference in the Loan Documents to the term "Loan" shall hereafter mean that certain \$326,164.00 construction loan made by Lender to Borrower and evidenced by the Amended Note. Each reference in the Loan Documents to the term "Maturity Date" shall hereafter mean March 1,

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2009 (subject to one six (6) month extension). Notwithstanding anything to the contrary set forth in the Amended Note or the Loan Documents, the Lender shall have no obligation to disburse any of the remaining \$25,195.12 in loan proceeds, except for payment of accrued interest on the Amended Note.

3. The 49 S. Brockway Mortgage is hereby modified by amending and restating in its entirety the definition of "Note" on page 12 to read as follows:

"The word "Note" means that certain third amended and restated promissory note dated as of September 1, 2008, in the original principal amount of \$326,164.00, made by Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note. The interest rate on the Note is a variable interest rate based upon an index. The maturity date of the Note is March 1, 2009 (subject to one six (6) month extension)."

4. The 35 S. Brockway Mortgage is hereby modified by amending and restating in its entirety the definition of "Note" on page 12 to read as follows:

"The word "Note" means that certain third amended and restated promissory note dated as of September 1, 2008, in the original principal amount of \$326,164.00, made by Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note. The interest rate on the Note is a variable interest rate based upon an index. The maturity date of the Note is March 1, 2009 (subject to one six (6) month extension)."

5. Each Assignment of Rents is hereby modified by amending and restating in its entirety the definition of "Note" as it appears on page 7 of each Assignment of Rents to read as follows: "The word "Note" means that certain third amended and restated promissory note dated as of September 1, 2008, in the original principal amount of \$326,164.00, made by Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note. The interest rate on the Note is a variable interest rate based upon an index. The maturity date of the Note is March 1, 2009 (subject to one six (6) month extensions)."

6. The Loan Agreement is hereby modified as follows:

a. The figure "Three Hundred Eighty-Eight Thousand Eight Hundred Sixty-Four and 00/100 Dollars (\$388,864.00)" as it appears in the first sentence of numbered paragraph 3 is hereby deleted and replaced with the figure "Three Hundred Twenty-Six Thousand One Hundred Sixty-Four and 00/100 Dollars (\$326,164.00)".

b. The figure "\$64,780.00" as it appears in the seventeenth line of numbered paragraph 3 is hereby deleted and replaced with the figure "\$2,080.00".

c. Numbered paragraph 5.1 is hereby amended and restated in its entirety to read as follows: "A third amended and restated promissory note (as modified, restated or replaced from time to time, the "Note") executed by the Borrower payable to the order of Lender, in the principal amount of \$326,164.00."

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d. The figure "\$388,864.00" as it appears in numbered paragraph 6.1(b) is hereby deleted and replaced with the figure "\$326,164.00".

e. The date "March 1, 2008" as it appears in numbered paragraph 8.1 is hereby deleted and replaced with the date "March 1, 2009".

7. The Indemnity is hereby modified by amending and restating in its entirety the definition of "Note" on page 6 to read as follows: "The word "Note" means that certain third amended and restated promissory note dated September 1, 2008, in the original principal amount of \$326,164.00, made by Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note. The interest rate on the Note is a variable interest rate based upon an index. The maturity date of the Note is March 1, 2009 (subject to one six (6) month extension)."

8. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Amended Note.

9. Except for the modifications stated herein, the Amended Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Amended Note and other Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the loan evidenced by the Amended Note shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Amended Note and other Loan Documents, to forgive or waive any violation, default or breach under the Amended Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.

10. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender a non-refundable modification fee in the amount of \$500.00, plus all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees"). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by Lender, such Additional Fees shall be paid by Obligors within five days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Amended Note).

11. The Premises described in the Mortgage shall remain in all events subject to the lien, charge or encumbrance of the Mortgage, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to affect the lien, charge or encumbrance of the Mortgage, or the priority thereof over any other liens, charges, or encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Amended Note, the Mortgage and/or the Assignment of Rents, nor shall anything herein contained or done in pursuance thereof affect or be

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construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

12. This Modification Agreement shall extend to and be binding upon each of the Obligors and their respective heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

13. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Amended Note, the Guaranty and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Amended Note, the Guaranty and other Loan Documents, as so amended.

Without limiting the generality of the foregoing paragraph, each Guarantor hereby further represents and warrants to the Lender with the intent that the Lender rely thereon, as follows with regard to the Guaranty as hereby modified: (a) the Guaranty is in full force and effect and is binding and enforceable against the Guarantor in accordance with its terms; (b) the Guarantor irrevocably consents and agrees to the Borrower's execution and delivery of this Modification Agreement; (c) the liability of the Guarantor to the Lender under the Guaranty shall in no way be affected, modified, altered, or discharged in any fashion by the Borrower's execution, delivery or performance of this Modification Agreement; (d) the Guarantor hereby restates and reaffirms to Lender all terms and provisions of the Guaranty as if set forth in full herein; and (e) the Guarantor does not possess any claims, defenses, offsets, or counterclaims against the enforcement of the Guaranty as of the date hereof, and any and all such claims, defenses, offsets and counterclaims, whether known or unknown, are forever waived and released, and the Guarantor is unconditionally liable under the Guaranty, for the payment and performance of all present and future indebtedness and all other obligations described therein.

14. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois (exclusive of choice of law principals), including all matters of construction, validity and performance.

15. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

16. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

17. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON

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CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.


TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

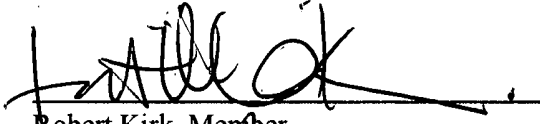
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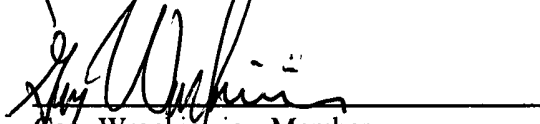
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IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.


BROCKWAY PLACE, LLC, an Illinois limited liability company

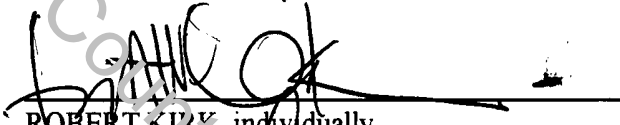
By: 
Timothy Schmitt, Member

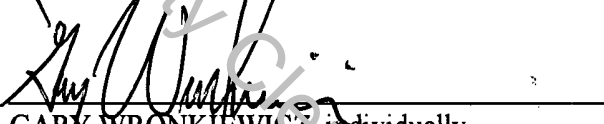
By: 
Robert Kirk, Member

By: 
Gary Wronkiewicz, Member

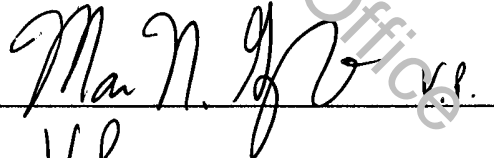
Property of Cook County Clerk's Office


TIMOTHY SCHMITT, individually


ROBERT KIRK, individually


GARY WRONKIEWICZ, individually

OXFORD BANK & TRUST

By: 
Its: U.S.

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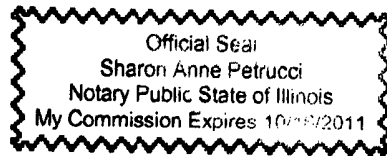
STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that TIMOTHY SCHMITT, ROBERT KIRK and GARY WRONKIEWICZ personally known to me as the Members of BROCKWAY PLACE, LLC, an Illinois limited liability company, and 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, sealed and delivered the said instrument as such Members of said limited liability company, pursuant to authority, given by the Members of said limited liability company, as their 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 9TH day of SEPTEMBER 2008.

Sharon Anne Petrucci
Notary Public

My Commission Expires: 10/16/2011



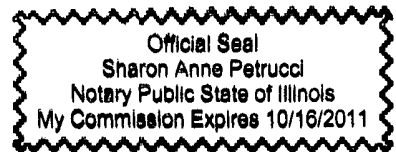
STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that TIMOTHY SCHMITT personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 9TH day of SEPTEMBER, 2008.

Sharon Anne Petrucci
Notary Public

My Commission Expires: 10/16/2011



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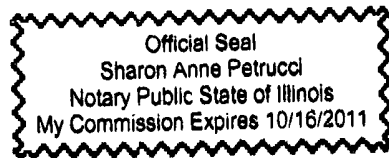
STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that ROBERT KIRK personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 9th day of SEPTEMBER, 2008.

Sharon Anne Petrucci
Notary Public

My Commission Expires: 10/16/2011



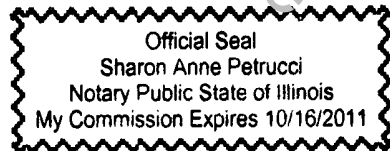
STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that GARY WRONKIEWICZ personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 9th day of SEPTEMBER, 2008.

Sharon Anne Petrucci
Notary Public

My Commission Expires: 10/16/2011



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STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that MARC GRYZLO, of OXFORD BANK & TRUST, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such VP, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 25 day of September, 2008.

Angela L. Cook
Notary Public

My Commission Expires: 6-19-11



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EXHIBIT "A"

PIN: 02-22-207-005-0000 and 02-22-207-007-0000

ADDRESS: 49 S. Brockway, Palatine, Illinois 60067

THE NORTH 1/2 OF LOT 5 AND THE NORTH 1/2 OF LOT 6 IN BLOCK "G" IN A.S. PRATT'S SUBDIVISION IN EAST 1/2 OF NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE MAP IN BOOK 125 OF MAPS, PAGE 61.

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EXHIBIT "B"

PIN: 02-22-207-001-0000

ADDRESS: 35-41 S. Brockway, Palatine, Illinois 60067

LOT 4 IN BLOCK "G" IN PALATINE SUBDIVISION BY ALEXANDER S. PRATT, BEING A SUBDIVISION IN NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office