

**Illinois Anti-Predatory  
Lending Database  
Program**

**Certificate of Exemption**

**Report Mortgage Fraud  
800-532-8785**

The property identified as: **PIN: 07-35-309-021-0000**

#39801424

**Address:**

**Street:** 522 SEQUOIA TRAIL

**Street line 2:**

**City:** ROSELLE

**State:** IL

**ZIP Code:** 60172

**Lender:** Charter One Bank

**Borrower:** MATTHEW AND HEATHER HERBST

**Loan / Mortgage Amount:** \$71,600.00

This property is located within Cook County and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

**Certificate number:** C2DFF0A1-88F9-4DCF-8D9E-46AB6C673DA4

**Execution date:** 02/07/2009

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**Charter One**

~~After recording, return to:~~

Charter One  
Consumer Loan Operations  
Mail Stop: RJW215  
1 Citizens Drive  
Riverside, RI 02915

This instrument prepared by:

Beth Romano  
Charter One  
480 Jefferson Boulevard  
Warwick, RI 02886

Parcel ID: 07-35-309-021-0000

39801424 [Space Above This Line For Recording Data]-----

## MORTGAGE

### WORDS USED OFTEN IN THIS DOCUMENT:

(A) "Security Instrument" means this document, which is dated 02/07/2009 together with all Riders, if any, to this document.

(B) "Borrower" is

**MATTHEW HERBST**

**AND**

**HEATHER HERBST**

**HUSBAND AND WIFE**



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Charter One is a division of RBS Citizens, N.A.

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Borrower's address is 522 SEQUOIA TRAIL, ROSELLE, IL 60172

The Borrower is sometimes simply "I" or "me".

**(C) "Lender"**, RBS Citizens, N.A.,  
a national banking organization formed under federal law,

called the "Lender". Lender maintains an office for business at:  
1 Citizens Plaza, Providence, RI 02903

**(D) "Note"** means the Promissory Note or Agreement signed by Borrower and dated 02/07/2009  
The Note states that I owe Lender \$71,600.00, plus interest. I have promised to pay this debt in  
regular Periodic Payments and to pay the debt in full not later than 02/12/2034.

**(E) "Property"** means the property that is described below under the heading "Borrower's Transfer to  
Lender of Rights in the Property."

**(F) "Loan"** means the debt evidenced by the Note, plus interest, any prepayment charges and late  
charges due under the Note, Incidental Amounts, and all sums due under this Security Instrument, plus  
interest.

If this box is checked, specifically and without limitation, this Security Instrument secures a revolving  
line of credit and shall secure not only the amount which Lender has presently advanced to Borrower  
under the Agreement, but also any future amounts Lender may advance to Borrower under the  
Agreement or in its discretion may loan to Borrower under the Agreement within fifteen (15) years from  
the date of this Security Instrument to the same extent as if such future advance were made as of the date  
of the execution of this Security Instrument. Under the revolving line of credit, Lender may make  
advances to Borrower so long as Grantor complies with all the terms of the

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Agreement and related documents. At no time shall the principal amount of the Indebtedness secured by this Mortgage, not including sums advanced to protect the security of this Mortgage, exceed the Maximum Amount Secured.

**(G) "Sums Secured"** means the amounts described below under the heading "Borrower's Transfer to Lender of Rights in the Property." The Sums Secured shall include any and all Loan amounts described above, up to a Maximum Amount Secured of \$71,600.00

**(H) "Incidental Amounts"** include disbursements made to protect the security of this Security Instrument and the value of the Property, with interest on such disbursements at the periodic rate stated in the Note, including for example, where the payments represent:

(i) expenses incurred by Lender on behalf of Borrower in the event of Borrower's failure to perform a covenant or obligation relating to maintaining the Property or preserving its value and protecting Lender's lien under this Security Instrument that would result in an event of default under the terms of this Security Instrument;

(ii) expenses incurred by Lender in the event of a foreclosure, and

(iii) interest and late payment charges.

**(I) "Applicable Law"** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

**(J) "Community Association Dues, Fees, and Assessments"** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

**(K) "Electronic Funds Transfer"** means any transfer of funds other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

**(L) "Miscellaneous Proceeds"** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property. As used in Sections 5 and 6 below, "Condemnation" refers to any event referred to in (ii) or (iii) of the preceding sentence.

**(M) "Periodic Payment"** means the regularly scheduled amount due for principal and interest under the Note.

**(N) "RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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**(O) "Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

## BORROWER'S TRANSFER TO LENDER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender to the fullest extent permitted by Applicable law: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For these purposes, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the county of COOK

### SEE ATTACHED SCHEDULE A

which currently has the address of 522 SEQUOIA TRAIL, ROSELLE, IL 60172

("Property Address").

**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 Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest and Other Charges.** I will pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note.

Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 11. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold

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such unapplied funds until I make payment to bring the Loan current. If I do not do so within a reasonable period of time, Lender will either apply such funds or return them to me. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which I might have now or in the future against Lender will relieve me from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments.** Unless Applicable Law provides otherwise, all payments received by Lender under the Note and Section 1 will be applied by Lender as permitted under the Note.

**3. Prior Security Instruments; Borrower's Obligation to Pay Charges, Assessments And Claims.** I will perform all of my obligations under any mortgage, deed of trust, or other security instruments with a lien which has priority over this Security Instrument, including my promises to make payments when due. I will pay all taxes, assessments, water charges, sewer rents and other similar charges, and any other charges and fines that may be imposed on the Property and that may be superior to this Security Instrument. I will also make ground rents or payments due under my lease if I am a tenant on the Property and Community Association Dues, Fees, and Assessments (if any) due on the Property. In this Security Instrument, the word "Person" means any individual, organization, governmental authority or other party.

I will promptly pay or satisfy all Liens against the Property that may be superior to this Security Instrument. However, this Security Instrument does not require me to satisfy a superior Lien if: (a) I agree, in writing, to pay the obligation which gave rise to the superior Lien and Lender approves the way in which I agree to pay that obligation, but only so long as I am performing such agreement; (b) in good faith, I argue or defend against the superior Lien in a lawsuit so that in Lender's opinion, during the lawsuit, the superior Lien may not be enforced, but only until the lawsuit ends; or (c) I secure from the holder of that other Lien an agreement, approved in writing by Lender, that the Lien of this Security Instrument is superior to the Lien held by that Person. If Lender determines that any part of the Property is subject to a superior Lien, Lender may give me a notice identifying the superior Lien. Within 10 days of the date on which the notice is given, I must pay or satisfy the superior Lien or take one or more of the actions mentioned in this Section 3.

Lender also may require me to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with the Loan, unless Applicable Law does not permit Lender to make such a charge.

**4. Property Insurance.** I will keep the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including earthquakes and floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts, including deductible levels, and for the periods that Lender requires. I may choose any insurer reasonably acceptable to Lender. Lender may require me to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. If I disagree with the flood zone determination, I may request the Federal Emergency Management Agency to review the flood zone determination and I promise to pay any fees imposed by the Federal Emergency Management Agency for its review. Insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. If Lender requires, I will promptly give Lender all receipts of paid premiums and renewal notices.

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If I fail to maintain coverage as required in this Section, Lender may obtain insurance coverage, at my expense, as Lender in Lender's sole discretion determines appropriate to protect Lender's interest in the Property in accordance with the provisions of Section 6. I understand and agree that any coverage Lender purchases may cover only Lender's interest in the Property and might provide greater or lesser coverage than was previously in effect. Insurance coverage purchased by the Lender might not protect me, my equity in the Property, or the contents of the Property, against any risk, hazard or liability. I understand and agree that the premium for any insurance purchased by the Lender may be higher than the premium I could have paid for such insurance.

Any amounts disbursed by Lender to purchase insurance coverage under this Section will become my additional debt secured by this Security Instrument. These amounts will bear interest at the Note rate from the date of disbursement and will be payable, with such interest, upon notice from Lender to me requesting payment.

In the event of loss, I will notify the insurance carrier and Lender promptly. Lender may make proof of loss to the insurance company if I fail to do so promptly.

The amount paid by the insurance company for loss or damage to the Property is called "Insurance Proceeds." Unless Lender and I otherwise agree in writing, and subject to the rights of any Person with a superior Lien on the Property, any Insurance Proceeds, whether or not the underlying insurance was required by Lender, will be used to repair or to restore the damaged Property unless: (a) it is not economically feasible to make the repairs or restoration; (b) the use of the Insurance Proceeds for that purpose would lessen the protection given to Lender by this Security Instrument; or (c) Lender and I have agreed in writing not to use the Insurance Proceeds for that purpose. During the period that any repairs or restorations are being made, Lender may hold any Insurance Proceeds until it has had an opportunity to inspect the Property to verify that the repair work has been completed to Lender's satisfaction. However, this inspection will be done promptly. Lender may make payments for the repairs and restorations in a single payment or in a series of progress payments as the work is completed. Unless Lender and I agree otherwise in writing or unless Applicable Law requires otherwise, Lender is not required to pay me any interest or earnings on the Insurance Proceeds. I will pay for any public adjusters or other third parties that I hire, and their fees will not be paid out of the Insurance Proceeds. Subject to the rights of any Person with a superior Lien on the Property, if the repair or restoration is not economically feasible or if it would lessen Lender's protection under this Security Instrument, then the Insurance Proceeds will be used to reduce the amount that I owe to Lender under this Security Instrument. Such Insurance Proceeds will be applied in the order provided for in Section 2. If any of the Insurance Proceeds remain after the amount that I owe to Lender has been paid in full, the remaining Insurance Proceeds will be paid to me.

If I abandon the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If I do not answer, within 30 days, a notice from Lender stating that the insurance company has offered to settle a claim, Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 17 of this Security Instrument or otherwise, I give Lender my rights to any Insurance Proceeds in an amount not greater than the amounts unpaid under the Note and this Security Instrument. I also give Lender any other of my rights (other than the right to any refund of unearned premiums that I paid) under all insurance policies covering the Property, if the rights are applicable to the coverage of the Property. Lender may use the Insurance Proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

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## 5. Borrower's Obligations to Maintain And Protect The Property And to Fulfill Any Lease Obligations.

**(a) Maintenance and Protection of the Property.** I will not destroy, damage or harm the Property, and I will not allow the Property to deteriorate. Whether or not I am residing in the Property, I will keep the Property in good repair so that it will not deteriorate or decrease in value due to its condition. Unless it is determined under Section 7 of this Security Instrument that repair is not economically feasible, I will promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or Condemnation (as defined in the definition of Miscellaneous Proceeds) proceeds are paid because of loss or damage to, or Condemnation of, the Property, I will repair or restore the Property only if Lender has released those proceeds for such purposes. Lender may pay for the repairs and restoration out of proceeds in a single payment or in a series of progress payments as the work is completed. If the insurance or Condemnation proceeds are not sufficient to repair or restore the Property, I promise to pay for the completion of such repair or restoration.

If I do not own, but am a tenant on the Property, I will fulfill all my obligations under my lease. I also agree that, if I acquire the full title (sometimes called "Fee Title") to the Property, my lease interest and the Fee Title will not merge unless Lender agrees to the merger in writing.

**(b) Lender's Inspection of Property.** Lender, and others authorized by Lender, may enter on and inspect the Property. They will do so in a reasonable manner and at reasonable times. If it has a reasonable purpose, Lender may inspect the inside of the home or other improvements on the Property. Before or at the time an inspection is made, I Lender will give me notice stating a reasonable purpose for such interior inspection.

**6. Lender's Right to Protect Its Rights in The Property.** If: (a) I do not keep my promises and agreements made in this Security Instrument; (b) someone, including me, begins a legal proceeding that may significantly affect Lender's interest in the Property or rights under this Security Instrument (such as a legal proceeding in bankruptcy, in probate, for Condemnation or Forfeiture (as defined in Section 7), proceedings which could give a Person rights which could equal or exceed Lender's interest in the Property or under this Security Instrument, proceedings for enforcement of a Lien which may become superior to this Security Instrument, or to enforce laws or regulations); or (c) I have abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and Lender's rights under this Security Instrument.

Lender's actions can include, but are not limited to the following. Lender can protect and/or assess the value of the Property. Lender can secure and/or repair the Property. Lender can pay sums to eliminate any Lien against the Property that may be equal or superior to this Security Instrument. Lender can appear in court and pay reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Lender can also enter the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, have utilities turned on or off, and take any other action to repair or secure the Property. Although Lender may take action under this Section 6, Lender does not have to do so and is under no duty to do so. I agree that Lender will not be liable for not taking any or all actions under this Section 6.

To the extent not prohibited by Applicable Law, I will pay to Lender any amounts, with interest, which Lender spends under this Section 6. I will pay those amounts to Lender when Lender sends me a notice requesting that I do so. I will pay interest on those amounts at the interest rate set forth in the Note. Interest on each amount will begin on the date that the amount is spent by Lender. This Security Instrument will protect Lender in case I do not keep this promise to pay those amounts with interest. Those amounts will become additional debt secured by this Security Instrument until they are paid in full, with interest.



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**7. Agreements About Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are assigned to and will be paid to Lender.

If the Property is damaged, and subject to the rights of any Person with a superior Lien on the Property, the Lender will apply any Miscellaneous Proceeds to restore or repair the Property, if the restoration or repair is economically feasible and Lender's security given in this Security Instrument is not lessened. During such repair and restoration period, Lender will have the right to hold the Miscellaneous Proceeds until Lender has had an opportunity to inspect the Property to verify that the work has been completed to Lender's satisfaction. However, the inspection will be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless Lender and I agree otherwise in writing or unless Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender will not be required to pay me any interest or earnings on the Miscellaneous Proceeds. Subject to the rights of any Person with a superior Lien on the Property, if the restoration or repair is not economically feasible or Lender's security given in this Security Instrument would be lessened, the Miscellaneous Proceeds will be applied to the Sums Secured, whether or not then due. The excess, if any, will be paid to me. Such Miscellaneous Proceeds will be applied in the order provided for in Section 2.

In the event of a total or partial taking, destruction, or loss in value of the Property, and subject to the rights of any Person with a superior Lien on the Property, the Miscellaneous Proceeds will be applied to the Sums Secured, whether or not then due. The excess, if any, will be paid to me.

If I abandon the Property, or if, after I send notice that the Opposing Party (as defined in the next sentence) offered to make an award to settle a claim for damages, I fail to respond to Lender within 30 days after the date Lender gives notice, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restore or repair the Property or to the Sums Secured, whether or not then due. "Opposing Party" means the third party that owes me Miscellaneous Proceeds or the party against whom I have a right of action in regard to Miscellaneous Proceeds.

I will be in default under this Security Instrument if any Person brings a civil or criminal action or proceeding that Lender determines could result in a court ruling that would require Forfeiture of the Property, or that could damage Lender's interest in the Property or rights under this Security Instrument. "Forfeiture" is a court action to require the Property, or any part of the Property, to be given up. I may correct the default by obtaining a court ruling that dismisses the court action, if Lender determines that this court ruling prevents Forfeiture of the Property and also prevents any damage to Lender's interest in the Property or rights under this Security Instrument. If I correct the default, I will have the right to have enforcement of this Security Instrument discontinued, even if Lender has required Immediate Payment in Full (as defined in Section 17). The proceeds of any award or claim for damages that are attributable to the damage or reduction of Lender's interest in the Property are assigned, and will be paid, to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property will be applied in the order provided for in Section 2.

## **8. Continuation of Borrower's Obligations And of Lender's Rights.**

**(a) Borrower's Obligations.** Lender may allow me, or a Person who takes over my rights and obligations, to delay or to change the amount of the Periodic Payments. Even if Lender does this, however, I will still be fully obligated under the Note and under this Security Instrument unless Lender agrees to release me, in writing, from my obligations. Lender may allow those delays or changes for me or a Person who takes over my rights and obligations, even if Lender is requested not to do so. Even if Lender is requested to do so, Lender will not be required to (1) bring a lawsuit against me or such a Person for not fulfilling obligations under the Note or under this Security Instrument, or (2) refuse to extend time for payment or otherwise modify amortization of the Sums Secured.

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**(b) Lender's Rights.** Even if Lender does not exercise or enforce any right of Lender under this Security Instrument or under Applicable Law, Lender will still have all of those rights and may exercise and enforce them in the future. Even if: (1) Lender obtains insurance, pays taxes, or pays other claims, charges or Liens against the Property; (2) Lender accepts payments from third Persons; or (3) Lender accepts payments in amounts less than the amount then due, Lender will have the right under Section 17 below to demand that I make Immediate Payment in Full of any amounts remaining due and payable to Lender under the Note and under this Security Instrument.

## 9. Obligations of Borrower And of Persons Taking Over Borrower's Rights or Obligations.

If more than one Person signs this Security Instrument as Borrower, each of us is fully obligated to keep all of Borrower's promises and obligations contained in this Security Instrument. Lender may enforce Lender's rights under this Security Instrument against each of us individually or against all of us together. This means that any one of us may be required to pay all of the Sums Secured.

However, if one of us does not sign the Note: (a) that Person is signing this Security Instrument only to give that Person's rights in the Property to Lender under the terms of this Security Instrument; (b) that Person is not personally obligated to pay the Sums Secured; and (c) that Person agrees that Lender may agree with the other Borrowers to delay enforcing any of Lender's rights, to modify, or make any accommodations with regard to the terms of this Security Instrument or the Note without that Person's consent.

Subject to the provisions of Section 13 of this Security Instrument, any Person who takes over my rights or obligations under this Security Instrument in writing, and is approved by Lender in writing, will have all of my rights and will be obligated to keep all of my promises and agreements made in this Security Instrument. Borrower will not be released from Borrower's obligations and liabilities under this Security Instrument unless Lender agrees to such release in writing. Any Person who takes over Lender's rights or obligations under this Security Instrument will have all of Lender's rights and will be obligated to keep all of Lender's promises and agreements made in this Security Instrument except as provided under Section 13.

**10. Loan Charges.** Lender may charge me fees for services performed in connection with my default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law. In regard to any other fees, the fact that this Security Instrument does not anticipate and expressly authorize the Lender to charge a specific fee will not be construed to prohibit Lender from charging me such a fee.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then any such loan charge will be reduced by the amount necessary to reduce the charge to the permitted limit. Lender must refund any sums already collected from me that exceed permitted limits. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note and will not affect the amount of the Periodic Payment.

**11. Notices.** All notices given by me or Lender in connection with this Security Instrument must be in writing. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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Subject to Applicable Law, any notice to me in connection with this Security Instrument is considered given to me when mailed by first class mail or when actually delivered to my notice address if sent by other means. My notice address is the Property Address unless I give notice to Lender of a different address. I will promptly notify Lender of my change of address. If Lender specifies a procedure for reporting my change of address, then I will only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Notice to any one Borrower will constitute notice to all Borrowers unless Applicable Law expressly requires otherwise.

Subject to Applicable Law, any notice to Lender will be given by first class mail to Lender's address stated above or any other address Lender designates by notice to me. Any notice to Lender will be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument is given to Lender when actually received by Lender.

**12. Law That Governs this Security Instrument; Word Usage.** Federal law and the law of the jurisdiction where the Property is located will govern this Security Instrument. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might allow the parties to agree by contract or it might be silent, but such silence does not mean that Lender and I cannot agree by contract. If any term of this Security Instrument or of the Note conflicts with Applicable Law, the conflict will not affect other provisions of this Security Instrument or the Note which can operate, or be given effect, without the conflicting provision. This means that the Security Instrument or the Note will remain as if the conflicting provision did not exist.

As used in this Security Instrument: (a) words of the masculine gender mean and include corresponding words of the feminine and neuter genders; (b) words in the singular mean and include the plural, and words in the plural mean and include the singular; and (c) the word "may" gives sole discretion without any obligation to take any action.

**13. Agreements about Lender's Rights if the Property Is Sold or Transferred.** Lender may require Immediate Payment in Full of all Sums Secured by this Security Instrument if all or any part of the Property, or if any right in the Property, is sold or transferred without Lender's prior written permission. If Borrower is not a natural Person and a beneficial interest in Borrower is sold or transferred without Lender's prior written permission, Lender also may require Immediate Payment in Full. However, Lender shall not exercise this option if Applicable Law prohibits Lender from doing so.

If Lender requires Immediate Payment in Full under this Section 13, Lender will give me a notice that states this requirement. The notice will give me at least 30 days to make the required payment. The 30-day period will begin on the date the notice is given to me in the manner required by Section 11 of this Security Instrument. If I do not make the required payment during that period, Lender may act to enforce its rights under this Security Instrument without giving me any further notice or demand for payment.

**14. Note Holder's Right to Sell the Note or an Interest in the Note; Borrower's Right to Notice of Change of Loan Servicer.** The Note, or an interest in the Note, together with this Security Instrument, may be sold one or more times. I might not receive any prior notice of these sales.

The entity that collects the Periodic Payments and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law is called the "Loan Servicer." There may be a change of the Loan Servicer as a result of the sale of the Note. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If the Note is sold

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and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to me will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

**15. Notice of Grievance.** Neither I nor Lender may commence, join or be joined to any court action (as either an individual party or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other has not fulfilled any of its obligations under this Security Instrument, unless the other is notified (in the manner required under Section 11 of this Security Instrument) of the unfulfilled obligation and given a reasonable time period to take corrective action. If Applicable Law provides a time period which will elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this Section. The notice of acceleration and opportunity to cure given to me under Section 17 and the notice of the demand for payment in full given to me under Section 17 will be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 15. All rights under this Section are subject to Applicable Law.

**16. Hazardous Substances.** The Applicable Laws that relate to health, safety or environmental protection are called "Environmental Law." Environmental Law classifies certain substances as toxic or hazardous. There are other substances that are considered hazardous for purposes of this Section 16. These substances are gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. The substances defined as toxic or hazardous by Environmental Law and the substances considered hazardous for purposes of this Section 16 are called "Hazardous Substances." "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law. An "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not do anything affecting the Property that violates Environmental Law, and I will not allow anyone else to do so. I will not cause or permit Hazardous Substances to be present on the Property. I will not use or store Hazardous Substances on the Property. I also will not dispose of Hazardous Substances on the Property, or release any Hazardous Substance on the Property, and I will not allow anyone else to do so. I also will not do, nor allow anyone else to do, anything affecting the Property that: (a) is in violation of any Environmental Law; (b) creates an Environmental Condition; or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The promises in this Section do not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized as appropriate for normal residential use and maintenance of the Property (including, but not limited to, Hazardous Substances in consumer products). I may use or store these small quantities on the Property. In addition, unless Environmental Law requires removal or other action, the buildings, the improvements and the fixtures on the Property are permitted to contain asbestos and asbestos-containing materials if the asbestos and asbestos-containing materials are undisturbed and "non-friable" (that is, not easily crumbled by hand pressure).

I will promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge; (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If I learn, or any governmental or regulatory authority, or any private party, notifies me that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I will promptly take all necessary remedial actions in accordance with Environmental Law.

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Nothing in this Security Instrument creates an obligation on Lender for an Environmental Cleanup.

**17. Lender's Rights If Borrower Fails to Keep Promises and Agreements.** Except as provided in Section 13 of this Security Instrument and upon my breach of any covenant or agreement in this Security Instrument, Lender may require that I pay immediately the entire amount then remaining unpaid under the Note and under this Security Instrument. Lender may do this without making any further demand for payment. This requirement is called "acceleration" or "Immediate Payment in Full."

Lender shall give notice to me prior to acceleration following my breach of any covenant or agreement in this Security Instrument. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to me, 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 Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform me of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of mine 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 Sums Secured by this Security Instrument without further demand and may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

- (a) **Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the Loan immediately due and payable, including any prepayment fee that Borrower would be required to pay.
- (b) **Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Borrower's interest in all or any part of the Property.
- (c) **Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining on the Loan due to Lender after application of all amounts received from the exercise of the rights provided in this Security Instrument.
- (d) **Other Remedies.** Lender shall have all other rights and remedies provided in this Security Instrument or the Note or available at law or in equity.

A waiver by any part of a breach of a provision of this Security Instrument shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Borrower under this Security Instrument after failure of Borrower to perform shall not affect Lender's right to declare a default and exercise its remedies under this Security Instrument.

If Lender institutes any suit or action to enforce any of the terms of this Security Instrument, Lender shall be entitled to recover reasonable attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all expenses incurred by Lender that in Lender'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 Loan payable on demand and shall bear interest from the date of expenditure until repaid at the Note rate. Expenses covered by this Section include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable 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. Borrower also will pay any court costs, in addition to all other sums provided by law.

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**18. Lender's Obligation to Discharge this Security Instrument.** When Lender has been paid all Sums Secured under this Security Instrument, Lender will discharge this Security Instrument by delivering a certificate stating that this Security Instrument has been satisfied. I will pay all costs of recording the discharge in the proper official records. I agree to pay a fee for the discharge of this Security Instrument, if Lender so requires. Lender may require that I pay such a fee, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted by Applicable Law.

**19. Discontinuance of Enforcement.** Notwithstanding acceleration of the Sums Secured by this Security Instrument under the provisions of Section 13 or Section 17, Lender may, in Lender's sole discretion and upon such conditions as Lender in Lender's sole discretion may determine, discontinue any proceedings begun to enforce the terms of this Security Instrument.

**20. No Waiver.** No waiver by Lender at any time of any term, provision or covenant contained in this Security Instrument or in the Note secured hereby shall be deemed to be or construed as a waiver of any other term, provision or covenant or of the same term, provision of covenant at any other time.

**21. Additional Charges.** Borrower agrees to pay reasonable charges as allowed by Applicable Law in connection with the servicing of the Loan including, without limitation, the costs of obtaining tax searches and subordinations. Provided, however, that nothing contained in this Section is intended to create and shall not be construed to create any duty or obligation by Lender to perform any such act, or to execute or consent to any such transaction or matter, except a release of the Security Instrument upon full repayment of all Sums Secured.

**22. My Loan Application.** I will be in default if, during the Loan application process, I or any Persons acting at my direction or with my knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning my occupancy of the Property as my principal residence.

**23. Reinstatement After Acceleration.** Borrower shall have the right to have enforcement of this Security Instrument discontinued, to the extent provided by Applicable Law.

**24. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument. I shall pay any recordation costs. Lender may charge me a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**25. Certain Other Advances.** In addition to any other sum secured hereby, this Security Instrument shall also secure the unpaid principal balance of, plus accrued interest on, any amount of money loaned, advanced or paid by Lender to or for the account and benefit of Borrower, after this Security Instrument is delivered to and filed with the Recorder's Office, COOK County, Illinois, for recording up to the Maximum Amount Secured. Lender may make such advances in order to pay any real estate taxes and assessments, insurance premiums plus all other costs and expenses incurred in connection with the operation, protection or preservation of the Property, including to cure Borrower's defaults by making any such payments which Borrower should have paid as provided in this Security Instrument.

**26. Waiver of Homestead Rights.** Borrower is hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this state.

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## REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Security Instrument to give Notice to Lender's address set forth on page one of this Security Instrument, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider(s) executed by Borrower and recorded with it.

Signed, sealed and delivered:

*Matthew Herbst*  
MATTHEW HERBST

*Heather Herbst*  
HEATHER HERBST

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PROPERTY OF COOK COUNTY CLERK'S OFFICE

# UNOFFICIAL COPY

## INDIVIDUAL ACKNOWLEDGMENT

STATE OR COMMONWEALTH OF Ill )

COUNTY OF Cook )

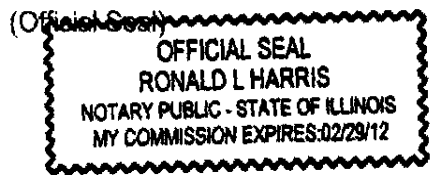
)SS:

On the 7th day of FEBRUARY, 2009, before me appeared

**MATTHEW HERBST**

to me personally known to be the person(s) whose name(s) is/are subscribed to this instrument, and such person(s) acknowledged that he/she/ he/ (i) executed the same for the purposes therein contained, and (ii) executed this instrument as their free act and deed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Ronald L Harris  
Notary Public

Attention Registry of Deeds/Town or City Clerk:

~~Mail to:~~ Charter One  
Consumer Loan Operations - RJW215  
1 Citizens Drive  
Riverside, RI 02915



# UNOFFICIAL COPY

## INDIVIDUAL ACKNOWLEDGMENT

STATE OR COMMONWEALTH OF Ill )

COUNTY OF Cook )

)SS:

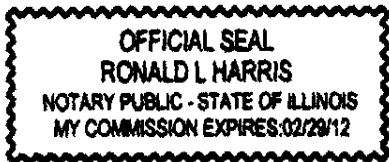
On the 7th day of FEBRUARY, 2009, before me appeared

**HEATHER HERBST**

to me personally known to be the person(s) whose name(s) is/are subscribed to this instrument, and such person(s) acknowledged that he/she/they (i) executed the same for the purposes therein contained, and (ii) executed this instrument as their free act and deed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Official Seal)



Ronald L. Harris  
Notary Public

Attention Registry of Deeds/Town or City Clerk:

Mail to: **Charter One  
Consumer Loan Operations - RJW215  
1 Citizens Drive  
Riverside, RI 02915**

**UNOFFICIAL COPY**

## EXHIBIT A

SITUATED IN THE COUNTY OF COOK AND STATE OF ILLINOIS:

PARCEL 1:



LOT 112 IN TRAILS UNIT 2, BEING A SUBDIVISION IN THE SOUTH WEST 1/4 OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 18, 1972 AS DOCUMENT 21870672, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

RIGHTS AND EASEMENTS FOR THE INGRESS AND EGRESS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE GRANT OF EASEMENT RECORDED AS DOCUMENT 21992274 AND AS CREATED BY THE GRANT OF EASEMENT RECORDED AS DOCUMENT 22223915, IN COOK COUNTY, ILLINOIS.

Permanent Parcel Number: 07-35-309-021-0000  
MATTHEW HERBST AND HEATHER HERBST, NOT AS JOINT TENANTS, OR TENANTS IN COMMON BUT AS TENANTS BY THE ENTIRETY, AS HUSBAND AND WIFE

522 SEQUOIA TRAIL, ROSELLE IL 60172  
Loan Reference Number : 11459063/CBRIPD  
First American Order No: 39801424  
Identifier: FIRST AMERICAN EQUITY LOAN SERVICES

 HERBST  
39801424  
FIRST AMERICAN ELS  
MORTGAGE  


IL

WHEN RECORDED, RETURN TO:  
*EQUITY LOAN SERVICES, INC.*  
1100 SUPERIOR AVENUE, SUITE 200  
CLEVELAND, OHIO 44114  
NATIONAL RECORDING - TEAM 1  
*Accommodation Recording Per Client Request*