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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2007 097846

2007 DEC 14 AM 8:46

MICHAEL A. BROWN
RECORDER

DAVID H. FOY

SECOND MORTGAGE

THIS SECOND MORTGAGE is effective as of this 3rd day of December, 2007 by and between **John L. Cantwell**, individually (herein after referred to as "Mortgagor") and **David H. Foy**, (hereinafter referred to as "Mortgagee").

Document is
NOT OFFICIAL!
WITNESSETH

WHEREAS, the owner of the Property commonly known and legally described in Exhibit A attached hereto and by this reference made a part hereof, is Mortgagor; and

WHEREAS, the Mortgagee and Mortgagor were involved in litigation before the Lake Superior Court located in Hammond, Indiana, in a cause of action entitled David H. Foy v. John L. Cantwell, et.al., Cause No.: 45D05-0601-PL-00001, which was settled after mediation on October 16, 2007 (hereinafter the Settlement Agreement) and, as set forth in the Settlement Agreement, Mortgagor has agreed to pay Mortgagee the sum of Sixteen Thousand, Two Hundred Dollars (\$16,200.00) at Three Hundred Dollars (\$300.00) per month for 54 months, with no interest, unless upon default, then interest will be assessed at eight percent (8%) per annum ; and

WHEREAS, the Mortgagee and Mortgagor have executed a Promissory Note dated 3rd day of December, 2007;

WHEREAS to secure the payment of the obligations under the Settlement Agreement and Promissory Note, Mortgagor hereby mortgages, conveys, transfers and grants unto Mortgagee, its successors and assigns forever, Real Estate, and all improvements thereon, situated in the County of Lake, State of Indiana, (hereinafter referred to as the Mortgaged Property or Premises) legally

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described in Exhibit A, attached hereto and by this reference made a part hereof, and commonly located at 4200 W. 73rd Avenue. Merrillville, Indiana 46410; and

WHEREAS, this Mortgage shall secure any and all amendments, modifications, extensions, renewals or replacements of the whole or any part of the indebtedness hereby secured, however, evidenced with interest at such lawful rate as may be agreed upon and any such renewals or extensions of any change in the terms or rate of interest shall not impair in any manner the validity of or priority of this Mortgage.

TOGETHER, with all buildings, and improvements now or hereafter thereto belonging upon the Mortgaged Property or any part thereof and all fixtures now or hereafter installed including, but not limited to, all lighting, cooling, ventilating, air conditioning, plumbing, sprinklers, communications, electrical systems and the equipment pertaining thereto together with the rents, issues, profits and leases of the Mortgaged Property.

TO HAVE AND HOLD the premises unto said Mortgagee, its successors and assigns, forever, for the purpose and uses set forth herein.

I. MORTGAGOR COVENANTS

Mortgagor represents to and covenants with Mortgagee that Mortgagor holds fee simple title to the Mortgaged Property, free and clear of any and all liens and encumbrances other than the following:

a First Mortgage made by Mortgagor in favor of **Mortgage Electronic Registration Systems, Inc. (a Delaware corporation, solely as nominee for Lender and Lender's successors and assigns and Community Central Mortgage Company, LLC, dated June 20, 2005 in the amount of \$170,000.00 and recorded as document no. 2005 053936 (the First Mortgage)**

Mortgagor represents and warrants that he has the power and authority to mortgage the Mortgaged Property.

Mortgagor shall maintain or cause to be maintained the Mortgaged Property in good repair, working order, and condition and make or cause to be made, when necessary all repairs, renewals, and replacements, structural, non-structural, exterior, interior, ordinary and extraordinary. Mortgagor shall refrain from and shall not permit the commission of waste in or about the Mortgaged Property and shall not remove, demolish, alter, change or add to the structural character of and improvement at any time erected on the Mortgaged Property without the prior written consent of Mortgagee, except as hereinafter otherwise provided. Mortgagor covenants and agrees that in the ownership, operation and management of the Premises Mortgagor will observe and comply with all applicable federal, state and local statutes, ordinances, regulations, orders and restrictions. If this Mortgage is on a condominium or a planned unit development, Mortgagor shall perform all of Mortgagor's obligations under the declaration of covenants creating or governing the condominium or planned

unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. Mortgagee shall have the right at any time, and from time to time, to enter the Premises for the purpose of inspecting the same.

II. INSURANCE

Until all obligations under the Settlement Agreement shall have been paid or discharged, Mortgagor, at its expense, shall obtain and maintain insurance coverage against such risks and in such amounts as Mortgagee shall from time to time reasonably request and, in the absence of a contrary request from Mortgagor, shall obtain and maintain the following coverage:

(a) Casualty. An "all-risk" casualty insurance policy covering the improvements now existing or hereafter erected on the Real Estate together with all fixtures which are a part of the Premises in an amount that is not less than the current fair market value, or replacement cost, which even is greater, of all improvements located on the Premises.

(b) Liability. A comprehensive general liability insurance policy with a combined single limit of liability of not less than Five Hundred Thousand (\$500,000.00) Dollars.

(c) Such other insurance as Mortgagee may from time to time reasonably require.

(d) All policies of insurance to be furnished hereunder shall be in forms, companies, amounts and deductibles reasonably satisfactory to Mortgagee, with mortgage clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days prior written notice to Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire upon Mortgagee's written request, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

(e) Mortgagor shall not take out separate insurance concurrent in form of contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee. Mortgagor immediately shall notify Mortgagee whenever any such separate insurance is taken out and promptly shall deliver to Mortgagee the policy or policies of such insurance.

(f) In the event of loss Mortgagor or the insurance carrier will give immediate notice by mail to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and the insurance proceeds, or any part thereof, shall be applied by Mortgagee to the restoration or repair of the property damaged.

In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

(g) If Mortgagor fails to keep the Mortgaged Property insured in accordance with the requirements of the Loan Documents, Mortgagee shall have the right, at its option, to provide for such insurance and pay the premiums thereof, and any amounts paid thereon by the Mortgagee shall bear interest at the rate of eight percent (8.0%) per annum, from the date of payment.

(h) Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of that insurance, including interest and other charges Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Mortgagor's total outstanding balance or obligation. The costs of the insurance may be more than the cost of the insurance Mortgagor is able to obtain on its own.

III. PAYMENT OF TAXES AND ASSESSMENTS

Mortgagor shall pay before any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises of any nature whatsoever when due, and shall furnish to Mortgagee, upon Mortgagee's written request, duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. With respect to any tax or assessment which Mortgagor may desire to contest, Mortgagor shall pay such tax or assessment in full under protest in order to prevent a default under this Mortgage on account thereof.

IV. FUNDS FOR TAXES AND INSURANCE

If required by Mortgagee, Mortgagor shall pay to Mortgagee, amounts for taxes, assessments and insurance premiums that will become due and payable to renew the insurance hereinabove provided; said installments to be substantially equal and to be in such amount as will assure to Mortgagee that not less than thirty (30) days before the time when such taxes and premium respectively become due, Mortgagor will have paid to Mortgagee a sufficient amount to pay such taxes and premiums in full. Said amount shall be applied to the payment of said taxes, assessments and insurance premiums when the same become due and payable; provided, however, that Mortgagee

shall have no liability for any failure to so apply said amounts for any reason whatsoever. Nothing herein contained shall in any manner limit the obligation of Mortgagor to pay taxes and to maintain insurance as above provided. In the event of any default by Mortgagor, Mortgagee may, at its option but without any obligation on its part so to do, apply said amount upon said taxes, assessments and insurance premiums, and/or toward the payment of any amounts payable by Mortgagor to Mortgagee under the Mortgage and/or toward the payment of the indebtedness secured hereby or any portion thereof, whether or not then due or payable. Mortgagee shall not require payments hereunder so long as Mortgagor makes timely payment of taxes and insurance and provides Mortgagee with evidence of same upon written request.

V. PROTECTION OF MORTGAGEE'S SECURITY

If default be made in the payment of any of the aforesaid taxes or assessments or in making repairs or replacements or in procuring and maintaining insurance and paying the premiums therefore, or in keeping or performing any other covenant of Mortgagor herein, Mortgagee may, at its option and without any obligation on its part so to do, pay said taxes and assessments, make such repairs and replacements, effect such insurance, pay such premiums, and perform any other covenant of Mortgagor herein, All amounts expended by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith on demand with interest thereon at the rate applicable under the Allowed Claim from the date of such expenditure.

VI. REIMBURSEMENT FOR MORTGAGEE'S LEGAL EXPENSE

In the event that Mortgagee is made a party to any suit or proceedings by reason of the interest of Mortgagee in the Premises, Mortgagor shall reimburse Mortgagee for all costs and expenses, including attorney's fees, incurred by Mortgagee in connection therewith, whether or not said proceeding or suit ever goes to trial. All amounts incurred by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith on demand with interest thereon at the rate applicable under the Allowed Claim from the date of such expenditure.

VII. CONDEMNATION

If all or any part of the Mortgaged Property is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all expenses, including reasonable costs and attorney's fees, to the restoration or repair of the property damaged, if the property can be restored or repaired to constitute a complete architectural unit. In the event the said property cannot be restored or repaired to constitute a complete architectural unit, then such award or monies received after the payment of expenses of Mortgagee as aforesaid

shall be applied on account of the unpaid principal balance of the Allowed Claim, irrespective of whether such principal balance is then due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Allowed Claim, irrespective of whether such principal balance is then due and payable.

VIII. EVENTS OF DEFAULT

Each of the following shall constitute an "Event of Default" for purpose of this Mortgage:

- (a) Any sale, transfer, lease or any agreement to transfer the Mortgaged Property from John L. Cantwell to any other person;
- (b) The failure of the Mortgagor, John L. Cantwell, to use the Mortgaged Property as her principal residence for any period in excess of sixty (60) days except that in the event fire or other casualty renders the Mortgaged Property uninhabitable, then John L. Cantwell's failure to use the Mortgaged Property as his principal residence during the period of reconstruction and/or repair shall not be considered a default.
- (c) Failure to promptly perform or observe any other covenant, promise, term or agreement contained in the Mortgage, Promissory Note, or Settlement Agreement or any other document by the parties hereto executed in connection with the Settlement Agreement.
- (d) The commencement of any petition in Bankruptcy, whether voluntary or involuntary by or against John L. Cantwell or if, John L. Cantwell is adjudicated bankrupt or insolvent or files any petition or answer seeking assignment, composition, liquidation or similar relief under the present or any future Federal or state law or seeks or covenants to acquiesces in the appointment of any trustee, receiver, or similar officer of John L. Cantwell, regarding the Mortgaged Property.
- (e) The incapacity or disability of the John L. Cantwell which entails him extended treatment in a nursing home or other long-term care facility.
- (f) The death of John L. Cantwell.
- (g) The failure of Mortgagor to make the payments required under pursuant to the Promissory Note.
- (h) Any default of John L. Cantwell declared under the First Mortgage dated as of June 20, 2007, by John L. Cantwell in favor of Mortgage Electronic Registration Systems, Inc. (a Delaware corporation) solely as nominee for Lender and Lender's

successors and assigns and Community Central Mortgage Company, LLC, in the amount of \$170,000.00, recorded as document no. 2005 053936.

IX. NOTICE OF EVENT OF DEFAULT, ACCELERATION

(a) Mortgagor shall promptly notify Mortgagee, in writing within five (5) days of the occurrence of any Event of Default.

(b) If an Event of Default occurs, Mortgagee may, upon notice to Mortgagor, declare all sums secured hereby as immediately due and payable. Prior to such acceleration of all sums secured hereby, Mortgagee shall mail notice to Mortgagor, specifying: (1) the breach; (2) the action required to cure such breach, if the breach is capable of being cured; (3) a date not less than 30 days from the date the notice is mailed to Mortgagor by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Mortgagor to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Mortgagee, at Mortgagee's option, may declare the whole of the indebtedness secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Then, at any time thereafter, at the sole option of Mortgagee, the principal balance shall become immediately due and payable, and any other sums secured hereby shall become immediately due and payable. All sums coming due and payable hereunder shall bear interest, after acceleration, at the rate of eight percent (8.0%) per annum. After any such Event of Default, Mortgagee may institute or cause to be instituted, proceedings for the realization of his rights under this Mortgage or Settlement Agreement.

X. RIGHTS, POWERS AND REMEDIES OF MORTGAGEE

When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee may at its election:

(a) Foreclose this Mortgage by legal action, as provided by Indiana Statutes and this paragraph shall further authorize a power of sale as provided by said statutes.

(b) Enter upon and take possession of the Mortgaged Property with the irrevocable consent of Mortgagor as granted and evidenced by execution of this Mortgage. As Mortgagee in possession, Mortgagee may hold, operate, manage and control the Mortgaged Property and conduct business, if any, either personally or by its agents. The Mortgagee may collect rents and lease the Mortgaged

Property, cancel or modify existing leases and generally exercise all powers and rights customarily incident to ownership. Mortgagee may pay out of any rents collected, taxes, insurance, conversions, fees and any expenses attributable to the Mortgaged Property.

(c) Upon, or at any time after the filing of a complaint or petition to foreclose this Mortgage, Mortgagee may apply to the court for appointment of a receiver of the Mortgaged Property. Such receiver shall have the power to collect the rents, issues and profits of the Mortgaged Property during the pendency of the foreclosure suit up to and after any sale of the Mortgaged Property. The court may authorize the receiver to apply net income from management and control of the Mortgaged Property in whole or in part to the indebtedness secured hereby or to any tax or special assessment which may be or become superior to the lien hereof.

XI. CROSS-DEFAULT CLAUSE

Default by Mortgagor in the performance or observance of any covenant, promise or condition of the Settlement Agreement or Promissory Note shall be deemed an Event of Default under the Settlement Agreement or Promissory Note, entitling Mortgagee to exercise all or any remedies available to Mortgagee under the terms of the Settlement Agreement or Promissory Note, and any default or Event of Default under the Settlement Agreement or Promissory Note, shall be deemed a default hereunder, entitling Mortgagee to exercise any or all remedies provided for herein, provided that notice and opportunity to cure default is provided to Mortgagor as specified in Article VIII above. Failure by Mortgagee to exercise any right which it may have hereunder shall not be deemed a waiver thereof unless so agreed in writing by Mortgagee, and the waiver by Mortgagee of any default by Mortgagor hereunder shall not constitute a continuing waiver of any other default or of the same default in the future.

XII. MORTGAGEE'S RIGHT OF INSPECTION

Mortgagee and/or its representative shall have the right to inspect the Mortgaged Property at all reasonable times and upon reasonable advance notice to Mortgagor, and access thereto shall be permitted for that purpose.

XIII. FURTHER INSTRUMENTS

Upon request of Mortgagee, Mortgagor will execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage.

XIV. NOTICES

Any notice, demand, requests or other communication desired to be given or required pursuant to the terms hereof shall be in writing and shall be delivered by personal service or sent by registered

or certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address as the parties hereto may designate in writing from time to time:

Mortgagor: John L. Cantwell
4200 W. 73rd Avenue
Merrillville, Indiana 46410

with a copy to: Randy H. Wyllie
Wieser ~~Sterba~~ & Wyllie, LLP
429425 W. Lincoln Highway
Schererville, Indiana 46307
(facsimile: 219-865-7408)

Mortgagee: David Foy and Kim Foy
13401 W. 81st Avenue.
Dyer, Indiana 46311

with a copy to: Daniel Fumagalli/Adrian P. Smith
Chuhak & Tecson, P.C.
30 S. Wacker Drive
Suite 2600
Chicago, IL 60606
(facsimile: 312-444-9027)

STOP
This Document is the property of
the Lake County Recorder!

XV. SUCCESSORS AND ASSIGNS

This Mortgage and all provisions hereof shall run with the Mortgaged Property and shall be binding upon and enforceable against Mortgagor and its permitted successors, grantees and assigns, any subsequent owner or owners of the Premises who acquire the Premises subject to this Mortgage and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed this Mortgage. Mortgagee shall have the ability to assign this Mortgage to any other person or entity without any permission or advance notice to Mortgagor. In the event Mortgagee assigns this Mortgage he shall notify Mortgagor within 15 days of the assignment. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Allowed Claim.

All of the covenants and conditions hereof shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of Mortgagor and Mortgagee, respectively, and all persons claiming through or under them. Any reference herein to Mortgagee shall include the

successors and assigns of Mortgagee. Mortgagor shall not assign its interest without the prior written consent of Mortgagee.

XVI. ENVIRONMENTAL MATTERS

(a) Mortgagor shall be liable for and shall hold harmless and indemnify Mortgagee from and against any loss, damage or liability suffered by the Mortgagee due to claims against it by governmental enforcement agencies or third parties based on the presence of any hazardous waste as defined in RCRA ("Hazardous Waste"), petroleum or hazardous substance as defined in CERCLA ("Hazardous Substance") or any of the hazardous, toxic or regulated substances as set forth in this paragraph on, or near the Premises, and Mortgagor shall be liable for compliance (and for all costs associated therewith) with any directive or order by any governmental entity relating to the presence of any such Hazardous Waste, petroleum or Hazardous Substance at, or on the Premises regardless of by whom caused. Mortgagor shall deliver promptly to Mortgagee (i) copies of any documents received from the United States Environmental Protection Agency or from any state, county or municipal environmental or health agency concerning the Mortgagor's operations upon the Premises and (ii) copies of any documents submitted to the United States Environmental Protection Agency or to any state, county or municipal environmental or health agency concerning Mortgagor's operations on the Premises.

(b) Mortgagor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances or threaten to release any Hazardous Substances, on or in the Mortgaged Property. Mortgagor shall not do, nor allow anyone else to do, anything affecting the Mortgaged Property (i) that is in violation of any Environmental Law, (ii) which creates an Environmental Condition, or (iii) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Mortgaged Property. The preceding two sentences shall not apply to the presence, use, or storage on the Mortgaged Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Mortgaged Property (including, but not limited to, hazardous substances in consumer products.)

(c) As used in this paragraph "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

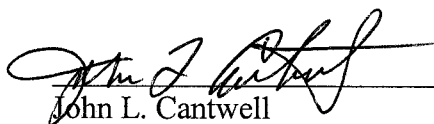
(d) "Environmental Law" means federal laws and laws of the jurisdiction where the Mortgaged Property is located that relate to health, safety or environmental protection.

(e) "Environmental Cleanup" includes any response action, remedial action, or removal action as defined in Environmental Law.

(f) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

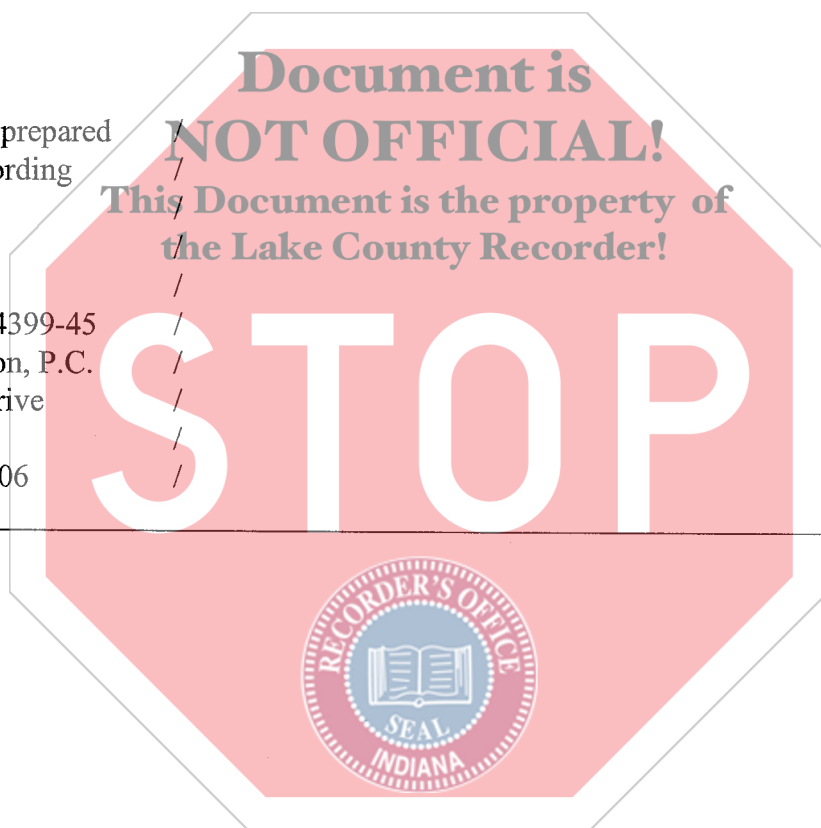
XVII. SUBORDINATION

This instrument is subject and subordinate to that certain First Mortgage dated as of June 20, 2005, by John L. Cantwell in favor of Mortgage Electronic Registration Systems, Inc. (a Delaware corporation) solely as nominee for Lender and Lender's successors and assigns and Community Central Mortgage Company, LLC, in the amount of \$170,000.00, recorded as document no. 2005 053936.


John L. Cantwell

This instrument prepared
by and after recording
return to:

Adrian P. Smith
Attorney No.: 24399-45
Chuhak & Tecson, P.C.
30 S. Wacker Drive
Suite 2600
Chicago, IL 60606



LEGAL DESCRIPTION:

Part of the Northwest 1/4 of Section 18, Township 35 North, Range 8 West of the 2nd Principal Meridian, described as follows: Commencing at a point 938.48 feet West of the Southeast corner of said Northwest 1/4; running thence North parallel with the East line of said 1/4 Section a distance of 405 feet; thence West parallel with the South line of said 1/4 Section a distance of 220 feet; thence South parallel with the East line of said 1/4 Section a distance of 405 feet to the South line of said 1/4 Section; thence East along said South line a distance of 220 feet to the point of beginning, in Lake County, Indiana.



STATE OF INDIANA)
) SS
COUNTY OF LAKE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that John L. Cantwell, personally known to me appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this 3rd day of Dec, 2007.


Notary Public Beth A. Tague

My Commission Expires: June 19, 2010

