



Doc#: 0433503068
Eugene "Gene" Moore Fee: \$40.50
Cook County Recorder of Deeds
Date: 11/30/2004 11:35 AM Pg: 1 of 9

THIS INSTRUMENT
PREPARED BY:
JAMES A. HASIER
Martin & Karczas, Ltd.
30 North LaSalle Street
Suite 4020
Chicago, Illinois 60602

PLEASE MAIL TO:
North Community Bank
3639 North Broadway
Chicago, Illinois 60613

MODIFICATION AGREEMENT
(1106 W. Fullerton, Chicago, Illinois)

THIS MODIFICATION AGREEMENT made this 9th day of November, 2004, by and between 1106 WEST FULLERTON, LLC, an Illinois limited liability company ("Mortgagor") NORTH COMMUNITY BANK, an Illinois banking corporation, with an office at 3639 N. Broadway, Chicago, Illinois 60613 (hereinafter called "Lender") and FRANK MILITO, ANTONIO MILITO, JOSEPH MILITO and FULLERTON-SEMINARY, INC., an Illinois corporation.

WITNESSETH:

This Agreement is based upon the following recitals:

- A. On **June 11, 2003**, for full value received, FULLERTON-SEMINARY, INC., an Illinois corporation, executed and delivered to Lender a Promissory Note in the principal amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) (hereinafter called the "\$ 150,000.00 Note"). Mortgagor secured the obligation under the Loan by granting to Lender a certain Mortgage (hereinafter called the "\$150,000.00 Mortgage") and an Assignment of Lease and Rents, of even date with said Note, covering certain improved real property in the County of Cook, State of Illinois, which Mortgage and Assignment of Leases and Rents were recorded on June 17, 2003 as Document No. 0316831054 and 0316831055, respectively, with the Recorder of Deeds of Cook County, Illinois, covering the property described in attached Exhibit A (hereinafter called the "Mortgaged Premises"). That said \$150,000.00 Mortgage cross-collateralized all then existing and future debt of the Mortgagor.
- B. On **December 31, 2002**, for full value received, Mortgagor executed and delivered to Lender a Promissory Note in the principal amount of SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00) (hereinafter called the "\$ 700,000.00 Note"). Mortgagor secured the obligation under the Loan by granting to Lender a certain Mortgage (hereinafter called the "\$700,000.00 Mortgage") and an Assignment of Lease and Rents, of even date with said Note, covering certain improved real

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property in the County of Cook, State of Illinois, which Mortgage and Assignment of Leases and Rents were recorded on January 10, 2003 as Document No. 0030045783 and 0030045784, respectively, with the Recorder of Deeds of Cook County, Illinois, covering the property described in attached Exhibit A (hereinafter called the "Mortgaged Premises"). That said **\$700,000.00** Mortgage cross-collateralized all then existing and future debt of the Mortgagor and that of Guarantor Frank Milito.

- C. On **August 13, 2003**, for full value received, FULLERTON-SEMINARY, INC. executed and delivered to Lender a Promissory Note in the principal amount of **THREE HUNDRED THOUSAND DOLLARS (\$300,000.00)** (hereinafter called the "**\$300,000.00** Note"). Mortgagor secured the obligation under the Loan by granting to Lender a certain Mortgage (hereinafter called the "**\$300,000.00** Mortgage"), which Mortgage was recorded on August 22, 2003 as Document No. 0323403057 with the Recorder of Deeds of Cook County, Illinois, covering the property described in attached Exhibit A (hereinafter called the "Mortgaged Premises"). That said **\$300,000.00** Mortgage cross-collateralized all then existing and future debt of the Mortgagor.
- D. That there is now outstanding a loan from Lender to a related entity of Mortgagor, Milito's, Ltd., evidenced by a Promissory Note originated on May 15, 2000, in the original principal amount of \$75,000.00 with a current outstanding principal balance as of November 9, 2004 of \$ 14,414.23 (the "Milito's, Ltd. loan").
- E. All Notes referenced in A through D above shall be collectively referred herein to as the "Notes" and all Mortgages referenced in A through C above shall be referred to herein as the "Mortgages".
- F. The outstanding principal balance of; the **\$ 150,000.00** Note as of November 9, 2004, is \$ 148,994.77; the outstanding principal balance of : the **\$ 700,000.00** Note as of November 9, 2004, is \$648,780.98; and the outstanding principal balance of the **\$300,000.00** Note as of November 9, 2004, is \$ 242,976.21.
- G. That Mortgagor and FULLERTON-SEMINARY, INC. are desirous of consolidating the Notes into one Promissory Note and paying off the Milito's, Ltd. loan and obtaining an additional \$50,000.00 advance to FULLERTON-SEMINARY, INC. and 1106 WEST FULLERTON, LLC to be secured by the Mortgages and other security as referenced herein.
- H. Mortgagor represents to Lender that, excepting as for the Mortgages referenced herein, there is no junior mortgage or other subsequent lien now outstanding against the Mortgaged Premises (unless disclosed to Mortgagee, and such subsequent lienholder has agreed to consent to this Modification Agreement and subordinate its

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lien to the lien of the Mortgage, as herein modified, which Consent and Subordination is attached hereto as Exhibit "B"), and that the lien of the Mortgages, as herein modified, is a valid, Cross collateralized, first and subsisting lien of said Mortgaged Premises.

- I. That Lender is agreeable to making such modification on terms and conditions as set forth more fully herein, on the additional conditions that: a) Antonio Milito, Joeseph Milito, Frank Milito and FULLERTON-SEMINARY, INC. provide Lender an unconditional Continuing Guaranty of the obligations of 1106 WEST FULLERTON, LLC; b) Antonio Milito, Joeseph Milito, Frank Milito and 1106 WEST FULLERTON, LLC provide Lender an unconditional Continuing Guaranty of the obligations of FULLERTON-SEMINARY, INC.; c) the obligations be further secured by a first mortgage lien security interest in the property commonly known as 1112-1116 W. Fullerton, Chicago, Illinois; and d) 1106 WEST FULLERTON, LLC and FULLERTON-SEMINARY, INC. provide a first lien security interest in the assets in favor of Lender as further security.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in consideration of the following covenants and agreements, the parties hereto do hereby mutually agree that the Notes and Mortgages are hereby modified as follows:

1. That the Notes shall be consolidated into one Promissory Note, which will also include \$50,000.00 in new funds to be advanced, (the "Consolidation Note") of even date hereof in the original principal amount of \$1,112,782.69 executed and delivered by the undersigned. That said Consolidation Note shall be secured by the Mortgages and a first mortgage lien security interest in the property commonly known as 1112-1116 W. Fullerton, Chicago, Illinois.
2. The maturity date of the Consolidation Note, shall be November 9, 2009.
3. The Consolidated Note amount shall be \$ 1,112,782.69. The principal indebtedness secured by the Mortgages shall also be increased to \$ 1,112,782.69. A Portion of the proceeds under the Consolidated Note shall be applied to costs and fees associated with this Modification Agreement and to pay off the Milito's, Ltd. loan.
4. As a condition to entering into this loan modification the undersigned has agreed to a loan modification fee of \$5,500.00 (the "Modification Fee") and to be responsible for any and all costs and fees incurred by Lender associated with the preparation and recordation of this Modification Agreement including title costs and attorney's fees. Further, it is understood and agreed that the foregoing charges are earned and due and payable upon execution of this Modification Agreement and shall be construed as additional indebtedness under the

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Consolidation Note.

5. Commencing November 9, 2004 the obligations, rights and duties of the undersigned under the Notes will be controlled by and according to the terms of the Consolidation Note.
6. Under the terms of the Consolidation Note the unpaid principal balance, including the new funds advanced, shall accrue at the fixed rate of SEVEN PERCENT PER ANNUM, computed daily on the basis of a three hundred sixty (360) day year for each day all or any part of the principal balance hereof shall remain outstanding. Installment payments of principal and interest in the amount SEVEN THOUSAND NINE HUNDRED THIRTY SIX AND 8/100THS (\$ 7,936.08) DOLLARS shall be payable each month on the first day of the month commencing December 9, 2004. The unpaid principal balance, along with any accrued unpaid interest, shall be payable on November 9, 2009.
7. Under the terms of the Consolidation Note the undersigned shall have the right to prepay the entire indebtedness due hereunder; with accrued interest thereon, to date of payment on any instalment date, upon giving a thirty (30) day written notice to the holder of the Note of the intention to make such prepayment. If at the time of said prepayment the yield on a United States Treasury Security with the closest matching maturity date of this Note is the same as, or greater than, the interest rate on this Note, there is no prepayment premium. However, if at the time of said prepayment, the yield on said Treasury Security is less than the interest rate on this Note, the prepayment premium will be calculated as follows:
 - (A) Multiplying the principal balance of the Note at the time of prepayment by the difference between the interest percentage rate on this Note and the yield on the United States Treasury Security with the closest matching maturity to the maturity date of this Note; then
 - (B) Dividing the figure obtained in (A) by 12, then
 - (C) Multiplying the figure obtained in (B) by the number of months remaining until the maturity date of the Note.

No prepayment premium will be applicable to any amounts due at maturity, provided that where the maturity shall have been accelerated for default, the above prepayment premium shall be charged if permitted by law, except that the undersigned shall have the right to prepay the outstanding indebtedness on this Note at par during the last six (6) months of the term of the Note. Notwithstanding the foregoing, the undersigned will not be assessed a prepayment premium in the event the real estate mortgaged to secure the Note is sold to a bonafide third party for value and the sale proceeds are applied to satisfy the Note.

8. All other terms and conditions of the Mortgages and related documents shall remain in full force and effect.

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In consideration of the modification of the terms of the Notes, and Mortgages by Lender, as hereinabove set forth, Mortgagor does hereby covenant and agree to pay the balance of the indebtedness evidenced by the Note and secured by the Mortgage as herein modified, and to perform the covenants contained in the Mortgages and Mortgagor represents to Lender that there is no junior mortgage, or other subsequent lien now outstanding against the Mortgaged Premises, except as otherwise disclosed herein, and that the lien of the Mortgages are a valid, first and subsisting lien on said Mortgaged Premises.

Nothing herein contained shall in any manner whatsoever impair the Notes and the Mortgages and Guaranty as modified hereby, or the first lien created thereby or any other documents executed by Mortgagor in connection therewith, or alter, waive, vary or affect any promise, agreement, covenant or condition recited in any of the above-mentioned documents, except as herein expressly modified, nor affect or impair any rights, powers, or remedies of Mortgagee under any of the above-mentioned documents. Except as hereinabove otherwise provided, all terms and provisions of the Notes, Mortgages and other instruments and documents executed in connection with the subject Mortgage loan, shall remain in full force an effect and shall be binding upon the parties hereto, their successors and assigns.

IT IS FURTHER AGREED AND ACKNOWLEDGED, by the undersigned, in consideration of and as an inducement for Lender to enter into this Modification Agreement, that:

1. Antonio Milito, Joeseoph Milito, Frank Milito and 1106 WEST FULLERTON, LLC shall to enter into an unconditional Continuing Guaranty of the obligations of FULLERTON-SEMINARY, INC.

2. Antonio Milito, Joeseoph Milito, Frank Milito and of FULLERTON-SEMINARY, INC. shall to enter into an unconditional Continuing Guaranty of the obligations 1106 WEST FULLERTON, LLC.

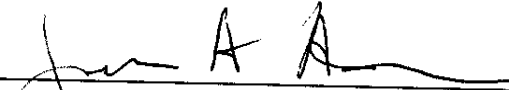
3. 1106 WEST FULLERTON, LLC and FULLERTON-SEMINARY, INC. shall provide a first lien security interest in the assets, of their respective businesses, in favor of Lender as further security for any and all obligations of the undersigned that are now owing or may in the future be owing to the Lender.

4. The obligations of 1106 WEST FULLERTON, LLC and FULLERTON-SEMINARY, INC. shall further be secured by a first mortgage lien and assignment of leases and rents on the real estate commonly known as 1112 - 1116 W. Fullerton, Chicago, Illinois.

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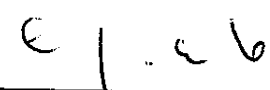
IN WITNESS WHEREOF, this instrument has been executed by the parties hereto in manner and form sufficient to bind them, as of the day and year first above written.

LENDER:
NORTH COMMUNITY BANK:




Its Attorney

**MORTGAGOR/BORROWER/
GUARANTOR:**
1106 WEST FULLERTON, LLC, an Illinois
limited liability company

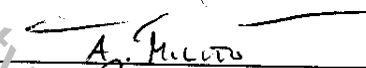
By: 

Frank Milito, Manager

GUARANTOR:



FRANK MILITO



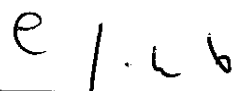
ANTONIO MILITO




JOSEPH MILITO

BORROWER/GUARANTOR:
FULLERTON-SEMINARY, INC., an Illinois
corporation

Attest:



Secretary

By: 

FRANK MILITO, President

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State of Illinois)
) ss.
County of Cook)

JANET J. MISKUS, a Notary Public in and for said County, in the State aforesaid, do hereby certify that on this day personally appeared before me JAMES H. HASLER personally known to me to be the same person whose name is subscribed to the foregoing instrument and personally known to me to be an authorized agent of North Community Bank and acknowledged that he signed the said instrument as his free and voluntary act and deed, and as the free and voluntary act of North Community Bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 29TH day of NOVEMBER, 2004

State of Illinois)
) ss.
County of Cook)

Janet J. Miskus
Notary Public
OFFICIAL SEAL
JANET J MISKUS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 02/20/05

The undersigned, a Notary Public in and for said county, in the aforesaid State, do hereby certify that FRANK MILITO, known to me to be the same persons whose name is subscribed to the foregoing instrument as the Manager of 1106 WEST FULLERTON, LLC, 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 limited liability company, for the uses and purposes therein set forth.

Dated: November 29, 2004

State of Illinois)
) ss.
County of Cook)

Janet J. Miskus
Notary Public
OFFICIAL SEAL
JANET J MISKUS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 02/20/05

The undersigned, a Notary Public in and for said county, in the aforesaid State, do hereby certify that FRANK MILITO, known to me to be the same person whose name is subscribed to the foregoing instrument as Guarantor, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

Dated: November 29, 2004

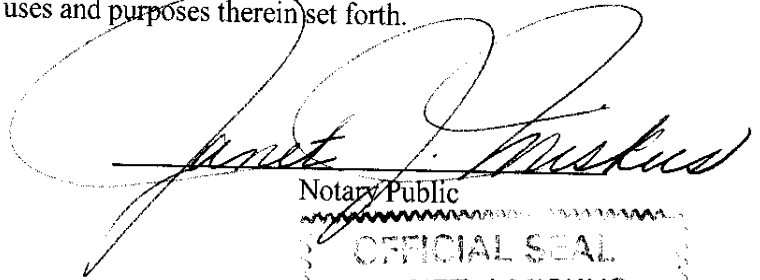
Janet J. Miskus
Notary Public
OFFICIAL SEAL
JANET J MISKUS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 02/20/05

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State of Illinois)
) ss.
County of Cook)

The undersigned, a Notary Public in and for said county, in the aforesaid State, do hereby certify that FRANK MILITO, of FULLERTON-SEMINARY, INC., known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ President and _____ Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Dated: November 29, 2004



Notary Public



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LOTS 6, 7, AND THE EAST ½ OF LOT 8 IN BLOCK 2 IN LINN AND SWAN'S SUBDIVISION OF THE WEST ½ OF BLOCK 18 OF CANAL TRUSTEES' SUBDIVISION OF THE EAST ½ OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 14-29-425-041-0000

Common Address: 1106 W. Fullerton, Chicago, Illinois

Property of Cook County Clerk's Office