

# UNOFFICIAL COPY



THIS INSTRUMENT PREPARED BY:  
Bruce A. Salk  
Cohen, Salk & Huvad, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062

Doc#: 0612518084 Fee: \$46.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/05/2008 03:57 PM Pg: 1 of 12

AND AFTER RECORDING MAIL TO:  
~~Guarantee Trust Life Insurance Company~~  
~~1275 Milwaukee Avenue~~  
~~Glenview, Illinois 60025~~  
~~Attn: Arthur Fess~~  
First American Title Insurance Company  
Attn: Heather Yre  
30 N. LaSalle St, Suite 310  
Chicago, IL 60602

## FIFTH MODIFICATION AGREEMENT

**THIS FIFTH MODIFICATION AGREEMENT** (hereinafter referred to as the "Modification Agreement") made as of this 1st day of May, 2006, by and among SHECHTMAN ENTERPRISES, LLC, a Wisconsin limited liability company ("Borrower"), MORRIS SHECHTMAN and GERTRUDE SHECHTMAN (collectively, the "Guarantors") (Borrower and Guarantors are hereinafter collectively referred to as the "Obligors") and GUARANTEE TRUST LIFE INSURANCE COMPANY ("Lender").

12

### WITNESSETH:

**WHEREAS**, Shechtman Enterprises, a Wisconsin general partnership (the "Partnership") executed and delivered to Lender that certain mortgage note dated as of August 23, 1996 in the original principal sum of Five Hundred Sixty-Five Thousand and 00/100 (\$565,000.00) Dollars (the "Original Note"), which Original Note is secured by the following documents (the following documents and any and all other instruments executed by the Partnership or any Obligor, as modified, restated or replaced from time to time, are hereinafter collectively referred to as the "Loan Documents"):

- (i) mortgage and security agreement of even date therewith made by the Partnership, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 96660786 (the "Mortgage") on property commonly known as 1913 West North Avenue, Chicago, Illinois and legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises");
- (ii) assignment of rents and of lessor's interest in leases dated of even date with the Original Note made by the Partnership in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 96660787 (the "Assignment");
- (iii) guaranty dated of even date with the Original Note made by Guarantors in favor of Lender (the "Guaranty");

# UNOFFICIAL COPY

- (iv) environmental indemnity agreement dated of even date with the Original Note made by Guarantors in favor of Lender; and
- (v) UCC-1 financing statement made by the Partnership in favor of Lender ("Financing Statement").

**WHEREAS**, the Original Note and Loan Documents were modified pursuant to that certain assumption agreement by and among the Partnership, Borrower, Guarantors and Lender dated as of May 1, 2001, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 0010384825, whereby Borrower assumed the obligations of the Partnership under the Original Note, the Mortgage, the Assignment and the Financing Statement;

**WHEREAS**, the Original Note and Loan Documents were further modified pursuant to that certain modification agreement dated as of October 1, 2001 by and among the parties hereto, which provided, among other things, for Borrower to execute an amended and restated mortgage note dated as of October 1, 2001 in the principal amount of \$500,712.45 (the "Amended Note"), which amended and replaced the Original Note;

**WHEREAS**, the Amended Note and Loan Documents were further modified pursuant to that certain modification agreement dated as of May 1, 2003 by and among the parties hereto, which provided, among other things, for Borrower to execute a second amended and restated mortgage note dated as of May 1, 2003 in the principal amount of \$489,534.89 (the "Second Amended Note"), which amended and replaced the Amended Note;

**WHEREAS**, the Second Amended Note and Loan Documents were further modified pursuant to that certain third modification agreement dated as of December 30, 2004 by and among the parties hereto, which provided, among other things, for Borrower to execute a third amended and restated mortgage note dated as of December 30, 2004 in the principal amount of \$777,680.72 (the "Third Amended Note"), which amended and replaced the Second Amended Note;

**WHEREAS**, the Third Note and Loan Documents were further modified pursuant to that certain fourth modification agreement dated as of September 2, 2005 by and among the parties hereto, which provided, among other things, for Borrower to execute a fourth amended and restated mortgage note dated as of September 2, 2005 in the principal amount of \$843,750.00 (the "Fourth Amended Note"), which amended and replaced the Third Amended Note;

**WHEREAS**, Obligors are desirous of increasing the principal sum of the Fourth Amended Note to \$900,000.00, and (ii) making certain other changes thereto, and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

**NOW THEREFORE**, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, first and subsisting lien on the Premises and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there is no existing second mortgage or other liens subsequent to

# UNOFFICIAL COPY

the lien of the Mortgage held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions, or either of them, this Modification Agreement, at the sole election of Lender, shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct. All defined terms used herein and not otherwise defined shall have the meaning ascribed to such term as set forth in the Loan Documents.

2. As of the date hereof, the total outstanding principal balance of the Fourth Amended Note is \$834,588.96. Concurrent with the execution of this Modification Agreement, Borrower shall execute and deliver to Lender a fifth amended and restated mortgage note of even date herewith in the principal amount of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00), payable to the order of Lender (the "Fifth Amended Note"). Each reference in the Loan Documents to the term "Note" shall hereafter be deemed to be a reference to the Fifth Amended Note.

3. The Mortgage is hereby modified as follows:

The first "Whereas" paragraph on page 1 is hereby amended and restated in its entirety to read as follows.

**"WHEREAS** the Mortgagor has executed and delivered to the Mortgagee, the Mortgagor's Fifth Amended and Restated Mortgage Note dated as of May 1, 2006, payable to the order of Mortgagee, in the principal sum of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00) Dollars (as amended, restated or replaced from time to time, the "Note") bearing interest at the rate specified therein, due in the manner as provided therein and in any event on the 1st day of May, 2013, the terms and provisions of which Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and"

4. The Assignment is hereby modified by amending and restating in its entirety the first "Whereas" paragraph on page 1 to read as follows:

**"WHEREAS**, Assignor has executed a fifth amended and restated mortgage note (as amended, restated or replaced from time to time, the "Note") dated as of May 1, 2006, payable to the order of GUARANTEE TRUST LIFE INSURANCE COMPANY (hereinafter referred to as "Assignee") in the principal amount of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00); and"

5. The Guaranty is hereby modified by amending and restating in its entirety recitals paragraph A on page 1 to read as follows:

**"A.** Shechtman Enterprises, LLC, a Wisconsin limited liability company ("Borrower"), has executed a certain fifth amended and restated mortgage note (the "Note") dated as of May 1, 2006, payable to the order of Lender in the principal sum

# UNOFFICIAL COPY

of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00), together with interest as therein described, which Note is held by Lender.”

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

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

8. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender a non-refundable modification fee in the amount of \$327.00 plus all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees"). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by Lender, such Additional Fees shall be paid by Obligors within five days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Fifth Amended Note).

9. The Premises described in the Mortgage shall remain in all events subject to the lien, charge or encumbrance of the Mortgage, or conveyance of title (if any) effected thereby, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to effect the lien, charge or encumbrance of, or warranty of title in, or conveyance effected by the Mortgage, or the priority thereof over liens, charges, encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Fifth Amended Note and/or Mortgage, nor shall anything herein contained or done in pursuance thereof affect or be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

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

11. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Fifth Amended Note and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or

# UNOFFICIAL COPY

set-offs against the enforcement by Lender of their respective obligations and liabilities under the Fifth Amended Note and other Loan Documents, as so amended.

12. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois, including all matters of construction, validity and performance.

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

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

15. Lender's consent to this Modification Agreement shall be subject to Lender (or Lender's nominee) having received the following in a form and substance acceptable to Lender on or before April 28, 2006 (the "Modification Termination Date"):

(a) An endorsement to First American Title Insurance Company Loan Policy No. LP3212830 (the "Title Policy") which (i) amends the description of the Mortgage insured under the Title Policy to include this Modification Agreement, (ii) amends the description of the Assignment to include this Modification Agreement, (iii) extends the effective date of the Title Policy to the date of the recording of this Modification Agreement, (iv) includes no additional exceptions to title other than those that have been approved in writing by Lender, (v) states that all real estate taxes and assessments applicable to the Premises which are due and payable as of the date of such endorsement have been paid in full, and (vi) increases the amount of insurance to \$900,000.00; and

(b) Such other documents as Lender may reasonably require.

The Obligors' failure to deliver the aforementioned documents and items to Lender on or before the Modification Termination Date shall, at the option of Lender, result in this Modification Agreement (including all agreements and waivers of Lender contained herein) being null and void.

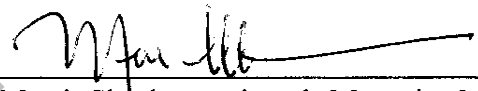
16. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF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

# UNOFFICIAL COPY

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

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

SHECHTMAN ENTERPRISES, LLC, a Wisconsin limited liability company

By:   
Morris Shechtman, its sole Managing Member

  
MORRIS SHECHTMAN, individually

  
GERTRUDE SHECHTMAN, individually

GUARANTEE TRUST LIFE INSURANCE COMPANY

By: 

Its: Sr VA Finance



# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Arthur G. Fess, of GUARANTEE TRUST LIFE INSURANCE COMPANY, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President, 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 life insurance company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 26~~th~~ day of April, 2006.

Eileen M. Carlson  
Notary Public

My Commission Expires: 02/20/2010





# UNOFFICIAL COPY

## EXHIBIT "A"

PIN: 17-06-200-028

ADDRESS: 1913 West North Avenue, Chicago, Illinois

LOTS 5, 6 AND 7 IN BLOCK 3 IN PICKET'S 2ND ADDITION TO CHICAGO, A SUBDIVISION OF LOT 4, AN ASSESSOR'S DIVISION OF PART OF THE NORTH ½ OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

**UNOFFICIAL COPY****STATEMENT REQUIRED FOR THE ISSUANCE OF ALTA OWNERS AND LOAN POLICIES**Commitment No. LP 3212830

Loan No. \_\_\_\_\_

Date May 1, 2006

To the best of knowledge and belief of the undersigned, the following is hereby certified with respect to the land described in the above commitment.

1. That, except as noted at the end of this paragraph, within the last six (6) months a) no labor, service or materials have been furnished to improve land, or to rehabilitate, repair, refurbish, or remodel the building(s) situated on the land; b) nor have any goods, chattels, machinery, apparatus or equipment been attached to the land or buildings(s) thereon, as fixtures; c) nor have any contracts been let for the furnishing of labor, service, materials, machinery, apparatus or equipment which are to be completed subsequent to the date hereof; d) nor have any notices of lien been received, except the following, if any: none
2. That all management fees, if any, are fully paid, except the following: none
3. That there are no unrecorded security agreements, leases, financing statements chattel mortgages or conditional sales agreements in respect to any appliances, equipment or chattels that have or are to become attached to the land or any improvements thereon as fixtures, except the following, if any: none
4. That there are no unrecorded contracts or options to purchase the land, except the following, if any: none
5. That there are no unrecorded leases, easements or other servitudes to which the land or building, or portions thereof, are subject, except the following, if any: lease with Northwestern Memorial Physicians Group
6. That, in the event the undersigned is a mortgagor in a mortgage to be insured under a loan policy to be issued pursuant to the above commitment, the mortgage and the principal obligations it secures are good and valid and free from all defenses: that any person purchasing the mortgage and obligations it secures, or otherwise acquiring any interest therein, may do so in reliance upon the truth of the matters herein recited: and that this certification is made for the purpose of better enabling the holder or holders, from time to time, of the above mortgage and obligations to sell, pledge or otherwise dispose of the same freely at any time, and to insure the purchasers of pledgee thereof against any defenses thereto by the mortgagor or the mortgagor's heirs, personal representative or assigns.

The undersigned makes the above statement for the purpose of inducing First American Title Insurance Company to issue its owners or loan policy pursuant to the above commitment.

**Seller or Owner**

Shechtman Enterprises, LLC,  
a Wisconsin limited liability company

**Purchaser**

By: \_\_\_\_\_

  
Morris Shechtman, Managing Member

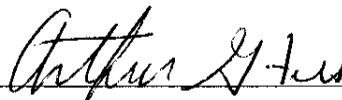
**LENDER'S DISBURSEMENT STATEMENT**

The undersigned hereby certifies that the proceeds of the loan secured by the mortgage to be insured under the loan policy to be issued pursuant to the above commitment were fully disbursed to or on the order of the mortgagor on May 1, 2006. You are hereby authorized to date down the above commitment to cover the date of said disbursement.

May 1, 2006

Dated

Signature

  
\_\_\_\_\_

# UNOFFICIAL COPY

## PERSONAL UNDERTAKING (GAP)

WHEREAS, the FIRST AMERICAN TITLE INSURANCE COMPANY, hereinafter referred to as "the Company", is about to issue its title insurance policy or policies or commitments therefor, all hereinafter referred to as "the Title Insurance Policy", No. LP 3212830, in respect to the land therein described;

AND WHEREAS, the Company has raised as title exceptions on the Title Insurance Policy certain defects, liens, encumbrances, adverse claims, or other matters, all hereinafter referred to as "Exceptions to Title", described as follows:

All rights, interests, liens, claims, encumbrances, or defects in title or any of them, or any rights existing by reason of the consequence thereof or growing out thereof subsequent to September 2, 2006;

AND WHEREAS, the Company has been requested to issue the Title Insurance Policy, and may hereafter, in the ordinary course of its business, issue title insurance policy or policies or commitments therefor in the form or forms now or then commonly used by the Company, or issue hold harmless or indemnity letters to induce other title insurance companies to issue title insurance policies or commitments therefor, in respect to the land or to some part or parts thereof, or interests therein, all of the foregoing being hereafter referred to as "Future Policies or Commitments", either omitting all mention of the aforesaid Exceptions to Title, or insuring against loss or damage by reason thereof;

NOW THEREFORE, in consideration of the issuance of the Title Insurance Policy and the payment of \$1.00 to the undersigned by the Company, the sufficiency and receipt of which are hereby acknowledged, the undersigned, jointly and severally, for itself, themselves, heirs, personal representatives, successors, and assignees do hereby covenant and agree with the Company: (1) to fully protect, defend, and save the Company harmless from and against all the Exceptions to Title, in and from any and all loss, costs, damages, attorney's fees, and expenses of every kind and nature which it may suffer, expend or incur under, or by reason, or in consequence of the Title Insurance policy on account, or in consequence, or growing out of the Exceptions to Title, or on account of the assertion or enforcement or attempted assertion or enforcement thereof or of any rights existing or hereafter arising, or which may be claimed to exist under, or by reason, or in consequence, or growing out of the Exceptions to Title or any of them; (2) to provide for the defense, at their own expense, on behalf and for the protection of the company and the parties insured or who may become insured, against loss or damage under the Title Insurance Policy (but without prejudice to the right of the Company to defend if it so elects) in all litigation consisting of actions or proceedings based on any Exceptions to Title which may be asserted or attempted to be asserted, established or enforced in, to, upon, against or in respect to the land or any part thereof, or interest therein; (3) to pay, discharge, satisfy, and remove from the title to the land, and clear from the public record all of the Exceptions to Title; and (4) that each and every provision herein shall extend and be in force concerning future Policies or Commitments.

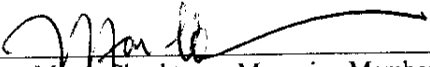
The foregoing notwithstanding, it is hereby covenanted and agreed, and expressly made a part of this agreement, that the liability of the undersigned hereunder shall cease and determine at such time as the Company shall have completed all of its various title searches and examination thereof covering the date of recording, required for the issuance of the above policy; provided, however, that (1) no rights, interests, liens, claims, encumbrances, or defects in title or any of them, or any rights existing by reason or in consequence thereof or growing out thereof are disclosed by the said various title searches and examination thereof; (2) there is then pending no suit, action, or proceedings, either direct or collateral, to assert, establish, or enforce the said mentioned rights, interests, liens, claims, encumbrances, or defects in title, or any of them, or any rights existing or arising by reason or in consequence thereof or growing out thereof; (3) that no judgment, order or decree rendered in any such proceeding remains unsatisfied; and (4) that the undersigned is not in default in the performance of any of the terms, covenants, and conditions hereof.

# UNOFFICIAL COPY

## FOR COMPANIES

IN WITNESS WHEREOF, the undersigned being the hereinafter named limited liability company, has caused these presents to be signed by its Managing Member as of this 1<sup>st</sup> day of May, 2006.

Shechtman Enterprises, LLC,  
a Wisconsin limited liability company

By:   
Morris Shechtman, Managing Member

Address of Company:

P.O. Box ~~15006~~ 170986  
Milwaukee, Wisconsin 53217

Approved:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Property of Cook County Clerk's Office