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Cook County Recorder of Deeds
Date: 07/13/2007 03:50 PM Pg: 1 of 12

FREEDOM TITLE CORP.

6706390 *Howard*

COVERSHEET

FOR

AGREEMENT AND MODIFICATION

OF MORTGAGE

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**AGREEMENT AND MODIFICATION OF MORTGAGE,
SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND
RENTS-FIXTURE FILING AND RELATED LOAN DOCUMENTS**

6706390 Howard

This Agreement and Modification of Mortgage, Security Agreement and Assignment of Leases and Rents-Fixture Filing and Related Loan Documents (this "Agreement") is made as of the 14th day of June, 2007 by and among **1841-45 N. ORCHARD, LLC**, an Illinois corporation ("Orchard" or "Borrower" as the case may be), with its chief executive office at 1841-1845 N. Orchard Street, Chicago, Illinois 60614, **ANDREW HERSHOFF** ("Hershoff" or "Guarantor" as the case may be) residing at 2324 N. Wayne, Chicago, Illinois 60614 and **AMCORE BANK, N.A.**, a national banking association (the "Lender"), with an office at 300 Tri-State International, Suite 180, Lincolnshire, Illinois 60069.

RECITALS:

A. On December 20, 2004, Lender made a Term Installment Loan (the "Loan") to Hershoff as evidenced by that certain Term Installment Note (the "Note") in the original principal amount of Five Million and No/100 Dollars (\$5,000,000.00).

B. The Note was secured by, among other things, a Mortgage, Security Agreement and Assignment of Leases and Rents-Fixture Filing (the "Mortgage") of even date with the Note and executed by Orchard. The Mortgage was recorded in the Cook County Recorder's Office on January 6, 2005 as Document No. 0500649024 and encumbered the real property and improvements commonly known as 1841 N. Orchard, Chicago, Illinois (the "1841 Property") and 1845 N. Orchard, Chicago, Illinois (the "1845 Property") and legally described on Exhibit A attached hereto.

C. In or about March, 2006, Orchard sold the 1841 Property and Lender executed that certain Partial Release (the "Release") dated August 23, 2006 whereby Lender released the 1841 Property from the Mortgage. The Release was recorded in the Cook County Recorder's Office on September 11, 2006 as Document No. 0625455118. Hershoff used a portion of the proceeds from the sale of the 1841 Property to pay down the outstanding balance due and owing under the Note.

D. In May, 2006, Hershoff requested that Lender restructure the Loan to, among other things, change the obligor under the Loan to Orchard.

E. On May 9, 2006, Borrower executed that certain Promissory Note (the "Promissory Note") in the original principal amount of Three Million Four Hundred Thousand and No/100 Dollars (\$3,400,000.00) to refinance, amend and replace the Note. The Promissory Note was executed by Borrower and payable to the order of and delivered to the Lender pursuant to the terms and conditions of that certain Commercial Loan Agreement (the "Loan Agreement") executed by Borrower of even date with the Promissory Note.

F. The Promissory Note was secured by, among other things, the Mortgage and a new Mortgage (the "New Mortgage") of even date with the Promissory Note and executed by Borrower.

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The New Mortgage was recorded in the Cook County Recorder's Office on May 15, 2006 as Document No. 0613550004 and encumbered 1845 Property.

G. The Promissory Note was guaranteed by Guarantor pursuant to that certain Guaranty of even date with the Promissory Note (the "**Guaranty**").

H. On February 20, 2007, the Promissory Note matured and Borrower, Guarantor and Lender entered into a Forbearance Agreement (the "**Forbearance Agreement**") whereby, among other things, Lender agreed to forbear from the enforcement of its rights and remedies under the loan documents through September 30, 2007.

I. As of June 4, 2007, the outstanding balance due and owing under the Promissory Note, not including attorneys' fees and costs, was as follows:

Principal:	\$3,370,459.01
Interest:	\$ <u>11,260.49</u>
Total Due:	\$3,381,719.50

Per Diem Interest: \$750.86

J. In lieu of the Forbearance Agreement, Borrower has requested that Lender extend the maturity date of the Promissory Note and increase the principal amount of the loan which Lender has agreed to do subject to the terms and conditions contained herein.

K. The Note, Mortgage, Promissory Note, Loan Agreement, New Mortgage, Guaranty, Forbearance Agreement and any other document executed in connection with the Note and Promissory Note, whether now or hereafter existing, and all renewals, amendments, supplements, restatements, extensions and modifications thereof and thereto, are sometimes hereinafter collectively referred to as the "**Loan Documents**."

NOW THEREFORE, in consideration of the premises, terms, conditions and promises contained herein and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Incorporation.** The recitals to this Agreement are fully incorporated herein by this reference and shall have the same force and effect as though restated herein.

2. **Definitions.** All Capitalized terms used in this Amendment and not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

3. **Modification of the Mortgage.** The Mortgage is hereby modified as follows:

a. The **WHEREAS** clause contained on Page 1 of the Mortgage is amended in its entirety to be and read as follows:

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WHEREAS, Mortgagor is indebted to Mortgagee in an amount not to exceed the principal sum of THREE MILLION SIX HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$3,650,000.00), which indebtedness is evidenced by a Promissory Note (the "Note") dated May 9, 2006 in the original principal amount of Three Million Four Hundred Thousand and No/100 Dollars (\$3,400,000.00) and subsequently amended to increase the principal amount to Three Million Six Hundred Fifty Thousand and No/100 Dollars (\$3,650,000.00) made by Mortgagor and payable to the order of and delivered to Mortgagee pursuant to the terms and conditions of that certain Commercial Loan Agreement of even date with the Note, and any and all renewals, extensions or refinancings thereof, in and by which Note, Mortgagor promises to pay the said principal sum and interest in the manner and at the rates as provided therein.

b. All references to "Borrower" contained in the Mortgage shall mean and refer to Mortgagor, 1841-45 N. Orchard, LLC.

c. In all other respects the Mortgage shall remain in full force and effect as amended.

4. **Modification of Promissory Note.** The Promissory Note is hereby modified as follows:

a. The "Note Amount" in the box at the top of Page 1 of the Promissory Note of "\$3,400,000.00" is deleted and replaced with "\$3,650,000.00".

b. The "Maturity Date" in the box at the top of Page 1 of the Promissory Note of "February 20, 2007" is deleted and replaced with "June 1, 2008".

c. Line three of Paragraph 2 entitled "**PROMISE TO PAY**" is amended by deleting the reference to "\$3,400,000.00" and replacing therein "\$3,650,000.00".

d. The second sentence in Paragraph 6 of the Promissory Note entitled "**PAYMENT**" is amended in its entirety to be and read as follows:

I agree to pay the entire unpaid Principal and any accrued but unpaid interest on June 1, 2008.

e. In all other respects the Promissory Note shall remain in full force and effect as amended.

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5. **Modification of Loan Agreement.** The Loan Agreement is hereby modified as follows:

a. The "Note Amount" in the box at the top of Page 1 of the Loan Agreement of "\$3,400,000.00" is deleted and replaced with "\$3,650,000.00".

b. The "Maturity Date" in the box at the top of Page 1 of the Loan Agreement of "February 20, 2007" is deleted and replaced with "June 1, 2008".

c. Line two of Paragraph 2.A. entitled "**MULTIPLE ADVANCES**" is amended by deleting the reference to "\$3,400,000.00" and replacing therewith "\$3,650,000.00".

d. Paragraph 3 of the Loan Agreement entitled "**MATURITY DATE**" is amended in its entirety to be and read as follows:

3. MATURITY DATE. I agree to fully repay the Loan by June 1, 2008.

e. Paragraph 4) is amended in its entirety to be and read as follows:

Y. Additional Covenants.

4) The initial interest reserve of \$218,737.00 included in the original principal amount of the Loan of \$3,400,000.00 is being increased to \$468,737.00 as a result of the increase in the principal amount of the Loan to \$3,650,000.00 and interest will be drawn from the Loan on a monthly basis to pay the interest on the Loan.

f. In all other respects the Loan Agreement shall remain in full force and effect as amended.

6. **Cancellation of New Mortgage and Forbearance Agreement.** Subject to Lender procuring, at Borrower's cost, a loan policy from Chicago Title Insurance Company insuring the Mortgage as a first and paramount lien on the 1845 Property in the amount of \$3,650,000.00 with no exceptions in Schedule B or otherwise for any mechanic's liens, encumbrances or liens of any other nature, Lender shall cancel and release the New Mortgage and the parties hereby agree to cancel and terminate the Forbearance Agreement.

7. **General Representations and Warranties.** Borrower and Guarantor hereby represent and warrant that: (i) the Loan Documents are fully enforceable in accordance with their terms; (ii) the Loan Documents constitute legal, valid and binding obligations of Borrower and Guarantor, as the case may be; and (iii) the liens and security interests granted under the Loan Documents are duly perfected in accordance with applicable law.

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8. **Reaffirmation and Ratification of Guaranty.** Guarantor hereby consents to this Agreement and to the execution and delivery by Borrower to Lender of this Agreement. Guarantor hereby ratifies and confirms his respective liabilities and obligations under the Guaranty, Loan Agreement, Promissory Note and any other Loan Documents, all as amended by this Agreement. Guarantor further acknowledges that he has no defenses, claims or set-offs to the enforcement by Lender of the liabilities and obligations of Guarantor under the Guaranty, Loan Agreement, Promissory Note and Loan Documents.

9. **Reaffirmation and Ratification by Borrower.** Borrower hereby ratifies, confirms and adopts his liabilities and obligations under the Loan Agreement, Promissory Note any other Loan Documents, all as amended by this Agreement, and the liens and security interests created thereby and acknowledges that it has no defenses, claims or set-offs to the enforcement by Lender of the obligations and liabilities of Borrower under the Loan Agreement, Promissory Note and any other Loan Documents all as amended by this Agreement.

10. **Further Assurances.** Borrower and Guarantor will, on request of Lender, from time to time, execute and deliver such documents as may be reasonably necessary and reasonably acceptable to Borrower and Guarantor to perfect and maintain perfected as a valid first lien on the 1845 Property, the lien granted to Lender pursuant to the Mortgage, and to fully consummate the transactions and to effect the purposes contemplated by this Agreement.

11. **Time is of the Essence.** Time is of the essence of the payment of all amounts due pursuant to the terms of this Agreement and performance and observation by Borrower and Guarantor of each covenant, agreement, provision and term of this Agreement.

12. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles.

13. **Construction.** This Agreement shall not be construed more strictly against Lender merely by virtue of the fact that the same has been prepared by Lender or its counsel, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledge and waive any claim contesting the existence and the adequacy of the consideration given by any of the other parties hereto in entering into this Agreement.

14. **Gender.** All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine, and neuter genders, and any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

15. **Entire Agreement.** Borrower, Guarantor and Lender each acknowledge that there are no other agreements or representations, either oral or written, express or implied, not embodied in this Agreement and the documents executed in connection herewith, which, together, represent

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a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender.

16. Successors and Assigns. Except as provided herein, this Agreement shall be binding upon and shall inure to the benefit of Borrower, Guarantor and Lender and their respective successors, assigns, grantees, heirs, executors, personal representatives, and administrators.

17. Ratification. Except for that certain mechanic's lien filed by Jose Roque, Inc. on November 17, 2006 as Document No. 0632134094, Borrower and Guarantor represent to Lender that there is no other ownership interest, lien, or other interest now outstanding against the 1845 Property and that the lien of the Lender has been, is, and remains the superior, paramount and first lien on the 1845 Property.

18. Consent. Borrower and Guarantor acknowledge that they have thoroughly read and reviewed the terms and provisions of this Agreement and are familiar with the same, that the terms and provisions contained herein are clearly understood and have been fully and unconditionally consented to by them, and that Borrower and Guarantor have had full benefit and advice of counsel of their or its own selection, or the opportunity to obtain the benefit and advice of counsel of their or its own selection, in regard to understanding the terms, meaning, and effect of this Agreement, and that Borrower and Guarantor have full power and authority to enter into this Agreement and this Agreement has been entered into by Borrower and Guarantor freely, voluntarily, with full knowledge, and without duress, and that in executing this Agreement, Borrower and Guarantor are relying on no other representations, either written or oral, express or implied, made to Borrower and Guarantor by any other party hereto, and that the consideration received by Borrower and Guarantor hereunder has been actual and adequate.

19. Release. As additional consideration for Lender's agreement to enter into this Agreement, Borrower and Guarantor hereby release and forever discharge Lender, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors, and assigns and all persons, firms, corporations, and organizations, and organizations in its behalf of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Borrower and Guarantor may now have or claim to have against Lender, as of the date hereof, whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way touching, concerning, arising out of, or founded upon the Loan Documents, this Agreement, and any document related thereto, including, but not limited to, all such loss or damage of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the date of this Agreement.

20. Counterparts. It is understood and agreed that this Agreement may be executed in several counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts, taken together, shall constitute one and the same Agreement, even though all of the parties hereto may not have executed the same counterpart of this Agreement.

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21. **Notices.** Any notice that Lender or Borrower and Guarantor may desire or be required to give to the other shall be in writing and shall be mailed to the intended recipient thereof at its address set forth in the Loan Agreement and shall be deemed to have been delivered two (2) business days after mailing by United States registered or certified mail, return receipt requested.

22. **Enforceability.** If any provision of this Agreement is held invalid or unenforceable as to any party, the remainder of this Agreement shall not be affected thereby, the provisions of this Agreement being severable in any such instance. This Agreement shall be deemed to specifically amend the Loan Agreement, Mortgage and Promissory Note, as aforesaid and made a part thereof. If there are any discrepancies between the Loan Agreement, Mortgage and Promissory Note in their original form and the terms of this Agreement, the terms of this Agreement shall control.

23. **No Impairment.** Nothing contained herein shall be deemed to or shall in any manner prejudice or impair, or act as a release or relinquishment of, any lien, security interest or assignment granted to and/or held by the Lender in connection with the Loan Documents. Except as otherwise expressly provided herein, the execution hereof by the Lender does not, and shall not be deemed to, constitute a waiver, limitation or modification of any of the Lender's rights or remedies under the Loan Documents, or applicable law, all of which the Lender hereby expressly reserves, nor shall the same constitute a waiver of any default which may have heretofore occurred or which may hereafter occur with respect to the Loan Documents.

IN WITNESS WHEREOF, this Agreement 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:

AMCORE BANK, N.A., a national banking association

By: Todd Younger
Todd Younger
Its: Senior Vice President

BORROWER:

1841-45 N. ORCHARD, LLC, an Illinois limited liability company

By: Andrew Hershoff
Andrew Hershoff
Its: Managing member

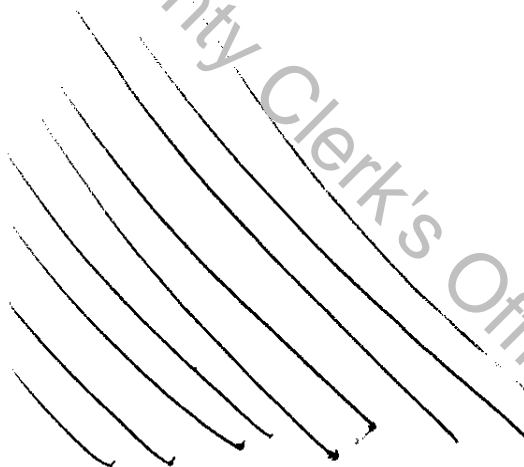
(Signatures continued on the following page)

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GUARANTOR:

By: Andrew Hershoff
Andrew Hershoff, individually

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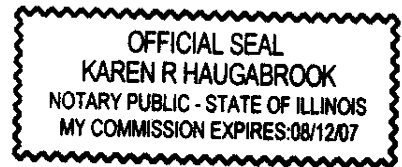
STATE OF ILLINOIS)
) SS
COUNTY OF ~~WINNEBAGO~~)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Todd Younger, senior vice president of Amcore Bank, N.A., personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument in his capacity as vice president of Amcore Bank, N.A., as his free and voluntary act, and as the free and voluntary act of Amcore Bank, N.A., for the uses and purposes therein set forth.

Given under my hand and official seal this 21st day of June, 2007.




Notary Public
Commission expires 8/12/07



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew Hershoff, as managing member of 1841-45 N. Orchard, LLC, personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument in his capacity as managing member of 1841-45 N. Orchard, LLC, as his free and voluntary act, and as the free and voluntary act of 1841-45 N. Orchard, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this 14th day of June, 2007.

Notary Public
Commission expires _____


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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew Hershoff, personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this 14 day of June, 2007.

Notary Public **OFFICIAL SEAL**
Commission expires **TUNDE MANESES**
 NOTARY PUBLIC, STATE OF ILLINOIS
 MY COMMISSION EXPIRES 2-24-2009

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EXHIBIT A

LOT 5 IN ANA M. HELMS RESUBDIVISION OF THE SOUTH ½ OF THE SOUTH ½ OF THE WEST ½ OF LOT 12 AND THE NORTH ½ OF THE WEST ½ OF LOT 13 IN BLOCK 2 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, OTHERWISE KNOWN AS LOT 10 IN COUNTY CLERK'S DIVISION OF THE WEST ½ OF LOTS 9, 10 AND 11 AND THE NORTH 1/4 OF THE SOUTH 1/4 OF LOT 12 AND AS LOTS 3, 4, 5 AND 6 IN ASSESSOR'S DIVISION OF LOT 13, ALL IN BLOCK 2 IN SAID SHEFFIELD'S ADDITION TO CHICAGO, IN COOK COUNTY, ILLINOIS.

Commonly known as: 1845 N. Orchard Street, Chicago, Illinois 60614

P.I.N. No.: 14-33-302-039-0000