

# UNOFFICIAL COPY

This instrument prepared by  
and please return to:



**Polsinelli Shalton Flanigan Suelthaus PC**  
**180 North Stetson Avenue, Suite 4525**  
**Chicago, Illinois 60601-6733**  
**Attention: Kimberly K. Enders, Esq.**

**Doc#: 0736209126 Fee: \$46.00**  
**Eugene "Gene" Moore RHSP Fee:\$10.00**  
**Cook County Recorder of Deeds**  
**Date: 12/28/2007 11:39 AM Pg: 1 of 12**

P.I.N.: 14-17-210-019-0000  
COMMONLY KNOWN AS: 4616-18 N. Kenmore, Chicago, Illinois 60640

## FOURTH LOAN MODIFICATION AGREEMENT

This instrument is a Fourth Loan Modification Agreement ("Fourth Modification") among First Chicago Bank & Trust, an Illinois banking corporation ("Lender"), 4616 North Kenmore LLC, an Illinois limited liability company ("Borrower"), and John C. O'Flaherty ("Guarantor").

### RECITALS:

A. Borrower holds fee simple title to certain real estate ("Real Estate") commonly known as 4616-18 N. Kenmore, Chicago, Illinois, and is legally described on Exhibit A attached hereto. Guarantor is the sole member and manager of Borrower. The Real Estate is improved with a building containing 21 residential units ("Units"), which Borrower has submitted to the Illinois Condominium Act and intends to sell Units to third parties.

B. On May 6, 2005, Borrower, Lender and Guarantor entered into a Construction Loan Agreement ("Loan Agreement"), pursuant to which Borrower executed and delivered to Lender

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a Promissory Note in the amount of \$4,791,610.00 ("Note"), which evidenced a loan in the amount of \$4,791,610.00 ("Loan"). To secure the Note, Borrower and Guarantor executed and delivered to Lender the following documents ("Security Documents"):

1. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage") executed by Borrower and covering the Real Estate, which Mortgage was recorded with the Cook County Recorder of Deeds on May 12, 2005 as Document No. 0513235185;

2. a UCC Financing Statement;

3. an Environmental, ADA and ERISA Indemnification Agreement executed by Borrower and Guarantor;

4. Guaranty of Note, Mortgage, and Other Undertakings ("Guaranty") executed by Guarantor;

5. an Assignment of Real Estate Sale Contracts executed by Borrower and Lender;

6. an Assignment of Project Documents; and

7. a General Contractor's Lien Subordination Agreement recorded as Document No. 0513235186 executed by O'Flaherty Builders.

C. On September 28, 2006, Borrower and Lender entered into a Loan Modification Agreement ("Modification"), pursuant to which Lender increased the amount of the Loan by \$180,000.00 ("Additional Loan"). The Modification was recorded on October 4, 2006, as Document No. 0627722166. In connection with the Additional Loan, Borrower executed and delivered to Lender a Revised Promissory Note in the amount of \$4,971,610.00 ("Revised Note"), a copy of which was attached as Exhibit B to the Modification, and Guarantor executed

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and delivered to Lender his Revised Guaranty of Note, Mortgage and Other Undertakings concurrently therewith.

D. As of December 1, 2006, one of the Units and three parking spaces were sold and released from the Mortgage and other Security Documents. The outstanding principal balance of the Loan was \$4,612,617.00. Borrower, Guarantor and Lender entered into a Second Loan Modification Agreement ("Second Modification"), pursuant to which Lender increased the amount of the Loan by \$180,000.00 to \$4,792,617.00 in order to pay interest on the Loan and extended the maturity date of the Loan until June 1, 2007 ("Second Additional Loan"). The Second Modification was recorded with the Cook County Recorder of Deeds on January 11, 2007 as Document No. 0701122119. In connection with the Second Additional Loan, Borrower executed and delivered to Lender a Second Revised Promissory Note in the amount of \$4,792,617.00 ("Second Revised Note"), a copy of which was attached as Exhibit B to the Second Modification, and Guarantor executed and delivered to Lender his Revised Guaranty of Note, Mortgage and Other Undertakings concurrently therewith.

E. As of June 1, 2007, Borrower, Guarantor and Lender entered into a Third Loan Modification Agreement ("Third Modification"), pursuant to which Lender increased the amount of the Loan by \$33,000.00 to \$1,444,432.00 in order to pay interest on the Loan, and extended the maturity date of the Loan until December 1, 2007. The Third Modification was recorded with the Cook County Recorder of Deeds on July 6, 2007. In connection with the Third Modification, Borrower executed and delivered to Lender a Third Revised Promissory Note in the amount of \$1,444,432.00 ("Third Revised Note"), a copy of which was attached as Exhibit B to the Third Modification, and Guarantor executed and delivered to Lender his Second Revised Guaranty of Note, Mortgage and Other Undertakings concurrently therewith.

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F. Borrower has now requested Lender to extend the maturity date of the Loan until June 1, 2008. Lender is agreeable to this request subject to the covenants, conditions and restrictions contained herein.

**NOW, THEREFORE**, in consideration of good and valuable consideration, the parties agree as follows:

1. The Maturity Date set forth in subparagraph (b) of the Third Revised Note is hereby modified and amended from December 1, 2007 until June 1, 2008. Interest payments must be made on the first day of each month until the Loan is paid in full.

2. The Security Documents are hereby modified and amended to secure the Note as hereby modified and all references to the Note in the Security Documents are modified and amended to refer to the Note, the Revised Note, the Second Revised Note or the Third Revised Note as hereby modified. All interest charged on and all payments made on the Note, the Revised Note, the Second Revised Note and the Third Revised Note are previously are unchanged.

3. This Fourth Modification shall be effective upon Lender's receipt of this Fourth Modification executed by the parties hereto and the following documents and items:

- (a) an Organizational Resolution of Borrower;
- (b) an LLC File Detail Report printout from the Illinois Secretary of State's website showing the good standing status of Borrower;
- (c) payment of the fees and costs set forth in Section 7 hereof;
- (d) a date down endorsement to Lender's loan title insurance policy;
- (e) an ALTA Statement and other title clearance documents executed by Borrower; and

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(f) a Certification of No Change to Borrower's organizational documents.

4. This Fourth Modification shall constitute an amendment of the Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Note, Revised Note, Second Revised Note or Third Revised Note ("Loan Documents") reference is made to the Loan Documents aforesaid, such reference shall be deemed a reference to such Loan Documents as hereby modified and amended. All other provisions of the Loan Documents remain unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Mortgage as revised by this Fourth Modification, or the covenants, conditions and agreements therein contained or contained in the Note, Revised Note, Second Revised Note or Third Revised Note.

5. In the event of conflict between any of the provisions of the Loan Documents and this instrument, the provisions of this instrument shall override and control.

6. Borrower and Guarantor hereby renew, remake and affirm the representations and warranties contained in the Loan Documents.

7. Borrower hereby agrees to pay Lender's fee in the amount of \$500.00 and all of Lender's expenses arising out of and in connection with this Fourth Modification including, but not limited to, attorneys' fees, title insurance premiums and recording fees.

8. Borrower and Guarantor warrant to Lender that neither the Borrower or Guarantor or any affiliate are identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

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Borrower and Guarantor covenant to Lender that if they become aware that they or any affiliate are identified on any Blocked Persons List, Borrower or Guarantor shall immediately notify the Lender in writing of such information. Borrower and Guarantor further agree that in the event they or any affiliate are at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Lender will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Lender determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Lender and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

**9. BORROWER AND GUARANTOR KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY THE RIGHT THEY MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THE REVISED NOTE, THE SECOND REVISED NOTE, THE THIRD REVISED NOTE, THIS FOURTH MODIFICATION, THE THIRD MODIFICATION, THE SECOND MODIFICATION, THE MODIFICATION, THE MORTGAGE, THE LOAN**

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AGREEMENT, THE SECURITY DOCUMENTS, OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH LENDER, BORROWER AND/OR GUARANTOR ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER OR GUARANTOR, OR EITHER OF THEM.

10. BORROWER AND GUARANTOR HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER AND GUARANTOR HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER AND GUARANTOR HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER AND GUARANTOR IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO BORROWER AND GUARANTOR AT THEIR ADDRESSES AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF LENDER. BORROWER AND GUARANTOR AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING, AFTER ALL APPEAL RIGHTS ARE

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EXHAUSTED, SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

BORROWER AND GUARANTOR AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST LENDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE IFFREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER AND GUARANTOR OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS; PROVIDED, HOWEVER, UNLESS LENDER IS REQUIRED BY LAW TO INSTITUTE PROCEEDINGS IN ANY OTHER JURISDICTION, LENDER SHALL FIRST INSTITUTE PROCEEDINGS IN A STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS.

*Signature page follows*



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IN WITNESS WHEREOF, the parties hereto have executed this Fourth Modification on \_\_\_\_\_, to take effect as of December 1, 2007.

**LENDER:**

First Chicago Bank & Trust, an Illinois banking corporation

By: [Signature]  
Its AVP

**BORROWER:**

4616 North Kenmore LLC, an Illinois limited liability company

By: [Signature]  
John C. O'Flaherty, manager

**GUARANTOR:**

[Signature]  
John C. O'Flaherty

STATE OF ILLINOIS     )  
  )     SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that DAN ROBINSON, VICE, President of First Chicago Bank & Trust, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal DECEMBER 13, 2007.



[Signature]  
Notary Public

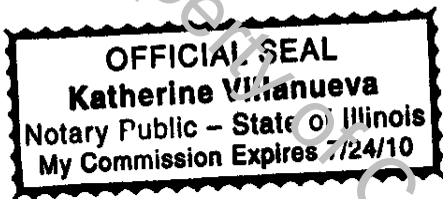
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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that John C. O'Flaherty, individually and as manager of 4616 North Kenmore, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, 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.

GIVEN under my hand and Notarial Seal DECEMBER 13, 2007.

Katherine Villanueva  
Notary Public



Cook County Clerk's Office

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## EXHIBIT A

### LEGAL DESCRIPTION:

LOTS 120 AND 121 IN THE WILLIAM DEERING'S SERRENDER SUBDIVISION OF A PART OF THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 4616-18 N. KENMORE, CHICAGO, ILLINOIS 60640  
P.I.N.: 14-17-210-019-0000

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## EXHIBIT A

### LEGAL DESCRIPTION:

LOTS 120 AND 121 IN THE WILLIAM DEERING'S SERRENDER SUBDIVISION OF A PART OF THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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