

# UNOFFICIAL COPY

THIS DOCUMENT PREPARED  
BY:

Crowley & Lamb., P.C.  
350 North LaSalle Street Suite 900  
Chicago, Illinois 60610

AFTER RECORDING RETURN  
TO:

Diamond Bank, FSB  
100 West North Avenue  
Chicago, Illinois 60610  
Attn: Vice President



Doc#: 0800703047 Fee: \$44.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/07/2008 12:14 PM Pg: 1 of 11

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## THIRD MODIFICATION AND CROSS COLLATERALIZATION OF LOAN DOCUMENTS

**THIS THIRD MODIFICATION AND CROSS COLLATERALIZATION OF LOAN DOCUMENTS** (this "Agreement") is made effective as of the 28th day of December, 2007, by and among **2338 W. NORTH INC., an Illinois corporation**, with an address at 2631 W. Chicago Avenue, Chicago, Illinois 60622 ("Borrower") and **KONSTANTIN SHELEGEDA and VICTOR ANDROVSICHIN**, having an address at 2631 W. Chicago Avenue, Chicago, Illinois 60622 (collectively "Guarantor"), **R.E. Development Concepts Inc.**, an Illinois corporation ("R.E.") and **DIAMOND BANK, FSB**, its successors and assigns, having an address at 100 West North Avenue, Chicago, Illinois 60610 ("Lender").

### RECITALS:

A. Lender has heretofore made a construction loan ("Loan") to Borrower in the principal amount of ONE MILLION SEVEN THOUSAND FOUR HUNDRED AND 00/100THS DOLLARS U.S. (\$1,007,400.00), as evidenced by a Promissory Note dated November 8, 2005, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Original Note") and a certain Construction Loan and Security

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Agreement ("Loan Agreement") dated November 8, 2005 from Borrower in favor of the Lender which Original Note was replaced as set forth below.

B. Whereas the Loan was modified by that First Modification of Loan Documents dated August 2006 (the "Modification"), wherein Lender advanced additional funds to Borrower and increased the principal balance of the Loan to a new loan amount of One Million Two Hundred Eleven Thousand Nine Hundred Sixty and 00/100ths Dollars U.S. (\$1,211,960.00) as evidenced by a certain Amended and Restated Note from Borrower in favor of Lender. On or about July 1, 2006, the Loan was further modified by that Modification and Cross Collateralization of Loan Documents dated July 1 2006, which modification in part extended the Maturity Date of the Loan to December 12, 2006. Ultimately the Loan was modified by that Second Modification of Loan Documents dated May 1, 2007 and evidenced by that certain Promissory Note dated May 1, 2007 in the original principal amount of \$514,017.01 executed by Borrower in favor of Lender (the "Note").

C. The Note is secured by, among other things, (i) that certain Mortgage dated November 8, 2005, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on November 10, 2005, as Document No. 0531433160 (the "Mortgage"), which Mortgage encumbers the real property and all, improvements thereon legally described on Exhibit A hereto ("Property"), and (ii) that certain Assignment of Rents and Leases dated November 8, 2005, from Borrower to Lender and recorded with the Recorder's Office on November 10, 2005, as Document No. 0531433161 (the "Assignment of Leases"), (iii) the personal Guaranty and separate Completion Guaranty (the "Guaranty") of Konstantin Shelegeda and Victor Androvsic in, guaranteeing payment and performance of all obligations of Borrower under the Note and Loan Documents (as hereinafter defined) and (iv) certain other loan documents (the Note, the Mortgage, the Loan Agreement, the Guaranty, the Assignment of Leases and any other document evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

D. Borrower now desires to amend the Loan Documents in order to induce Lender to advance to Borrower an additional amount of \$15,000.00 and increase the principal balance of the Loan by said amount and extend the Maturity Date of the Loan to May 1, 2008, and Lender is willing to advance to Borrower an additional amount of \$15,000.00 and so extend the maturity, subject to the Borrower's and R.E.'s agreement to cross-collateralize and cross-default the Loan with the R.E Mortgage (defined below) on certain property commonly known as 2631 West Chicago, Unit 1, Chicago, Illinois (the "Additional Collateral") and on the terms and conditions more fully set forth hereinafter.

E. Lender has also made a loan to R.E. ("R.E. Loan") in the amount of \$200,000 under a Promissory Note ("R.E. Note") dated June 21, 2007 in the original principal amount of Two Hundred Thousand and No/100 Dollars (\$200,00.00) secured by, among other things, a Mortgage and Security Agreement and UCC Fixture Filing ("R.E. Mortgage"; collectively with the R.E Note and all other documents evidencing or securing the R.E Note, the "R.E Loan Documents") executed by R.E. in favor of Lender dated as of June 21, 2007 and recorded in the Recorder's Office on June 28, 2007 as document No. 0717933042.

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## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender, R.E. and Borrower to modify the Loan Documents, as provided herein, (iii) Borrower's agreement to pay Lender all of Lender's reasonable attorneys fees and costs in connection with this Modification, (iv) the covenants and agreements contained herein, and (v) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Additional Advance.** Lender agrees to advance to Borrower an additional amount of \$15,000.00 (the "Additional Advance") and increase the principal balance of the Loan by said amount, subject to the terms and conditions of the Amended Note described hereinafter.

2. **Amendment of Note.** The Note shall be further amended and restated by that certain Amended and Restated Promissory Note of even date herewith executed by Borrower in the form attached hereto as Exhibit C (the "Amended Note"). As of the date hereof, the Amended Note shall be substituted for and replace in its entirety the existing Note (as previously amended and restated) as evidence of the amounts due and owing to Lender, and the existing Note (as previously amended and restated) shall be canceled by Lender.

3. **Modification of the Mortgage and other Loan Documents.** That based on the Additional Advance, the Mortgage and the other Loan Documents (including but not limited to the Loan Agreement and the Guaranty) are hereby amended to increase the Loan Amount to Five Hundred Twenty Nine Thousand Seventeen and 00/100ths Dollars U.S. (\$529,017.00) and the Maturity Date of the Loan shall be extended to May 1, 2008.

5. **Amendment to Interest Reserve Agreement.** Borrower agrees that the Loan Agreement and the Interest Reserve Agreement between Lender and Borrower shall be amended to provide that from the Additional Advance described above, Borrower agrees that Lender may withdraw from the Additional Advance and deposit into the Account (as defined in the Interest Reserve Agreement), the sum of \$15,000.00 and that the Interest Reserve Agreement be and hereby is amended to increase the amount of the Reserve (as defined therein) by the sum of \$15,000.00, to provide for the payment of interest on the Loan prior to the Maturity Date (as amended herein).

6. **Additional Collateral.** Each of R.E and Borrower agrees that Lender is willing to provide the Additional Advance on the condition, *inter alia*, that it receive the cross collateral and cross default contained herein with respect to the Additional Collateral.

7. **Pay Down Loan.** Unit 3 on the fourth floor of the Property is currently under contract for sale for \$427,000 ("Gross Purchase Price"). Borrower agrees to use the net proceeds from such

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sale to pay down the outstanding principal amount of the Loan. All costs deducted from the Gross Purchase Price are subject to Lender's approval in its sole discretion. If such pay down does not occur on or before February 10, 2008, Borrower shall promptly pay to Lender a fee equal to 2% of the then outstanding principal amount of the Loan.

8. **Cross-Collateral/Cross Default.** Each of Borrower and R.E agrees that the property commonly known as 2338 West North Avenue, Chicago, Illinois and legally described in Exhibit "A" attached hereto (the "2338 Property") and the property commonly known as 2631 West Chicago Avenue, Unit 1, Chicago, Illinois and legally described in Exhibit "B" attached hereto (the "2631 Property") (collectively the "Properties") are granted to Lender as collateral for the Loan and the R.E. Loan in exchange for the Lender's agreement to modify the Loan as herein provided. A default by either Borrower or R.E. under their respective loan shall be deemed an event of default under the terms of the other loan and shall afford the Lender the right to pursue one or more actions against all of R.E., Borrower, the Guarantors and the Properties, as Lender deems reasonable and necessary.

9. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty of each of the Loan and the R.E Loan and agrees that each of their Guaranty's are in full force and effect following the execution and delivery of this Agreement and the Amended Note and that the Guarantor remain liable to Lender for all amounts due in connection with the Amended Note (including the amounts evidence by the Additional Advance) and the R.E Note. The representations and warranties of Guarantor in each Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. Each Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in each Guaranty.

10. **Representations and Warranties of Borrower and Guarantor.** Borrower, R.E., and Guarantor hereby represent, covenant and warrant to Lender as follows:

(a) The representations and warranties in the Note, the Loan Agreement, the Mortgage and the other Loan Documents and in the R.E Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Loan Documents and the R.E Loan Documents) under the Note, the Mortgage or the other Loan Documents and none of Borrower, R.E. or Guarantor knows of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents or the R.E Loan Documents.

(c) The Loan Documents and R.E Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower, R.E. and Guarantor, as applicable, enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

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(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, neither Borrower nor Guarantor has any claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) The execution and delivery of this Agreement and the performance of the Loan Documents and the R.E. Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower, R.E. and Guarantor. This Agreement has been duly executed and delivered on behalf of Borrower, R.E. and Guarantor.

11. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 008321417 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

12. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

13. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower, R.E, or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, R.E, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor, R.E. and Lender each acknowledge and waive any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

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(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, R.E., Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, R.E., Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents and R.E. Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Amended Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. 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.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Guarantor, R.E.'s and Borrower's obligations under this Agreement.

**[signature page attached]**

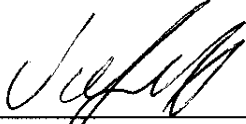



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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement dated as of the day and year first above written.

**BORROWER:**

2338 W. NORTH INC., an Illinois corporation

By:   
Victor Androvsichin, its President

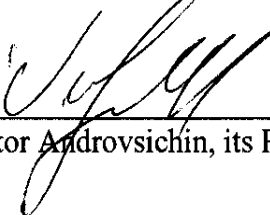
By:   
Konstantin Shelegeda, its Vice President

**LENDER:**

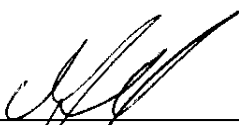
DIAMOND BANK, FSB

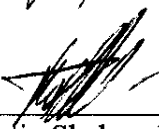
By:   
Its: Senior Vice President

**R.E. DEVELOPMENT CONCEPTS INC.**

By:   
Victor Androvsichin, its President

**GUARANTOR:**

  
Victor Androvsichin, individually

  
Konstantin Shelegeda, individually

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Michelle M. Musto, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Christopher Sebastian, <sup>Senior</sup> Vice president of Diamond Bank, FSB, known to me to be the same person whose name is subscribed to the foregoing instrument as such <sup>Senior</sup> President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary acts, and as the free and voluntary act of Diamond Bank, FSB, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28<sup>th</sup> day of December, 2007.

Michelle M. Musto  
Notary Public

My Commission Expires:

7/11/09



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Cook )

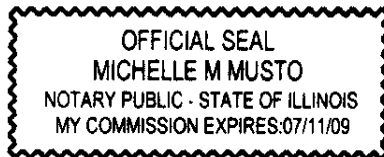
I, Michelle M. Musto, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Victor Androvsichin and Konstantin Shelegeda, individually and President and Vice President respectively of 2338 W. NORTH INC, an Illinois corporation, known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Vice President, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of 2338 W. NORTH INC, an Illinois corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28<sup>th</sup> day of December, 2007.

Michelle M. Musto  
Notary Public

My Commission Expires:

7/11/09





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STATE OF ILLINOIS            )  
                                                  ) SS.  
COUNTY OF Cook            )

I, Michelle M. Musto, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Victor Androvsichin and President of R.E Development Concepts INC, an Illinois corporation, known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28<sup>th</sup> day of December, 2007.

Michelle M. Musto  
Notary Public

My Commission Expires:  
7/11/09



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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 44 IN J. N. MASON'S SUBDIVISION OF THE WEST PART OF LOT 5 AND THE SOUTH 33 FEET OF LOT 3 IN THE ASSESSOR'S DIVISION OF UNSUBDIVIDED LANDS IN THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN NO.: 17-31-326-054-0000

COMMONLY KNOWN AS: 2338 WEST NORTH AVENUE, CHICAGO, ILLINOIS

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## EXHIBIT B

### LEGAL DESCRIPTION - ADDITIONAL COLLATERAL

UNIT 1 IN 2631 W. CHICAGO CONDOMINIUM GROUP AS DEPICTED ON THE PLAT OF SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

PARCEL 1:

LOT 10 IN THE RESUBDIVISION OF BLOCK 3 (EXCEPT THE EAST 67 FEET THEREOF) IN WRIGHT AND WEBSTER'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

WHICH PLAT OF SURVEY IS ATTACHED AS EXHIBIT "D" OF THE DECLARATION OF CONDOMINIUM OWNERSHIP RECORDED MARCH 20, 2006 IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS AS DOCUMENT NO. 0807944075, AS AMENDED FROM TIME TO TIME TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, IN COOK COUNTY, ILLINOIS.

P.I.N.: 16-12-201-009-0000

COMMONLY KNOWN AS: 2631 W. CHICAGO AVENUE, UNIT 1, CHICAGO, ILLINOIS