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Doc#: 0805945089 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/28/2008 11:21 AM Pg: 1 of 10

**THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO:**

Citibank, N.A.
Commercial Real Estate Finance
500 West Madison
5th Floor
Chicago, Illinois 60661
Loan No. 02-8433138

Above this Line for Recorder's Use Only

ASSIGNMENT AND ASSUMPTION AGREEMENT
(No Release of Borrower)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assumption Agreement") is dated as of this 19th day of February, 2008 ("Effective Date") by and among 7644-48 N. GREENVIEW LLC, an Illinois limited liability company ("New Borrower"), NORTH STAR TRUST COMPANY, AS SUCCESSOR TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 13, 1979 AND KNOWN AS TRUST NUMBER 11-2016 ("Borrower"), and CITIBANK N.A., a national banking association ("Lender"), successor to Citibank, FSB, a federal savings bank ("Original Lender").

WITNESSETH:

WHEREAS, Borrower financed the purchase and/or development of certain real property together with certain personal property located thereon commonly known as 7644-48 North Greenview Avenue, located in the City of Chicago, County of Cook, State of Illinois, more specifically described on the attached Exhibit "A" ("Property", which term shall hereinafter include any personal property in which Lender may have a security interest) by a loan ("Loan") from Original Lender.

WHEREAS, Lender is the current holder of the following documents:

1. Trustee Note ("Note"), dated May 1, 2006, in the original principal amount of \$500,000.00, executed by Borrower in favor of Original Lender; and
2. Trustee Mortgage ("Mortgage") dated May 1, 2006, and recorded May 9, 2006 with the Cook County Recorder of Deeds as Document No. 0612927064, given by Borrower in favor of Original Lender.

The Note, Mortgage and all other documents executed or delivered in connection therewith, are hereafter called the "**Loan Documents**." All terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Loan Documents;

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WHEREAS, Borrower desires to sell, convey and transfer and New Borrower desires to acquire the right, title and interest of Borrower in and to the Property, which sale, transfer and conveyance requires the consent of the Lender under the Loan Documents;

WHEREAS, in order to induce Lender to consent to the transfer and assumption by New Borrower of the rights, duties and obligations of the Borrower under the Loan Documents, New Borrower and Borrower have agreed to enter into this Assumption Agreement;

WHEREAS, Lender is willing to consent to the sale, conveyance and transfer of the Property to the New Borrower, provided the New Borrower assumes the obligations and liabilities of the Borrower under the Loan Documents, as more specifically set forth herein;

WHEREAS, Trust Agreement dated December 19, 1979, and known as Trust Number 11-2016 has been closed by the former trustee, North Star Trust Company, and the former trustee is no longer able or authorized to execute this Agreement or any other agreement as trustee. Lender and New Borrower acknowledge that said Trust has closed, and New Borrower is still willing to fully assume all of the obligations and liabilities of the Borrower under the Loan Documents, as more specifically set forth herein; and

WHEREAS, New Borrower is willing to assume such obligations and liabilities.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Assumption of Obligations by New Borrower.** The New Borrower hereby fully and unconditionally assumes all of the obligations, liabilities, covenants, representations and warranties of the Borrower under each of the Loan Documents, and New Borrower hereby fully and unconditionally assumes and agrees to pay the unpaid balance of the indebtedness evidenced by the Loan, as it exists from time to time, in accordance with all the terms and conditions thereof, and further agrees to comply with and perform all the duties, obligations and covenants of the Borrower under the Loan Documents at the times and in the manner provided therein.
2. **Understands Loan Documents.** New Borrower hereby acknowledges that it has received and reviewed copies of all the Loan Documents and understands the provisions, contents and effect thereof.
3. **Current Unpaid Principal Balance.** New Borrower further acknowledges that the unpaid principal balance of the indebtedness evidenced by the Loan as of February 19, 2008 is \$490,228.08 ("**Principal Balance**") and the current interest rate is 6.360% per annum.
4. **Liability of Borrower.** Borrower and the guarantors, if any, hereby acknowledge and agrees that Borrower and the guarantors, if any, remain liable under the Loan Documents to the extent of their respective liability under the Loan Documents.
5. **Consent to Transfer.** Lender hereby consents to the transfer of the Property from Borrower to New Borrower subject to all the terms and conditions specifically set forth in this Assumption Agreement, effective upon the satisfaction and performance of the following terms and conditions ("**Closing Date**"). If these conditions shall not have been met by March 14, 2008 (also referred to herein as the "**Condition Satisfaction Date**"), Lender shall have the right to terminate its obligations under this Assumption Agreement, in which event, all of Borrower's obligations under the Loan Documents to Lender shall remain in full force and effect without modification and Lender shall remain entitled to exercise all remedies provided under the Loan Documents or, at Lender's sole option, Lender may extend the Condition Satisfaction Date, which extension shall be in writing and subject to such amended terms and conditions as Lender shall deem necessary, in Lender's sole and absolute discretion. Lender does not hereby consent to any other or further transfers of the Property except as herein provided.

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- 5.1 **Execute this Assumption Agreement.** Execution and delivery by Borrower, New Borrower and any guarantors of this Assumption Agreement and such other instruments and agreements as Lender may reasonably request and recordation of this Assumption Agreement or a memorandum of this Assumption Agreement in the county where the Property is located;
- 5.2 **Assumption Fee; Other Fees and Costs.** New Borrower agrees to pay all other expenses in connection with this transaction including, without limitation, attorneys fees, recording fees, mortgage tax, title and escrow fees. Lender shall be at no expense by reason of this transaction;
- 5.3 **Make Current Payments.** Receipt by Lender of all monthly payments, late charges and other amounts due and owing under the Note through the Closing Date including all payment of taxes, assessments, insurance premiums and other expenses relating to the Property and New Borrower shall have provided Lender evidence of such payments;
- 5.4 **Impound Account.** New Borrower shall also pay an amount determined by Lender for the purpose of establishing an impound account for payment of taxes and assessments as provided in the Mortgage;
- 5.5 **Provide Evidence of Required Insurance.** Receipt by Lender of a policy of fire and hazard insurance which shall comply with the requirements of the Loan Documents, naming New Borrower as the named insured, insuring the Property in such amount as is acceptable to Lender, naming Lender as mortgagee, and providing that insurance coverage cannot be canceled without at least thirty (30) days' advance written notice to Lender, and evidence that the premium to insure the real property has been prepaid for at least one full year beyond the Closing Date;
- 5.6 **Update Lender's Title Policy.** Receipt by Lender of a new Lender's ALTA Extended Coverage Title Insurance Policy (2006 Form with endorsements deleting creditor's rights exclusion and arbitration requirements from boilerplate language) in an amount no less than the current unpaid Principal Balance of the Note or a "date down" of its existing title insurance policy on the Property, supplemented with any other endorsement required or requested by Lender, from a title insurance company to be designated by Lender ("Title Company") ensuring: (a) the lien evidenced by the Mortgage as modified by this Assumption Agreement constitutes a valid mortgage lien on the real property constituting a portion of the Property, senior in priority to all other claims, liens, encumbrances, easements, reservations and restrictions except such exceptions as Lender shall approve in writing; (b) Lender is the "named insured"; and (c) New Borrower is the fee simple owner of the Property. New Borrower shall comply with all of Lender's and or Title Company's requirements for the issuance of such policy and/or endorsements and shall pay all premiums, costs and expenses incurred in connection therewith;
- 5.7 **Obtain Authority.** Receipt by Lender of evidence satisfactory to Lender and Title Company regarding both New Borrower's existence, capacity, power and authority to enter into and close the transaction contemplated hereunder and the validity and enforceability of this Assumption Agreement in accordance with its terms. Such evidence shall include, without limitation, certified copies of the organizational documents of New Borrower and its general partners, if any; and
- 5.8 **Representations True.** All representations and warranties of each of the parties hereto contained in this Assumption Agreement, in the Loan Documents and in any documents or instruments executed in connection with the transaction contemplated hereby, shall be true and correct in all material respects as of the Closing Date and shall not omit to state a fact material to the truth and completeness of any statement made therein.

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6. **Lien Priority.** It is expressly understood and agreed that the Mortgage is now and shall continue to be a first lien upon the Property, and that nothing done or said in this Assumption Agreement is intended or shall be construed as discharging, limiting or affecting in any manner, the lien of the Mortgage on the Property, or the priority thereof over other liens, charges and encumbrances of the Mortgage, or to release or affect the liability of any party or parties whatsoever who may now or hereafter be liable under or on account of the Loan Documents. The parties hereto expressly understand and agree that this Assumption Agreement shall not be considered a satisfaction of the Mortgage or cancellation of the Note.

7. **Authority to Execute.** The parties hereto each represent and warrant that this Assumption Agreement is duly executed and delivered by them and constitutes a legal, valid and binding obligation on them, enforceable in accordance with its terms.

8. **Waiver and Release.** The parties hereto each hereby unconditionally waive and release any and all claims, damages costs, liabilities, actions or suits he, she, it or they have or may have, whether known or unknown, against Lender, its officers, agents, directors, employees, shareholders, successors or assigns, arising out of or in connection with the Loan Documents, the debt evidenced thereby or the handling, course of conduct, closing or servicing thereof. The parties hereto each acknowledge that this waiver and release is voluntary and without any duress or undue influence, and is given as part of the consideration for Lender's accommodation of the request for an assumption of the Loan.

9. **No Modification.** Except as specifically provided in this Assumption Agreement, the Loan Documents are not altered, amended or modified by reason of this Assumption Agreement, and except as specifically set forth herein, the Loan Documents remain in full force and effect and their validity and enforceability is hereby ratified and confirmed by each of the parties hereto.

10. **Address for Notice.** New Borrower's address for any notice under the Loan Documents is as follows:

7644-48 N. Greenview LLC
1305 Greenwood
Wilmette, Illinois 60091
Attn: Robert C. Loss

11. **Reserved.**

12. **Reserved.**

13. **Miscellaneous.**

13.1 **Contracts.** This Assumption Agreement and all related documents shall be deemed to be contracts made and delivered in the state in which the Property is located and shall be governed by and construed in accordance with the laws of such state, except to the extent such laws conflict with the laws of the United States or the regulations governing federal savings banks, or would restrict activities otherwise permitted in relation to the operation of federal savings banks.

13.2 **Entire Agreement.** This Assumption Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any prior written or oral agreements among them concerning the subject matter hereof. There are no representations, agreements, arrangements or understandings, oral or written, between and among the parties hereto, relating to the subject matter hereof, which are not fully described herein.

13.3 **Joint and Several Liability.** If this Assumption Agreement is executed by more than one person, firm or corporation as New Borrower, the obligations of each such person, firm or

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corporation hereunder shall be joint and several. If any entity executing this Assumption Agreement is a general or limited partnership, then a reference herein to Borrower and/or New Borrower, as applicable, shall be deemed to include the partnership's general and/or managing partner(s).

- 13.4 Successors and Assigns. This Assumption Agreement applies to, inures to the benefit of, and binds all parties hereto and their respective heirs, legatees, devisees, administrators, executors, successors and assigns.
- 13.5 Recitals. The recitals set out herein are incorporated into and made a part of this Assumption Agreement.

[SIGNATURES ON NEXT PAGE]

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IN WITNESS WHEREOF, the parties have executed this Assumption Agreement on the date and year first written above.

NEW BORROWER:

7644-48 N. GREENVIEW LLC,
an Illinois limited liability company

By: _____

Robert C. Loss, Manager
Robert C. Loss, Manager

BORROWER:

ROBERT C. LOSS, AS THE BENEFICIARY UNDER
THAT NOW CLOSED TRUST AGREEMENT DATED
DECEMBER 13, 1979 AND KNOWN AS TRUST
NUMBER 11/2016

Robert C. Loss, Beneficiary

LENDER:

CITIBANK N.A., a national banking association

By: _____

Print Name: _____

Its: _____
James Davis, President

AGREEMENT IS NOT TO BE EXECUTED UNDER A POWER OF ATTORNEY
ALL SIGNATURES MUST BE ACKNOWLEDGED

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ACKNOWLEDGMENTS

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS:

On this 19TH day of February, 2008, before me, a Notary Public in and for said State, personally appeared **ROBERT C. LOSS**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as the Manager of 7446-48 N. Greenview LLC and that by his signature on the instrument, 7446-48 N. Greenview LLC executed the instrument.

WITNESS my hand and official seal.



Notary Public
My Commission Expires:




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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 19th day of February, 2008, before me, Teri L. Hill, a Notary Public in and for said State, personally appeared **ROBERT C. LOSS**, the beneficiary under that certain Trust Agreement dated December 13, 1979 and known as Trust Number 11-2016, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same as his own free and voluntary act for the uses and purposes in said instrument.

WITNESS my hand and official seal.



Notary Public
My Commission Expires



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STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS:

On this _____ day of _____, 2008, before me, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her authorized capacity as the Vice President of Citibank, N.A., and that by his/her signature on the instrument, Citibank, N.A., executed the instrument.

WITNESS my hand and official seal.

Notary Public
 My Commission Expires

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EXHIBIT "A" LEGAL DESCRIPTION

The Property is located in the City of Chicago, County of Cook, State of Illinois and is described as follows:

LOT 67 IN GERMANIA ADDITION TO EVANSTON, BEING A SUBDIVISION OF BLOCKS 2 AND 3 IN DREYER'S LAKE SHORE ADDITION TO EVANSTON AND THAT PART OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF THE INDIAN BOUNDARY LINE AND SOUTH AND WEST OF SAID BLOCKS 2 AND 3 IN COOK COUNTY, ILLINOIS.

Address: 7644-43 N. Greenview Avenue, Chicago, Illinois

Tax Parcel Numbers: 17-29-106-014

Property of Cook County Clerk's Office
FATIC has made an accommodation
recording of the instrument
First American Title Insurance Company