

# UNOFFICIAL COPY



Doc#: 0819018029 Fee: \$60.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 07/08/2008 11:17 AM Pg: 1 of 13

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.

P.I.N.: See Exhibit A attached  
COMMONLY KNOWN AS: See Exhibit A attached

## THIRD LOAN MODIFICATION AGREEMENT

This instrument is a Third Loan Modification Agreement ("Third Modification") of a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing dated April 11, 2006 and recorded with the Cook County Recorder of Deeds on April 12, 2006 as Document No. 0610218030 ("Mortgage"), among The PrivateBank and Trust Company, an Illinois banking corporation ("Mortgagee"), New West Kedzie L.L.C., an Illinois limited liability company ("Mortgagor"), and August D. Mauro and Theodore C. Mazola (collectively, "Guarantors") and other loan documents.

### RECITALS:

A. WHEREAS, Mortgagor holds fee simple title to certain real estate legally and commonly described on Exhibit A hereto ("Real Estate");

B. WHEREAS, on April 11, 2006, Mortgagor, Mortgagee and Guarantors entered into a Construction Loan Agreement ("Loan Agreement") pursuant to which Mortgagor executed

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and delivered to Mortgagee a Promissory Note in the amount of \$700,000.00 ("Note No. 1"), the proceeds of which were used to provide financing for pre-development and a model unit on the Real Estate, a Promissory Note in the amount of \$1,166,000.00 ("Note No. 2"), which Note No. 2 evidences any draws made on the Letter of Credit; a Letter of Credit Reimbursement Agreement governing Borrower's obligations to repay drafts on the Letter of Credit; a Promissory Note Evidencing a Revolving Line of Credit in the amount of \$4,000,000.00 ("Note No. 3"), the proceeds of which are being used to construct approximately 102 residential units on the Real Estate ("Units"). The Mortgage secures Note No. 1, Note No. 2, Note No. 3 and the Reimbursement Agreement.

C. WHEREAS, the loans described in the Loan Agreement and evidenced by Note No. 1, Note No. 2, Note No. 3 and the Letter of Credit Reimbursement Agreement are collectively referred to as the "Loans." Note No. 1, Note No. 2, Note No. 3 and the Letter of Credit Reimbursement Agreement are collectively referred to as the "Original Notes." Guarantors executed and delivered their Guaranty of Loan Agreement, Notes, Mortgage and Other Undertakings covering the Loans ("Guaranty").

D. WHEREAS, as of May 1, 2007, Mortgagee, Mortgagor and Guarantors entered into a Loan Modification Agreement ("Modification"), pursuant to which Mortgagor and Mortgagee added Parcel No. 8 described on Exhibit A hereof to the lien of the Mortgage ("Additional Real Estate"), extended the maturity date of Note No. 1 until May 1, 2008, increased the amount of Note No. 2 by \$583,333.00 in order to increase the amount of the issued and outstanding Letters of Credit, and increased the amount of Note No. 3 by \$2,000,000.00 in order to allow for the construction of more pre-sold Units and allow it to use Loan proceeds to construct Units on the Additional Real Estate. Borrower executed and delivered a Promissory

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Note Evidencing Letter of Credit Repayment Obligations in the amount of \$1,750,000.00 ("Revised Note No. 2") and a Promissory Note Evidencing a Revolving Line of Credit in the amount of \$6,000,000.00 ("Revised Note No. 3"). The Modification was recorded on July 13, 2007 as Document No. 0719415027.

E. WHEREAS, on September 21, 2007, Mortgagee, Mortgagor, and Guarantors entered into a Second Loan Modification Agreement ("Second Modification"), pursuant to which Mortgagor and Mortgagee added Parcel No. 9 ("Second Additional Real Estate") described on Exhibit A hereof to the lien of the Mortgage. The Second Modification was recorded on September 25, 2007 as Document No. 0726844013.

F. Mortgagor and Guarantors have now requested Mortgagee to extend the maturity date of Loan No. 3 from May 1, 2008 until August 1, 2008.

**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 Revised Note No. 3 is hereby modified and amended from May 1, 2008 until August 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 as hereby modified. All interest charged on and all payments made on the Note previously are unchanged.
3. Note No. 1 has been paid in full and the Letter of Credit has expired without draws having been made on it. Lender is no longer obligated to disburse funds for Loan No. 1 or issue any letters of credit.

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4. The first sentence of Section 11(c) of the Loan Agreement is hereby deleted and the following provisions are substituted in place thereof: Borrower may not commence construction of a single-family residence or any two-Unit or three-Unit building on the Real Estate, Additional Real Estate or Second Additional Real Estate nor use any Loan funds, including the Revised Loan No. 3 funds, unless there exists a Sale Contract for all Units or the single-family residence to be constructed on the lot.

5. This Third Modification shall constitute a modification and amendment of the Mortgage and the Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Mortgage ("Loan Documents") reference is made to a Loan Document, such reference shall be deemed a reference to such Loan Documents as hereby modified and amended. Except as provided herein, all other provisions of the Loan Documents remain unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Security Documents, or the covenants, conditions and agreements therein contained or contained in Revised Note No. 2, Revised Note No. 3 or the Loan Documents.

6. This Third Modification shall be effective upon Mortgagee's receipt of this Third Modification executed by the parties hereto and the following documents and items:

(a) a date down endorsement to Mortgagee's loan title insurance policy which extends the date of the policy to the date of recording of this Third Modification, and which reflects that Mortgagor holds fee simple title to the Real Estate, Additional Real Estate and Second Additional Real Estate and which insures the Mortgage as modified by this Third Modification;

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(d) updated certificates of insurance as required by Section 4 of the Mortgage, for the Real Estate, the Additional Real Estate, and Second Additional Real Estate;

(e) a Certification of No Change to Organizational Documents executed by Mortgagor;

(f) a Certificate of Good Standing of Mortgagor;

(g) a Borrowing Resolution of Mortgagor;

(h) payment of Mortgagee's fee and expenses.

7. Upon receipt of the documents required in Section 6 hereof, Mortgagee will cause this Third Modification to be placed of record and concurrently therewith will order an endorsement to its Mortgagee's title insurance policy from the title insurer of the Mortgage ("Title Insurer") covering said recordings. When the endorsement has been issued and reflects that Mortgagor is the holder and owner of the fee simple title to the Real Estate, Additional Real Estate and Second Additional Real Estate and that Mortgagee holds the lien of the Mortgage as modified by this Third Modification as a first lien on the Real Estate, Additional Real Estate and Second Additional Real Estate, subject only to the exceptions reasonably permitted by Mortgagee, then this Third Modification shall become effective.

8. In the event of conflict between any of the provisions of the Loan Documents and this Third Modification, the provisions of this Third Modification shall override and control.

9. Mortgagor and Guarantors hereby renew, remake and affirm the representations and warranties contained in the Loan Documents.

10. Mortgagor hereby agrees to pay all of Mortgagee's expenses arising out of and in connection with this Third Modification including, but not limited to, title insurance premiums, recording fees and attorneys' fees performed in the preparation of necessary documentation.

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11. Guarantors hereby affirm their obligations under the Guaranty and agree that the Guaranty is amended and extended to cover and guarantee the Mortgage as modified. Guarantors hereby expressly acknowledge and confirm that by executing this Third Modification, Mortgagee has not waived, altered or modified Mortgagee's rights under any of the Loan Documents to amend, extend, renew or modify or otherwise deal with the obligations of the parties hereto or any of the security given to Mortgagee in connection therewith without the consent of Guarantors and without such action releasing, modifying, or affecting the obligations of Guarantors or affecting the security heretofore granted to Mortgagee.

**12. MORTGAGOR AND GUARANTORS 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 MORTGAGE, THE LOAN DOCUMENTS, THE SECURITY DOCUMENTS OR THIS THIRD MODIFICATION, OR ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH MORTGAGEE, MORTGAGOR AND GUARANTORS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE IN GRANTING ANY FINANCIAL ACCOMMODATION TO MORTGAGOR OR GUARANTORS, OR ANY OF THEM.**

**13. MORTGAGOR AND GUARANTORS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND MORTGAGOR AND GUARANTORS HEREBY IRREVOCABLY AGREE THAT**

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ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. MORTGAGOR AND GUARANTORS 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. MORTGAGOR AND GUARANTORS AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

MORTGAGOR AND GUARANTORS AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST MORTGAGEE OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREIN ABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF MORTGAGEE TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF MORTGAGEE TO BRING ANY ACTION OR PROCEEDING AGAINST MORTGAGOR OR GUARANTORS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

14. Mortgagor and Guarantors warrant to Mortgagee that neither the Mortgagor nor Guarantors nor any affiliate is 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

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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.

Mortgagor and Guarantors covenant to Mortgagee that if they become aware that they or any affiliate is identified on any Blocked Persons List, Mortgagor and Guarantors shall promptly notify the Mortgagee in writing of such information. Mortgagor and Guarantors further agree that in the event it or any Affiliate is at any time identified on any Blocked Persons List, Mortgagee may immediately contact the Office of Foreign Assets Control and any other government agency the Mortgagee 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, Mortgagee 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) the Mortgagee determines, in its reasonable discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of the Mortgagee and encumbering, any part of the Premises (as defined in the Mortgages) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

**SIGNATURE PAGE FOLLOWS**



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IN WITNESS WHEREOF, the parties hereto have executed this Third Modification on June 26, 2008 to be effective as of May 1, 2008.

**MORTGAGEE:**

The PrivateBank and Trust Company, an Illinois banking corporation

By: [Signature]  
Its MANAGING DIRECTOR

**MORTGAGOR:**

New West Kedzie L.L.C., an Illinois limited liability company

By: [Signature]  
Theodore Mazola, managing member

By: [Signature]  
August Mauro, managing member

**GUARANTORS:**

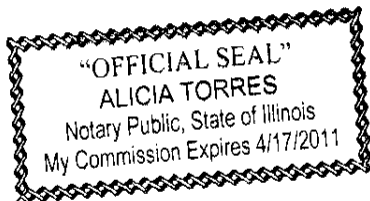
[Signature]  
August D Mauro

[Signature]  
Theodore C. Mazola

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 James Wagner, Managing Director of The PrivateBank and Trust Company, an Illinois banking corporation, 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 acts and as the free and voluntary act of said banking corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal June 27, 2008  
[Signature]  
Notary Public



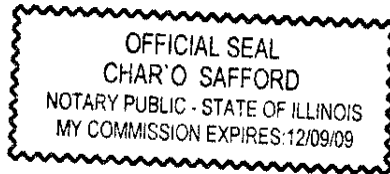
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STATE OF ILLINOIS        )  
  )  
  )        SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that August D. Mauro, individually and as Managing Member of New West Kedzie L.L.C., 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.

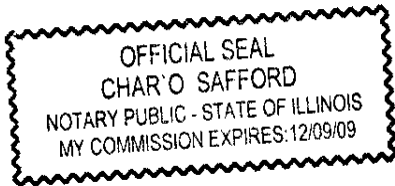
GIVEN under my hand and Notarial Seal June 26, 2008.  
Charo Safford  
Notary Public

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 Theodore C. Mazola, individually and Managing Member of New West Kedzie L.L.C., 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 June 26, 2008.  
Charo Safford  
Notary Public



**UNOFFICIAL COPY****EXHIBIT A****PARCEL 1:**

LOT 1 (EXCEPT THE EAST 63 FEET), LOT 2 (EXCEPT THE EAST 73 FEET) AND LOTS 3, 4, 5, 6, 7, 8, 9 AND 10 IN BLOCK 3 IN GEORGE K. SHOENBERGER SUBDIVISION OF THE EAST 1/4 OF THE NORTH 40 RODS OF THE SOUTH EAST 1/4 OF SECTION 14 AND THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 706 S. KEDZIE, 718 S. KEDZIE, 720 S. KEDZIE AND  
3207 W. FLOURNOY, CHICAGO, ILLINOIS  
P.I.N.: 16-14-107-038; 16-14-407-039; 16-14-407-040; AND  
16-14-407-043

**PARCEL 2:**

LOTS 1, 2, 3 AND 4 AND THE NORTH 17 FEET 1-5/8 INCHES OF LOT 5 IN BLOCK 13 IN E. A. CUMMINGS AND COMPANY'S CENTRAL PARK AVENUE ADDITION, A SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13, LYING SOUTH OF THE NORTH 40 RODS THEREOF AND NORTH OF THE NORTH LINE OF THE RIGHT OF WAY OF THE CHICAGO AND GREAT WESTERN RAILROAD, LYING EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 734 S. KEDZIE, CHICAGO, ILLINOIS  
P.I.N.: 16-14-411-032

**PARCEL 3:**

THE SOUTH 17 FEET OF LOT 21, AND ALL OF LOTS 22, 23, 24 AND 25 AND THE NORTH 8 FEET OF LOT 26 IN BLOCK 2 IN GEORGE K. SCHOENBERGER'S SUBDIVISION OF THE EAST 1/4 OF THE NORTH 40 RODS OF THE SOUTH EAST 1/4 OF SECTION 14 AND THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 709 S. KEDZIE, 711 S. KEDZIE AND 713 S. KEDZIE,  
CHICAGO, ILLINOIS  
P.I.N.: 16-13-304-002; 16-13-304-003; AND 16-13-304-004

**PARCEL 4:**

LOTS 19, 20, 21, 22, 26, 27 AND 28 IN BLOCK 2 IN P.W. SNOWHOOK'S DOUGLAS PARK ADDITION IN THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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## EXHIBIT A

COMMONLY KNOWN AS: 735 S. KEDZIE, 737 S. KEDZIE, 741 S. KEDZIE, 743 S. KEDZIE, 753 S. KEDZIE, 755 S. KEDZIE AND 759 S. KEDZIE, CHICAGO, ILLINOIS

P.I.N.: 16-13-308-001; 16-13-308-002; 16-13-308-003;  
16-13-308-004; 16-13-308-008; 16-13-308-009;  
AND 16-13-308-010

### PARCEL 5:

THE WEST 82-1/2 FEET OF LOTS 19 TO 21, ALL OF LOTS 22 AND 23 IN BLOCK 3 IN P.W. SNOWHOOK'S DOUGLAS PARK ADDITION IN THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 803 S. KEDZIE, 809 S. KEDZIE AND 811 S. KEDZIE, CHICAGO, ILLINOIS

P.I.N.: 16-13-312-044; 16-13-312-002; AND 16-13-312-003

### PARCEL 6:

LOTS 43, 44, 45, 46 AND 47 IN ELIAS COBEL'S SUBDIVISION OF BLOCKS 1 AND 2 IN SUBDIVISION OF THE SOUTH 45 ACRES OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 817 S. KEDZIE, CHICAGO, ILLINOIS

P.I.N.: 16-13-312-046

### PARCEL 7:

LOTS 20, 24, 25, 26 AND 28 IN THE SUBDIVISION OF BLOCK 3 IN PIPER'S SUBDIVISION OF SOUTH 45 ACRES OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 905 S. KEDZIE, 915 S. KEDZIE, 917 S. KEDZIE, 919 S. KEDZIE AND 925 S. KEDZIE, CHICAGO, ILLINOIS

P.I.N.: 16-13-316-002; 16-13-316-006; 16-13-316-007;  
16-13-316-008; AND 16-13-316-010

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## EXHIBIT A

### PARCEL 8:

THE EAST 63 FEET OF LOT 1 IN BLOCK 3 IN GEORGE K. SCHOENBERGER'S SUBDIVISION OF THE EAST 1/4 OF THE NORTH 40 RODS OF THE SOUTH EAST 1/4 OF SECTION 14 AND THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 700 South Kedzie, Chicago, Illinois 60612  
P.I.N.: 16-14-407-042-0000

### PARCEL 9:

LOT 19 IN SUBDIVISION OF BLOCK 3 IN PIPERS SUBDIVISION OF THE SOUTH 45 ACRES OF THE WEST ONE HALF OF THE SOUTH ONE QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 901 South Kedzie, Chicago, Illinois 60612  
P.I.N.: 16-13-316-001-0000