

# UNOFFICIAL COPY



**INSTRUMENT PREPARED BY  
AND WHEN RECORDED RETURN TO:**

**Citibank, N.A.  
Commercial Real Estate Finance  
500 West Madison  
7<sup>th</sup> Floor  
Chicago, Illinois 60661  
Attn: Loan No. 15-3539285**

**Doc#: 0827322073 Fee: \$66.00**  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/29/2008 01:49 PM Pg: 1 of 16

Property of Cook County Clerk's Office

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

## MODIFICATION AND EXTENSION AGREEMENT

**THIS MODIFICATION AND EXTENSION AGREEMENT** (this "**Agreement**") dated for reference purposes only as of September 1, 2008 ("**Effective Date**"), is made by and between **CITIBANK, N.A.**, a national banking association ("**Lender**"), successor by merger to Citibank, FSB, a federal savings bank ("**Original Lender**"), and **CHICAGO TITLE LAND TRUST COMPANY, AS SUCCESSOR TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 16, 1984 AND KNOWN AS TRUST NO. 60566** (the "**Borrower**"), with respect to the following facts and circumstances:

### RECITALS:

- A. American National Bank and Trust Company of Chicago was the original Trustee under the Trust Agreement dated March 16, 1984 and Known as Trust No. 60566. Chicago Title Land Trust Company is the successor and current Trustee under Trust Agreement dated March 16, 1984 and Known as Trust No. 60566.
- B. Lender is the current holder of:
  - 1. Trustee Note dated June 12, 1996 (the "**Note**"), evidencing a loan (the "**Loan**") in the original principal amount of \$3,175,000.00, executed by Borrower in favor of Original Lender;
  - 2. Trustee Mortgage dated June 12, 1996, recorded on June 18, 1996 as Document No. 96467598 in the Official Records of Cook County ("**Official Records**"), State of Illinois (the "**Mortgage**"), encumbering certain real property and personal property related thereto commonly known as 2011-2019 Ash Street (the "**Property**"), in the City of Des Plaines, County of Cook, State of Illinois and more specifically described on **Exhibit "A"** attached hereto and made a part hereof;
  - 3. Assignment of Rents dated June 12, 1996, recorded June 18, 1996 as Document No. 96467599 in the Official Records;
  - 4. Security Agreement and Security Assignment Under Land Trust dated June 12, 1996 given by Des Plaines Limited Partnership, the beneficiary under Trust Agreement

# UNOFFICIAL COPY

dated March 16, 1984 and Known as Trust No. 60566, accepted by Original Lender, and acknowledged by Borrower;

5. Guarantee dated June 12, 1996, given by Louis Benedetto for the benefit of Original Lender; and
6. Guarantee dated June 12, 1996, given by Des Plaines Limited Partnership for the benefit of Original Lender.

The foregoing documents, and any other documents evidencing, securing or pertaining to the Loan, are sometimes hereinafter referred to collectively as the "**Loan Documents**".

Borrower has requested that Lender agree to a modification of certain terms of the Loan and Lender has so agreed upon the terms, conditions, representations, warranties, covenants and agreements set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Capitalized Terms and Conflicts with Loan Documents. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings designated in the Loan Documents. The provisions of this Agreement shall prevail over any inconsistent provisions set forth in any of the Loan Documents.
2. Consent to Revision of Loan Documents. Lender hereby consents to the revision of the terms of the Loan Documents as specifically set forth in this Agreement, effective upon the satisfaction and performance of the following terms and conditions (the "**Closing Date**"). If these conditions shall not have been met by October 14, 2008 (the "**Condition Satisfaction Date**") Lender shall have the right to terminate its obligations under this 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 advisable, in Lender's sole and absolute discretion.
  - 2.1 Execute this Agreement. Execution and delivery by Borrower of this Agreement and such other instruments and agreements as Lender may reasonably request and recordation of this Agreement in the county where the real property is located;
  - 2.2 Pay Lender Fees. Receipt by Lender of its fees charged in connection with the transactions contemplated under this Agreement including, without limitation, a modification fee in the amount of \$300.00;
  - 2.3 Pay all Costs. Receipt by Lender of Lender's costs and expenses incurred by Lender and Lender's attorneys in preparing this Agreement. Borrower shall also pay all other costs and fees incurred by Lender relating to this Agreement, including but not limited to title insurance fees, recording costs, mortgage tax and escrow fees. Lender shall be at no expense by reason of this transaction;
  - 2.4 Performance under Loan Documents. Performance by Borrower of all of its covenants and responsibilities under the Loan Documents through the Closing Date, including without limitation, payment of all monthly payments and other amounts due and owing under the Note;
  - 2.5 Provide Evidence of Required Insurance. Lender shall receive confirmation adequate in its sole discretion that all insurance requirements set forth in the Loan Documents have been met;

# UNOFFICIAL COPY

- 2.6 Update Lender's Title Policy. Receipt by Lender of a new Lender's ALTA 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 amount of the Note **OR** a "date down" of its existing title insurance policy on the Property, supplemented with a modification endorsement and 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 Agreement constitutes a valid mortgage lien on the real property constituting a portion of the Property, senior in priority to all other liens and encumbrances except such exceptions as Lender shall approve in writing; (b) Lender is the "named insured"; and (c) Borrower is the fee simple owner of the Property and the legal and valid owner of the easements, if any, which constitute a part of the Property;
- 2.7 Obtain Subordination Agreement(s). If Lender has consented to any subordinate liens on the Property, then execution, acknowledgment of all signatures, and delivery by Borrower and every subordinate lienholder of subordination agreement(s) in form and substance satisfactory to Lender and Title Company;
- 2.8 Obtain Subordination, Nondisturbance and Attornment Agreement(s). If required by Lender, execution, acknowledgment of all signatures, and delivery by Borrower and every Property tenant designated by Lender, of subordination, nondisturbance and attornment agreements, or, if required by Lender, solely subordination agreements;
- 2.9 Obtain Authority. Lender shall be provided evidence satisfactory to Lender and Title Company regarding both Borrower's existence, capacity, power and authority to enter into this Agreement and close the transaction contemplated hereunder and the validity and enforceability of this Agreement in accordance with its terms; and
- 2.10 Representations True. All representations and warranties of Borrower contained in this 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.
3. Current Principal Balance. The outstanding principal balance under the Note after the application of the payment of the installment that was due on September 1, 2008 is \$2,109,959.34.
4. Modification to Promissory Note. Subject to the conditions contained in Paragraph 2 above, effective as of the Effective Date, and notwithstanding anything to the contrary contained in the Note, the Note shall be modified pursuant to the provisions set forth in this Section 4. The provisions of this Section 4 shall prevail over any inconsistent provisions set forth in the Note or other Loan Documents.
- 4.1 Promise to Pay. For value received, the Borrower promises to pay Lender in lawful money of the United States, the principal sum of \$3,175,000.00, or so much thereof as has been advanced, together with interest thereon as provided in the Note, as modified by this Agreement.
- 4.2 Definitions. The following terms shall have the following meanings (capitalized terms used in this Section 4 but not otherwise defined in this Section 4 shall have the meanings designated in the Note):
- (a) "**INDEX**" and "**THEN CURRENT INDEX**" mean the interest rate reported, on the applicable Interest Adjustment Date, in the Money Rates column or section of The Western Edition of The Wall Street Journal as the London Interbank Offered Rate for six (6) month periods, which is also commonly referred to as "**6-Month LIBOR**". In the event that such Index ceases to be published in the referenced publication or in

# UNOFFICIAL COPY

any other generally accepted similar financial publication, or is otherwise no longer available, "**Index**" shall mean a substitute index selected by Lender, in Lender's sole and absolute discretion, in any manner not inconsistent with applicable federal laws.

If an Interest Adjustment Date falls on a date which is not a Banking Day, then the first Banking Day immediately preceding such Interest Adjustment Date shall be used for purposes of determining the Then Current Index. As used herein, "**BANKING DAY**" means a day, other than a Saturday or a Sunday, on which commercial banks in California and in London, England, are open for business for all banking functions, and on which dealings are carried on in the London interbank market.

- (b) "**MARGIN**" means Three percent (3.000%).
- (c) "**INTEREST RATE**" means the annual rate of interest charged on the principal balance of the loan evidenced by the Note from time to time, as such rate may be adjusted as provided in this Agreement.
- (d) "**INITIAL INTEREST RATE**" means Six and Four Hundred Forty one-thousandths percent (6.440%) per annum.
- (e) "**THEN CURRENT INTEREST RATE**" means, for the period prior to the first Interest Adjustment Date, the Initial Interest Rate. Thereafter, it means the Interest Rate after the most recent Interest Adjustment.
- (f) "**INTEREST ADJUSTMENT**" means an increase or decrease in the Then Current Interest Rate as specified in Section 4.3(c) of this Agreement.
- (g) "**INTEREST ADJUSTMENT DATE**" means September 1, 2013, and thereafter, the day on which every sixth regularly scheduled Monthly Payment is due during the term of the Note.
- (h) "**MONTHLY PAYMENT**" means the payment of the total monthly principal and interest due Lender in accordance with the terms of the Note, as modified by this Agreement.

#### 4.3 Interest Rate and Monthly Payments; Adjustments.

- (a) Interest Rate. From the Effective Date until August 31, 2013, the outstanding principal balance shall bear interest at the Initial Interest Rate set forth in Section 4.2(d) above. Thereafter, the Interest Rate may be adjusted in accordance with Section 4.3(c) below and Interest Adjustments may occur following every sixth regularly scheduled Monthly Payment during the term of the Note. Interest under the Note, as modified by this Agreement, shall be calculated on the basis of a 360-day year divided into 12 months of 30 days each; provided, however, that for any partial calendar month, interest, at Lender's option, may be calculated on the basis of a 365-day year and the actual number of days elapsed.
- (b) Monthly Payments. Monthly Payments of principal and interest, in arrears, based on a thirty (30) year amortization schedule shall be made during the term of the Note. All payments shall be made to Citibank, N.A., at One Sansome Street, 19<sup>th</sup> Floor, San Francisco, CA 94104, or at such other place as Lender notifies Borrower, in initial Monthly Payments of \$13,265.06 each due and payable on the first day of each month beginning October 1, 2008. Thereafter, the monthly principal and interest payments shall be adjusted in accordance with Section 4.3(d) below. Such Monthly Payments shall continue until the remaining indebtedness evidenced by the Note, if

# UNOFFICIAL COPY

not sooner paid, shall be all due and payable on August 1, 2038. (the "**Final Payment Date**"), which Final Payment Date is an extension of the current maturity date provided in the Loan Documents.

- (c) **Interest Rate Adjustments.** On each Interest Adjustment Date, Lender shall decrease or may, at its option, increase the Interest Rate so that the Interest Rate shall equal the sum of the Then Current Index and the Margin (as both such terms are defined in Section 4.2 above), and shall provide notice thereof to Borrower. Except for the first Interest Adjustment, no Interest Adjustment shall exceed 1%. Furthermore, no Interest Adjustment shall result in a Then Current Interest Rate greater than five (5) percentage points above the Initial Interest Rate or a Then Current Interest Rate less than one (1) percentage point below the Initial Interest Rate. If Lender elects on any Interest Adjustment Date not to impose a permissible increase in whole or in part in the Interest Rate, such election shall not be deemed a waiver of Lender's right to impose such an increase at a later time either prior to or following the next Interest Adjustment Dates.
- (d) **Monthly Payment Adjustments.** Upon any Interest Adjustment, the Monthly Payment shall be adjusted to an amount which will result in the full payment of the outstanding principal and interest of the Note at the Then Current Interest Rate within three hundred sixty (360) months from the Effective Date. Each payment adjustment shall be effective on the first day of the calendar month following each Interest Adjustment Date.

#### 4.4 Prepayment.

- (a) **Prepayment Restrictions:** The principal sum evidenced by the Note may not be prepaid, in whole or in part at any time except that Borrower shall have the right to prepay the whole (but not less than the whole) of the unpaid principal balance of the Note on any scheduled payment date under the Note upon and subject to the following terms and conditions. Borrower shall give Lender not less than thirty (30) days prior written notice (the "**Prepayment Notice**") specifying the scheduled payment date on which such prepayment is to be made (the "**Prepayment Date**"). Borrower shall pay to Lender on the Prepayment Date the sum of the following: (i) the then unpaid principal balance of the Note, plus (ii) all interest accrued and unpaid on the principal balance of the Note to and including the Prepayment Date, plus (iii) all other sums then due under the Note and each of the other Loan Documents, plus (iv) a prepayment consideration (the "**Prepayment Fee**") in an amount equal to the total interest that accrued on the principal balance of the Note during the ninety (90) days prior to the Prepayment Date. If a Prepayment Notice is given, such notice shall be irrevocable, and the principal balance of the Note and all other sums required to be paid as set forth in clauses (i) through (iv) of this Section 4.4(a) shall be due and payable on the Prepayment Date. Without limiting any of the provisions of this Section 4.4(a), Lender shall not be obligated to accept any prepayment of the principal balance of the Note unless it is accompanied by the Prepayment Fee due in connection therewith.
- (b) **Default Prepayment Fee:** Borrower agrees that any tender of payment by Borrower or any other party of all or any portion of the principal sum evidenced by the Note, other than as expressly set forth in Section 4.3(b) or 4.4(a) of this Agreement, shall constitute a prohibited prepayment under the Note, as modified by this Agreement. Borrower further agrees that should (i) any default be made in the payment of any amount due under the Note, or any other event of default have occurred, and (ii) the maturity of the Note be accelerated, then a tender of payment by Borrower, or by any entity related to, or affiliated with, Borrower or anyone on behalf of Borrower, of the amount necessary to satisfy all sums due under the Loan Documents, including,

# UNOFFICIAL COPY

without limitation, any sum due on any judgment rendered in any foreclosure action, or any amounts necessary to redeem the real property securing the Note, made at any time prior to, during, or after, a judicial foreclosure or a sale pursuant to the exercise of a power of sale of the Property, shall constitute an evasion of the payment terms of the Note, as modified by this Agreement, and shall be deemed to be a prohibited prepayment under the Note, as modified by this Agreement. Borrower acknowledges that Lender has relied upon the anticipated investment return under the Note, as modified by this Agreement, in entering into transactions with, and in making commitments to, third parties; therefore, the tender of any prohibited prepayment shall, to the extent permitted by law, include the Prepayment Fee. Borrower agrees that the Prepayment Fee represents the reasonable estimate of Lender and Borrower of a fair average compensation for the loss that may be sustained by Lender due to the prohibited prepayment of the indebtedness evidenced by the Note. Such Prepayment Fee shall be paid in the case of any prohibited prepayment without prejudice to the right of Lender to collect any other amounts provided to be paid under the Loan Documents. Nothing herein contained shall constitute an agreement on the part of Lender to accept any prepayment, other than as expressly provided in Section 4.4(a) of this Agreement.

BORROWER HEREBY EXPRESSLY (A) WAIVES ANY RIGHTS IT MAY HAVE UNDER APPLICABLE LAW TO PREPAY THE NOTE, IN WHOLE OR IN PART, WITHOUT PENALTY, UPON ACCELERATION OF THE FINAL PAYMENT DATE OF THE NOTE, AND (B) AGREES THAT IF, FOR ANY REASON, A PREPAYMENT OF ANY OR ALL OF THE NOTE IS MADE, UPON OR FOLLOWING AN ACCELERATION OF THE FINAL PAYMENT DATE OF THE NOTE BY LENDER ON ACCOUNT OF ANY DEFAULT BY BORROWER UNDER ANY LOAN DOCUMENT, INCLUDING BUT NOT LIMITED TO ANY TRANSFER OR DISPOSITION AS PROHIBITED OR RESTRICTED BY THE MORTGAGE, THEN BORROWER SHALL BE OBLIGATED TO PAY, CONCURRENTLY THEREWITH, AS A PREPAYMENT FEE, THE APPLICABLE SUM SPECIFIED AS THE PREPAYMENT FEE, CALCULATED IN THE MANNER PROVIDED IN SECTION 4.4(a) OF THIS AGREEMENT. BY INITIALING THIS PROVISION IN THE SPACE PROVIDED BELOW, BORROWER AGREES THAT LENDER'S AGREEMENT TO MODIFY THE LOAN EVIDENCED BY THE NOTE ON THE TERMS SET FORTH IN THIS AGREEMENT CONSTITUTES ADEQUATE CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY BORROWER, FOR THIS WAIVER AND AGREEMENT.

\_\_\_\_\_ BORROWER'S INITIALS

5. Reserved.
6. Reserved.
7. Acceleration. Nothing herein shall be construed as limiting Lender's right to accelerate the indebtedness under the Loan Documents, and to declare the same to be immediately due and payable, in the event of default under the Loan Documents.
8. Borrower Representations and Warranties. Borrower, hereby represents and warrants to Lender as follows:
  - 8.1 This Agreement and the Loan Documents have been duly executed by Borrower and constitute the valid, legal and binding obligations of Borrower, enforceable in accordance with their respective terms and the execution hereof is not in violation of any provision of Borrower's organizational documents or any amendments thereto. All consents, approvals, and authorizations which pertain to Borrower and all of its constituent owners required in order to permit or authorize the Borrower to enter into and perform all obligations of the Borrower under or with respect to this Agreement have been obtained and are in full force and effect

# UNOFFICIAL COPY

- 8.2 Borrower has been duly formed and is in good standing pursuant to the laws of the State of Illinois, has fully complied with all requirements for its formation and existence.
- 8.3 In connection with the original funding of the Loan, Borrower delivered to Lender all organizational and formation documents, and all consents, resolutions and authorizations, which pertain to Borrower and all of its constituent owners, and all such organizational and formation documents, and consents, resolutions and authorizations, remain in full force and effect and have not been revoked, amended or modified since the date of the Note.
- 8.4 Borrower is the lawful owner of good and marketable fee simple title to the Property and the legal and valid owner of the easements, if any, which constitute a part of the Property.
- 8.5 Neither this Agreement nor the Loan Documents nor any other document, financial statement, income and operating statement, rent roll, credit information, certificate or statement furnished to Lender by Borrower, whether pursuant to this Agreement or otherwise, contains any materially untrue statement or omits to state a fact material to the truth and completeness of any statement made.
- 8.6 No event has occurred and no condition exists which, as of the execution of this Agreement, will result, either immediately or with a lapse of time or the giving of notice or both, in the occurrence or existence of any event of default under this Agreement or any of the Loan Documents. Borrower is and continues to be in compliance with all representations and warranties contained in the Loan Documents.
9. Environmental Matters.
- 9.1 **Definitions.** For purposes of this Agreement, "**Hazardous Material**" means: (a) "**hazardous substances**", as defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"), 42 U.S.C. Sec. 9601 *et seq.*; (b) "**hazardous wastes**", as defined by the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. Sec. 6902 *et seq.*; (c) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended; (d) any petroleum or petroleum by-products; (e) any radioactive materials, including any source, special nuclear or by-product material as defined at 42 U.S.C. Sec. 2011 *et seq.*, as amended or hereafter amended; (f) asbestos in any form or condition; and (g) lead-based paint hazards, i.e., any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the appropriate Federal or State agency. "**Remedial Work**" means all investigation, testing, analysis, monitoring, restoration, abatement, detoxification, containment, handling, treatment, removal, storage, decontamination, clean-up, transport, disposal or other ameliorative work or response action required by (i) any Environmental Laws (as hereinafter defined), (ii) any order or request of any federal, state or local governmental agency, or (iii) any judgment, consent decree, settlement or compromise with respect to any and all enforcement, clean-up, removal, remedial or other governmental or regulatory actions or agreements or orders threatened, instituted, or completed pursuant to any Environmental Laws, or any actions, proceedings or claims by such entities or third parties relating to or arising out of the breach of any Environmental Laws or the presence of any Hazardous Material on, under or near the Property (collectively "**Claim**").
- 9.2 **Representations and Warranties.** Borrower represents and warrants to the Lender that:

# UNOFFICIAL COPY

- (a) Compliance. The Property (including underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, are currently in compliance with all applicable laws, ordinances, requirements and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in Paragraph 9.1 above, all as amended and modified from time to time (collectively, "**Environmental Laws**"). All Hazardous Materials generated or handled on the Property have been or will be disposed of in a lawful manner.
- (b) Absence of Hazardous Material. No generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has occurred as a result of the presence or disposal of Hazardous Materials or is occurring on or from the Property and no Hazardous Material shall be introduced to or handled on the Property without thirty (30) days' prior written notice to and written approval by Lender. No environmental or public health or safety hazards currently exist as a result of the presence or disposal of Hazardous Materials with respect to the Property or the business or operations conducted thereon. No underground storage tanks (including petroleum storage tanks) have ever been or are present on or under the Property.
- (c) Proceedings and Actions. There have been no past, and there are no pending or threatened: (i) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Property, or the disposal or presence of Hazardous Materials, or regarding any Environmental Laws; or (ii) liens or governmental actions, notices of violations, notice of noncompliance or other proceedings of any kind relating to Hazardous Materials or Environmental Laws that could impair the value of the Property, or the priority of the Lender's mortgage lien.

9.3 Borrower's Covenants. Borrower agrees as follows:

- (a) Compliance. The Property, and the use and operation thereof, shall comply with all Environmental Laws. All required governmental permits and licenses shall remain in effect, and Borrower shall comply therewith. All Hazardous Materials, present, handled or generated on the Property will be disposed of in a lawful manner. The Borrower will satisfy all requirements of applicable Environmental Laws for the maintenance and removal of all underground storage tanks on the Property, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.
- (b) Proceedings and Actions. Borrower shall immediately notify the Lender and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Property or compliance with Environmental Laws. Borrower shall promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of the Lender. Borrower shall keep the Property free of any lien imposed pursuant to any Environmental Laws.
- (c) Environmental Audit. Borrower shall provide such information and certifications, which the Lender may reasonably request from time to time to insure Borrower's compliance with the Agreement. To investigate Borrower's compliance with Environmental Laws and with this Agreement, the Lender shall have the right, but not the obligation, at any time to enter upon the Property, take samples, review books and records of Borrower, interview the employees and officers of Borrower, and conduct similar activities. Borrower shall cooperate in the conduct of such an audit. No inspection or failure to inspect the Property by Lender shall impose any



# UNOFFICIAL COPY

liability upon Lender for the discovery, failure to discover, evaluation, or remediation of any Hazardous Material that may exist on or affecting the Property. Lender shall not be liable or responsible for any loss, damage, injury or liability to the Property or to any persons or property thereon arising from any entry or inspection by Lender pursuant to this Paragraph 9.3, except only for any loss, damage, injury or liability which is caused solely by the gross negligence of Lender (which for purposes of this Agreement shall mean an action taken by Lender with reckless disregard of the consequences thereof), provided that in no event shall Lender be liable under any circumstances for any consequential damages suffered by Borrower or any other person or entity.

- (d) Remedial Work. As soon as possible, but no later than sixty (60) days after receipt by Borrower of any Claim, Borrower shall perform or cause others qualified to do so to commence and/or perform any and all necessary Remedial Work in response to any Claim. Subject to the terms of any leases and applicable laws, in response to Borrower's knowledge of the presence of any Hazardous Material on or under the Property or real property immediately adjacent to the Property, Borrower shall immediately perform or cause tenants to immediately perform all Remedial Work. All Remedial Work shall be performed by contractors approved by Lender and in accordance with all applicable Environmental Laws and any other applicable laws, rules, regulations, or orders. All costs and expenses of any Remedial Work shall be paid by Borrower, it being understood that Lender shall incur no cost, expense or liability in connection with any Remedial Work. Lender shall have the right, but no obligation, to join and participate in, as a party if it so elects at Lender's cost, any legal proceedings or actions initiated in connection with any Hazardous Material Claims, provided, however, Borrower shall reimburse Lender for its attorneys' fees and costs incurred if such participation is deemed reasonably necessary by Lender to protect its security interest in the Property.
- 9.4 Lender's Right to Rely. Lender is entitled to rely upon Borrower's representations and warranties contained in this Agreement despite any independent investigations by Lender or its consultants. Borrower shall take reasonable actions to determine for itself, and to remain aware of, the environmental condition of the Property and shall have no right to rely upon any environmental investigations or findings made by the Lender or its consultants.
- 9.5 Indemnifications. The term "**Lender's Environmental Liability**" shall mean any losses, liabilities, obligations, penalties, claims, litigation demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including reasonable attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against the Lender in connection with or arising from:
- (a) any Hazardous Material, on, in, under or affecting all or any portion of the Property, the groundwater under or downgradient from the Property, or any surrounding areas;
  - (b) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Agreement;
  - (c) any violation or claim of violation by Borrower of any Environmental Laws;
  - (d) the imposition of any lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Material; or

# UNOFFICIAL COPY

- (e) any claim by Borrower against Lender under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted.

Borrower agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to the Lender and at Borrower's sole cost) and hold the Lender free and harmless from and against the Lender's Environmental Liability.

It is expressly understood and agreed that, to the extent that the Lender is strictly liable under any Environmental Laws, Borrower's obligation to the Lender under this indemnity shall likewise be without regard to fault on the part of Borrower with respect to the violation or condition which results in liability to Lender.

- 9.6 Survival. The foregoing indemnification, defense and hold harmless obligations shall survive repayment of the Loan or any transfer of the Property by foreclosure or by a deed in lieu of foreclosure.

10. Reserved.

11. No Defenses, Set-offs or Counterclaims. Borrower represents and warrants to Lender that it has no claims, defenses, set-offs, or counterclaims of any kind or nature whatsoever against Lender with respect to the Loan Documents or obligations thereunder, or any action previously taken or not taken by Lender with respect thereto or with respect to any security interest, encumbrance, lien, or collateral in connection therewith to secure the outstanding indebtedness under the Loan Documents.

12. Waiver and Release. Borrower acknowledges, certifies, represents and warrants that it has no claims or defenses in connection with the Loan Documents, any interest in arrears, any late charges, any balance in any accumulation account or the interest and other sums heretofore paid or payable pursuant to, or in connection with the Note or any of the other Loan Documents. Borrower, for itself, and each of its shareholders, officers, directors, agents, employees, representatives, affiliates, successors, assigns, and all persons acting by, through, under or under control of any of the foregoing (hereinafter collectively referred to as "**Releaser**"), hereby releases, waives, discharges, and covenants not to sue Lender or its officers, directors, shareholders, affiliates, agents, employees, successors, assigns and/or representatives (hereinafter collectively referred to as "**Releasee**") with respect to any and all past, present and potential future claims, causes of action, damages, demands, costs and other liabilities of any kind, direct or indirect, known or unknown, foreseen or unforeseen, which any Releaser now has or which may arise in the future and which relate to or arise from any of the following: (a) Releasee's administration of the Loan on or before the date of execution of this Agreement; (b) the conduct of any Releasee during the negotiation, documentation, execution and delivery of the restructuring of the Loan and the modification of the Loan Documents; and (c) any other actions or omissions by the Releasee prior to the date of this Agreement in connection with the Loan Documents or the Real Property.

- 12.1 No Assignment. Releaser represents and warrants that Releaser has not assigned, in whole or in part, any of the claims released herein. Borrower agrees that, if Borrower or any other Releaser asserts against any Releasee any of the claims released herein, Borrower and/or each of its partners shall pay, in addition to any other damages caused the Releasees thereby, all reasonable attorney's fees incurred by the Releasees in defending or otherwise responding to the released claims.

- 12.2 Voluntary Waiver and Release; Subsequent Facts. Borrower acknowledges 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 Borrower's request for modification of the Loan. Borrower expressly acknowledges that it may hereafter discover facts different from or in addition to those, which it now believes to be true with respect to the release of claims. The Borrower agrees that the foregoing release shall be and remain effective in all respects notwithstanding such different or additional facts.

# UNOFFICIAL COPY

13. **No Waiver.** Any waiver of the rights of Lender occurring on or before the date of this Agreement shall not, and do not, constitute the waiver of any rights of Lender to fully enforce the terms and conditions of any of the Loan Documents hereafter. Nor shall the delay in pursuing any remedy or in insisting upon full performance for any breach or failure of any covenant, condition or promise herein prevent Lender from later pursuing remedies for which the applicable statutes of limitation have not run or been waived or from insisting upon full performance for the same or similar breaches or failures.

14. **Continuation of Rights.** Borrower acknowledges and agrees that the modification of the Loan Documents do not alter, impair or affect in any fashion (or evidence the intent of either party to alter, impair or affect in any fashion) any and all past, present, and future claims, causes of action, damages, demands, costs and other liabilities of any kind, direct or indirect, known or unknown, foreseen or unforeseen, which Lender or any of its officers, successors, assigns and/or representatives now has or may have in the future against Borrower, its general partners, agents, employees, representatives, affiliates, successors, assigns and all persons acting by through, under or under the control of any of the foregoing which relate to, arise from or are connected with the Loan except as specifically set forth in this Agreement and in the Loan Documents as modified.

15. **Acknowledgment of Reliance.** Borrower further acknowledges and agrees that Lender is specifically relying upon the representations, warranties and agreements contained herein as an inducement to Lender to enter into this Agreement.

16. **Notices.** Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent by overnight or reliable express courier, or by registered or certified mail, postage prepaid, return receipt requested and addressed as listed below or to such other address as the party concerned may substitute by written notice to the other. All notices shall be deemed received upon deposit with the United States Postal Service or upon delivery to the courier service.

To Borrower: Chicago Title Land Trust Company  
171 N. Clark Street  
Suite 575  
Chicago, Illinois 60601  
Attn: Trust No. 60566

To Lender: Citibank, N.A.  
Commercial Real Estate Finance  
500 West Madison  
7<sup>th</sup> Floor  
Chicago, Illinois 60661  
Loan No: 15-3539285

With copy to: Citibank, N.A.  
Commercial Loan Servicing  
One Sansome Street  
San Francisco, CA 94104  
Loan No: 15-3539285

Notices sent by Lender pertaining to adjustments in the interest rate or the monthly payments under the Note, as modified hereby, or monthly payments made by Borrower under the Note shall not be required to be sent by registered or certified mail.

17. **Cross Default.** Each of the parties hereto agrees that the occurrence of a default hereunder shall also be considered a material default or an event of default under the Loan Documents and will enable Lender to avail itself of all remedies provided under the Loan Documents.

18. **Time of the Essence.** Time is of the essence in the performance of every provision hereof.

# UNOFFICIAL COPY

19. Severability. If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, then the remainder of this Agreement, or the application of such provision, to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20. Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the parties hereto with respect to the matters set forth herein, and there are no agreements, understandings, warranties or representations except as specifically delineated herein. Any exhibits attached hereto are hereby incorporated herein by reference and made a part hereof. This instrument is not intended to have any legal effect, or to be a legally binding agreement, or any evidence thereof, until it has been signed by each of the parties hereto and all conditions to effectiveness hereunder have been satisfied. This Agreement shall not be amended or modified in any way except by an instrument in writing executed by each of the parties hereto.

21. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives and assigns. This Agreement is entered into for the exclusive benefit of the parties hereto and no other party shall derive any rights or benefits herefrom.

22. Further Assurances. The parties hereto agree that upon the reasonable request of the other party to this Agreement, each such party will execute and deliver to the requesting party such other additional instruments and documents, or perform or cause to be performed such other and further acts and things, as may be reasonably necessary to more fully consummate the transactions as set forth in this Agreement provided, however, that performance by either party under this paragraph shall not create any new liability or obligation on the performing party whatsoever.

23. Loan Documents Continue. Borrower hereby further ratifies and acknowledges the continuing validity and enforceability of the Loan Documents and the obligations and first liens evidenced thereby. Except as expressly provided in this Agreement, all terms, covenants, conditions and provisions of the Loan Documents shall be and remain in full force and effect as written unmodified hereby. In the event of any conflict between the terms of this Agreement and the Loan Documents, this Agreement shall control.

24. Reserved.

25. Waiver Of Jury Trial. To the fullest extent permitted by law, Borrower and Lender HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, the Note, this Modification Agreement, the Mortgage or any of the Loan Documents, or the enforcement of any remedy under any law, statute, or regulation. Neither party will seek to consolidate any such action in which a jury has been waived, with any other action in which a jury trial cannot or has not been waived. Each party acknowledges that it has received the advice of counsel with respect to this waiver.

26. Advice of Independent Counsel. Borrower hereby represents and warrants that it has had the advice of independent legal counsel of its own choosing, duly admitted to practice in the State of Illinois, in negotiations for and during the preparation of this Agreement, that it has read the provisions of this Agreement, that all provisions of this Agreement have been fully explained to it by its attorneys, and that it is fully aware and understands the provisions of this Agreement and their legal effect and consequences. Borrower hereby represents and warrants that it has executed this Agreement on the advice of its attorneys, after careful and independent investigation, and is not executing this Agreement under fraud, duress or undue influence.

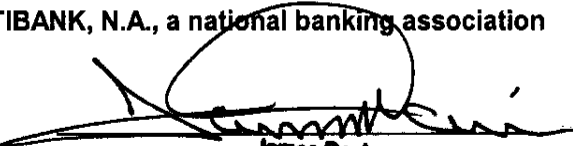
[SIGNATURES ON NEXT PAGE]

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above stated.

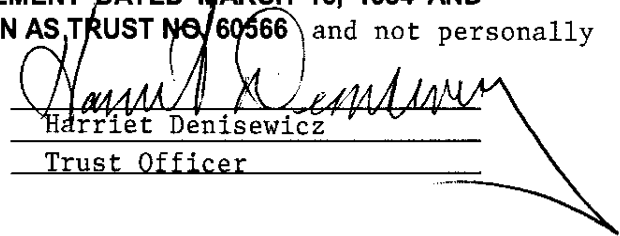
**LENDER:**

**CITIBANK, N.A., a national banking association**

By:   
 Name: James Davis  
 Title: Vice President  
Commercial Real Estate Finance  
Citibank, N.A.  
500 West Madison Street  
Chicago, IL 60661  
(312) 627-3963  
jd.davis@ctigroup.com

**BORROWER:**

**CHICAGO TITLE LAND TRUST COMPANY, AS  
SUCCESSOR TRUSTEE UNDER TRUST  
AGREEMENT DATED MARCH 16, 1984 AND  
KNOWN AS TRUST NO. 60566 and not personally**

By:   
 Name: Harriet Denisevicz  
 Title: Trust Officer

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and recited in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and are not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

**AGREEMENT IS NOT TO BE EXECUTED IN COUNTERPARTS OR  
UNDER A POWER OF ATTORNEY  
ALL SIGNATURES MUST BE NOTARIZED**

# UNOFFICIAL COPY

## ACKNOWLEDGEMENTS

STATE OF ILLINOIS )

COUNTY OF COOK )

On this 17<sup>th</sup> day of SEPTEMBER 2008 before me, a Notary Public in and for said State, personally appeared JAMES DAVIS, the VICE PRESIDENT of Citibank, N.A., 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/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument Citibank, N.A., executed the instrument.

WITNESS my hand and official seal.



*Bianca J Domingulz*  
Notary Public  
My Commission expires:

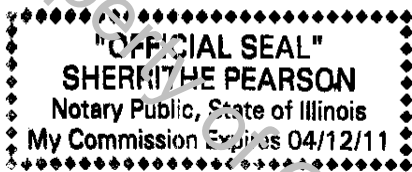
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

On this 25th day of Sept, 2008 before me, a Notary Public in and for said State, personally appeared Harriet Denisewicz, the Trust Officer of Chicago Title Land Trust Company, 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/she executed the same in his/her authorized capacity on behalf of Chicago Title Land Trust Company, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument

WITNESS my hand and official seal.



*Sherrilthe Pearson*

Notary Public  
My Commission expires:

Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT "A" LEGAL DESCRIPTION

The Property is situated in the City of Des Plaines, County of Cook, State of Illinois and is described as follows:

LOTS 1 TO 20, BOTH INCLUSIVE, IN HOWARD HIGHLANDS UNIT NO. 2, BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 2011-2019 Ash Street, Des Plaines, Illinois

Tax I.D. Numbers:

- 09-29-410-001-0000
- 09-29-410-002-0000
- 09-29-410-003-0000
- 09-29-410-004-0000
- 09-29-410-005-0000
- 09-29-410-006-0000
- 09-29-410-007-0000
- 09-29-410-008-0000
- 09-29-410-009-0000
- 09-29-410-010-0000
- 09-29-410-021-0000

**FATIC has made an accommodation  
recording of the instrument.  
First American Title Insurance Company**