



**THIS DOCUMENT WAS PREPARED
BY AND AFTER RECORDING
SHOULD BE RETURNED TO:**

Jay R. Goldberg
Field and Goldberg, LLC
10 South LaSalle Street
Suite 2910
Chicago, IL 60603

Doc#: 0911245087 Fee: \$62.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/22/2009 12:51 PM Pg: 1 of 14

4394617 Get 2065 / Put

THIRD LOAN MODIFICATION AGREEMENT

THIS THIRD LOAN MODIFICATION AGREEMENT (the "Agreement") is made and entered into as of the 31st day of March, 2009 by and among **FIRST EAGLE BANK, formerly known as First Eagle National Bank ("Lender")**, **S & S HOME BUILDERS, LLC, an Illinois limited liability company ("Borrower")**, and **MICHAEL N. SCHWARTZ ("Schwartz")** and **SCOTT Y. SCHILLER ("Schiller"** and herein, together with Schwartz, individually and collectively called "Guarantors").

WITNESSETH:

WHEREAS, Borrower is the owner of certain real estate commonly known as Unit 1A at 1652-1654 West North Avenue, which is located in the City of Chicago, County of Cook, State of Illinois and more particularly described on Exhibit A attached hereto and made a part hereof (the "North Avenue Premises"), and

WHEREAS, Lender has heretofore made a mortgage loan (the "Loan") to Borrower in the stated principal sum of Five Hundred Sixty Thousand Dollars and No Cents (\$560,000.00); and

WHEREAS, the Loan is evidenced and secured by the following documents in favor of Lender (hereinafter, together with all other documents evidencing, securing or otherwise governing the Loan, collectively referred to as the "Loan Documents") each of which is dated as of August 9, 2006 unless otherwise stated:

- (a) Promissory Note (the "Note") made by Borrower to Lender in the stated principal sum of Five Hundred Sixty Thousand Dollars and No Cents (\$560,000.00);
- (b) Commercial Guaranty made by Schwartz in favor of Lender;
- (c) Commercial Guaranty made by Schiller in favor of Lender;

UNOFFICIAL COPY

(d) Mortgage (herein called the "North Avenue Mortgage") made by Borrower to Lender encumbering the North Avenue Premises and the improvements thereon and all other property, assets and collateral therein described, which North Avenue Mortgage was recorded in the Office of the Recorder of Deeds of Cook County, Illinois (herein called the "Recorder's Office") as Document No. 0624147046;

(e) Assignment of Rents made by Borrower to Lender which was recorded in the Recorder's Office as Document No. 0624147047;

(f) Business Loan Agreement between Borrower and Lender;

(g) Hazardous Substances Certificate and Indemnity Agreement by and among Borrower, Guarantors and Lender;

(h) First Amendment to Loan Documents dated August 9, 2007 by and between Borrower, Guarantors and Lender which was recorded in the Recorder's Office as Document No. 0727406037; and

(i) Second Amendment to Loan Documents dated August 9, 2008 by and between Borrower, Guarantors and Lender which was recorded in the Recorder's Office as Document No. 0827703010; and

WHEREAS, Guarantors are the owner of certain real estate commonly known as 2133 West Crystal Street, which is located in the City of Chicago, County of Cook, State of Illinois and more particularly described on Exhibit B attached hereto and made a part hereof (the "Crystal Street Premises"); and

WHEREAS, Guarantors are the owner of certain real estate commonly known as Unit Nos. 1C and PU-6 at 2031 West Pierce Avenue, which is located in the City of Chicago, County of Cook, State of Illinois and more particularly described on Exhibit C attached hereto and made a part hereof (the "Pierce Avenue Premises"); and

WHEREAS, Guarantors have agreed to execute and deliver to Lender a second mortgage on the Crystal Street Premises and the Pierce Avenue Premises to further secure the Loan; and

WHEREAS, Lender and Borrower have agreed to certain modifications to the Loan Documents; and

WHEREAS, the agreements of the parties are set forth herein and limited to this Agreement.

UNOFFICIAL COPY

AGREEMENT

NOW, THEREFORE, for valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed, as of the date hereof, as follows:

1. **Preambles.** The preambles hereto are incorporated herein by reference as fully and with the same force and effect as if each and every term, provision and condition thereof was specifically recited herein at length.
2. **Definitions.** All capitalized terms herein not otherwise defined shall have the same meanings as in the Note, Mortgage (as defined below) and in the other Loan Documents.
3. **Additional Collateral.** The Crystal Street Premises and Pierce Avenue Premises are hereby added as additional collateral securing the Loan. In addition, Lender shall record and file Uniform Commercial Code Financing Statements on the Crystal Street Premises and Pierce Avenue Premises with the Recorder's Office and the Illinois Secretary of State, respectively. Any reference to Real Property in the Loan Documents shall mean and refer individually and collectively to the North Avenue Premises, Crystal Street Premises and Pierce Avenue Premises. In the event of a sale of the Crystal Street Premises to a bona fide purchaser for value, Lender agrees to release the Crystal Street Premises from Lender's collateral upon receipt by Lender of the greater of: (i) the net proceeds from such sale which amount shall be the gross purchase price less any actual usual and customary expenses associated with a sale of this type of property, or (ii) three hundred thousand dollars (\$300,000.00). In the event of a sale of the Pierce Avenue Premises to a bona fide purchaser for value, Lender agrees to release the Pierce Avenue Premises from Lender's collateral upon receipt by Lender of the greater of: (i) the net proceeds from such sale which amount shall be the gross purchase price less any actual usual and customary expenses associated with a sale of this type of property, or (ii) one hundred thousand dollars (\$100,000.00).
4. **Leases.** Borrower shall not enter into a lease for all or any portion of the North Avenue Premises until such time as said lease has been provided to Lender and approved by Lender in Lender's sole discretion. If Lender does not object in writing to a lease submitted for approval within three (3) business days, then the lease shall be deemed approved.
5. **Amendment to Note.** In addition to any other modifications contained in this Agreement and notwithstanding anything to the contrary contained in the Note, the Note is hereby further amended as follows:
 - (a) The Maturity Date of the Loan is hereby extended to March 31, 2010.

UNOFFICIAL COPY

(b) Effective the date hereof, the interest rate on the Loan shall be equal to the **greater of**: (i) the Prime Rate (defined below) plus One Percent (1%), or (ii) Six and One-Half Percent (6.5%) per annum.

(c) "Prime Rate" shall mean the prime rate of interest as published on a daily basis in the *Wall Street Journal*. In the event that the *Wall Street Journal* publishes a range of prime rates of interest, the Prime Rate shall be the highest of the range of prime rates of interest. In the event that the Prime Rate is no longer published by the *Wall Street Journal*, Lender will choose a new source that publishes the Prime Rate and Borrower will be notified of Lender's choice.

(d) Borrower will pay this loan in one principal payment of Five Hundred Sixty Thousand Dollars and No Cents (\$560,000.00) plus interest on March 31, 2010. This payment due on March 31, 2010 will be for all principal and all accrued interest not yet paid. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning April 9, 2009, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any unpaid collection costs; then to any late charges; then to any accrued unpaid interest; and then to principal. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding.

(e) Borrower shall be granted a five (5) day grace period without notice to cure any monetary default under the Note.

(f) Notwithstanding and in addition to anything to the contrary, the following section is hereby added to the Note:

CROSS COLLATERALIZATION; CROSS DEFAULT. This Note is cross collateralized and cross defaulted with (i) that certain Promissory Note made by The 2040 West Belmont L.L.C., an Illinois limited liability company, to Lender in the stated principal sum of Five Hundred Fifty Thousand Dollars and No Cents (\$550,000.00) dated December 21, 2006 (the "\$550,000 Note"), and (ii) that certain Promissory Note made by The 2040 West Belmont L.L.C., an Illinois limited liability company, to Lender in the stated principal sum of Nine Hundred Fifty Thousand Dollars and No Cents (\$950,000.00) dated December 31, 2002 (the "\$950,000 Note"). A default under (i) the \$550,000 Note or any document which secures the \$550,000 Note, or (ii) the \$950,000 Note or any document which secures the \$950,000 Note shall, without notice or period of grace, constitute an immediate default hereunder, entitled Lender under the Loan Documents to

UNOFFICIAL COPY

exercise all rights and remedies as may be available to Lender in the case of a default or Event of Default under the Loan Documents.

(g) The "Prepayment Penalty" provision contained in any and all of the Loan Documents shall be and hereby is deleted.

(h) The following section is hereby added to the Note:

Cure Provision. If any default, other than a default in payment, is curable and if Borrower has not been given notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonable practical.

(i) The portion of the "Adverse Change" provision constituting an Event of Default under the Loan Documents stating substantially as follows: "Lender believes the prospect of payment or performance . . . is impaired", shall be and hereby is deleted and shall not constitute an Event of Default.

(j) The "Insecurity" provision constituting an Event of Default under the Loan Documents stating substantially as follows: "Lender in good faith believes itself insecure", shall be and hereby is deleted and shall not constitute an Event of Default.

6. **Amendment to North Avenue Mortgage.** In addition to any other modifications contained in this Agreement and notwithstanding anything to the contrary contained in the North Avenue Mortgage, the North Avenue Mortgage is hereby further amended as follows:

(a) Notwithstanding and in addition to anything to the contrary, the following section is hereby added to the North Avenue Mortgage:

CROSS COLLATERALIZATION; CROSS DEFAULT. The Note is cross collateralized and cross defaulted with (i) that certain Promissory Note made by The 2040 West Belmont L.L.C., an Illinois limited liability company, to Lender in the stated principal sum of Five Hundred Fifty Thousand Dollars and No Cents (\$550,000.00) dated December 21, 2006 (the "\$550,000 Note"), and (ii) that certain

UNOFFICIAL COPY

Promissory Note made by The 2040 West Belmont L.L.C., an Illinois limited liability company, to Lender in the stated principal sum of Nine Hundred Fifty Thousand Dollars and No Cents (\$950,000.00) dated December 31, 2002 (the "\$950,000 Note"). A default under (i) the \$550,000 Note or any document which secures the \$550,000 Note, or (ii) the \$950,000 Note or any document which secures the \$950,000 Note shall, without notice or period of grace, constitute an immediate default hereunder, entitling Lender under the Loan Documents to exercise all rights and remedies as may be available to Lender in the case of a default or Event of Default under the Loan Documents.

(b) The North Avenue Mortgage is modified to secure the Note as hereby modified and is deemed amended to conform to the terms and provisions hereof and the amendments and modifications to the Loan and Loan Documents effected hereby.

7. **Continued Priority.** In the event that, by virtue of any of the terms, conditions and provisions of this Agreement, a lien or other property interest in the Premises otherwise junior in priority to the liens created by the Loan Documents shall gain superiority over the liens created by the Loan Documents, this Agreement shall, nunc pro tunc, be null and void without further action of the parties hereto to the fullest extent as if it had never been executed, to the end that the priority of the Loan Documents shall not be impaired.

8. **Title Insurance.** Concurrent with the execution and delivery hereof by Borrower, Borrower agrees to provide Lender with an endorsement to its mortgagee's policy of title insurance for the North Avenue Premises ("Title Policy"), which endorsement shall be acceptable to Lender and shall guarantee as of the date hereof that:

- (a) there are no objections to title except (a) the objections to title other than real estate taxes reflected on the Title Policy, and (b) general real estate taxes for the year 2008 (second installment) and subsequent years;
- (b) reflects the recording of this Agreement;
- (c) properly reflects the Lender's second mortgage on the Crystal Street Premises and on the Pierce Avenue Premises;
- (d) contains no exceptions to title for the Crystal Street Premises or the Pierce Avenue Premises unless agreed to by Lender, in writing, in Lender's sole discretion;
- (e) re-dates the effective date of the Title Policy to the date of recording of this Agreement; and

UNOFFICIAL COPY

(f) together with other endorsements required by Lender.

9. **Lender Expenses.** Borrower agrees to pay all costs, fees and expenses (including but not limited to reasonable legal fees) incurred by Lender in connection with the preparation of this Agreement. Such of the foregoing as are incurred prior to the execution and delivery of this Agreement shall be paid concurrent with such execution and delivery. All other fees, costs and expenses shall be paid within five (5) business days after notice from Lender of the amount due and the reason therefor.

10. **Ratification.** The Loan Documents are hereby ratified, confirmed and approved and are and shall remain in full force and effect pursuant to the terms and conditions set forth therein, except to the extent otherwise expressly modified hereby. Each of the Loan Documents is hereby modified and amended so that all reference to such documents shall be deemed to be a reference to the Loan Documents as hereby modified and amended. The parties hereto acknowledge and agree that notwithstanding the actual date that this Agreement or any of the Loan Documents were executed and/or notarized, this Agreement and the Loan Documents are in full force and effect from and after the date of such document or the date referred to in such document as being the effective date or made and entered date.


(Signature Page Follows)

UNOFFICIAL COPY

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

LENDER:

FIRST EAGLE BANK, formerly known as First Eagle National Bank

By: 
Name: Joe Puzos
Title: Vice Pres. db

BORROWER:

S & S HOME BUILDERS, LLC, an Illinois limited liability company

By: 
Michael N. Schwartz, Manager

By: 
Scott Y. Schiller, Manager

GUARANTORS:


MICHAEL N. SCHWARTZ


SCOTT Y. SCHILLER

Property of Cook County Clerk's Office

UNOFFICIAL COPY

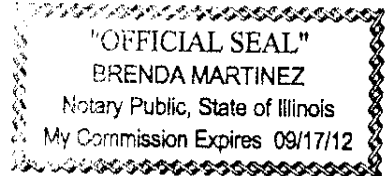
STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that **MICHAEL N. SCHWARTZ**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16 day of April, 2009.

Brenda Martinez
Notary Public

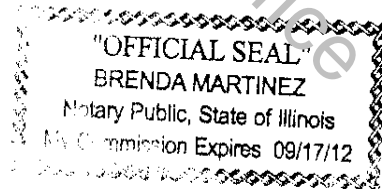
STATE OF ILLINOIS)
) SS
COUNTY OF Cook)



I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that **SCOTT Y. SCHILLER**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16 day of April, 2009.

Brenda Martinez
Notary Public



UNOFFICIAL COPY

EXHIBIT A

Legal Description of North Avenue Premises

Unit 1A together with its undivided percentage interest in the common elements in Bucktown Corner Condominiums as delineated and defined in the Declaration recorded as Document No. 00342193, as amended from time to time, in Section 31, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

ADDRESS OF PROPERTY: Unit 1A
1652-1654 West North Avenue
Chicago, IL 60622

PERMANENT INDEX NO.: 14-31-430-046-1011

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

Legal Description of Crystal Street Premises

Lot 13 in Block 3 in the subdivision of that part of Lot 13 in the Assessor's Division of the Unsubdivided Lands in the Northeast $\frac{1}{4}$ and East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 6, Township 39 North, Range 14 East of the Third Principal Meridian, lying West of Hoyne Street in Cook County, Illinois.

Address of Property: 2133 West Crystal Street
Chicago, IL 60622

Permanent Index No.: 17-06-128-010-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

Legal Description of Pierce Avenue Premises

Units 1C and Parking Space PU-6 2031 West Pierce Street Condominium, as delineated on a survey of the following described parcel of real estate:

Lot 42 (except the West 2 feet thereof) and all of Lot 43 in Block 4 in D. S. Lee's Addition to Chicago in the East ½ of the Northwest ¼ of Section 6, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

which survey is attached as Exhibit "D" to the Declaration of Condominium recorded May 9, 2002 as Document Number 0020531944, together with its undivided percentage interest in the common elements.

Address of Property: Unit Nos. 1C and PU-6
2031 West Pierce Avenue
Chicago, IL 60622

Permanent Index Nos.: 17-06-107-043-1003
17-06-107-043-1014

Property of Cook County Clerk's Office