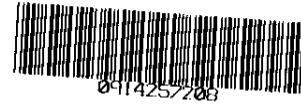


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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 0914257208 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/22/2009 09:11 AM Pg: 1 of 13

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN: 12-36-401-041-0000**

Address:

Street: 1946 N. 75th ave.

Street line 2: 2800 & 2804 N. 75th Ave., 12-20-225-034&35-0000

City: Elmwood Park

State: IL

ZIP Code: 60707

Lender: MIDWEST BANK AND TRUST COMPANY

Borrower: JOSEPH ANDRIACCHI & TR#98-2-7373

Loan / Mortgage Amount: \$133,125.00

This property is located within Cook County and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Certificate number: F202A1AF-B7D2-409F-AC75-2E7DC5689FF0

Execution date: 12/10/2008

UNOFFICIAL COPY**Original**

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Holland & Knight LLC
131 S. Dearborn Street
30th Floor
Chicago, Illinois 60603
Francis L. Keldermans, Esq.

This space reserved for Recorder's use only

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of December 10, 2008, by and among Joseph M. Andriacchi ("Joseph Andriacchi") and Midwest Bank and Trust Company, as successor Trustee ("Trustee") to Midwest Trust Services, Inc., not personally but as Trustee under Trust Agreement dated July 28, 1998 and known as Trust No. 98-2-7373 (the Trust") (collectively, "Borrowers"), and **MIDWEST BANK AND TRUST COMPANY**, an Illinois banking association, its successors and assigns ("Lender").

RECITALS:

A. On or about May 24, 2006 Lender has heretofore made a loan ("Loan") to Joseph Andriacchi and Silvana Andriacchi ("Silvana Andriacchi") (Joseph Andriacchi and Silvana Andriacchi are referred to collectively as "Initial Borrowers") in the original principal amount of One Hundred Thirty-Three Thousand One Hundred Twenty-Five and no/100 Dollars (\$133,125.00) pursuant to the terms and conditions contained in that Business Loan Agreement dated May 24, 2006 by and between Initial Borrowers and Lender.

B. The Loan is evidenced by that Promissory Note ("Initial Note") dated May 24, 2006 made by the Initial Borrowers to the order of Lender in the original principal amount of the Loan.

C. The Initial Note is secured by that Mortgage (the "Initial 2800 Mortgage") dated as of May 24, 2006 made and executed by Initial Borrowers to Lender and recorded on June 7, 2006 in the Office of the Recorder of Deeds, Cook County, Illinois ("Recorder's Office") as Document No. 0615804012 granting a lien on the property commonly known as 2800 N. 75th Avenue, Elmwood Park, Illinois (the "2800 Property") and legally described therein, and that Assignment of Rents (the "2800 Assignment of Rents") dated as of May 24, 2006 made and executed by made and executed by Initial Borrowers to Lender and recorded on June 7, 2006 in the Recorder's Office as Document No. 0615804013 with respect to the 2800 Property.

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D. On or about May 24, 2007, Initial Borrowers and Lender entered into that Business Loan Agreement (the "5-24-07 Loan Agreement"). Concurrently therewith and as a condition precedent thereto, Initial Borrowers executed and delivered to Lender that Promissory Note (the "5-24-07 Note") dated May 24, 2007 payable to Lender in the original principal amount of the Loan.

E. On or about July 24, 2007, Initial Borrowers executed and delivered to Lender that Promissory Note (the "7-24-07 Note") payable to Lender in the original principal amount of the Loan.

F. On or about December 10, 2007, Initial Borrowers and Lender entered into that Business Loan Agreement (the "12-10-07 Loan Agreement") pursuant to which Lender agreed to increase the principal amount of the Loan to Five Hundred Twenty-Five Thousand and no/100 Dollars (\$525,000.00). In consideration thereof and as a condition precedent thereto, Initial Borrowers executed and deliver to Lender (i) that Promissory Note (the "12-10-07 Note") dated December 10, 2007 made by Initial Borrowers to the order of Lender in the increased principal amount of Five Hundred Twenty-Five Thousand and no/100 Dollars (\$525,000.00), (ii) that Change in Terms Agreement (the "Change in Terms Agreement") dated February 6, 2008 executed by Initial Borrowers for the benefit of Lender, (iii) that Modification of Mortgage (the "Modification of Mortgage") dated December 10, 2007 made and executed by Initial Borrowers to Lender and recorded on 12/19/07 in the Recorder's Office as Document No. 0735318065, with respect to the 2800 Property.

G. As additional security for the Loan, Initial Borrowers executed or caused to be executed (i) that Mortgage (the "2804 Mortgage") dated as of December 10, 2007 made and executed by Initial Borrowers to Lender and recorded on December 27, 2007 in the Recorder's Office as Document No. 0736105093 granting a lien on the property commonly known as 2804 N. 75th Avenue, Elmwood Park, Illinois (the "2804 Property") and legally described therein, (ii) that Assignment of Rents (the "2804 Assignment of Rents") dated as of December 10, 2007 made and executed by Initial Borrowers to Lender and recorded on December 27, 2007 in the Recorder's Office as Document No. 0736105094 with respect to the 2804 Property, (iii) that Mortgage (the "1946 Mortgage") dated as of December 10, 2007 made and executed by the Trust to Lender and recorded on January 9, 2008 in the Recorder's Office as Document No. 0800909027 granting a lien on the property commonly known as 1946 N. 75th Avenue, Elmwood Park, Illinois (the "1946 Property") and legally described therein, and (iv) that Assignment of Rents (the "1946 Assignment of Rents") dated as of December 10, 2007 made and executed by the Trust to Lender and recorded on January 9, 2008 in the Recorder's Office as Document No. 0800909028 with respect to the 1946 Property.

H. On or about November 9, 2008, Silvana Andriacchi died.

I. Joseph Andriacchi desires to modify the Loan Documents in order to, among other things, (i) extend the Maturity Date of the Note, (ii) modify the Interest Rate, (iii) add the Trust as a co-Borrower to replace Silvana Andriacchi, and (iv) cross-collateralize and cross-default this Loan with other loans to Joseph Andriacchi.

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J. In consideration of Lender's agreeing to modify the Loan Documents and enter into this Agreement, Borrower agrees to execute and deliver to Lender (i) that Amended and Restated Promissory Note ("Amended Note") of even date herewith made payable by Joseph Andriacchi and the Trust as co-Borrowers payable to the order of Lender in the principal amount of the Loan, and (ii) that Collateral Assignment of Beneficial Interest ("CABI") of even date herewith by and among Joseph Andriacchi, as beneficiary, the Trustee and Lender, and (iii) such other documents, agreements, and certificates as Lender requests.

K. The Initial Loan Agreement, the 5-24-07 Loan Agreement, the 12-10-07 Loan Agreement and this Agreement are referred to collectively as the "Loan Agreement". The Initial Note, the 5-24-07 Note, the 7-24-07 Note, the 12-10-07 Note and the Amended Note are referred to collectively as the "Note". The Initial 2804 Mortgage and the Modification of Mortgage are referred to collectively as the "2804 Mortgage". The 1946 Mortgage, the 2800 Mortgage and the 2804 Mortgage are referred to collectively as the "Mortgages". The 1946 Assignment of Rents, the 2800 Assignment of Rents and the 2804 Assignment of Rents are referred to collectively as the "Assignments of Rents". The 1946 Property, the 2800 Property and the 2804 Property are referred to collectively as the "Property". The Note, the Mortgages, the Assignments of Rents, the Change in Terms Agreement, the CABI, and any other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents".

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date.** The Maturity Date of the Note is extended to December 14, 2009. Any reference in the Note, the Loan Agreement, the Mortgages or any other Loan Document to the Maturity Date shall mean December 14, 2009.
2. **Interest Rate.** The Interest Rate is hereby modified as set forth, and defined in, the Amended Note.
3. **Principal and Interest.** Principal and interest shall be due and payable as set forth in the Note. [current principal balance??]
4. **Co-Borrower.** The Trustee hereby agrees to replace Silvana Andriacchi (deceased) as co-borrower of the Loan and accepts all liabilities and obligations under the Loan Documents as such co-borrower.
5. **Assignment of Leases and Rents.** In order to further secure payment of the Indebtedness and the observance, performance and discharge of the Obligations, Borrowers

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hereby absolutely and irrevocably assigns and transfers to Lender, all of Borrowers' right, title and interest in and to the leases and the rents, subject only to the Permitted Exceptions. Borrowers hereby appoint Lender its true and lawful attorney-in-fact, with the right, at Lender's option at any time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in Borrowers' or Lender's name, for all rents. Notwithstanding the foregoing assignment of leases and rents, so long as no Event of Default has occurred which remains uncured, Borrowers shall have a license to collect rents or other income from the Premises (such license to be deemed revoked upon the occurrence of an Event of Default) provided that the existence or exercise of such right of Borrowers shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Borrower, and any subsequent assignment by Borrower shall be subject to the rights of the Lender hereunder. This Assignment shall not be deemed or construed to constitute Lender as a mortgagee in possession nor obligate Lender to take any action or to incur expenses or perform or discharge any obligation, duty or liability. Exercise of any rights under this Article 9 and the application of the rents to the indebtedness or the Obligations shall not cure or waive any Event of Default.

6. **Cross Default and Cross Collateralization.** An Event of Default under any other Loan Documents with respect to any indebtedness owing by Joseph Andriacchi to Lender thereunder ("Other Loans") shall be an Event of Default with respect to this Loan, and upon the occurrence of an Event of Default, Lender shall have the right to exercise any and all remedies granted to Lender under this Agreement in accordance with the terms and conditions hereof. The collateral securing the Loan shall secure the Other Loans. The collateral securing the Other Loans shall also secure the Loan.

7. **Representations and Warranties of Borrower.** Borrowers hereby represents, covenants and warrants to Lender as follows:

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

(b) There is currently no Event of Default (as defined in the Loan Agreement) under the Loan Agreement the Note, any of the Mortgages or the other Loan Documents and Borrowers do not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Loan Agreement the Note, any of the Mortgages or the other Loan Documents.

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

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

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(e) As of the date hereof, Borrowers have no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) The Trust is validly existing under the laws of the State of its formation and Borrowers have the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of the Trust. This Agreement has been duly executed and delivered on behalf of Borrowers.

8. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue its title insurance policy (the "Title Policy"), together with such endorsements as Lender requires, as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

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

10. **Miscellaneous.**

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

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

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

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

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

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

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

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

11. **Trustee Exculpation.** This Agreement is executed by the Trustee, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing in this Agreement or the Note shall be construed as creating any liability on such Trustee personally to perform any express or implied covenant, condition or obligation under this Agreement or the Note, all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Agreement or the Note. Notwithstanding the foregoing, the Lender shall not be precluded from: (a) recovering any condemnation awards or insurance proceeds attributable to the Property; (b) recovering any tenant security deposits, advance or pre-paid rents; or (c) enforcing the personal liability of Joseph M. Andriacchi as co-maker of the Note, of the payment of the Note and performance of the Loan Documents.

[Signature Page Follows]

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

LENDER:

BORROWERS:

Midwest Bank and Trust Company

By: _____

Lester Arceo
Assistant Vice President

Joseph M. Andriacchi
Joseph M. Andriacchi

Midwest Bank and Trust Company, as
successor Trustee to Midwest Trust
Services, Inc., not personally but as Trustee
under Trust Agreement dated July 28, 1998
and known as Trust No. 98-2-7373

By: _____

Name: Rosalene M. DePass
Title: Trust Officer

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
).ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Lester Arceo, Assistant Vice President of Midwest Bank and Trust Company, is 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 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 4th day of March, 2009.

Shawnese Carson
Notary Public

My Commission Expires: 11-15-2011



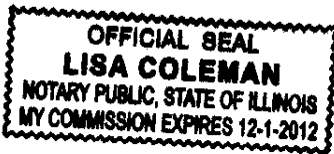
STATE OF ILLINOIS)
).ss
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Joseph M. Andriacchi is 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 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 4th day of MARCH, 2009.

Lisa Coleman
Notary Public

My Commission Expires: 12-1-2012



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EXHIBIT A-1

Legal Description

1946 N. 75th Ave., Elmwood Park, Illinois

Lot 1 in Andriacchi's Third Subdivision, a subdivision of Lots 21 and 22 (except the South 33.0 feet thereof) in Montclare Hillside First Addition, being a subdivision of the North 1/2 of the Northwest 1/4 of the Southeast 1/4 of Section 36, Township 40 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois, recorded July 27, 1914 as Document No. 5465421, in Cook County, Illinois.

PIN: 12-36-401-041-0000

Property of Cook County Clerk's Office

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EXHIBIT A-2

Legal Description

2800 N. 75th Ave., Elmwood Park, Illinois

THE SOUTH 1/2 OF LOT 24 IN ELMWOOD PARK GARDENS, BEING A SUBDIVISION A SUBDIVISION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 12-25-225-035 --0000

Property of Cook County Clerk's Office

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EXHIBIT A-3

Legal Description

2804 N. 75th Ave., Elmwood Park, Illinois

THE NORTH 1/2 OF THE SOUTH 2/3RDS OF LOT 24 IN ELMWOOD PARK GARDENS,
BEING A SUBDIVISION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF
THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 12,
EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 12-25-225-034-0000

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Property of Cook County Clerk's Office