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Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 07/13/2009 09:49 AM Pg: 1 of 15

This Document Prepared by
and after Recording Return to:

Alvin L. Kruse
Elizabeth V. Pfeiler
Seyfarth Shaw LLP
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603

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FIFTH AMENDED AND RESTATED LOAN MODIFICATION AGREEMENT

THIS FIFTH AMENDED AND RESTATED LOAN MODIFICATION AGREEMENT dated as of June 5, 2009, by and among **RS HOMES I LLC**, an Illinois limited liability company ("**Homes**"), **RS POINTE LLC**, an Illinois limited liability company ("**Pointe**"), and **RS SQUARE LLC**, an Illinois limited liability company ("**Square**") (**Homes, Pointe and Square** being referred to herein collectively, the "**Borrowers**"), **ABLA HOMES LLC**, a Delaware limited liability company (the "**Pledgor**"), **LR DEVELOPMENT COMPANY LLC**, a Delaware limited liability company doing business under the assumed name Related Midwest LLC ("**LR**"), and **QUEST DEVELOPMENT LLC**, an Illinois limited liability company ("**Quest**") (**LR and Quest** being referred to herein collectively as the "**Guarantors**") (the **Borrowers, the Pledgors and the Guarantors** being sometimes referred to herein collectively as the "**Borrower/Pledgor/Guarantor Parties**"), and **BANK OF AMERICA, N.A.**, a national banking association ("**Senior Lender**"), Successor by Merger to LaSalle Bank National Association, a national banking association, as Senior Lender and Agent ("**LaSalle Senior**"), and **BANK OF AMERICA, N.A.**, a national banking association ("**Bridge Lender**"), Successor by Merger to LaSalle Bank National Association, a national banking association, as Bridge Lender ("**LaSalle Bridge**") (**Senior Lender and Bridge Lender** being sometimes referred to herein collectively the "**Lenders**" and Senior Lender in its capacity as agent for Lenders being sometimes referred to herein as the "**Agent**");

WITNESSETH:

WHEREAS, the Borrower/Pledgor/Guarantor Parties and the Lenders heretofore entered into the following documents (collectively, the "**Documents**"):

- (i) Amended and Restated Construction Loan Agreement dated as of May 31, 2007 (the "**Loan Agreement**"), by and among the Borrowers and the Lenders;

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(ii) Promissory Note A (Senior) dated May 31, 2007 ("Note A"), from the Borrowers to LaSalle alone, on its own behalf and not in its capacity as Agent for the Lenders, in the principal amount of \$4,600,000;

(iii) Promissory Note C (Bridge) dated May 31, 2007 ("Note C"), from the Borrowers to LaSalle alone, on its own behalf and not in its capacity as Agent for the Lenders, in the principal amount of \$6,500,000;

(iv) Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of May 1, 2005, by the Borrowers to and for the benefit of LaSalle Senior, on its own behalf and in its capacity as Agent for the Lenders, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on June 6, 2005, as Document No. 0515727126, as modified and amended by the Modification Agreement dated as of May 31, 2007 (the "2007 Modification Agreement"), by and among the Borrower/Pledgor/Guarantor Parties, LaSalle Senior, LaSalle Mezzanine (as defined therein), LaSalle Bridge and the Agent, a Memorandum of which was recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on June 5, 2007, as Document No. 0715609079;

(v) Assignment of Rents and Leases dated as of May 1, 2005, by the Borrowers to and for the benefit of LaSalle Senior, on its own behalf and in its capacity as Agent for the Lenders, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on June 6, 2005, as Document No. 0515727127, as modified and amended by the 2007 Modification Agreement;

(vi) Assignment of Plans, Permits and Contracts dated as of May 1, 2005, from the Borrowers to LaSalle Senior, on its own behalf and in its capacity as Agent for the Lenders, as modified and amended by the 2007 Modification Agreement;

(vii) Pledge of Membership Interests (Security Agreement) dated as of May 1, 2005, by the Pledgors to and in favor of LaSalle Senior, on its own behalf and in its capacity as Agent for the Lenders, as modified and amended by the 2007 Modification Agreement;

(viii) Environmental Indemnity Agreement dated as of May 1, 2005, by the Borrowers and the Guarantors to and for the benefit of LaSalle Senior, on its own behalf and in its capacity as Agent for the Lenders, as modified and amended by the 2007 Modification Agreement;

(ix) Security Agreement (Redevelopment Documents) dated as of May 1, 2005 (the "Security Agreement"), by the Borrowers to and for the benefit of LaSalle Senior, on its own behalf and in its capacity as Agent for the Lenders, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on June 6, 2005, as Document No. 0515727128, as modified and amended by the 2007 Modification Agreement; and

(x) Guaranty of Payment and Completion dated as of May 1, 2005, by the Guarantors for the benefit of LaSalle, on its own behalf in its capacity as Senior Lender

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under the Loan Agreement and in its capacity as Agent for the Lenders under the Loan Agreement, as modified and amended by the 2007 Modification Agreement; and

WHEREAS, the Documents were previously modified and amended by the Amended and Restated Loan Modification Agreement dated as of May 31, 2008 (the "**First Modification**"), by and among the Borrower/Pledgor/Guarantor Parties and the Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on July 8, 2008, as Document No. 0819035119; by the Second Amended and Restated Loan Modification Agreement dated as of September 25, 2008 (the "**Second Modification**"), by and among the Borrower/Pledgor/Guarantor Parties and the Lender, recorded in the Office of said Recorder of Deeds, on October 9, 2008, as Document No. 0828345073; by the Third Amended and Restated Loan Modification Agreement dated as of December 30, 2008 (the "**Third Modification**"), by and among the Borrower/Pledgor/Guarantor Parties and the Lender, recorded in the Office of said Recorder of Deeds on December 31, 2008, as Document No. 0836618024; and by the Fourth Amended and Restated Loan Modification Agreement dated as of March 5, 2009 (the "**Fourth Modification**"), by and among the Borrower/Pledgor/Guarantor Parties and the Lender, recorded in the Office of said Recorder of Deeds on May 22, 2009, as Document No. 0914218037 (the 2007 Modification Agreement, the First Modification, the Second Modification, the Third Modification and the Fourth Modification being referred to herein collectively as the "**Previous Modifications**"); and

WHEREAS the Documents, as modified and amended by the Previous Modifications, encumber the real estate described in **Exhibit A** attached hereto and the personal property located thereon; and

WHEREAS, the parties desire to make certain modifications and amendments to the Documents, as modified and amended by the Previous Modifications, as more fully provided for herein, all as modifications, amendments and continuations of, but not as novations of, the Documents;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Recitals Part of Agreement; Defined Terms, References to Documents.

(a) The foregoing recitals are hereby incorporated into and made a part of this Agreement.

(b) All capitalized terms used and not otherwise defined in this Agreement shall have the meanings set forth in the Loan Agreement.

(c) Except as otherwise stated herein, all references in this Agreement to any one or more of the Documents shall be deemed to include the previous modifications and amendments to the Documents provided for in the Previous Modifications, whether or not express reference is made to such previous modifications and amendments.

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Section 2. Extension of Maturity Date. The maturity date of the Loan and Note C, as previously extended by the Previous Modifications, is hereby extended from June 5, 2009, to February 5, 2010, and all of the Documents, as modified and amended by the Previous Modifications, are hereby modified and amended accordingly. Without limitation on the generality of the foregoing, the date "June 5, 2009" is hereby changed to "February 5, 2010" each time it appears in the Documents, as modified and amended by the Previous Modifications, in reference to the maturity date of the Loan and Note C.

Section 3. Organizational Chart. The Organizational Chart attached to Exhibit H to the Loan Agreement is hereby amended and restated in its entirety, to be as set forth in the certified copy thereof delivered to Bridge Lender on the execution and delivery of this Agreement, and as a condition to the agreements of Bridge Lender provided for in this Agreement.

Section 4. Extension Fee. As a condition to agreements of Bridge Lender and the Agent provided for in this Agreement, on the date of the execution and delivery of this Agreement, the Borrowers shall pay to Bridge Lender a non-refundable extension fee in the amount of \$9,000.

Section 5. Attachment to Note C. Bridge Lender may, and prior to any transfer by it of Note C shall, attach a copy of this Agreement to the original Note C and place an endorsement on the original Note C making reference to the fact that such attachment has been made.

Section 6. Representations and Warranties. In order to induce the Lenders to enter into this Agreement, the Borrower/Pledgor/Guarantor Parties hereby represent and warrant to the Lenders as follows as of the date of this Agreement and if different, as of the date of the execution and delivery of this Agreement:

(a) Each Borrower is a duly formed limited liability company under the laws of the State of Illinois, validly existing, in good standing and fully qualified to do business in the State of Illinois, and has full right, power and authority to enter into this Agreement and each of the Documents to which it is a party and the Previous Modifications and to perform and consummate the transactions contemplated hereby and thereby.

(b) LR is a duly formed limited liability company under the laws of the State of Delaware, validly existing and in good standing in the State of Delaware, fully qualified to do business and in good standing in the State of Illinois, and has full power and authority to execute this Agreement and each of the Documents to which it is a party and the Previous Modifications and to perform and consummate the transactions contemplated hereby and thereby.

(c) Quest is a duly formed limited liability company under the laws of the State of Illinois, validly existing, in good standing and fully qualified to do business in the State of Illinois and has full power and authority to execute this Agreement and each of the Documents to which it is a party and the Previous Modifications and to perform and consummate the transactions contemplated hereby and thereby.

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(d) Execution and delivery of this Agreement and the Documents and the Previous Modifications do not and will not contravene, conflict with, violate or constitute a default under the certificate of formation, articles of organization or articles of incorporation, limited liability company agreement or operating agreement, or bylaws governing any of the Borrower/Pledgor/Guarantor Parties.

(e) This Agreement and each of the Documents and the Previous Modifications constitute the duly authorized, valid and legally binding obligations of the party required to execute the same and will be enforceable strictly in accordance with their respective terms (except to the extent that enforceability may be affected or limited by applicable bankruptcy, insolvency and other similar debtor relief laws affecting the enforcement of creditors' rights generally and general principles of equity).

(f) The Borrower/Pledgor/Guarantor Parties are in full compliance in all material respects with all of the terms and conditions of the Documents to which they are a party and the Previous Modifications, and no Default or Event of Default has occurred and is continuing with respect to any of the Documents or the Previous Modifications.

(g) Except as disclosed to Lenders in writing, there is no litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending or threatened (i) against any Borrower, or (ii) against any Pledgor or any Guarantor which individually or in the aggregate, if adversely determined, would have a material adverse effect on the financial condition of any Pledgor or any Guarantor.

(h) The statements contained in the recitals to this Agreement are true and correct.

Section 7. Documents to Remain in Effect; Confirmation of Obligations; References. The Documents shall remain in full force and effect as originally executed and delivered by the parties, except as previously modified and amended by the Previous Modifications and as modified and amended as provided herein. The Borrower/Pledgor/Guarantor Parties hereby (i) confirm and reaffirm all of their obligations under the Documents, as previously modified and amended by the Previous Modifications and as modified and amended as provided herein; (ii) acknowledge and agree that the Lenders, by entering into this Agreement, do not waive any existing or future default or event of default under any of the Documents, or any rights or remedies under any of the Documents, except as expressly provided herein; (iii) acknowledge and agree that the Lenders have not heretofore waived any default or event of default under any of the Documents, or any rights or remedies under any of the Documents; and (iv) acknowledge and agree that they do not have actual knowledge of any defense, set-off or counterclaim to the payment or performance of any of their obligations under the Documents, as previously modified and amended by the Previous Modifications and as modified and amended herein. All references in the Documents to any one or more of the Documents, or to the "Loan Documents," shall be deemed to refer to such Document, Documents or Loan Documents, as the case may be, as previously modified and amended by the Previous Modifications and as modified and amended by this Agreement.

Section 8. Certifications, Representations and Warranties. In order to induce the Lenders to enter into this Agreement, the Borrower/Pledgor/Guarantor Parties hereby certify,

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represent and warrant to the Lenders that all certifications, representations and warranties contained in the Documents and the Previous Modifications and in all certificates heretofore delivered to the Lenders are true and correct as of the date of this Agreement and if different, as of the date of the execution and delivery of this Agreement, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Agreement and if different, as of the date of the execution and delivery of this Agreement.

Section 9. Entire Agreement; No Reliance. This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this Agreement other than as are herein set forth. The Borrower/Pledgor/Guarantor Parties acknowledge that they are executing this Agreement without relying on any statements, representations or warranties, either oral or written, that are not expressly set forth herein.

Section 10. Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

Section 11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12. Amendments, Changes and Modifications. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

Section 13. Construction.

(a) The words "hereof," "herein," and "hereunder," and other words of a similar import refer to this Agreement as a whole and not to the individual Sections in which such terms are used.

(b) References to Sections and other subdivisions of this Agreement are to the designated Sections and other subdivisions of this Agreement as originally executed.

(c) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(d) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

(e) The Borrower/Pledgor/Guarantor Parties and the Lenders, and their respective legal counsel, have participated in the drafting of this Agreement, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Agreement.

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Section 14. Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 15. Governing Law. This Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

**[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]**

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IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

**RS HOMES I LLC
RS POINTE LLC
RS SQUARE LLC**

By ABLA Homes LLC, Sole Member of each Borrower

By LR ABLA LLC, Manager/Member

By LR Development Company LLC, d/b/a Related Midwest LLC, Sole Member

By Deborah Walters
Deborah Walters, Vice President

ABLA HOMES LLC

By LR ABLA LLC, Manager/Member

By LR Development Company LLC, d/b/a Related Midwest LLC, Sole Member

By Deborah Walters
Deborah Walters, Vice President

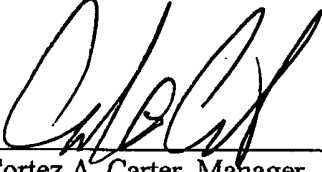
LR DEVELOPMENT COMPANY LLC, d/b/a Related Midwest LLC

By Deborah Walters
Deborah Walters, Vice President

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QUEST DEVELOPMENT LLC

By 
Cortez A. Carter, Manager

**BANK OF AMERICA, N.A., Successor by Merger to
LaSalle Bank National Association, as Agent**

By _____
Printed Name: _____
Title: _____

**BANK OF AMERICA, N.A., Successor by Merger to
LaSalle Bank National Association, as Bridge Lender**

By _____
Printed Name: _____
Title: _____

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QUEST DEVELOPMENT LLC

By _____
Cortez A. Carter, Manager

BANK OF AMERICA, N.A., Successor by Merger to
LaSalle Bank National Association, as Agent

By Evan J. Sitariski
Printed Name: Evan J. Sitariski
Title: Vice President

BANK OF AMERICA, N.A., Successor by Merger to
LaSalle Bank National Association, as Bridge Lender

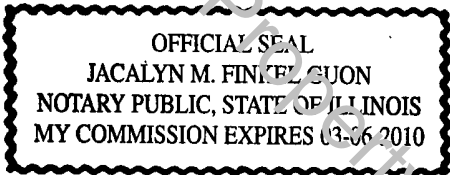
By Evan J. Sitariski
Printed Name: Evan J. Sitariski
Title: Vice President

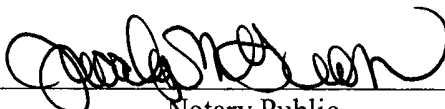
Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 29th day of June, 2009, by Deborah Walters, Vice President of LR Development Company LLC, a Delaware limited liability company, the sole member of LR ABLA LLC, a Delaware limited liability company, the member/manager of ABLA Homes LLC, a Delaware limited liability company, the sole member of RS Homes I LLC, RS Pointe LLC and RS Square LLC, each an Illinois limited liability company, on behalf of said limited liability companies.

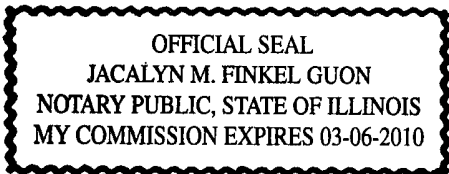




Notary Public

STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 29th day of June, 2009, by Deborah Walters, Vice President of LR Development Company LLC, a Delaware limited liability company, the sole member of LR ABLA LLC, a Delaware limited liability company, the member/manager of ABLA Homes LLC, a Delaware limited liability company, on behalf of said limited liability companies.



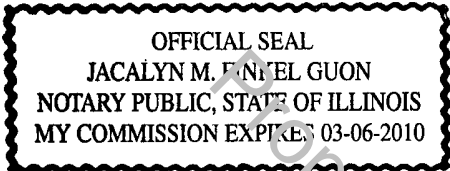


Notary Public

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 29th day of June, 2009, by Deborah Walters, Vice President of LR Development Company LLC, a Delaware limited liability company doing business under the assumed name Related Midwest LLC, on behalf of the company.

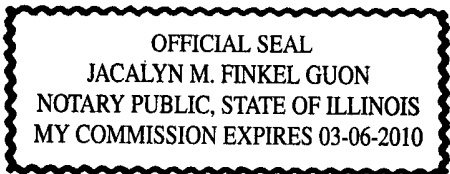





Notary Public

STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 29th day of June, 2009, by Cortez Al Carter, Manager of Quest Development LLC, an Illinois limited liability company, on behalf of the company.





Notary Public

STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of June, 2009, by _____, _____ of Bank of America, N.A., a national banking association, on behalf of the association, in its capacity as Agent.

Notary Public

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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this _____ day of June, 2009, by Deborah Walters, Vice President of LR Development Company LLC, a Delaware limited liability company doing business under the assumed name Related Midwest LLC, on behalf of the company.

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this _____ day of June, 2009, by Cortez Al Carter, Manager of Quest Development LLC, an Illinois limited liability company, on behalf of the company.

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this 30th day of June, 2009, by Evan J. Sitariski, VP of Bank of America, N.A., a national banking association, on behalf of the association, in its capacity as Agent.

Preeti Saini

Notary Public



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 30th day of June, 2009, by Evan J Sitariski, VP of Bank of America, N.A., a national banking association, on behalf of the association, in its capacity as Bridge Lender.



Notary Public



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EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

THE FRANKLIN, UNIT 212

PARCEL 1: UNIT 212 IN THE FRANKLIN AT ROOSEVELT SQUARE CONDOMINIUMS (AS HEREINAFTER DESCRIBED) TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, WHICH UNIT AND COMMON ELEMENTS ARE COMPRISED OF:

(A) THE LEASEHOLD ESTATE (SAID LEASEHOLD BEING DEFINED IN PARAGRAPH 1.C. OF THE ALTA LEASEHOLD ENDORSEMENT(S) ATTACHED HERETO), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY: CHICAGO HOUSING AUTHORITY, AS LESSOR, AND RS SQUARE LLC, AS LESSEE, DATED AS OF MAY 1, 2005, WHICH LEASE WAS RECORDED JUNE 6, 2005 AS DOCUMENT NUMBER 0515727116, AND RE-RECORDED JUNE 16, 2005 AS DOCUMENT 0516745100; WHICH LEASE AS AMENDED, DEMISES THE LAND (AS HEREINAFTER DESCRIBED IN 1(B) BELOW) FOR A TERM OF 99 YEARS (EXCEPT THE BUILDINGS AND IMPROVEMENTS ON THE LAND);

(B) OWNERSHIP OF THE BUILDINGS AND IMPROVEMENTS LOCATED ON THE FOLLOWING DESCRIBED LAND: LOT 33 IN PLAT 2 ROOSEVELT SQUARE SUBDIVISION, A RESUBDIVISION OF BLOCKS 6, 7, AND PART OF 8 OF HENRY WALLER'S SUBDIVISION, PART OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH SURVEY IS ATTACHED AS EXHIBIT "A-2" TO THE DECLARATION OF CONDOMINIUMS, RECORDED AS DOCUMENT NUMBER 0629010076, AND AMENDED FROM TIME TO TIME, IN COOK COUNTY, ILLINOIS.

Common Address: 1155 W. Roosevelt, Unit 212

Permanent Index Number(s): 17-20-200-091-4012 (affects subject property for 2007 and beyond)