

# UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY  
AFTER RECORDING RETURN TO:

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Doc#: 0921533008 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/03/2009 08:18 AM Pg: 1 of 10

## FIRST AMENDMENT TO CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

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8331340  
THIS FIRST AMENDMENT TO JUNIOR CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Amendment"), is made and entered into as of this 28 day of July, 2009, by and among LIBRARY TOWER L.L.C., an Illinois limited liability company ("Mortgagor"), and BANK OF AMERICA, N.A., a national banking association and the successor by merger to LaSalle Bank National Association, as Agent for the Banks from time to time parties to the Loan Agreement ("Mortgagee").

### RECITALS

A. LaSalle Bank National Association, the predecessor in interest to Mortgagor, as Agent, certain Banks party thereto from time to time and Borrower entered into that certain Mezzanine Construction Loan Agreement dated May 11, 2006 (the "Initial Loan Agreement"), as amended by Modification of Mezzanine Construction Loan Agreement and Consent dated December 26, 2006, Second Modification of Mezzanine Construction Loan Agreement dated January 23, 2007, Third Modification of Mezzanine Construction Loan Agreement dated April 30, 2007 and Fourth Modification of Mezzanine Construction Loan Agreement of even date herewith (collectively, the "Loan Amendments") and, together with the Initial Loan Agreement, collectively, the "Loan Agreement"), pursuant to which the Banks agreed to make a construction loan to Mortgagor in the original principal amount of \$11,500,000 (the "Mezzanine Loan").

B. The Mezzanine Loan is secured by that certain Junior Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated May 11, 2006 and recorded on May 18, 2006 in the office of the Cook County Recorder of Deeds as Document No. 0613833131 (the "Mortgage"), which Mortgage encumbers certain real property described on Exhibit A attached hereto.

C. In connection with the execution and delivery of the Fourth Modification of Mezzanine Construction Loan Agreement referred to in Recital A, Mortgagee and Mortgagor wish to modify the Mortgage as hereinafter set forth.

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## AGREEMENTS

In consideration of the foregoing Recitals (which are incorporated herein by this reference) and the mutual agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Capitalized terms used herein and not defined in this Amendment shall have the respective meanings ascribed to such terms in the Mortgage.
2. Pursuant to the Loan Agreement, the maturity date of the Mezzanine Loan and the due date of the Note have been extended to December 11, 2010, and such dates are subject to further extension upon the terms and subject to the conditions in the Loan Agreement.
3. The parties hereto agree that, from and after the date hereof: (a) the terms "Loan Agreement," "Note," and "Loan Documents," each as used in the Mortgage (as amended hereby), and all other references to any Loan Document in the Mortgage (as amended hereby), shall mean and refer to the Loan Agreement, the Note and the Loan Documents, respectively, each as amended by the Loan Amendments; and (b) the term "Mortgagee", as used in the Mortgage (as amended hereby) shall refer to Bank of America, N.A., a national banking association and the successor by merger to LaSalle Bank National Association, as Agent for the Banks from time to time parties to the Loan Agreement.
4. Except as expressly modified and amended by this Amendment and/or the Loan Amendments, the Mortgage shall continue in full force and effect and, as thus modified and amended, is hereby ratified, confirmed and approved. This Amendment applies to, inures to the benefit of and is binding on the parties hereto, and their respective successors and assigns.
5. THIS AMENDMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.
6. This Amendment shall be governed by and construed in accordance with, the laws of the State of Illinois.
7. This Amendment may be executed in multiple counterparts all of which taken together shall constitute one executed original.
8. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AMENDMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF MORTGAGEE, IN ANY OTHER COURT IN WHICH MORTGAGEE SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE

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DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH 8. MORTGAGOR HEREBY WAIVES PERSONAL SERVICE UPON EACH PARTY, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO SUCH PARTY AT THE ADDRESS STATED HEREIN OR IN THE LOAN DOCUMENTS AND SERVICE SO MADE WILL BE DEEMED COMPLETED UPON RECEIPT OR BY ANY OTHER MEANS PERMITTED BY THE LAWS OF THE STATE OF ILLINOIS. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS AMENDMENT OR ANY OF THE LOAN DOCUMENTS ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

9. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE DEALINGS OF MORTGAGOR AND MORTGAGEE WITH RESPECT TO THIS AMENDMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT MORTGAGOR OR MORTGAGEE MAY FILE A COPY OF THIS AMENDMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF MORTGAGOR AND MORTGAGEE TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, Mortgagor and Mortgagee have caused this Amendment to be executed as of the day and year first above written.

**MORTGAGOR:**

LIBRARY TOWER L.L.C.,  
an Illinois limited liability company

By: Lennar Chicago, Inc., an Illinois  
Corporation, as successor by merger to  
Concord Homes, Inc., its Managing  
Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MORTGAGEE:**

BANK OF AMERICA, N.A.,  
a national banking association and successor by  
merger to LaSalle bank National Association, as a  
Bank and as Administrative Agent for the Banks

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, Mortgagor and Mortgagee have caused this Amendment to be executed as of the day and year first above written.

**MORTGAGOR:**

LIBRARY TOWER L.L.C.,  
an Illinois limited liability company

By: Lennar Chicago, Inc., an Illinois  
Corporation, as successor by merger to  
Concord Homes, Inc., its Managing  
Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MORTGAGEE:**

BANK OF AMERICA, N.A.,  
a national banking association and successor by  
merger to LaSalle bank National Association, as a  
Bank and as Administrative Agent for the Banks

By: \_\_\_\_\_  
Name: John G. Arnold  
Title: Senior Vice President

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, Mortgagor and Mortgagee have caused this Amendment to be executed as of the day and year first above written.

**MORTGAGOR:**

LIBRARY TOWER L.L.C.,  
an Illinois limited liability company

By: Lennar Chicago, Inc., an Illinois Corporation, as successor by merger to Concord Homes, Inc., its Managing Member

By: Erik Higgins  
Name: \_\_\_\_\_  
Title: Erik R. Higgins  
Vice President

**MORTGAGEE:**

BANK OF AMERICA, N.A.,  
a national banking association and successor by merger to LaSalle bank National Association, as a Bank and as Administrative Agent for the Banks

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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STATE OF ILLINOIS, COUNTY OF COOK, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_ day of July, 2009, before me, the undersigned Notary Public of said State, that \_\_\_\_\_, as \_\_\_\_\_ of LIBRARY TOWER L.L.C., a Illinois limited liability company, as \_\_\_\_\_ of Lennar Chicago, Inc., an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation and such limited liability company, for the uses and purposes therein set forth.

WITNESS my hand and Notarial Seal.

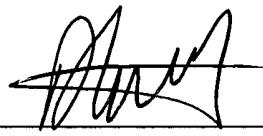
\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ILLINOIS, COUNTY OF COOK, TO WIT:

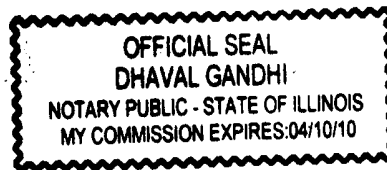
I HEREBY CERTIFY, that on this 21<sup>st</sup> day of July, 2009 before me, the undersigned Notary Public of said State, that JOHN ARNOLD, the SVP of BANK OF AMERICA, N.A. a national banking association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such SVP, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of such Bank, for the uses and purposes therein set forth.

WITNESS my hand and Notarial Seal.



\_\_\_\_\_  
Notary Public

My Commission Expires: 4/10/10



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## All-Purpose Acknowledgment

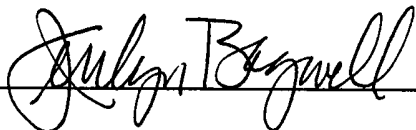
State of California )

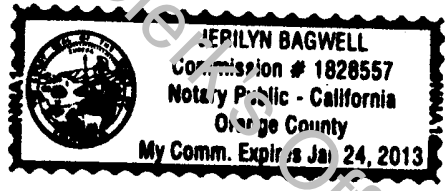
County of Orange )

On July 23, 2009 before me, Jerilyn Bagwell, Notary Public, personally appeared Erik Higgins who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Jerilyn Bagwell, Notary Public



My Commission Expires: January 24, 2013

Commission Number: 1828557



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## EXHIBIT A LEGAL DESCRIPTION OF THE PROPERTY

*[TILTE COMPANY TO SUPPLY DESCRIPTIONS AND PINS]*

PINS:

Common Address: \_\_\_\_\_, Chicago, Illinois

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## EXHIBIT A LEGAL DESCRIPTION OF THE PROPERTY

UNITS 501, 502, 517, 601, 604, 606, 608, 616, 617, 701, 703, 704, 705, 706, 707, 709, 717, 801, 804, 805, 807, 808, 815, 816, 817, 901, 903, 904, 905, 906, 907, 908, 914, 917, 1001, 1002, 1004, 1005, 1006, 1007, 1008, 1010, 1013, 1014, 1015, 1017, 1101, 1102, 1103, 1104, 1106, 1107, 1108, 1110, 1111, 1112, 1113, 1115, 1117, 1201, 1203, 1204, 1205, 1206, 1208, 1209, 1212, 1214, 1217, 1401, 1402, 1403, 1404, 1405, 1406, 1408, 1412, 1413, 1415, 1416, 1501, 1502, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1512, 1516, 1619, 1620, 1621, 1622, 1623, 1625, 1626, 1718, 1719, 1720, 1721, 1722, 1726 AND 1727 IN LIBRARY TOWER CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE.

PART OF LOT 7, PART OF LOTS 12, 13, 18, 19 AND 24 IN C. L. AND I. HARMON'S SUBDIVISION OF BLOCK 137 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, WHICH PLAT OF SURVEY IS ATTACHED TO THE DECLARATION OF CONDOMINIUM RECORDED MAY 8, 2008 AS DOCUMENT NUMBER 0812949046, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS.

PINS: 17-16-247-038-0000, 17-16-247-039-0000, 17-16-247-040-0000, 17-16-247-041-0000, 17-16-247-042-0000, 17-16-247-051-0000, and 17-16-247-065-0000.