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Cook County Recorder of Deeds
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MODIFICATION AGREEMENT

THIS **MODIFICATION AGREEMENT** (this "**Agreement**") is dated as of November 11, 2009, by and among **OM DEVELOPMENT, LLC**, an Illinois limited liability ("**OM Development**"), **MARTIN BHATIA** ("**Martin**") and **SUDHIR K. BHATIA** ("**Sudhir**"; together with Green Marshfield and Martin, jointly and severally, the "**Obligors**" and each an "**Obligor**") and **FIRST NATIONAL BANK OF NAPERVILLE**, its successors and assigns (the "**Bank**").

RECITALS:

A. Bank made a loan to OM Development in the original principal amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) (the "**OM Loan**"). The OM Loan is evidenced by a Promissory Note made by OM Development, to the Bank, dated October 20, 2006, as amended by that certain Change in Terms Agreement dated October 20, 2007, as further amended by that certain Change in Terms Agreement dated October 20, 2008 (as may have been or may be further amended, restated or replaced from time to time, the "**OM Note**").

B. The OM Loan is secured by, among other things: (i) that certain Construction Mortgage dated October 20, 2006 made by OM in favor of the Bank and recorded with the Cook County, Illinois Recorder's Office (the "**Recorder's Office**") on November 13, 2006 as Document No. 0631720332 (as such mortgage has been and may be amended, restated or replaced from time to time, the "**OM Mortgage**"), which Mortgage encumbers the real property legally described on Exhibit A attached hereto, (ii) that certain Commercial Guaranty dated October 20, 2007 made by Martin in favor of the Bank (as such guaranty has been and may be amended, restated or replaced from time to time, the "**Martin OM Guaranty**"); (iv) that certain Commercial Guaranty dated October 20, 2007 made by Sudhir in favor of the Bank (as such guaranty has been and may be amended, restated or replaced from time to time, the "**Sudhir OM Guaranty**") and (v) certain other loan documents (the OM Note, the OM Mortgage, the Martin OM Guaranty, the Sudhir OM Guaranty and all of the other documents evidencing and/or securing the OM Loan, in their original form and as amended, restated or replaced from time to time, are sometimes collectively referred to herein as the "**OM Loan Documents**"). The Bank is the holder of the OM Note and is the secured party under the OM Loan Documents.

C. Bank made a construction loan to Green Marshfield, LLC, an Illinois limited liability company ("**Green Marshfield**") in the original principal amount of One Million and 00/100 Dollars (\$1,000,000.00) (the "**Green Marshfield Loan**") to construct a 4 unit

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condominium project the ("**Green Marshfield Project**"). The Green Marshfield Loan is evidenced by a Promissory Note made by Green Marshfield, to the Bank, dated July 13, 2007, as amended by that certain Promissory Note made by Green Marshfield to the Bank dated July 13, 2008, as further amended by that certain Change in Terms Agreement dated October 13, 2008 (as may have been or may be further amended, restated or replaced from time to time, the "**Green Marshfield Note**").

D. The Green Marshfield Loan is secured by, among other things: (i) that certain Construction Mortgage dated July 13, 2007 made by Green Marshfield in favor of the Bank and recorded with the Recorder's Office on July 17, 2007 as Document No. 0719835060 (as such mortgage has been and may be amended, restated or replaced from time to time, the "**Green Marshfield Mortgage**"), which Mortgage encumbers the real property legally described therein (the "**Green Marshfield Property**"), (ii) that certain Assignment of Rents dated July 13, 2007 made by Green Marshfield in favor of Bank and recorded in the Recorder's Office on July 17, 2007 as document No. 0719835061 (the "**Green Marshfield Assignment**"), (iii) that certain Commercial Guaranty dated July 13, 2008 made by Martin in favor of the Bank (as such guaranty has been and may be amended, restated or replaced from time to time, the "**Martin GM Guaranty**"); (iv) that certain Commercial Guaranty dated July 13, 2008 made by Sudhir in favor of the Bank (as such guaranty has been and may be amended, restated or replaced from time to time, the "**Sudhir GM Guaranty**") and (v) certain other loan documents (the Green Marshfield Note, the Green Marshfield Mortgage, the Green Marshfield Assignment, the Martin GM Guaranty, the Sudhir GM Guaranty and all of the other documents evidencing and/or securing the Green Marshfield Loan, in their original form and as amended, restated or replaced from time to time, are sometimes collectively referred to herein as the "**GM Loan Documents**").

E. Bank made an unsecured loan to Sudhir in the original principal amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "**Sudhir Loan**"). The Sudhir Loan is evidenced by a Promissory Note and Disclosure made by Sudhir, to the Bank, dated April 8, 2009 (as may have been or may be amended, restated or replaced from time to time, the "**Sudhir Note**"). The Sudhir Note and all other documents evidencing and/or executed in connection with the Sudhir Loan are hereafter collectively referred to as the Sudhir Loan Documents. The Bank is the holder of the Sudhir Note.

F. Concurrently herewith, Bank is making a loan jointly to OM Development and Green Marshfield in the original principal amount of Seventy Thousand and 00/100 Dollars (\$70,000.00) (the "**2009 Loan**"), which loan will be used to fund partial completion of construction of the Green Marshfield Project. The 2009 Loan is evidenced by a Promissory Note jointly made by OM Development and Green Marshfield to Bank, dated November 11, 2009 (as may be amended, modified, restated or replaced from time to time, the "**2009 Note**"). The 2009 Loan is secured, by among other things, (i) that certain Mortgage dated November 11, 2009 made by OM in favor of the Bank (as such mortgage may be amended, restated or replaced from time to time, the "**2009 Mortgage**") which Mortgage encumbers the real property legally described therein and is being given by OM in consideration for the Bank entering into the Forbearance Agreement (as defined below), (ii) that certain Commercial Guaranty dated November 11, 2009 made by Martin in favor of the Bank (as such guaranty may be amended, restated or replaced from time to time, the "**Martin 2009 Guaranty**"); (iii) that certain Commercial Guaranty dated November 11, 2009 made by Sudhir in favor of the Bank (as such

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guaranty may be amended, restated or replaced from time to time, the “**Sudhir 2009 Guaranty**”). The 2009 Note, 2009 Mortgage, Martin 2009 Guaranty, Sudhir 2009 Guaranty and all other documents which evidence and/or secure the 2009 Loan are sometimes hereafter collectively referred to as the “**2009 Loan Documents**”.

G. Concurrently herewith, Obligors, OM Development and the Bank are entering into that certain Forbearance and Loan Modification Agreement (the “**Forbearance Agreement**”), pursuant to which Bank has agreed to forbear from exercising its rights and remedies under the Green Marshfield Loan Documents, OM Loan Documents and Sudhir Loan Documents. A condition precedent to Bank entering into the Forbearance Agreement is the execution and delivery of this Agreement by Obligors.

AGREEMENTS:

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the mutual receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Modifications of OM Loan Documents.**

(a) The maturity date of the OM Note is hereby extended to June 30, 2010.

(b) The OM Mortgage and other OM Loan Documents are hereby modified to provide that a default or an “Event of Default” under the Forbearance Agreement, GM Loan Documents, Sudhir Loan Documents or 2009 Loan Documents shall constitute an Event of Default under the OM Loan Documents. Furthermore, the OM Mortgage and other documents securing the OM Loan are hereby modified to provided that such documents also secure the GM Loan, Sudhir Loan and 2009 Loan.

(c) The legal description contained in the OM Mortgage contains a scrivener’s error. The legal description set forth in the OM Mortgage and other OM Loan Documents is hereby deleted in its entirety and replaced with the following:

“THE SOUTH 25 FEET OF LOT 31 (EXCEPT SO MUCH THEREOF
TAKEN BY ALLEY) IN MARGARET JOHNSTON’S SUBDIVISION
OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST
1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF
THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,
ILLINOIS”

2. **Limited Amendment; Ratification.** This Agreement is given solely to amend the OM Loan Documents as set forth herein. No further amendment or modification is made or intended, and the terms and provisions of the OM Loan Documents, except as expressly modified herein, continue in full force and effect after the date hereof. The warranties, representations, covenants and agreements contained in the OM Loan Documents, as herein expressly amended, are hereby specifically reaffirmed and remade by Obligors and each OM

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Loan Document, as herein expressly amended, is hereby ratified, approved and confirmed in every respect.

3. **No Release or Novation.** The indebtedness secured by the OM Loan Documents are continuing obligations and nothing contained herein shall be deemed to release, terminate or subordinate any lien, security interest or assignment created or evidenced by the OM Loan Documents and all such liens, security interest and assignments and the priority thereof shall relate back to the date of the OM Loan Documents. Obligor and the Bank intend that this Agreement shall in no way affect the priority of the OM Loan Documents or constitute a novation of the indebtedness secured thereby.

4. **Representations and Warranties of Obligors.** Obligor hereby represent, covenant and warrant to the Bank as follows:

(i) Except as set forth in the Forbearance Agreement, there is currently no Event of Default under the OM Loan Documents, and Obligor 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 OM Loan Documents.

(ii) There has been no material adverse change in the financial condition of Obligor from the date of the most recent financial statement received by the Bank.

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

(iv) This Agreement has been duly executed and delivered on behalf of Obligor.

5. **Title Policy.** As a condition precedent to the agreements contained herein, Obligor shall, at their sole cost and expense, cause First Title Insurance Company to issue an endorsement to Bank's title insurance policy No. C-1511026 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the OM 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 the Bank.

6. **Reaffirmation of Guaranties.** Sudhir ratifies and affirm the Sudhir GM Guaranty and Sudhir OM Guaranty (jointly, the "**Sudhir Guaranties**") and agrees that the Sudhir Guaranties are in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Sudhir in the Sudhir Guaranties are, as of the date hereof, true and correct and Sudhir does not know of any default thereunder. The Sudhir Guaranties continue to be the valid and binding obligations of Sudhir, enforceable in accordance with their terms and Sudhir has no claims or defenses to the enforcement of the rights and remedies of Bank thereunder.

Martin ratifies and affirm the Martin GM Guaranty and Martin OM Guaranty (jointly, the "**Martin Guaranties**") and agrees that the Martin Guaranties are in full force and effect

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following the execution and delivery of this Agreement. The representations and warranties of Martin in the Martin Guaranties are, as of the date hereof, true and correct and Martin does not know of any default thereunder. The Martin Guaranties continue to be the valid and binding obligations of Martin, enforceable in accordance with their terms and Martin has no claims or defenses to the enforcement of the rights and remedies of Bank thereunder.

7. **Payment of Loan Fee and Additional Loan Expenses.** The Obligors hereby agree to pay prior to June 30, 2010, all of the Bank's reasonable attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees referred to in, necessitated by or otherwise relating to this Agreement (collectively, the "Additional Expenses"). Any Additional Expenses not paid when due shall accrue interest at the default interest rate set forth in the OM Note.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

9. **Entire Agreement.** Obligors and the Bank each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Forbearance Agreement and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Obligors and the Bank; 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 OM Loan Documents are and remain unmodified and in full force and effect.

10. **Obligors Not a Joint Venturer or Partner.** Notwithstanding the execution of this Agreement by the Bank, the same shall not be deemed to constitute the Bank a venturer or partner of or in any way associated with Obligors nor shall privity of contract be presumed to have been established with any third party.

11. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, substitutes and assigns.

12. **Headings and Gender.** Any references to the "OM Loan Documents" contained in any of the OM Loan Documents shall be deemed to refer to such OM 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.

13. **Construction of Agreement; Authority to Execute.** This Agreement has been negotiated by the parties and their respective attorneys. The language in this Agreement shall not be construed for or against either party based on any rule of construction favoring the non-drafting party, but shall be interpreted liberally to effect the intent of the parties. Obligors and Bank each acknowledges and waives any claim contesting the existence and the adequacy of the

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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.

14. **Counterparts**. This Agreement may be executed in any number of original counterparts, which when so executed shall be deemed to be an original for all purposes, and all counterparts shall together constitute one and same instrument; signature and acknowledgment pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same documents. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BANK:

**FIRST NATIONAL BANK OF
NAPERVILLE**

By: Candice S. Fox
Name: Candice S. Fox
Title: Vice President

OBLIGORS:

**OM DEVELOPMENT, LLC, an Illinois
limited liability company**

By: M. Bhatia
Name: Martin Bhatia
Title: Member

M. Bhatia
MARTIN BHATIA, personally

S. Bhatia
SUDHIR BHATIA, personally

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STATE OF Illinois)
) SS.
 COUNTY OF Du Page)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that CANDIE S. FOX, a VICE PRESIDENT of **FIRST NATIONAL BANK OF NAPERVILLE**, who 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/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18th day of November, 2009.

Irma Congelosi

Notary Public



My Commission Expires:

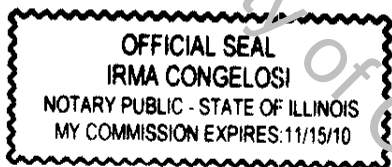
11-15-10

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STATE OF Illinois)
) SS.
COUNTY OF Du Page)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that MARTIN V BHATIA, a member of **OM DEVELOPMENT, LLC**, an Illinois limited liability company, who 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/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18th day of November, 2009.



Irma Congelosi
Notary Public

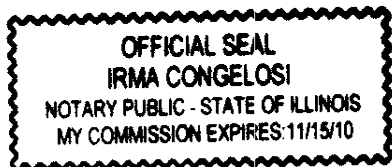
My Commission Expires:

11-15-10

STATE OF Illinois)
) SS.
COUNTY OF Du Page)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **MARTIN BHATIA**, who 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 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 18th day of November, 2009.



Irma Congelosi
Notary Public

My Commission Expires:

11-15-10

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STATE OF Illinois)
) SS.
COUNTY OF Du Page)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **SUDHIR BHATIA**, who 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 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 18th day of November, 2009.

Irma Congelosi
Notary Public



My Commission Expires:

11-15-10

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EXHIBIT A

PROPERTY

THE SOUTH 25 FEET OF LOT 31 (EXCEPT SO MUCH THEREOF TAKEN BY ALLEY) IN MARGARET JOHNSTON'S SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

4227 S. SAINT LAWRENCE
CHICAGO, IL 60653

20-03-224-014