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RECORDATION REQUESTED BY:

Mr. Jamie L. Ross
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134 North LaSalle Street
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Doc#: 1001244119 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/12/2010 02:23 PM Pg: 1 of 12

AFTER RECORDED MAIL TO:

NorthSide Community Bank
205 W. Wacker Drive
Chicago, Illinois 60606
Attn: Carla Reisinger

THIS INSTRUMENT PREPARED BY:

Mr. Jamie L. Ross
Kalcheim Haber, LLP
134 North LaSalle Street
Suite 2100
Chicago, Illinois 60602

FOURTH MODIFICATION AGREEMENT

This Fourth Modification Agreement ("Modification Agreement") is made as of the 27 day of August, 2009, among NORTHSIDE COMMUNITY BANK, an Illinois state bank ("Lender"), 6737 WEST IRVING PARK ROAD, LLC, an Illinois limited liability company ("Borrower"), ANTHONY SCHIAVONE, BEVERLY SCHIAVONE, JOSEPH SCHIAVONE and BARBARA SCHIAVONE (each individually, a "Guarantor," and, collectively, "Guarantors") and ALBANY BANK AND TRUST COMPANY, N.A., AS TRUSTEE UNDER THAT CERTAIN TRUST AGREEMENT DATED JUNE 1, 1994 AND KNOWN AS TRUST NUMBER 11-5030 ("Land Trustee").

WITNESSETH

WHEREAS, Borrower and Lender entered into a Construction Loan Agreement, dated as of September 14, 2006 (the "Loan Agreement");

WHEREAS, Borrower executed a Non-Revolving Promissory Note in the principal amount of ONE MILLION FOUR HUNDRED FIFTEEN THOUSAND AND 00/100 DOLLARS (\$1,415,000.00), dated September 14, 2006 (the "Note") in favor of Lender;

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WHEREAS, in connection with the Loan Agreement and the Note:

1. Borrower did execute a Construction Mortgage on real property, commonly known as 6737 West Irving Park Road, Chicago, Illinois and legally described on Exhibit "A" attached hereto, dated September 14, 2006 in favor of Lender, which was filed with the Recorder of Deeds of Cook County, Illinois on December 8, 2006 as document number 0634254001 ("Mortgage");

2. Borrower did execute an Assignment of Rents on the real property commonly known as 6737 West Irving Park Road, Chicago, Illinois, and legally described on Exhibit "A" attached hereto, dated September 14, 2006 in favor of Lender, which was filed with the Recorder of Deeds of Cook County, Illinois on December 8, 2006 as document number 0634254002 ("Assignment of Rents");

3. Land Trustee did execute a Mortgage on the real property, commonly known as 4210 West Montrose, Chicago, Illinois (the "Montrose Property"), and legally described on Exhibit "B" hereto, dated September 14, 2006, which was recorded with the Recorder of Deeds of Cook County, Illinois on September 27, 2006 as document number 0627035041 ("Montrose Mortgage");

4. Land Trustee did execute an Assignment of Rents on the real property, commonly known as 4210 West Montrose, Chicago, Illinois and legally described on Exhibit "B" hereto, dated September 14, 2006, which was recorded with the Recorder of Deeds of Cook County, Illinois on September 27, 2006 as document number 0627035042 ("Montrose Assignment of Rents");

5. The Guarantors did execute a Commercial Guaranty dated September 14, 2006 in favor of Lender ("Guaranty");

6. Borrower and the Guarantors did execute various other documents ("Other Documents"); and

WHEREAS, Borrower, Guarantors, Land Trustee and Lender did execute a First Modification Agreement dated March 14, 2008 ("First Modification Agreement"), and

WHEREAS, Borrower, Guarantors, Land Trustee and Lender did execute a Second Loan Modification Agreement dated September 14, 2008 ("Second Modification Agreement");

WHEREASE, Borrower, Guarantors, Land Trustee and Lender did execute a Third Loan Modification Agreement dated March 14, 2009 ("Third Modification Agreement"); and

WHEREAS, Borrower and the Guarantors have requested Lender to further modify and amend certain provisions of the Loan Agreement, the Mortgage, the

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Assignment of Rents, the Montrose Mortgage, the Montrose Assignment of Rents and the Other Documents to, among other things, extend the Maturity Date of the Note; and

WHEREAS, Lender is willing to grant Borrower's and Guarantors' requests on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, and of any amendments or modifications (including, but not limited to, the First Modification Agreement, Second Modification Agreement, and Third Modification Agreement) heretofore, now or hereafter made by Lender to Borrower and the Guarantors, the parties hereto hereby agree as follows:

All capitalized terms used herein without definition shall have the meaning as set forth in the Loan Agreement.

1. **Amendments to Loan Agreement.** The Loan Agreement is hereby amended as follows:

- (a) **Maturity Date.** The "Maturity Date" set forth in Section 1.1(b) thereof is extended from "September 14, 2009" to "February 14, 2010."
- (b) **Interest Rate.** Section 1.2(a) of the Loan Agreement is hereby modified in its entirety so as to provide as follows:
 - (a) **Interest on Loans.** Effective July 15, 2009, the unpaid principal amount of the Loans shall bear interest from the date thereof until the Maturity Date (whether by acceleration or otherwise) at a fixed rate of Six and Twenty Five One Hundredths of One Percent (6.25%) per annum (the "Interest Rate").
- (c) **Default Interest.** Section 1.2(b) of the Loan Agreement is hereby modified in its entirety so as to provide as follows:
 - (b) **Default Interest.** Notwithstanding the above provisions, if any Event of Default exists, all outstanding amounts of principal and, to the extent permitted by law, all overdue interest, in respect of each and every Loan shall bear interest, payable on demand, at the Default Rate. In no event shall Borrower be permitted to defer payment of any portion of any accrued interest after an Event of Default or when the Default Rate is in effect.
- (d) **Accrual and Payment of Interest.** Section 1.2(c) of the Loan Agreement is hereby modified in its entirety so as to provide as follows:
 - (c) **Accrual and Payment of Interest.** Prior to the Maturity Date and so long as no Event of Default shall have occurred, interest

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shall accrue on the unpaid balance of the Loan at the Interest Rate, and shall be payable in arrears upon the earlier to occur of the date of the next Unit sale or the Maturity Date (whether by acceleration or otherwise). After the Maturity Date, an Event of Default, or when the Default Rate is in effect, interest shall accrue at the Default Rate and shall be payable on demand.

- (e) Sales Requirements. Section 3.1 of the Loan Agreement is hereby amended by adding the following provision:

(nn) Sales Requirements. At the time hereof, Borrower has one 2-bedroom and four 1-bedroom Units remaining for sale. Effective upon execution of this Modification Agreement, Borrower shall reduce the listing price for sale on the 2-bedroom Unit to \$148,500, and on the 1-bedroom Units to \$97,500. Thereafter, Borrower shall, in consultation with Lender, make all price reductions reasonably necessary to result in all Units being sold and closed by February 14, 2010. Borrower shall promptly deliver to Lender copies of all listing agreements, Unit sales contracts, and leases affecting the Montrose Property. Lender shall have the right to approve or disapprove the Unit sales contracts and listing price reductions on the Units.

- (f) Conditional Write-Down of Principal Loan Balance. Section 1 of the Loan Agreement is hereby amended by adding the following provision Section 1.12:

1.12 Conditional Write-Down of Principal Loan Balance. Upon the Maturity Date and so long as no Event of Default shall have occurred, and provided that the provisions of Section 3.1(nn) have been completed with the sale and closing of all Units on or before February 14, 2010, Lender will as an accommodation to Borrower write-down one half of the then-outstanding and unpaid principal balance of the Loan.

2. Amendment to Mortgage, Assignment of Rents, Montrose Mortgage, Montrose Assignment of Rents and Other Documents. The "Maturity Date" referred to in the definition of "Note" in Section 7.1 of the Mortgage and the Montrose Mortgage and in the definition of "Note" in Section 5.1 of the Assignment of Rents and the Montrose Assignment of Rents and wherever else it may appear in said documents and the Other Documents is changed from September 14, 2009 to February 14, 2010.

3. Conditions Precedent. The parties agree that Lender's obligations under this Loan Modification Agreement shall be subject to the Lender's receipt of the following:

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- (a) Borrower's payment of all Costs in connection with this Modification Agreement.
- (b) Evidence satisfactory to Lender that Borrower is in good standing with the Illinois Secretary of State.
- (c) Evidence satisfactory to Lender that Borrower has made the listing price reductions to the Units as set forth in new Section 3.1(nn).

4. **Reaffirmation of Loan Instruments.** Except as expressly herein provided, Borrower, Guarantors, Land Trustee and Lender, as applicable, hereby reaffirm and incorporate herein by reference each and every term, provision, representation and warranty contained in the Loan Agreement, Note, Mortgage, Assignment of Rents, Montrose Mortgage, Montrose Assignment of Rents, Guaranty and Other Documents (the "Loan Instruments") and Borrower, Guarantors, Land Trustee and Lender agree that said terms, provisions, representations and warranties shall remain in full force and effect.

5. **Guarantors.** Each Guarantor expressly agrees to the terms, provisions and conditions of this Modification Agreement. Each Guarantor hereby reaffirms each and every obligation for payment and performance as set forth in the Guaranty made and delivered by him or her as of September 14, 2006. Each Guarantor acknowledges that he or she remains unconditionally and absolutely liable for the due and punctual payment of the amounts set forth in the Guaranty.

6. **Guarantor Representations.** All of the Guarantors, and each of them individually, represents and agrees that none of them shall pledge or further encumber in any manner the real estate used for the personal residence of any of them or any interest therein.

7. **Costs.** Borrower agrees to pay upon demand all of Lender's out-of-pocket expenses, including attorneys' fees and the costs incurred in connection with this Modification Agreement. Lender may pay someone else to help collect the loans secured by the Loan Documents and to enforce the Loan Documents, and the Borrower will pay that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and legal expenses, whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also will pay any court costs, in addition to all other sums provided by law.

8. **No Defenses.** Borrower, Land Trustee and Guarantors each represent to the Lender that as of the date hereof they have no defenses, setoffs, claims or counterclaims of any kind or nature whatsoever against Lender in connection with the Loan Instruments, this Modification Agreement, or any amendments to said documents or any action taken or not taken by the Lender with respect thereto or with respect to the collateral. Without limiting the generality of the foregoing, Borrower, Land Trustee and

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Guarantors each hereby release and forever discharge Lender, its affiliates, and each of its officers, agents, employees, attorneys, insurers, successors and assigns, from any and all liabilities, or causes of action, known or unknown, arising out of any action or inaction as of the date hereof with respect to the Loan Instruments.

9. **Disclaimer.** Borrower, Land Trustee and Guarantors expressly disclaim any reliance on any oral representation made by Lender with respect to the subject matter of this Modification Agreement. Borrower and Guarantors acknowledge and agree that Lender is specifically relying upon the representations, warranties, releases and agreements contained herein, and that this Modification Agreement is executed by Borrower and Guarantors and delivered to Lender as an inducement to extend the Maturity Date of the Note.

10. **Prior Modifications.** Any modification herein contained to the Loan Instruments shall apply to the same as they have been heretofore modified, including but not limited to, by the First Modification Agreement, Second Modification Agreement, and Third Modification Agreement.

11. **Jurisdiction, Jury Waiver.** This Modification Agreement has been delivered to Lender and accepted by Lender in the State of Illinois. If there is a lawsuit, under the Loan Documents or this Modification Agreement, Borrower and the Guarantors agree upon Lender's request to submit to the jurisdiction of the courts of Cook County, the State of Illinois. LENDER, BORROWER, LAND TRUSTEE AND THE GUARANTORS HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER LENDER, LAND TRUSTEE, BORROWER, OR THE GUARANTORS AGAINST ANY OF THE OTHERS. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

12. **Successors and Assigns.** All covenants and agreements contained by or on behalf of Borrower, Land Trustee or the Guarantors, as applicable, shall bind their respective successors and assigns and shall inure to the benefit of Lender, its successors and assigns. Borrower, Land Trustee or the Guarantors, as applicable, shall not, however, have the right to assign their rights under this Modification Agreement or the Loan Documents or any interest therein, without the prior written consent of Lender.

13. **Land Trustee's Liability.** This Modification Agreement is executed by Land Trustee; not personally but as Trustee as provided above in the exercise of the power and the authority conferred upon and vested in it as such Trustee (and Land Trustee thereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed that with the exception of the foregoing warranty, notwithstanding anything to the contrary contained herein, that each and all of the warranties, indemnities, representations, covenants, undertakings, and agreements made in this Modification Agreement on the part of Land Trustee, while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of Land Trustee, are nevertheless each and every one of them made and intended not as personal warranties, indemnities, representations,

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covenants, undertakings and agreements by Land Trustee or for the purpose or with the intention of binding Land Trustee personally, and nothing in this Modification Agreement or in the Loan Instruments shall be construed as creating any liability on the part of Land Trustee personally to pay the Note or any interest that may accrue thereon, or any other Indebtedness under this Modification Agreement, or to perform any covenant, undertaking, or agreement, either express or implied, contained in this Modification Agreement, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security under this Agreement, and that so far as Land Trustee and its successors personally are concerned, the legal holder or holders of the Note and the owner or owners of any Indebtedness shall look solely to the Property described in Exhibit B hereto and Rents for the payment of the Note and Indebtedness, by the enforcement of the lien created by this Modification Agreement in the manner provided in the Loan Agreement and herein or by action to enforce the personal liability of any Borrower or Guarantor.

IN WITNESS WHEREOF, the parties named below have caused this First Modification Agreement to be executed and delivered personally or by their respective duly authorized officers as of the day and year specified at the beginning hereof.

BORROWER:

6737 W. Irving Park Road, LLC,
an Illinois limited liability company

By *Anthony Schiavone*
Anthony Schiavone, its Manager

By *Joseph A. Schiavone*
Joseph Schiavone, its Manager

GUARANTORS:

Anthony Schiavone
Anthony Schiavone

Beverly Schiavone
Beverly Schiavone

Joseph Schiavone
Joseph Schiavone

Barbara Schiavone
Barbara Schiavone

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LAND TRUSTEE:

Albany Bank and Trust Company, NA., as
Trustee under that certain Trust Agreement
dated June 1, 1994 and known as Trust
No. 11-5030

By B Helms
Name Brenda Helms
Its Trust Officer

LENDER:

NorthSide Community Bank, an
Illinois state bank

By Maik Reinertsen
Maik Reinertsen
Vice President

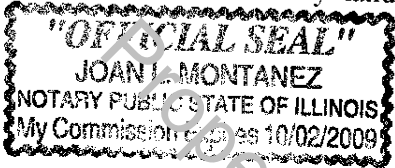
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LAND TRUSTEE ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that Brenda De Lins, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer of Land Trustee appeared before me this day in person and acknowledged that he/she signed and delivered this instrument as his/her free and voluntary act, and as the free and voluntary act of Land Trustee for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27 day of August, 2009.

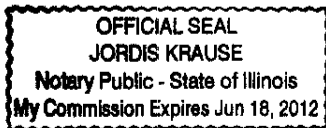


Joan L. Montanez
Notary Public

BORROWER ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that ANTHONY SCHIAVONE and JOSEPH SCHIAVONE, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as the as the Managers of 6737 W. Irving Park Road, LLC, an Illinois limited liability company, appeared before me this day in person and acknowledged that they signed and delivered this instrument a their free and voluntary act, and as the free and voluntary act of the Borrower for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28 day of August, 2009.

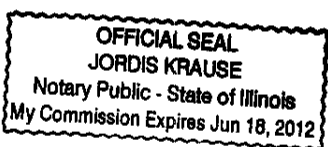


Jordis Krause
Notary Public

GUARANTORS' ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that ANTHONY SCHIAVONE, BEVERLY SCHIAVONE, JOSEPH SCHIAVONE and BARBARA SCHIAVONE, personally known to me to be the same persons whose names are subscribed to the foregoing instrument collectively as Guarantors appeared before me this day in person and acknowledged that they signed and delivered this instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28 day of August, 2009.



Jordis Krause
Notary Public

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LENDER ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that Maik Reinertsen, personally known to me to be the same person whose name is subscribed to the foregoing instrument individually and as such officer of the NORTHSIDE COMMUNITY BANK appeared before met his day in person and acknowledged that he signed and delivered this instrument as his free and voluntary at, and as the free and voluntary act of NORTHSIDE COMMUNITY BANK for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27 day of August, 2009.



Carla J. Reisinger
Notary Public

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EXHIBIT "A"

Legal Description of 6737 West Irving Park Road

Lot 24 in Block 2 in D.S. Dunning's Subdivision of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 19, Township 49 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 13-19-200-033-0000

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EXHIBIT "B"

Legal Description of 4210 West Montrose Avenue

Lot 40 I Block 21 in Irving Park Addition, a Subdivision of Lots 2, 3, 4, 5, 6, 16, 17, 18, 19, 20 and part of Lot 21 in Fitch and Heacox Subdivision of the Northeast Quarter of Section 15, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 13-15-224-035-0000

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