



Doc#: 1007647109 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 03/17/2010 03:05 PM Pg: 1 of 12

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.

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MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of August 5, 2009, by and among **Joseph M. Andriacchi** ("Joseph Andriacchi") and **Midwest Bank and Trust Company, not personally but as Trustee** ("Trustee") under Trust Agreement dated June 8, 1984 and known as Trust No. 84-06-4434 ("Trust") (Joseph Andriacchi and the Trust are referred to collectively as, "Borrower") and **MIDWEST BANK AND TRUST COMPANY**, an Illinois banking association, its successors and assigns ("Lender").

RECITALS

A. On or about July 27, 2004, Lender made a loan ("Loan") to Joseph Andriacchi and Silvana Andriacchi (a/k/a Silvana Venditti-Andriacchi) ("Initial Borrowers") in the original principal amount of Three Hundred Seventy-Five Thousand and no/100 Dollars (\$375,000.00), pursuant to the terms and conditions contained in that Business Loan Agreement ("Initial Loan Agreement") by and between Initial Borrowers and Lender.

B. The Loan is evidenced by a Promissory Note (the "Initial Note") dated July 27, 2004 in the original principal amount of the Loan made payable by Initial Borrowers to the order of Lender

C. The Loan is secured by, among other things, (i) a Mortgage ("Mortgage") dated July 27, 2004 executed by the Trust in favor of Lender and recorded on August 19, 2004 with the Cook County Recorder of Deeds ("Recorder's Office") as Document No. 0423242021, (ii) that Assignment of Rents ("Assignment of Rents") dated July 27, 2004 executed by the Trust in favor of Lender and recorded on August 19, 2004 with the Recorder's Office as Document No. 0423242022 and (ii) certain other loan documents.

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

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

F. 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 Borrower payable to the order of Lender in the principal amount of the Loan, and (ii) such other documents, agreements, and certificates as Lender requests.

G. The Initial Loan Agreement, and this Agreement are referred to collectively as the "Loan Agreement". The Initial Note and the Amended Note are referred to collectively as the "Note". The Note, the Mortgage, the Assignment of Rents, and the 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"). All terms not capitalized herein shall have the meanings ascribed to them in 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 January 5, 2011. Any reference in the Note, the Loan Agreement, the Mortgage, or any other Loan Document to the Maturity Date shall mean January 5, 2011.

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. Commencing _____, and on the first day of each calendar quarter thereafter, Borrower shall pay to Lender principal reduction payments that in the aggregate total at least Two Hundred Thousand and 00/100 Dollars (\$200,000.00) per quarter ("Minimum Principal Payments"). The Minimum Principal Payments shall be applied by Lender to the outstanding balances of the Loan or any of the Other Loans (as defined herein), but Lender shall have sole discretion as to whether such Minimum Principal Payments are applied to the Loan or any of the Other Loans, both the Loan and the Other Loans, or any combination thereof. As of the date hereof, the outstanding principal balance of the Loan is \$317,596.59.

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

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Documents as such co-borrower.

5. **Sales of Units.** Simultaneously with the closing of the sale of any individual unit on the Real Property, Borrower must deliver to Lender a sum equal to the greater of 100% of net sales proceeds, or 95% of gross sales proceeds from the sale of such unit. The sales price for any unit shall not be less than as shown in Exhibit B attached hereto and made part hereof.

6. **Assignment of Leases and Rents.** In order to further secure payment of the Indebtedness and the observance, performance and discharge of the Obligations, Borrowers 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.

7. **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.

8. **Additional Security for the Loan.** As a condition precedent to Lender's agreeing to modify the Loan Documents and enter into this Agreement, Borrower will cause to be delivered to Lender executed mortgages (collectively, the "New Mortgages") on the below described properties:

A first mortgage on the property commonly known as 2421 N. 77th Court, Unit 2E, Elmwood Park, Illinois executed by 92-6419 Trust, which property is described on Exhibit A-1; and

A first mortgage on the property commonly known as 2421 N. 77th Court, Unit 2W, Elmwood Park, Illinois executed by 92-6419 Trust, which property is described on Exhibit A-2.

9. **Financial Statements.** Borrower agrees and acknowledges that updated

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personal financial statements must be provided to Lender, in the form satisfactory to Lender, as a condition precedent to Lender's execution of this Agreement.

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

(a) The representations and warranties in the Loan Agreement, the Mortgage 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, the Mortgage, 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, the Mortgage, 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 Borrowers 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 Borrowers 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.

(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 or organization and has 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.

11. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Barrister 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.

12. **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.

13. **Miscellaneous.**

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(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 Borrowers or any guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrowers, any guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrowers, 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 Borrowers or any guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrowers, any guarantor 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, any guarantor 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 "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement, the Note, the Mortgage 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.

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

14. **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 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:

BORROWER:

Midwest Bank and Trust Company

By: *[Signature]*

Name: *Dan Stokes*

Title: *Senior Vice President*

[Signature]

Joseph M. Andriacchi

Midwest Bank and Trust Company, not personally but as Trustee under Trust Agreement dated June 8, 1984 and known as Trust No. 84-06-4434

By: *[Signature]*

Name: *KOSANDE M. DUTASS*

Title: *Trust Officer*

Property of Cook County Clerk's Office

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EXHIBIT A-1

THE PROPERTY

2421 N. 77th Court, Unit 2E, Elmwood Park, Illinois

PARCEL 1:

UNIT 2E IN THE SILVANA COURTS II CONDOMINIUM AS DELINEATED ON THE SURVEY OF THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE: LOT 9 (EXCEPT THE SOUTH 50 FEET THEREOF) IN BLOCK 21 IN THE SUBDIVISION OF THE FIRST ADDITION TO ELLSWORTH IN THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, HEREINAFTER REFERRED TO AS PARCEL, WHICH SURVEY IS ATTACHED AS EXHIBIT "B" TO THE DECLARATION OF CONDOMINIUM EXECUTED BY MIDWEST BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 3, 1982 AND KNOWN AS TRUST NUMBER 82-09-3929 AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS ON AUGUST 12, 1994 AS DOCUMENT NO. 94719177, TOGETHER WITH ITS UNDIVIDED 17.0% INTEREST IN SAID PARCEL.

PARCEL 2:

THE EXCLUSIVE RIGHT TO THE USE OF LIMITED COMMON ELEMENTS KNOWN AS PARKING SPACE #2E AND STORAGE SPACE #2E AS DELINEATED ON THE SURVEY ATTACHED TO THE DECLARATION AFORESAID RECORDED AS DOCUMENT NUMBER 94719177.

Property Address: 2421 North 77th Court, Unit 2E, Elmwood Park, Illinois 60707

P.I.N.: 12-25-330-053-1002

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EXHIBIT A-2

THE PROPERTY

2421 N. 77th Court, Unit 2W, Elmwood Park, Illinois

PARCEL 1:

UNIT 2W IN THE SILVANA COURTS II CONDOMINIUM AS DELINEATED ON THE SURVEY OF THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE: LOT 9 (EXCEPT THE SOUTH 50 FEET THEREOF) IN BLOCK 21 IN THE SUBDIVISION OF THE FIRST ADDITION TO ELLSWORTH IN THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, HEREINAFTER REFERRED TO AS PARCEL, WHICH SURVEY IS ATTACHED AS EXHIBIT "B" TO THE DECLARATION OF CONDOMINIUM EXECUTED BY MIDWEST BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 3, 1982 AND KNOWN AS TRUST NUMBER 82-09-3929 AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS ON AUGUST 12, 1994 AS DOCUMENT NO. 94719177, TOGETHER WITH ITS UNDIVIDED 17.0% INTEREST IN SAID PARCEL.

PARCEL 2:

THE EXCLUSIVE RIGHT TO THE USE OF LIMITED COMMON ELEMENTS KNOWN AS PARKING SPACE #2W AND STORAGE SPACE #2W AS DELINEATED ON THE SURVEY ATTACHED TO THE DECLARATION AFORESAID RECORDED AS DOCUMENT 94719177.

Property Address: 2421 North 77th Court, Unit 2W, Elmwood Park, Illinois 60707

P.I.N.: 12-25-330-053-1003

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EXHIBIT B

MINIMUM SALES PRICE

Collateral	Release Price
Park Place Condominium Units*	\$ 4,060,287
7702 WNorth Ave (comm'l #1)	\$ 228,000
7704 WNorth Ave (comm'l #2)	\$ 220,000
1308 W Greshaw, Chicago	\$ 600,000
9600 Golf Rd, Des Plais (Lot 25)	\$ 252,000
9600 Golf Rd, Des Plais (Lot 27)	\$ 204,800
9600 Golf Rd (9662 Reding)	\$ 232,000
9600 Golf Rd (9678 Reding)	\$ 260,000
2036 Glen Elyn, Glendale Heights	\$ 616,000
1946 N 75th Ave, Elmwood Park	\$ 560,000
2800 N 75th Ave, Elmwood Park	\$ 200,000
2804 N 75th Ave, Elmwood Park	\$ 240,000
7315-17 WNorth Ave, River Forest	\$ 420,000
1050 W Chicago Ave, Oak Park	\$ 416,000
7810-14 WNorth Ave, Elmwood Pk	\$ 540,000
1142 Franklin Ave, River Forest, IL	\$ 1,080,000
2421N, 77th Elmwood Park Unit 2E	\$ 160,000
2421N, 77th Elmwood Park Unit 2W	\$ 160,000

*Below is the Minimum Release Price breakdown for the individual Park Place condominium units:

Unit	Bed	Bath	Sq. Ft.	Asking		Minimum Release	
				Sales Prices		Prices	\$ per Sq. Ft.
2A	2	2	1,346	229,000	\$	212,970	\$ 158.22
2B	2	1	1,140	215,900	\$	200,787	\$ 176.13
2C	2	2	1,346	232,000	\$	215,760	\$ 160.30
2D	2	2	1,346	233,000	\$	216,600	\$ 160.99
2E	3	2	1,508	249,000	\$	231,570	\$ 153.56
3A	2	2	1,346	238,000	\$	221,340	\$ 164.44
3B	2	1	1,140	219,000	\$	203,670	\$ 178.66
3C	2	2	1,346	241,000	\$	224,130	\$ 166.52
3D	2	2	1,346	242,000	\$	225,060	\$ 167.21
3E	3	2	1,508	259,000	\$	240,870	\$ 159.73
4A	2	2	1,346	241,000	\$	224,130	\$ 166.52
4B	2	1	1,140	222,000	\$	206,460	\$ 181.11
4C	2	2	1,346	244,000	\$	226,920	\$ 168.59
4D	2	2	1,346	267,000	\$	248,310	\$ 184.48
4E	3	2	1,508	264,000	\$	245,520	\$ 162.81
5A	2	2	1,346	248,000	\$	230,640	\$ 171.35
				Unit 5B SOLD			
5C	2	2	1,346	251,000	\$	233,430	\$ 173.42
				Unit 5D SOLD			
Under Contract	3	2	1,508	271,000	\$	252,030	\$ 167.13
Averages	2.2	1.8	1,348	242,550	\$	225,572	167.84
Total	40	33	24,258	4,365,900	\$	4,060,287	\$ 167.38

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