



Doc#: 1012629119 Fee: \$58.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/06/2010 04:52 PM Pg: 1 of 12

**THIS DOCUMENT WAS PREPARED  
BY AND AFTER RECORDING  
SHOULD BE RETURNED TO:**

Jay R. Goldberg  
Field and Goldberg, LLC  
10 South LaSalle Street  
Suite 2910  
Chicago, IL 60603

**FOURTH LOAN MODIFICATION AGREEMENT**

THIS FOURTH LOAN MODIFICATION AGREEMENT (the "Agreement") is made and entered into as of the 31<sup>st</sup> day of March, 2010 by and among **FIRST EAGLE BANK, formerly known as First Eagle National Bank ("Lender")**, **S & S HOME BUILDERS, LLC, an Illinois limited liability company ("Borrower")**, and **MICHAEL N. SCHWARTZ ("Schwartz") and SCOTT Y. SCHILLER ("Schiller"** and herein, together with Schwartz, individually and collectively called "Guarantors").

**WITNESSETH:**

WHEREAS, Borrower is the owner of certain real estate commonly known as Unit 1A at 1652-1654 West North Avenue, which is located in the City of Chicago, County of Cook, State of Illinois and more particularly described on Exhibit A attached hereto and made a part hereof (the "North Avenue Premises"); and

WHEREAS, Guarantors are the owner of certain real estate commonly known as Unit Nos. 1C and PU-6 at 2031 West Pierce Avenue, which is located in the City of Chicago, County of Cook, State of Illinois and more particularly described on Exhibit B attached hereto and made a part hereof (the "Pierce Avenue Premises" and herein, together with the North Avenue Premises, herein individually and collectively called the "Premises"); and

WHEREAS, Lender has heretofore made a mortgage loan (the "Loan") to Borrower in the stated principal sum of Five Hundred Sixty Thousand Dollars and No Cents (\$560,000.00); and

WHEREAS, the Loan is evidenced and secured by the following documents in favor of Lender (hereinafter, together with all other documents evidencing, securing or otherwise governing the Loan, collectively referred to as the "Loan Documents") each of which is dated as of August 9, 2006 unless otherwise stated:

- (a) Promissory Note (the "Note") made by Borrower to Lender in the stated principal sum of Five Hundred Sixty Thousand Dollars and No Cents (\$560,000.00);

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(b) Commercial Guaranty (the "Schwartz Guaranty") made by Schwartz in favor of Lender;

(c) Commercial Guaranty (herein, together with the Schwartz Guaranty, individually and collectively called the "Guaranty") made by Schiller in favor of Lender;

(d) Mortgage (herein called the "Mortgage") made by Borrower to Lender encumbering the Premises and the improvements thereon and all other property, assets and collateral therein described, which Mortgage was recorded in the Office of the Recorder of Deeds of Cook County, Illinois (herein called the "Recorder's Office") as Document No. 0624147046;

(e) Assignment of Rents made by Borrower to Lender which was recorded in the Recorder's Office as Document No. 0624147047;

(f) Business Loan Agreement between Borrower and Lender;

(g) Hazardous Substances Certificate and Indemnity Agreement by and among Borrower, Guarantors and Lender;

(h) First Amendment to Loan Documents dated August 9, 2007 by and between Borrower, Guarantors and Lender which was recorded in the Recorder's Office as Document No. 0727406037;

(i) Second Amendment to Loan Documents dated August 9, 2008 by and between Borrower, Guarantors and Lender which was recorded in the Recorder's Office as Document No. 0827703010; and

(j) Third Loan Modification Agreement dated March 31, 2009 by and between Borrower, Guarantors and Lender which was recorded in the Recorder's Office as Document No. 0911245087; and

WHEREAS, Lender and Borrower have agreed to certain modifications to the Loan Documents; and

WHEREAS, the agreements of the parties are set forth herein and limited to this Agreement.

## AGREEMENT

NOW, THEREFORE, for valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed, as of the date hereof, as follows:

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1. **Preambles.** The preambles hereto are incorporated herein by reference as fully and with the same force and effect as if each and every term, provision and condition thereof was specifically recited herein at length.

2. **Definitions.** All capitalized terms herein not otherwise defined shall have the same meanings as in the Note, Mortgage and in the other Loan Documents.

3. **Payment of Fee.** For and as additional consideration of Lender agreeing to enter into this Agreement, concurrent with Borrower's execution of this Agreement, Borrower shall pay Lender a fee of Nine Hundred Eighty Two Dollars and Fifty Cents (\$982.50).

4. **Principal Paydown.** In the event of a sale of the Pierce Avenue Premises to a bona fide purchaser for value, Lender agrees to release the Pierce Avenue Premises from Lender's collateral upon receipt by Lender of the greater of: (i) the net proceeds from such sale which amount shall be the gross purchase price less any actual usual and customary expenses associated with a sale of this type of property, or (ii) one hundred fifty thousand dollars and no cents (\$150,000.00).

5. **Amendment to Note.** In addition to any other modifications contained in this Agreement and notwithstanding anything to the contrary contained in the Note, the Note is hereby further amended as follows:

(a) The Maturity Date of the Loan is hereby extended to April 15, 2012.

(b) Effective the date hereof, the interest rate on the Loan shall be Six and One-Half Percent (6.5%) per annum. The annual interest is computed on a 365/360 basis; that is by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable hereunder is computed using this method. This calculation method results in a higher interest rate than the numeric interest rate stated herein. (Initial here MAC)

(c) Beginning with the monthly payment due on April 30, 2010 and thereafter, Borrower shall make monthly payments of principal and interest calculated on the basis of a twenty five (25) year amortization schedule, with the unpaid balance due on the Maturity Date, at which time a substantial amount of principal shall remain outstanding and be due.

Borrower shall pay all accrued interest, the unpaid principal balance of this Note and any other sums due with respect to the Loan on the Maturity Date.

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6. **Amendment to Mortgage.** In addition to any other modifications contained in this Agreement and notwithstanding anything to the contrary contained in the Mortgage, the Mortgage is hereby further amended as follows:

(a) Anything contained in the Mortgage to the contrary notwithstanding, the Mortgage also secures all loans, advances, debts, liabilities, obligations, covenants and duties owing to the Lender by the Borrower and/or any Related Party (as hereinafter defined), whether now existing, or hereafter created or arising, including, without limitation: (i) the Note, (ii) the Indebtedness, and (iii) any and all other loans, advances, overdrafts, indebtedness, liabilities and obligations now or hereafter owed by Borrower or any Related Party to Lender, of every kind and nature nowsoever created, arising or evidenced, and howsoever owned, held or acquired, whether now due or to become due, whether direct or indirect, or absolute or contingent, whether several, joint or joint and several, whether liquidated or unliquidated, whether legal or equitable, whether disputed or undisputed, whether secured or unsecured, or whether arising under the Mortgage or any other document or instrument. For purposes of this paragraph, "Related Party" shall mean (i) Borrower, (ii) each beneficiary of Borrower, if Borrower is a land trust, (iii) the maker of the Note, if other than Borrower, and if more than one maker, each co-borrower of the Note other than Grantor, and (iv) each guarantor of the Note.

(b) A sale or transfer referred to in the Mortgage shall also mean and include the granting of any mortgage, deed of trust or other encumbrance of any kind on all or any portion of the Premises, whether or not it is junior to the lien of this Mortgage.

(c) At no time shall the principal amount of indebtedness secured by the Mortgage, not including sums advanced to protect the security of the Mortgage, exceed Ten Million Dollars and No Cents (\$10,000,000.00).

(d) The Mortgage is modified to secure the Note as hereby modified and is deemed amended to conform to the terms and provisions hereof and the amendments and modifications to the Loan and Loan Documents effected hereby.

7. **Continued Priority.** In the event that, by virtue of any of the terms, conditions and provisions of this Agreement, a lien or other property interest in the Premises otherwise junior in priority to the liens created by the Loan Documents shall gain superiority over the liens created by the Loan Documents, this Agreement shall, nunc pro tunc, be null and void without further action of the parties hereto to the fullest extent as if it had never been executed, to the end that the priority of the Loan Documents shall not be impaired.

8. **Title Insurance.** Concurrent with the execution and delivery hereof by Borrower, Borrower agrees to provide Lender with an endorsement to its mortgagee's

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policy of title insurance for the Premises ("Title Policy"), which endorsement shall be acceptable to Lender and shall guarantee as of the date hereof that:

- (a) there are no objections to title except (a) the objections to title other than real estate taxes reflected on the Title Policy, and (b) general real estate taxes for the year 2009 (second installment) and subsequent years;
- (b) reflects the recording of this Agreement; and
- (c) re-dates the effective date of the Title Policy to the date of recording of this Agreement;

together with such other endorsements required by Lender.

9. **Lender Expenses.** Borrower agrees to pay all costs, fees and expenses (including but not limited to reasonable legal fees) incurred by Lender in connection with the preparation of this Agreement. Such of the foregoing as are incurred prior to the execution and delivery of this Agreement shall be paid concurrent with such execution and delivery. All other fees, costs and expenses shall be paid within five (5) business days after notice from Lender of the amount due and the reason therefor.

10. **Ratification.** The Loan Documents are hereby ratified, confirmed and approved and are and shall remain in full force and effect pursuant to the terms and conditions set forth therein, except to the extent otherwise expressly modified hereby. Each of the Loan Documents is hereby modified and amended so that all reference to such documents shall be deemed to be a reference to the Loan Documents as hereby modified and amended. The parties hereto acknowledge and agree that notwithstanding the actual date that this Agreement or any of the Loan Documents were executed and/or notarized, this Agreement and the Loan Documents are in full force and effect from and after the date of such document or the date referred to in such document as being the effective date or made and entered date.

11. **Forbearance.** Any forbearance by Lender in exercising any right or remedy under the Note or any of the other Loan Documents or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any of its rights or remedies under any of the Loan Documents with respect to Borrower's obligations under the Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

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12. **Joinder of Guarantors.** Notwithstanding anything to the contrary contained herein Guarantors have entered into this Agreement for the purpose of ratifying and confirming Guarantors' obligations under the Guaranty, as amended hereby, and to acknowledge that the Guaranty and the other Loan Documents, as amended hereby, remain in full force and effect. The Guarantors shall be jointly and severally liable with all other guarantors for the payment and performance of the Indebtedness, whether or not such other guarantors sign the Guaranty or one or more separate guaranties.

(Signature Page Follows)

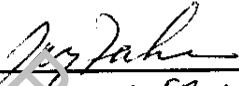
Property of Cook County Clerk's Office

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

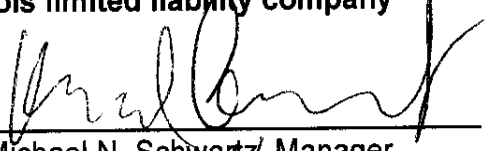
**LENDER:**

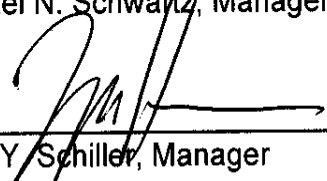
**FIRST EAGLE BANK, formerly known as First Eagle National Bank**

By:   
Name: JAY FANN  
Title: Senior Vice President

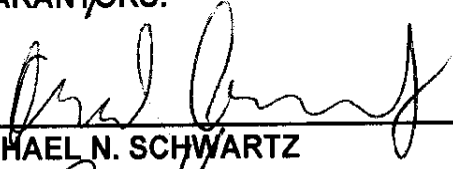
**BORROWER:**

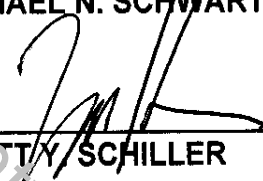
**S & S HOME BUILDERS, LLC, an Illinois limited liability company**

By:   
Michael N. Schwartz, Manager

By:   
Scott Y. Schiller, Manager

**GUARANTORS:**

  
MICHAEL N. SCHWARTZ

  
SCOTT Y. SCHILLER

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STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that JAY FAW, the SR. V.P. of **FIRST EAGLE BANK, formerly known as First Eagle National Bank**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of **FIRST EAGLE BANK**, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3<sup>RD</sup> day of MAY, 2010.

Mary E. Schlichter  
Notary Public



Property of Cook County Clerk's Office



# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **MICHAEL N. SCHWARTZ**, the Manager of **S & S HOME BUILDERS, LLC**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of **S & S HOME BUILDERS, LLC**, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3<sup>rd</sup> day of MAY, 2010.

*Mary E. Schlichter*  
\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )



I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **SCOTT Y. SCHILLER**, the Manager of **S & S HOME BUILDERS, LLC**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of **S & S HOME BUILDERS, LLC**, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3<sup>rd</sup> day of MAY, 2010.

*Mary E. Schlichter*  
\_\_\_\_\_  
Notary Public

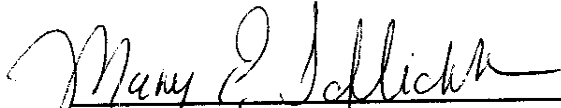


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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that **MICHAEL N. SCHWARTZ**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed 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 3<sup>RD</sup> day of MAY, 2010.

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

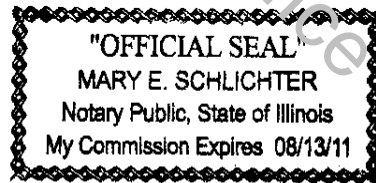


STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that **SCOTT Y. SCHILLER**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed 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 3<sup>RD</sup> day of MAY, 2010.

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



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## EXHIBIT A

### Legal Description of North Avenue Premises

Unit 1A together with its undivided percentage interest in the common elements in Bucktown Corner Condominiums as delineated and defined in the Declaration recorded as Document No. 00342193, as amended from time to time, in Section 31, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

**ADDRESS OF PROPERTY:** Unit 1A  
1652-1654 West North Avenue  
Chicago, IL 60622

**PERMANENT INDEX NO.:** 14-31-430-046-1011

Property of Cook County Clerk's Office

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## EXHIBIT B

### **Legal Description of Pierce Avenue Premises**

Units 1C and Parking Space PU-6 2031 West Pierce Street Condominium, as delineated on a survey of the following described parcel of real estate:

Lot 42 (except the West 2 feet thereof) and all of Lot 43 in Block 4 in D. S. Lee's Addition to Chicago in the East ½ of the Northwest ¼ of Section 6, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

which survey is attached as Exhibit "D" to the Declaration of Condominium recorded May 9, 2002 as Document Number 0020531944, together with its undivided percentage interest in the common elements.

**Address of Property:** Unit Nos. 1C and PU-6  
2013 West Pierce Avenue  
Chicago, IL 60622

**Permanent Index Nos.:** 17-06-107-043-1003  
17-06-107-043-1014

Cook County Clerk's Office