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THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Doc#: 1019722120 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/16/2010 02:19 PM Pg: 1 of 10

Dykema Gossett PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606  
Attn: Scott M. Lapins, Esq.

*This space reserved for Recorder's use only*

## FOURTH MODIFICATION OF MORTGAGE

THIS **FOURTH MODIFICATION OF MORTGAGE** (this "Modification") is made as of the 31<sup>st</sup> day of May, 2010 by and among **WELLS FARGO BANK, N.A.**, as successor-in-interest to **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association ("Administrative Agent") (in its individual capacity, "Wells Fargo"), as Administrative Agent, for itself and the other the financial institutions that are or may from time to time become parties (together with Wachovia and their respective successors and assigns, the "Lenders") and **OPTIMA OLD ORCHARD WOODS, LLC**, an Illinois limited liability company ("Borrower").

### RECITALS:

A. Borrower is the owner of fee simple title to certain real estate located in Skokie, Cook County, Illinois and legally described in Exhibit A attached hereto (the "Real Estate") and the improvements located thereon.

B. Borrower and Lenders entered into that certain Construction Loan Agreement (the "Original Loan Agreement") dated October 27, 2004 whereby Lenders agreed to lend to Borrower, on a revolving basis, an aggregate amount not to exceed Sixty-Five Million and 00/100 Dollars (\$65,000,000.00) outstanding at any one time.

C. Borrower and Lenders have entered into that certain Modification of the Loan Documents which, inter alia, provides for a temporary increase of the Loan Amount from Sixty-Five Million and 00/100 Dollars (\$65,000,000.00) to Seventy-Five Million and 00/100 Dollars (\$75,000,000.00).

D. The Loan is evidenced by certain Promissory Notes (the "Notes") from Borrower in favor of Lenders in the aggregate original principal amount of \$75,000,000.00.

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E. The Notes are secured by, inter alia, the following documents, all of which are dated October 27, 2004:

(i) Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing made by Borrower for the benefit of Lenders recorded in the Recorder's Office of Cook County on October 28, 2004, as Document Number 0430234062 ("Mortgage"), encumbering certain improved real estate located in Skokie, Cook County, Illinois and legally described in Exhibit A hereto (the "Property");

(ii) Assignment of Leases and Rents made by Borrower to Lenders (the "Assignment of Leases") made by Borrower for the benefit of Lenders recorded in the Recorder's Office of Cook County on October 28, 2004, as Document Number 0430234063 ("Mortgage"), encumbering certain improved real estate located in Skokie, Cook County, Illinois and legally described in Exhibit A hereto (the "Property"); and

(iii) Environmental Indemnity Agreement made by Borrower and Guarantor to Lenders (the "Indemnity Agreement").

F. The Loan Documents were modified by a Second Modification of Loan Documents dated as of August 7, 2007.

G. The Loan Documents were modified by a Third Modification of Loan Documents dated as of December 15, 2008.

H. The Loan Documents were modified by a Fourth Modification of Loan Documents dated as of October 29, 2009.

I. The Loan Documents were modified by a Fifth Modification of Loan Documents dated as of May 31, 2010 (the "Fifth Modification").

J. The Mortgage was modified by that certain Modification of Mortgage dated as of December 20, 2006 and recorded with the Cook County Recorder's Office on December 21, 2006 as Document No. 0635539047.

K. The Mortgage was modified by that certain Second Modification of Mortgage dated as of August 7, 2007.

L. The Mortgage was modified by that certain Third Modification of Mortgage dated as of December 15, 2008 and recorded with the Cook County Recorder's Office on December 30, 2008 as Document No. 0836522047..

M. The Mortgage, the Assignment of Rents, the Indemnity Agreement, the Notes, and the other documents or agreements delivered to Lenders to secure or evidence the Loan or to otherwise induce Lenders to disburse the proceeds of the Loan are hereinafter collectively referred to as the "Loan Documents."

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**NOW, THEREFORE**, in order to induce Lenders to modify the Loan Documents and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lenders hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are incorporated herein and made a part hereof.

2. **Modification of Mortgage.**

(a) Page 1 of the Mortgage is hereby amended to reflecting that the Maturity Date defined on the first page thereof is May 31, 2011 subject to a twelve month extension.

3. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lenders 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 under the Loan Agreement, the Notes, the Mortgage or the other Loan Documents and Borrower does 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 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 Modification, they continue to be the legal, valid and binding obligations of Borrower 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 Borrower or any other party whose financial statement has been delivered to Lenders in connection with the Loan from the date of the most recent financial statement received by Lenders.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

Borrower 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 Modification and to perform the Loan Documents as modified herein. The execution and delivery of this Modification and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by Borrower. This Modification has been duly executed and delivered on behalf of Borrower.

4. **Payment of Additional Loan Expenses.** Borrower hereby agrees to pay all of Lenders' reasonable attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification, all recording fees and charges,

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title insurance charges and premiums, loan fees, appraisal fees, and all other expenses, charges, costs and fees referred to in, necessitated by or otherwise relating to this Modification (collectively, the "Additional Loan Expenses"). If the Additional Loan Expenses are not paid to Lenders within ten (10) days after written demand therefor by Lenders, the Additional Loan Expenses shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Notes).

## 5. Miscellaneous.

(a) This Modification shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Modification shall not be construed more strictly against Lenders than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Lenders, it being recognized that Borrower and Lenders have contributed substantially and materially to the preparation of this Modification, and Borrower and Lenders each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Modification. Each of the parties to this Modification represents that it has been advised by its respective counsel of the legal and practical effect of this Modification, and recognizes that it is executing and delivering this Modification, 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 Modification, 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 Modification by Lenders, the same shall not be deemed to constitute Lenders as a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower and Lenders 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 Modification, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lenders; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Modification. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Modification 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 "Notes", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Notes, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section

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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 Modification may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Modification.

(h) Time is of the essence of each of Borrower's obligations under this Modification.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES ON FOLLOWING PAGE]**

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

**BORROWER:**

**OPTIMA OLD ORCHARD WOODS, LLC**, an Illinois limited liability company

By: Optima Old Orchard Woods Development, LLC, an Illinois limited liability company, its manager

By:   
David C. Hovey, Manager

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**ADMINISTRATIVE AGENT:**

**WELLS FARGO BANK, N.A.**, a national banking association

By: 

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STATE OF IL )  
 ) SS  
COUNTY OF Cook )

I HEREBY CERTIFY that on this 15<sup>th</sup> day of July, 2010, before me personally appeared DAVID C. HOVEY, as an individual and as Manager of **OPTIMA OLD ORCHARD WOODS DEVELOPMENT, LLC**, an Illinois limited liability company, the Manager of **OPTIMA OLD ORCHARD WOODS, LLC**, an Illinois limited liability company, to me known to be the same person who signed the foregoing instrument as his free act and deed as such manager for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited liability company.

WITNESS my signature and official seal at Glencoe, in the County of Cook and State of IL, the day and year last aforesaid.



J Oppenheimer  
Notary Public

My Commission Expires: 6/3/12



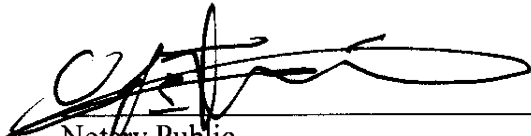
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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

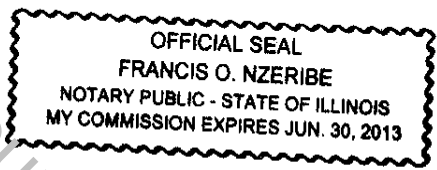
I HEREBY CERTIFY that on this 15<sup>th</sup> day of JULY, 2010, before me personally appeared NORA CIBSLA, as DIRECTOR of **WELLS FARGO BANK, N.A.**, a national banking association, to me known to be the same person who signed the foregoing instrument as his free act and deed as such manager for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited liability company.

WITNESS my signature and official seal at CHICAGO, in the County of COOK and State of ILLINOIS, the day and year last aforesaid.

(NOTARY SEAL)

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

My Commission Expires: 06/30/13



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## EXHIBIT A

### THE PROPERTY

#### PARCEL 1:

LOT 2 IN OLD ORCHARD WOODS SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 12, 2004 AS DOCUMENT 0422518103.

#### PARCEL 2:

NON-EXCLUSIVE EASEMENT IN FAVOR OF PARCEL 1 FOR VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS CREATED, DEFINED AND LIMITED IN INSTRUMENT RECORDED SEPTEMBER 15, 1994 AS DOCUMENT NO. 94807009 OVER AND ACROSS LAND AS THEREIN DESCRIBED AT EXHIBIT C THERETO, AS CONFIRMED BY CONFIRMATION OF DECLARATION OF COVENANTS AND EASEMENTS AND GRANT OF ADDITIONAL EASEMENT RECORDED 10-28-04 AS DOCUMENT 0430234060.

#### PARCEL 3:

TEMPORARY INGRESS AND EGRESS EASEMENT AND TEMPORARY SIGN EASEMENT IN FAVOR OF PARCEL 1 AS GRANTED BY AGREEMENT FOR TEMPORARY INGRESS AND EGRESS AGREEMENT AND TEMPORARY SIGN EASEMENT RECORDED 10-28-04 AS DOCUMENT 0430234059.

Commonly known as: 9645-9685 Woods Drive  
Skokie, Illinois

This Modification is not intended to further encumber any portion of the foregoing which has been released by Lender.