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Doc#: 1120640025 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/25/2011 10:07 AM Pg: 1 of 9

Recorder's use only

SECOND MODIFICATION OF LOAN DOCUMENTS

THIS SECOND MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 31 day of June, 2011, but is effective as of May 1, 2011, by and among **KIANOOSH JAFARI**, an individual ("K. Jafari"), and **SOUSSAN JAFARI**, an individual ("S. Jafari"), and together with K. Jafari, jointly and severally the "Borrowers", and each, a "Borrower", and **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois state chartered bank, its successor and assigns ("Lender").

RECITALS:

A. Pursuant to the terms and conditions of that certain Business Loan Agreement dated October 1, 2004 executed by Borrowers in favor of Lender (the "Original Loan Agreement"), Lender has heretofore made a revolving line of credit loan (the "Loan") to Borrowers in the maximum original principal amount of One Million and No/100 Dollars (\$1,000,000.00), as evidenced by a Promissory Note dated October 1, 2004 in the maximum original principal amount of the Loan made payable by Borrowers to the order of Lender (the "Original Note").

B. The Loan is secured by (i) that certain Mortgage dated December 1, 2008 from Borrowers to Lender recorded with the Recorder's Office of Cook County, Illinois (the "Recorder's Office") on January 5, 2009 as Document Number 0900533148 (as amended, restated, modified or supplemented and in effect from time to time, the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A attached hereto (the "Property"), (ii) that certain Assignment of Rents dated December 1, 2008 from Borrowers to Lender recorded with the Recorder's Office on January 5, 2009 as Document

This document prepared by and after recording return to:

Michael S. Kurtzon, Esq.
Dykema Gossett PLLC
10 S. Wacker Drive
Suite 2300
Chicago, Illinois 60606

Permanent Index Numbers:

See Exhibit A attached hereto

Address of Property:

See Exhibit A attached hereto

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P 9
S N
SC ✓
INT ✓

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Number 0900533149 (as amended, restated, modified or supplemented and in effect from time to time, the "Assignment of Rents"), and (iii) certain other loan documents (the Original Loan Agreement, the Original Note, as amended and restated by the 2010 Note (as defined below) and as further amended and restated by the Note (as defined below), the Mortgage, the Assignment of Rents, and the other documents evidencing and securing the Loan, in their original form and as amended, restated, modified or supplemented by the 2005 Change in Terms Agreement (as defined below), the 2006 Change in Terms Agreement (as defined below), the Loan Agreement (as defined below), the 2007 Change in Terms Agreement (as defined below), the October 2008 Change in Terms Agreement (as defined below), the December 2008 Change in Terms Agreement (as defined below) and the First Modification (as defined below) are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan Documents were modified by that certain Change in Terms Agreement dated October 1, 2005 executed by Borrowers in favor of Lender (the "2005 Change in Terms Agreement"), which, among other things, extended the maturity date of the Loan to October 1, 2006.

D. The Loan Documents were further modified by (i) that certain Change in Terms Agreement dated October 1, 2006 executed by Borrowers in favor of Lender (the "2006 Change in Terms Agreement"), and (ii) that certain Business Loan Agreement dated October 1, 2006 executed by Borrowers in favor of Lender (the "Loan Agreement"), which, among other things, further extended the maturity date of the Loan to October 1, 2007.

E. The Loan Documents were further modified by that certain Change in Terms Agreement dated October 1, 2007 executed by Borrowers in favor of Lender (the "2007 Change in Terms Agreement"), which, among other things, further extended the maturity date of the Loan to October 1, 2008.

F. The Loan Documents were further modified by that certain Change in Terms Agreement dated October 1, 2008 executed by Borrowers in favor of Lender (the "October 2008 Change in Terms Agreement"), which, among other things, further extended the maturity date of the Loan to December 1, 2008.

G. The Loan Documents were further modified by that certain Change in Terms Agreement dated December 1, 2008 executed by Borrowers in favor of Lender (the "December 2008 Change in Terms Agreement"), which, among other things, further extended the maturity date of the Loan to January 15, 2010 and required Borrowers to execute and deliver the Mortgage and Assignment of Rents in favor of Lender.

H. Borrowers executed that certain Promissory Note dated January 15, 2010 in the maximum original principal amount of One Million and No/100 Dollars (\$1,000,000.00) to the order of Lender (the "2010 Note"), which 2010 Note amended and restated the Original Note, as previously amended, restated, modified or supplemented, in its entirety and further extended the maturity date of the Loan to May 1, 2010.

I. Borrower and Lender entered into that certain Modification of Loan Documents dated as of June 28, 2010, but effective as of May 1, 2010, and recorded with the Recorder's

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Office on July 8, 2010 as Document Number 1018933054 (the "First Modification"), whereby the Loan Documents were amended in order to, among other things, (i) further extend the maturity date of the Loan to May 1, 2011, (ii) convert the Loan from a revolving loan to a term loan, and (iii) decrease the principal amount of the Loan to \$998,493.00. Concurrently therewith, Borrowers executed and delivered to Lender that certain Amended and Restated Promissory Note dated June 28, 2010, but effective as of May 1, 2010, in the original principal amount of \$998,493.00 and payable to the order of Lender (the "Note"), which Note amended and restated the 2010 Note in its entirety and, among other things, further extended the maturity date of the Loan to May 2, 2011.

J. The Loan is fully disbursed and the current outstanding principal balance of the Loan is Nine Hundred Sixty Six Thousand Two Hundred Thirteen and 73/100 Dollars (\$966,213.73).

K. Borrowers desire to amend the Loan Documents in order to, among other things, further extend the maturity date of the Loan to May 1, 2012. Lender is willing to consent to such modification upon the terms and conditions herein contained.

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. **Definitions.** All capitalized terms used but not otherwise defined herein in this Agreement shall have the same meanings ascribed to such capitalized terms in the Mortgage.

2. **Maturity Date.** The Maturity Date (as defined in the Note) of the Note is extended from May 1, 2011 to May 1, 2012. Any and all references in the Note, the Mortgage, the Loan Agreement and any other Loan Document to the Maturity Date shall mean May 1, 2012.

3. **Title Policy.** As a condition precedent to the agreements contained herein, Borrowers shall, at their sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's Title Insurance Policy No. 1410-008455012-KA (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the priority of the lien of the Mortgage as set forth in the Title Policy, 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.

4. **Limited Amendment; Ratification.** This Agreement is given solely to amend the Loan Documents as set forth herein. No further amendment or modification is made or intended, and the terms and provisions of the 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 Loan Documents, as herein expressly amended, are hereby specifically reaffirmed and remade by each Borrower and each Loan Document, as herein

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expressly amended, is hereby ratified, approved and confirmed in every respect. Each Borrower also hereby ratifies and confirms, as of the date of the Loan Documents and as of the date hereof, the liens, encumbrances and security interests in and on the Property and the real estate intended to be created by the Mortgage, as amended hereby.

5. **No Release or Novation.** The indebtedness secured by the Mortgage 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 Mortgage and all such liens, security interest and assignments and the priority thereof shall relate back to the date that the Mortgage was recorded as referenced in the above recitals. Borrowers and Lender intend that this Agreement shall in no way affect the priority of the Mortgage or constitute a novation of the indebtedness secured thereby.

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

(a) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and no Borrower knows 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.

(b) There has been no material adverse change in the financial condition of any Borrower 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.

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

(d) This Agreement has been duly executed and delivered on behalf of each Borrower.

7. **Costs and Expenses.** As a condition precedent to the agreements contained herein, Borrowers shall pay to Lender all out-of-pocket costs and expenses incurred by Lender in connection with the preparation, execution, filing and recordation of this Agreement, including, without being limited to, reasonable attorneys' fees and filing and recording fees.

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

9. **Entire Agreement.** Borrowers 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 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.

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10. **Borrowers Not a Joint Venturer or Partner.** 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 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 "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to 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.

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. Borrowers 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.

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; SIGNATURE
PAGE FOLLOWS]**

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

LENDER:

THE PRIVATEBANK AND TRUST COMPANY, an Illinois state chartered bank

By: *Josh Punt*
Name: *Josh Punt*
Title: *Managing Director*

BORROWERS:

Kianoosh Jafari
KIANOOSH JAFARI, personally

Soussan Jafari
SOUSSAN JAFARI, personally

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STATE OF ILLINOIS)
) .ss
COUNTY OF Cook)

I Barbara Kwak, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Scott Proctor, BD of THE PRIVATEBANK AND TRUST COMPANY, an Illinois state chartered bank, 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 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 30 day of June, 2011.



[Signature]
Notary Public

STATE OF ILLINOIS)
) .ss
COUNTY OF DuPage)

I Thomas M Rachubinski, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that KIANOOSH JAFARI 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 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 27th day of June, 2011.

[Signature]
Notary Public

My Commission Expires: 2/26/12



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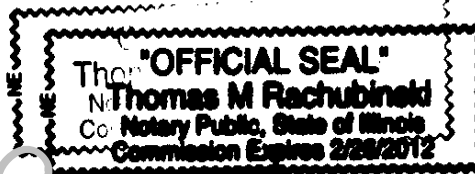
STATE OF ILLINOIS)
) .ss
COUNTY OF DuPage)

I THOMAS RACHUBINSKI, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that SOUSSAN JAFARI 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 she signed and delivered said instrument as her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27th day of June, 2011.

Thomas M Rachubinski
Notary Public

My Commission Expires: 2/28/12



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EXHIBIT A

THE PROPERTY

PARCEL 1: UNITS 601, P128 AND P129 IN THE 840 NORTH LAKE SHORE DRIVE CONDOMINIUM (AS HEREINAFTER DESCRIBED) TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, WHICH UNIT AND COMMON ELEMENTS ARE COMPRISED OF:

(A) THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1.C OF THE ALTA LEASEHOLD ENDORSEMENT(S) ATTACHED HERETO), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY NORTHWESTERN UNIVERSITY, A CORPORATION OF ILLINOIS, AS LESSOR, AND 840 LAKE SHORE DRIVE, L.L.C., AN ILLINOIS LIMITED LIABILITY COMPANY, AS LESSEE, DATED AS OF JUNE 31, 2000, WHICH LEASE WAS RECORDED AUGUST 2, 2000 AS DOCUMENT 000584668, AND RE-RECORDED AUGUST 11, 2000 AS DOCUMENT NUMBER 00614550, AND AS AMENDED BY AMENDMENT TO GROUND LEASE RECORDED MARCH 2, 2001 AS DOCUMENT NUMBER 0010169901 AND SECOND AMENDMENT TO GROUND LEASE RECORDED SEPTEMBER 11, 2003 AS DOCUMENT NUMBER 0325432158, AND BY UNIT SUBLEASES RECORDED SEPTEMBER 12, 2003 AS DOCUMENT NUMBERS 0325542164, 0325542349 AND 0325542350, WHICH LEASE, AS AMENDED, DEMISES THE LAND (AS HEREINAFTER DESCRIBED) FOR A TERM OF 99 YEARS COMMENCING JULY 31, 2000 (EXCEPT THE BUILDINGS AND IMPROVEMENTS LOCATED ON THE LAND); AND

(B) OWNERSHIP OF THE BUILDINGS AND IMPROVEMENTS LOCATED ON THE FOLLOWING DESCRIBED LAND: CERTAIN LOTS IN THE RESIDENCES ON LAKE SHORE PARK SUBDIVISION, BEING A SUBDIVISION OF PART OF LOTS 91 TO 98 IN LAKE SHORE DRIVE ADDITION TO CHICAGO, A SUBDIVISION OF PART OF BLOCKS 14 AND 20 IN CANAL TRUSTEES' SUBDIVISION OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; WHICH SURVEY IS ATTACHED AS AN EXHIBIT TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0325432161, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2: THE EXCLUSIVE RIGHT TO THE USE OF S-72, A LIMITED COMMON ELEMENT, AS DELINEATED ON THE SURVEY ATTACHED TO THE DECLARATION OF CONDOMINIUM AFORESAID.

COMMONLY KNOWN AS: 840 N. Lake Shore Drive, Units 601, P128 and P129, Chicago, Illinois

PINs: 17-03-228-033-4014; 17-03-228-033-4199; 17-03-228-033-4200