

UNOFFICIAL COPY

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



Doc#: 1225144073 Fee: \$62.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 09/07/2012 03:09 PM Pg: 1 of 13

Address of Property:
4300-4354 Regency Drive
Glenview, IL 60125

Permanent Index Nos.:
04-32-301-009-0000
04-32-301-010-0000
04-32-301-011-0000

FOURTH LOAN MODIFICATION AGREEMENT

THIS FOURTH LOAN MODIFICATION AGREEMENT (the "Agreement") is made and entered into as of the 5th day of August, 2012 by and among **MB FINANCIAL BANK, N.A.** ("Lender"), **REGENCY DRIVE PARTNERS, LLC**, an Illinois limited liability company ("Borrower"), and **BARRY SEIDEN** and **BENJAMIN ZAVEDUK** (herein, individually and collectively called "Guarantors").

WITNESSETH:

WHEREAS, Borrower is the owner of certain real estate (the "Premises") commonly known as 4300-4354 Regency Drive, which is located in the Village of Glenview, County of Cook, State of Illinois and more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Lender has heretofore made a mortgage loan (the "Loan") to Borrower in the stated principal sum of Four Million Three Hundred Thousand Dollars and No Cents (\$4,300,000.00); 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 December 12, 2006 unless otherwise stated:

- (a) Note (the "Note") made by Borrower in the stated principal sum of Four Million Three Hundred Thousand Dollars and No Cents (\$4,300,000.00);
- (b) Guaranty (the "Guaranty") made by Guarantors in favor of Lender;
- (c) Mortgage (herein called the "Mortgage") made by Borrower to Lender encumbering the Premises and the improvements thereon and all other property,

UNOFFICIAL COPY

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. 0635433342;

(d) Assignment of Rents and Leases made by Borrower to Lender, recorded in the Recorder's Office as Document No. 0635433343;

(e) Undated Uniform Commercial Code Financing Statements made by Borrower and Guarantors, as debtors, to Lender, as secured party, recorded in the Recorder's Office as Document No. 0635433344 and filed with the Illinois Secretary of State as Document No. 11688462;

(f) Loan Modification Agreement dated December 12, 2008 by and among Lender, Borrower and Guarantors, recorded in the Recorder's Office as Document No. 0835722020;

(g) Second Loan Modification Agreement dated January 5, 2012 by and among Lender, Borrower and Guarantors, recorded in the Recorder's Office as Document No. 1206616097; and

(h) Third Loan Modification Agreement dated April 5, 2012 by and among Lender, Borrower and Guarantors, recorded in the Recorder's Office as Document No. 1210710034; 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 follows:

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

UNOFFICIAL COPY

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 Ten Thousand Dollars and No Cents (\$10,000.00).

4. **Principal Paydown.** Concurrent with Borrower's execution of this Agreement, Borrower shall pay to Lender a principal paydown in the amount of One Hundred Twenty Two Thousand One Hundred Thirty Three Dollars and Thirty Three Cents (\$122,133.33).

5. **Decrease in Loan Amount.** Notwithstanding anything to the contrary contained in the Loan Documents, upon Borrower's compliance with Section 4 of this Agreement, the stated principal amount of the Note will be decreased to Three Million Five Hundred Twenty Thousand Dollars and No Cents (\$3,520,000.00) (the "Loan Amount"). Any reference to the Loan, the Loan Amount or to the Note in any of the Loan Documents shall be a reference to the Loan, the Loan Amount and/or the Note in the stated principal amount of Three Million Five Hundred Twenty Thousand Dollars and No Cents (\$3,520,000.00).

6. **Amendment to Note.** In addition to any other modifications contained in this Agreement, the terms of the Note are hereby amended as follows:

(a) The Maturity Date of the Note shall be August 5, 2016.

(b) The Regular Rate shall mean interest payable at the **greater of:** the MB Reference Rate, or (ii) Four and One-Half Percent (4.50%) per annum. "MB Reference Rate" shall mean and refer to the rate per annum then, and from time to time, most recently charged, announced or published by Lender as its Reference Rate. It is expressly agreed that the term "MB Reference Rate" is not intended, nor does it imply, that said rate of interest is a preferred rate or one which is offered by Lender to its most creditworthy customers. If Lender no longer announces the MB Reference Rate as an index, then Lender will choose a new index based upon comparable information and Borrower will be notified of this choice. The MB Reference Rate will change from time to time automatically without notice.

(c) Subsections K and L of Section 4 of the Note are hereby deleted in their entirety and are hereby replaced with the following:

K. If **BARRY SEIDEN** ("Seiden") fails to provide to Lender, no later than sixty (60) days after filing Seiden's personal tax return each year during the term of the Loan, the personal financial statement of Seiden; or

L. If **BENJAMIN ZAVEDUK** ("Zaveduk") fails to provide to Lender, no later than sixty (60) days after filing Zaveduk's personal tax

UNOFFICIAL COPY

return each year during the term of the Loan, the personal financial statement of Zaveduk; or

(d) The following subsection M is hereby added to Section 4 of the Note:

M. If Borrower fails to provide to Lender, no later than ninety (90) days after the end of each calendar quarter during the term of the Loan, the rent roll of the Premises,

(e) The first paragraph of Section 6 of the Note is deleted in its entirety and is hereby replaced with the following:

Subject to any changes resulting from changes in the MB Reference, beginning with the monthly payment due on September 5, 2012 and continuing on the fifth (5th) day of each month thereafter until the Maturity Date, Borrower shall make monthly payments of principal and interest in the amount of Twenty Two Thousand Three Hundred Ninety Three Dollars and Forty Four Cents (\$22,393.44). Whenever changes occur in the interest rate, Lender will change the Borrower's payments to reflect payments based on the original amortization period less number of months elapsed since the first payment. The new payment will be effective not less than forty-five (45) days from the change in the interest rate.

(f) Section 7 is deleted in its entirety and is hereby replaced with the following:

7. Prepayment Privilege. The Borrower may prepay on any installment payment date the unpaid principal balance of this Note, in whole or in part, provided that (a) Borrower gives Lender not less than ten (10) business days prior written notice of its intention to do so; and (b) Borrower pays, at the time of such prepayment and in addition thereto, all accrued interest to the date of such prepayment and all other unpaid indebtedness then due.

7. Amendment to Mortgage. In addition to any other modifications contained in this Agreement, the terms of the Mortgage are hereby amended as follows:

(a) The first WHEREAS paragraph on page 1 of the Mortgage is deleted in its entirety and is hereby replaced with the following:

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee, the Mortgagor's Note (herein called the "Note") dated the date hereof, in the original

UNOFFICIAL COPY

principal sum of Four Million Three Hundred Thousand Dollars and No Cents (\$4,300,000.00) bearing interest at the rate equal to the greater of: (i) the MB Reference Rate, or (ii) Four and One-Half Percent (4.50%) per annum, payable to Mortgagee, with a maturity date of August 5, 2016. "MB Reference Rate" shall mean and refer to the rate per annum then, and from time to time, most recently charged, announced or published by Mortgagee as its Reference Rate. It is expressly agreed that the term "MB Reference Rate" is not intended, nor does it imply, that said rate of interest is a preferred rate or one which is offered by Mortgagee to its most creditworthy customers. If Mortgagee no longer announces the MB Reference Rate as an index, then Mortgagee will choose a new index based upon comparable information and Mortgagor will be notified of this choice. The MB Reference Rate will change from time to time automatically without notice; and

(b) The first paragraph of Section 16 of the Mortgage is deleted in its entirety and is hereby replaced with the following:

16. Financial Statements. The Mortgagor will, (i) within ninety (90) days after the end of each calendar year during the term of the Loan, furnish to Mortgagee at the place where interest thereon is then payable, financial and operating statements of Mortgagor and the Premises for such fiscal year, (ii) within ninety (90) days after the end of calendar quarter year during the term of the Loan, furnish to Mortgagee at the place where interest thereon is then payable, the rent roll for the Premises, and (iii) within one hundred twenty (120) days after the end of each calendar year during the term of the Loan, the business tax return of Mortgagor. **BARRY SEIDEN** ("Seiden") will, within sixty (60) days after filing the personal tax return of Seiden, furnish to Mortgagee at the place where interest thereon is then payable, the personal financial statement of Seiden. **BENJAMIN ZAVEDUK** ("Zaveduk") will, within sixty (60) days after filing the personal tax return of Zaveduk, furnish to Mortgagee at the place where interest thereon is then payable, the personal financial statement of Zaveduk. A financial and operating statements submitted to Mortgagee shall be in reasonable detail and in any event including such itemized statement of receipts and disbursements as shall enable Mortgagee to determine whether any default exists hereunder or under the Note; and in connection therewith:

(c) Subsection 23.A is deleted in its entirety and is hereby replaced with the following:

UNOFFICIAL COPY

A. Upon an Event of Default, Mortgagee shall be entitled to have appointed a receiver of the Premises and the Mortgagor for itself and for any subsequent owner and/or mortgagor of the Premises hereby waives any and all defenses and objections to the application for a receiver as above provided and hereby specifically consents to such appointment;

(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.

8. **Amendment to Guaranty.** In addition to any other modifications contained in this Agreement, the terms of the Guaranty are hereby amended as follows:

(a) The following subsections A and B of Section 23 of the Guaranty are deleted in their entirety and are hereby replaced with the following:

A. If **BARRY SEIDEN** ("Seiden") fails to provide to Obligees, no later than sixty (60) days after filing the personal tax return of Seiden each year during the term of the Loan, the personal financial statement of Seiden; or

B. If **BENJAMIN ZAVEDUK** ("Zaveduk") fails to provide to Obligees, no later than sixty (60) days after filing the personal tax return of Zaveduk each year during the term of the Loan, the personal financial statement of Zaveduk.

(b) The Guaranty 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.

9. **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.

10. **Title Insurance.** Concurrent with the execution and delivery hereof by Existing Borrowers and Additional Borrower, Existing Borrowers and Additional Borrower agree to provide Lender with an endorsement to its mortgagee's policy of title insurance ("Title Policy"), which endorsement shall be acceptable to Lender and shall guarantee as of the date hereof that:

UNOFFICIAL COPY

(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 2012 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.

11. **Lender Expenses.** Borrower agrees to pay all costs, fees and expenses (including but not limited to 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.

12. **Non-Waiver.** In the event Lender shall at any time or from time to time disburse portions of the Loan without Borrower first satisfying all conditions precedent set forth herein or in the Loan Documents, Lender shall not thereby be deemed to have waived its right to require such satisfaction of the same or other condition as a condition precedent to its obligations to make further disbursement of the Loan.

13. **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.

14. **Release.** Borrower, Guarantors and any other obligor under the Loan, on behalf of themselves and their respective successors and assigns (collectively and individually, the "Mortgagor Parties"), hereby fully, finally and completely release, remise, acquit and forever discharge, and agree to hold harmless Lender and its respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, fiduciaries, attorneys, agents and properties, past, present and future, and their respective heirs, successors and assigns (collectively and individually, the "Mortgagee Parties"), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, debts, liens, actions, and causes of action of any and every nature whatsoever, known or unknown, direct or indirect, whether at law, by statute or in equity, in contract or in tort, under state or federal jurisdiction, and whether or not the economic effects of such alleged matters arise or are discovered in the future (collectively, the

UNOFFICIAL COPY

"claims"), which the Mortgagor Parties have as of the date of this agreement or may claim to have against the Mortgagee Parties, including but not limited to, any claims arising out of or with respect to any and all transactions relating to the Loan or the Loan Documents occurring on or before the date of this Agreement, including but not limited to, any loss, cost or damage of any kind or character arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of the Mortgagee Parties occurring on or before the date of this Agreement. The foregoing release is intended to be, and is, a full, complete and general release in favor of the Mortgagee Parties with respect to all claims, demands, actions, causes of action and other matters described therein, or any other theory, cause of action, occurrence, matter or thing which might result in liability upon the Mortgagee Parties arising or occurring on or before the date of this Agreement. The Mortgagor Parties understand and agree that the foregoing general release is in consideration for the agreements of Lender contained herein and that they will receive no further consideration for such release. Furthermore, each of the Mortgagor Parties represents and warrants to Lender that she, he or it: (i) read this agreement, including without limitation, the release set forth in this section (the "Release Provision"), and understands all of the terms and conditions hereof, and (ii) executes this Agreement voluntarily with full knowledge of the significance of this Release Provision and the releases contained herein and execution hereof. The Mortgagor Parties agree to assume the risk of any and all unknown, unanticipated, or misunderstood claims that are released by this Agreement.

15. **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.

16. **Counterpart.** This Agreement may be executed in separate counterparts and such counterparts, taken together, shall constitute a fully executed and enforceable agreement.

(Signature Page Follows)

UNOFFICIAL COPY

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

MB FINANCIAL BANK, N.A.

REGENCY DRIVE PARTNERS, LLC, an Illinois limited liability company

By: Barry Seiden

By: Barry Seiden

Name: Barry Seiden

Barry Seiden, Co-Managing Member

Title: VP

Barry Seiden
BARRY SEIDEN

Benjamin Zaveduk
BENJAMIN ZAVEDUK

Property of Cook County Clerk's Office

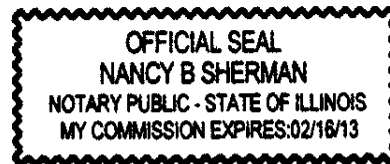
UNOFFICIAL COPY

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 Brian J. Robinson, the Vice President of **MB FINANCIAL BANK, N.A.**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, 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 **MB FINANCIAL BANK, N.A.**, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30th day of August, 2012.

Nancy B. Sherman
Notary Public



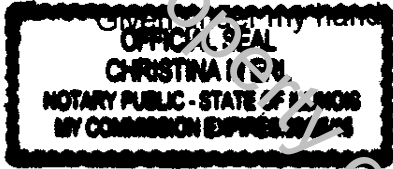
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **Barry Seiden**, the Co-Managing Member of **REGENCY DRIVE PARTNERS, 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 Co-Managing Member, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of **REGENCY DRIVE PARTNERS, LLC**, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30 day of AUGUST, 2012.




Christina M Erl
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **BARRY SEIDEN**, 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 free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30 day of AUGUST, 2012.



Christina M Erl
Notary Public

UNOFFICIAL COPY

EXHIBIT A

Legal Description

Parcel 1: Lot 2 and Lot 3 in Owner's Subdivision of the South 925.0 feet, measured at right angles to the South line of that part lying West of the Northwesterly line of the right of way of Dearlove Road and East of the Southeasterly line of the Chicago and Northwestern Railroad Company, of Lots 6 and 7 in Dearlove's Subdivision of Lots 9 and 10 in County Clerk's Division of Section 32, Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2: Lot 4 in Owner's Subdivision of the South 925.0 feet, measured at right angles to the South line of that part lying West of the Northwesterly line of the right of way of Dearlove Road and East of the Southeasterly line of the right of way of the Chicago and Northwestern Railroad Company, of Lots 6 and 7 in Dearlove's Subdivision of Lots 9 and 10 in County Clerk's Division of Section 32, Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

Address of Property: 4300-4354 Regency Drive
Glenview IL 60025

Permanent Index Nos.: 04-32-301-009-0000
04-32-301-010-0000
04-32-301-011-0000