

# UNOFFICIAL COPY



THIS DOCUMENT PREPARED BY  
AND MAIL TO:  
Robert A. Sternberg  
Kovitz Shifrin Nesbit  
750 W. Lake Cook Road, #350  
Buffalo Grove, IL 60089-2073

Doc#: 1301655037 Fee: \$52.00  
Karen A. Yarbrough RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/16/2013 03:13 PM Pg: 1 of 8

RECORDER'S USE ONLY

## MORTGAGE AND MORTGAGE NOTE MODIFICATION AGREEMENT

THIS MORTGAGE AND MORTGAGE NOTE MODIFICATION AGREEMENT ("Modification") is made and entered into as of the 5<sup>th</sup> day of January, 2013, by and between **BANCO POPULAR NORTH AMERICA**, its successors and assigns (the "Lender") and **S87, LLC**, an Illinois limited liability company (the "Borrower").

### RECITALS

WHEREAS, Lender has heretofore made to Borrower on October 5, 2012, a loan in the original principal amount of Three Million Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$3,325,000.00) (the "Loan") relating to the real property legally described on Exhibit A attached hereto and made part hereof; and

WHEREAS, the Loan was evidenced by a certain Mortgage Note dated as of October 5, 2012 (the "Note") in the original principal amount of Three Million Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$3,325,000.00) executed by Borrower and payable to the order of Lender, with a final payment date due on October 5, 2017; and

WHEREAS, the Note is secured by a certain Mortgage and Security Agreement (the "Mortgage") executed by the Borrower, creating a lien on certain real property located in Cook County, Illinois, and legally described on Exhibit A attached hereto (the "Mortgaged Premises"), which Mortgage was recorded with the Recorder of Deeds of Cook County Illinois on October 31, 2012 as Document No. 1230549009 and

WHEREAS, the Mortgage Note is further secured by among other things (i) the guaranty of Paul Tsakiris ("Guarantor"); and (ii) an Assignment of Leases and Rents dated as of October 5, 2012, executed by Borrower in favor of Lender and recorded on October 31, 2012 with the Recorder of Deeds of Cook County as document number 1230549010 (the "Assignment of Rents") (the Note, the Mortgage, the Guaranty, the Assignment of Rents and other loan documents are hereinafter collectively referred to as the "Loan Documents"); and

WHEREAS, Borrower has requested that the terms of the Mortgage Note be modified to increase the Loan to Three Million Seven Hundred Fourteen Thousand Eight Hundred Twenty-Four and 49/100 Dollars (\$3,714,824.49); and

Freedom Title Corporation  
2260 Hicks Road  
Suite 415  
Rolling Meadows IL 60008

6713890-1  
H/S

Handwritten initials/signature

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WHEREAS, Lender is willing to modify the Mortgage Note and Loan Documents to increase the Loan to Three Million Seven Hundred Fourteen Thousand Eight Hundred Twenty-Four and 49/100 Dollars (\$3,714,824.49), but only upon the terms and conditions herein set forth.

1. **Recitals**. The foregoing recitals to this Modification are fully incorporated herein by this reference thereto with the same force and effect as though restated herein.

2. **Defined Terms**. To the extent not otherwise defined herein to the contrary, all terms and/or phrases used in this Modification shall have the respective meanings ascribed to them in the Loan Documents.

3. **Principal Balance of Note**. Borrower and Lender acknowledge that as of the date hereof the outstanding principal balance of the Note is Three Million Three Hundred Fourteen Thousand Eight Hundred Twenty-Four and 49/100 Dollars (\$3,314,824.49).

4. **Modification of Terms**. The Loan amount is hereby increased to Three Million Seven Hundred Fourteen Thousand Eight Hundred Twenty-Four and 49/100 Dollars (\$3,714,824.49). The loan repayment terms of the Note and the Mortgage are hereby modified as set forth in the Amended and Restated Mortgage Note (the "Amended Note") attached hereto and made part hereof as Exhibit B, which Amended Note shall be executed by Borrower and delivered to Lender concurrently with the execution of this Modification.

5. **Additional Covenants of Borrower**.

(a) **Guaranty of Paul Tsakiris**. Borrower shall deliver to Lender concurrently with the execution of this Modification the Guaranty of Paul Tsakiris of the Amended and Restated Mortgage Note in the form acceptable to Lender.

(b) **Contractor's Statement**. Concurrent with the execution and delivery of this Modification by Borrower, Borrower shall deliver to Lender a sworn contractor's statement showing no significant change from the estimated cost of Four Hundred Ninety-Eight Thousand and 00/100 Dollars (\$498,000.00) for additional build out of the DaVita dialysis unit.

(c) **Construction Escrow**. From the proceeds of the increased Loan, Lender shall deposit the amount of Two Hundred Seventy-Five Thousand and 00/100 Dollars (\$275,000.00) with Freedom Title Company in a construction escrow to be disbursed by Freedom Title Company in accordance with the construction loan escrow agreement between Borrower, Lender and Freedom Title Company.

6. **Title Insurance**. Within thirty (30) days of the date of this Modification, Borrower shall deliver to Lender a date-down endorsement to the ALTA loan policy issued

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by Chicago Title Insurance Company on October 31, 2012 as Policy No. 72307-8757933 dated on or after the date of recording of this Modification insuring the Mortgage and this Modification, subject only to the title exceptions as approved by Lender's counsel and including endorsements as reasonably required by Lender.

7. Lender's Expenses. Concurrently with the execution of this Modification, Borrower shall pay or cause to be paid to Lender in immediately available funds all fees and expenses of Lender relating to this Modification and the transactions contemplated herein, including, without limitation, reasonable fees and expenses of Lender's counsel.

8. Representations of Borrower.

(a) Borrower hereby represents and warrants to and covenants with Lender that:

(i) At the date hereof, the Note, the Amended Note, the Mortgage and the Loan Documents are in full force and effect and Borrower is not in default in the payment of any sums, charges or obligations under the Note, the Amended Note or the Loan Documents or in the payment or performance of any covenants, agreements or conditions of Borrower contained in such documents;

(ii) At the date hereof Borrower has no right or claim of set-off, discount, deduction, defense or counterclaim which could be asserted in any action brought to enforce the Note, the Amended Note or the Loan Documents;

(iii) Lender is not in default in the performance or observance of any of its covenants, agreements or obligations under the Loan Documents;

(iv) There are no actions, suits or proceedings pending or threatened against Borrower or the Mortgaged Premises (or to the knowledge of Borrower, any basis for any such action, suit or proceeding), which if adversely determined, might individually, or in the aggregate, materially and adversely:

(1) impair the ability of Borrower to pay or perform its obligations under the Loan Agreement, the Amended Note or the Loan Documents; or

(2) affect the Mortgaged Premises or the use, manner of use, or operation thereof; and

(v) The Loan Documents, as amended hereby, and all the provisions thereof are hereby reaffirmed and ratified and remain in full force

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and effect, and the representations and warranties made therein are true and correct as if made on the date hereof.

(b) The representations, warranties and covenants of Borrower made in this Section 8 are, as of the date hereof, and shall be, at all times, true and correct in all material respects, and are and shall be of continuing force and effect until all indebtedness and obligations of Borrower under the Amended Note and the Loan Documents have been fully and finally paid and performed.

9. **Release; Reliance**. Borrower, on its own behalf and on behalf of its representatives, members, agents, employees, servants, successors and assigns (hereinafter collectively referred to as the "Borrowing Group") waives, releases and forever discharges Lender and its officers, directors, subsidiary, affiliated and related companies, agents, servants, employees, shareholders, representatives, successors, assigns, attorneys, accountants, assets and properties, as the case may be (hereinafter referred to as the "Lender Group") from and against all manner of actions, cause and causes of action, suits, debts, sums of money, accountants, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, obligations, liabilities, costs, expenses, losses, damages, judgments, executions, claims and demands, of whatsoever kind or nature, in law or in equity, whether known or unknown, whether or not concealed or hidden, arising out of or relating to any matter, cause or thing whatsoever, that any of the Borrowing Group, jointly or severally, may have had, or now have or that may subsequently accrue against the Lender Group by reason of any matter or thing whatsoever that has occurred through the date hereof arising out of or in any way connected to, directly, or indirectly, the Loan or any of the Loan Documents. Borrower acknowledges and agrees that Lender is specifically relying upon the representations, warranties, covenants and agreements contained in this Modification and that such representations, warranties, covenants and agreements constitute a material inducement to enter into this Modification.

10. **Default; Ratification**.

(a) If there occurs a breach of any warranty made by or on behalf of Borrower in this Modification, or if at any time any material representation or statement made herein by Borrower is not true and correct, and such representation or statement is not corrected to Lender's sole satisfaction within thirty (30) days after written notice thereof, such occurrence or breach shall constitute and be a default under the the Amended Note and the Loan Documents and shall entitle Lender, at the election of Lender, to exercise any and all rights, powers and remedies available to Lender under such agreements.

(b) Except as herein expressly modified, the Amended Note and the Loan Documents and the terms and provisions thereof are hereby reaffirmed and ratified and remain in full force and effect, and unchanged, in all respects.

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11. **Construction.** Borrower and Lender expressly state, declare and acknowledge that this Modification is intended only to modify Borrower's continuing obligations in the manner set forth herein, and is not intended as a novation.

12. **Miscellaneous.**

(a) Time is of the essence with respect to the payment, performance and observance of each and every covenant, agreement, condition, representation, warranty and obligation of Borrower under the Amended Note and the Loan Documents.

(b) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute and be taken as one and the same instrument.

(c) None of the covenants, terms or conditions of this Modification shall in any manner be altered, waived, modified, changed or abandoned, except by written instrument, duly signed and delivered by all the parties hereto.

(d) This Modification contains the whole agreement between the parties hereto as to the subject matter hereof and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise, of any kind relating to the subject matter hereof.

(e) This Modification shall extend to be obligatory upon and inure to the benefit of the respective successors and permitted assigns of Borrower and Lender.

(f) This Modification has been executed by Borrower and Lender in the state of Illinois and, together with all the Loan Documents, shall be construed and enforced in accordance with the laws of the state of Illinois.

IN WITNESS WHEREOF, Lender and the Borrower have caused this Modification to be executed as of the day and year first above written.

**LENDER:**

BANCO POPULAR  
NORTH AMERICA

By: *A. M. Shaw*  
Its *Vice President*

**BORROWER:**

S87, LLC,  
an Illinois limited liability company

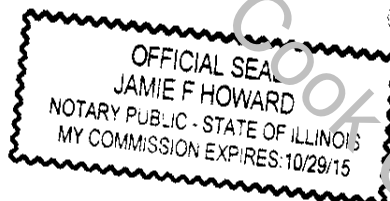
By: *[Signature]*  
Its \_\_\_\_\_

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STATE OF ILLINOIS        )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Alan M. Shave, the V.P. of BANCO POPULAR NORTH AMERICA, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said BANCO POPULAR NORTH AMERICA, for the uses and purposes therein set forth.

2013 GIVEN under my hand and notarial seal, this 10 day of January.

 Jamie Howard  
Notary Public

Property of Cook County Clerk's Office

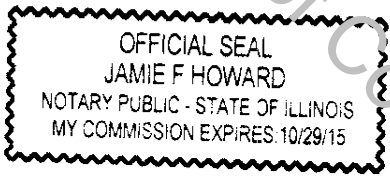
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STATE OF ILLINOIS        )  
                                      ) SS:  
COUNTY OF Cook        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Paul Tsakiris, the Sole Member of S87, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Sole Member, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said S87, LLC, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 10 day of January, 2013.

Jamie Howard  
Notary Public



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## EXHIBIT A

### Legal Description

**8721-8749 S. Stony Island Avenue  
Chicago, Illinois 60617**

**PIN: 25-01-102-022  
25-01-102-023  
25-01-102-024**

**PARCEL 1:** LOTS 10 THROUGH 20 IN BLOCK 4 IN FRED E. DOWNEY'S STONY ISLAND BOULEVARD SUBDIVISION OF LOTS 3 TO 6, INCLUSIVE IN THE PARTITION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

**PARCEL 2:** THAT PART OF EAST 87TH PLACE LYING NORTH OF AND ADJOINING THE NORTH LINE OF LOT 20 LYING EAST OF AND ADJOINING THE WEST LINE OF SAID LOT 20 PRODUCED NORTH 33 FEET AND LYING WEST OF AND ADJOINING THE EAST LINE OF SAID LOT 20 PRODUCED NORTH 33 FEET IN BLOCK 4 IN FRED E. DOWNEY'S SUBDIVISION OF LOTS 3 TO 6, BOTH INCLUSIVE, IN PARTITION OF OWNERS OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF LOT 2 IN PARTITION BY OWNERS OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS