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Doc#: 1703706178 Fee: \$86.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 02/06/2017 11:10 AM Pg: 1 of 20

**THIS DOCUMENT WAS PREPARED BY,
AND AFTER RECORDING, RETURN TO:**

Steven L. DeGraff
MUCH SHELIST
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606.1615

PERMANENT TAX INDEX NUMBERS:

17-32-408-003-0000
17-32-408-004-0000
17-32-408-005-0000
17-32-408-006-0000
17-32-408-007-0000
17-32-408-008-0000

PROPERTY ADDRESS:

3613-3625 South Morgan Street
Chicago, Illinois 60609

PERMANENT TAX INDEX NUMBER:

17-32-414-029-0000

PROPERTY ADDRESS:

3755 South Morgan Street, Unit 1-2
Chicago, Illinois

This space for Recorder's use only.

MODIFICATION OF SECURITY DOCUMENTS

This **MODIFICATION OF SECURITY DOCUMENTS** (this "**Agreement**") is made as of February 1, 2017, by and among (i) **LEXINGTON HOMES L.L.C.**, an Illinois limited liability company ("**Lexington Homes**"), **LEXINGTON PLACE III LLC**, an Illinois limited liability company ("**Lexington Place**"), **LEXINGTON SQUARE 4 LLC**, an Illinois limited liability company ("**Lexington Square**"), **LEXINGTON SHORE LLC**, an Illinois limited liability company ("**Lexington Shore**"), **LEXINGTON AT PORT CLINTON PLACE LLC**, an Illinois limited liability company ("**Port Clinton**"), **LEXINGTON TOWNE LLC**, an

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Illinois limited liability company ("**Lexington Towne**"), and LEXINGTON POINTE LLC, an Illinois limited liability company ("**Lexington Pointe**"; Lexington Homes, Lexington Place, Lexington Square, Lexington Shore, Port Clinton, Lexington Towne and Lexington Pointe, together with any Project Owner (as defined in the hereinafter defined "Loan Agreement") that from time to time becomes a party to the Loan Agreement, are collectively referred to herein as "**Borrower**"), (ii) RONALD J. BENACH, RONALD J. BENACH REVOCABLE TRUST, WAYNE R. MORETTI, WAYNE R. MORETTI 2007 TRUST, MAXIMILIAN F. PLZAK, and JEFFREY M. BENACH (individually and collectively, "**Guarantor**"), and (iii) ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association, and its successors and assigns ("**Lender**").

RECITALS:

A. Lender has made a loan to Borrower (the "**Loan**") in the original principal amount not to exceed TWENTY MILLION AND NO/100 DOLLARS (\$20,000,000.00) pursuant to that certain Loan Agreement dated as of May 20, 2016, by and between Borrower and Lender (the "**Loan Agreement**"; any capitalized word or phrase not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement). The Loan is evidenced by a certain Promissory Note dated as of May 20, 2016, in the principal amount of \$20,000,000.00 from Borrower payable to the order of Lender (the "**Promissory Note**"; the Promissory Note and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor are sometimes individually or collectively referred to herein as a "**Note**").

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated May 20, 2016, from Lexington Square to Lender and recorded with the Cook County Recorder (the "**Recorder's Office**") on May 26, 2016, as Document No. 1614757099 (the "**Mortgage**"), which Mortgage encumbers the land legally described as Parcel 1 on **Exhibit A** attached to and made a part of this Agreement (the "**Lexington Square Land**"); (ii) that certain Assignment of Leases and Rents dated May 20, 2016, from Lexington Square to Lender and recorded with the Recorder's Office on May 26, 2016, as Document No. 1614757100 (the "**Assignment of Rents**"); (iii) that certain Environmental Indemnity Agreement dated May 20, 2016, from Borrower and Guarantor to Lender (the "**Indemnity Agreement**"); and (iv) that certain Assignment of Agreements Affecting Real Estate dated May 20, 2016, from Lexington Square to Lender (the "**Assignment of Agreements**"; the Mortgage, the Assignment of Rents, the Indemnity Agreement, and the Assignment of Agreements are collectively referred to in this Agreement as the "**Security Documents**").

C. Borrower, Guarantor and Lender have entered into that certain First Amendment to Loan Agreement dated as of even date herewith (the "**First Amendment**") under which the Loan Agreement was amended to, among other things, add to the Borrowing Base and the Lexington Square Project as a Model Unit the townhome commonly known as 3755 South Morgan Street, Unit 1-2, Chicago, Illinois, and legally described as Parcel 2 on **Exhibit A** attached to and made a part of this Agreement (the "**Off-Site Model Unit**").

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D. It is a condition precedent to Lender's extension of a Loan Advance to finance the Off-Site Model Unit that Borrower, Guarantor, and Lender execute and deliver this Agreement in order to, among other things, spread the lien of the Mortgage and the Assignment of Rents to the Off-Site Model Unit.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth above (which are incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Security Documents, as provided in this Agreement, (iii) the covenants and agreements contained in this Agreement, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, the parties agree as follows:

1. DEFINITIONS. Any capitalized term not otherwise defined in this Agreement has the meaning set forth in the Loan Agreement.

2. AMENDMENTS TO SECURITY DOCUMENTS. Each of the Security Documents is amended as follows:

2.1 Loan Agreement. The term "Loan Agreement" is amended in its entirety to mean the Loan Agreement, as amended by the First Amendment.

2.2 Real Property. Exhibit A to each of the Mortgage, the Assignment of Rents, the Assignment of Agreements and the Indemnity Agreement is amended in its entirety by substituting therefor Exhibit A attached to and made a part of this Agreement.

3. SPREADER. The lien of the Mortgage, the Assignment of Rents, and the other Security Documents is spread and extended to the Off-Site Model Unit.

4. MISCELLANEOUS.

4.1 Governing Law. This Agreement is governed by and must be construed in accordance with the laws of the State of Illinois.

4.2 Construction. This Agreement may not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor, and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor, and Lender each acknowledge and waive 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 to be legally bound by the terms and provisions of this Agreement, of its own free will, without promises or threats or the exertion of duress upon it. Borrower and Guarantor each 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.

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4.3 No Joint Venture. Notwithstanding the execution of this Agreement by Lender, nothing contained in this Agreement may be considered to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor will privity of contract be presumed to have been established with any third party.

4.4 Prior Agreements. Borrower, Guarantor, and Lender each acknowledge that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents, the First Amendment and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor, and Lender; and that all such prior understandings, agreements and representations are modified as set forth in this Agreement. Except as expressly modified, the terms of the Loan Documents are and remain unmodified and in full force and effect.

4.5 Successors and Assigns. This Agreement binds and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

4.6 References to Loan Agreement and Security Documents. Any references to the "Mortgage", the "Assignment of Rents", or the "Indemnity Agreement" contained in any of the Security Documents should be considered to refer to the Mortgage, the Assignment of Rents, and the Indemnity Agreement as amended. The paragraph and section headings used in this Agreement are for convenience only and do not limit the substantive provisions hereof. All words in this Agreement that are expressed in the neuter gender should be considered to include the masculine, feminine, and neuter genders. Any word in this Agreement that is expressed in the singular or plural should be considered, whenever appropriate in the context, to include the plural and the singular.

4.7 Counterparts. This Agreement may be executed in one or more counterparts, all of which, when taken together, constitute one original Agreement.

4.8 Time of the Essence. Time is of the essence of Borrower's obligations under this Agreement.

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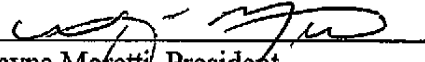
[Signatures Continued from Preceding Page]

BORROWER:

LEXINGTON PLACE III LLC, an Illinois limited liability company

By: **LEXINGTON HOMES L.L.C.**, an Illinois limited liability company, its Manager

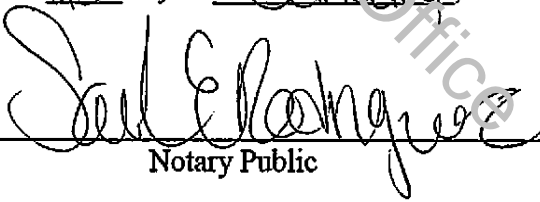
By: **LEXINGTON HOMES ILLINOIS, INC.**, an Illinois corporation, its Manager

By: 
Wayne Moretti, President

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Wayne Moretti, President of **LEXINGTON HOMES ILLINOIS, INC.**, an Illinois corporation, the Manager of **LEXINGTON HOMES L.L.C.**, an Illinois limited liability company, the Manager of **LEXINGTON PLACE III LLC**, an Illinois limited liability company, who 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said companies and corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23 day of JANUARY, 2017.


Notary Public



My Commission Expires:
03/14/20

[Signatures Continue on Following Page]

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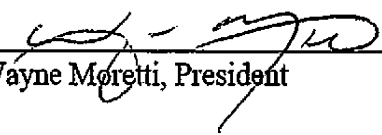
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BORROWER:

LEXINGTON SHORE LLC, an Illinois limited liability company

By: **LEXINGTON HOMES L.L.C.**, an Illinois limited liability company, its Manager

By: **LEXINGTON HOMES ILLINOIS, INC.**, an Illinois corporation, its Manager

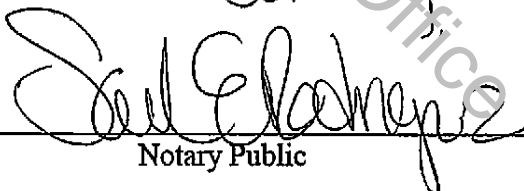
By: 
Wayne Moretti, President

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Wayne Moretti, President of **LEXINGTON HOMES ILLINOIS, INC.**, an Illinois corporation, the Manager of **LEXINGTON HOMES L.L.C.**, an Illinois limited liability company, the Manager of **LEXINGTON SHORE LLC**, an Illinois limited liability company, who 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said companies and corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23 day of January, 2017.




Notary Public

My Commission Expires:
03/14/20

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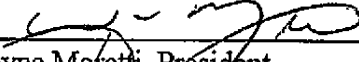
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BORROWER:

LEXINGTON POINTE LLC, an Illinois limited liability company

By: **LEXINGTON HOMES L.L.C.**, an Illinois limited liability company, its Manager

By: **LEXINGTON HOMES ILLINOIS, INC.**, an Illinois corporation, its Manager

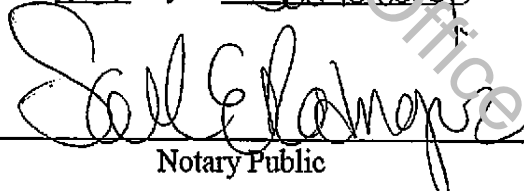
By: 
Wayne Moretti, President

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Wayne Moretti, President of **LEXINGTON HOMES ILLINOIS, INC.**, an Illinois corporation, the Manager of **LEXINGTON HOMES L.L.C.**, an Illinois limited liability company, the Manager of **LEXINGTON POINTE LLC**, an Illinois limited liability company, who 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said companies and corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23 day of January, 2017.




Notary Public

My Commission Expires:


03/14/20

[Signatures Continue on Following Page]

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[Signatures Continued from Preceding Page]

GUARANTOR:



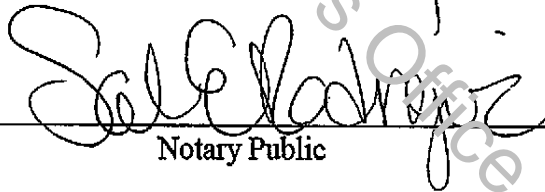
WAYNE R. MORETTI, not personally, but solely as
 Trustee of the **WAYNE R. MORETTI 2007 TRUST**

STATE OF _____)
) SS.
 COUNTY OF _____)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **WAYNE R. MORETTI**, not personally, but solely as Trustee of the **WAYNE R. MORETTI 2007 TRUST**, who 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said trust, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23 day of January, 2017.





 Notary Public

My Commission Expires:

03/14/20

[Signatures Continue on Following Page]

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[Signatures Continued from Preceding Page]

GUARANTOR:

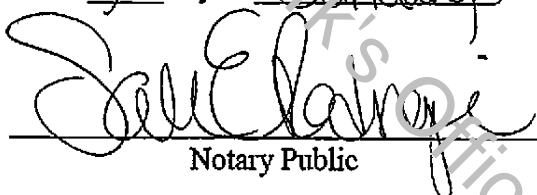


MAXIMILIAN F. PLZAK

STATE OF _____)
) SS.
 COUNTY OF _____)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **MAXIMILIAN F. PLZAK**, who 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 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 23 day of January, 2017.



 Notary Public



My Commission Expires:

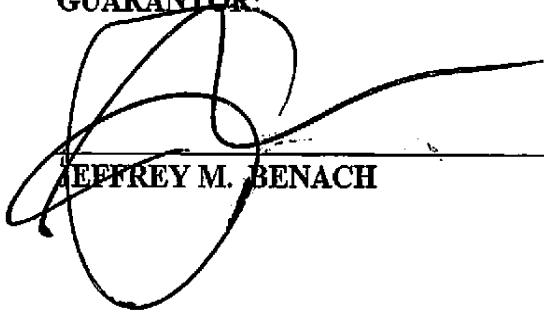
03/14/20

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UNOFFICIAL COPY

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GUARANTOR:



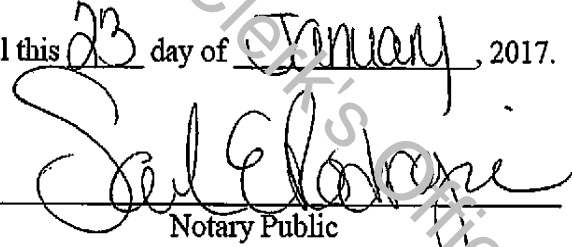
JEFFREY M. BENACH

STATE OF _____)
) SS.
 COUNTY OF _____)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **JEFFREY M. BENACH**, who 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 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 23 day of January, 2017.





 Notary Public

My Commission Expires:

03/14/20

[Signatures Continue on Following Page]

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[Signatures Continued from Preceding Page]

LENDER:

ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association

By: *Jason Baeten*
Name: Jason Baeten
Title: Vice President

STATE OF IL)
COUNTY OF Cook) SS

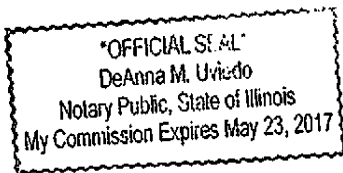
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Jason Baeten, Vice President of ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said national banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24th day of January, 2017.

DeAnna M. Uiedo

Notary Public

My Commission Expires:



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EXHIBIT "A"

LEGAL DESCRIPTION

LOTS 19, 20, 21, 22, 23, 24, 25 AND 26 IN BLOCK 9 IN GAGE AND OTHER'S SUBDIVISION OF THE EAST HALF OF THE SOUTH EAST QUARTER OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMON ADDRESS: 3613 3625 South Morgan Street
Chicago, Illinois 60609

PIN NOS.: 17-32-408-003-0000
17-32-408-004-0000
17-32-408-005-0000
17-32-408-006-0000
17-32-408-007-0000
17-32-408-008-0000

[Legal Description Continued on Following Page]

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PARCEL 2:

THAT PART OF LOT 1 IN LEXINGTON SQUARE 3 RESUBDIVISION, BEING A RESUBDIVISION OF LOT 20 IN LEXINGTON PLACE 2, BEING A RESUBDIVISION OF BLOCK 15 IN GAGE, LEMOYNE AND HUBBARD'S SUBDIVISION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 20, 2015, AS DOCUMENT NO 1520144094, DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1, THENCE SOUTH 89 DEGREES 54 MINUTES 36 SECONDS EAST, ON THE NORTH LINE OF SAID LOT, 48.00 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH 00 DEGREES 00 MINUTES 13 SECONDS WEST, ON THE EAST LINE OF SAID LOT, 20.96 FEET TO THE EASTERLY EXTENSION OF THE CENTERLINE OF AN EXISTING COMMON WALL AND TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 57 MINUTES 15 SECONDS WEST, ON SAID EASTERLY EXTENSION AND ON SAID CENTER LINE AND ON THE WESTERLY EXTENSION THEREOF, 48.00 FEET TO THE WEST LINE OF SAID LOT; THENCE SOUTH 00 DEGREES 00 MINUTES 13 SECONDS WEST, ON SAID WEST LINE, 19.00 FEET TO WESTERLY EXTENSION OF THE CENTERLINE OF AN EXISTING COMMON WALL; THENCE SOUTH 89 DEGREES 54 MINUTES 23 SECONDS EAST, ON SAID WESTERLY EXTENSION AND ON SAID CENTER LINE AND ON THE EASTERLY EXTENSION THEREOF, 48.00 FEET TO THE EAST LINE OF SAID LOT; THENCE NORTH 00 DEGREES 00 MINUTES 13 SECONDS EAST, ON SAID EAST LINE, 18.89 FEET THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 3755 South Morgan Street, Unit 1-2
Chicago, Illinois 60609

PIN NO.: 17-32-414-029-0000