

# UNOFFICIAL COPY



\*2104916020\*

**This document prepared by and after recording return to:**

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

Doc# 2104916020 Fee \$88.00

RHSP FEE: \$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/18/2021 12:40 PM PG: 1 OF 15

*This space reserved for Recorder's use Only*

## SECOND MORTGAGE MODIFICATION AGREEMENT

**THIS SECOND MORTGAGE MODIFICATION AGREEMENT** (this "Agreement") is dated as of September 25, 2020 but effective as of August 29, 2020, by and among **ANETS WOODS LLC**, a Delaware limited liability company ("Borrower"), **CIBC BANK USA**, an Illinois state chartered bank, formerly known as The PrivateBank and Trust Company, as administrative agent (the "Agent") for itself and for the Lenders, and **CIBC BANK USA**, an Illinois state chartered bank (as a lender, "CIBC"), and **EVERGREEN BANK GROUP**, an Illinois state chartered bank, as a lender (together with PrivateBank, the "Lenders").

### RECITALS:

A. The Lenders have heretofore made an acquisition and development loan in the principal amount of \$9,700,000.00 and a revolving credit construction loan in the principal amount of \$7,000,000.00 (collectively, the "Loans") to Borrower, pursuant to the terms and conditions of a Revolving Credit, Acquisition, Development and Construction Loan and Security Agreement and Other Loan Documents dated as of August 29, 2016 between Borrower and Lenders (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and which Loans were increased to an aggregate amount of \$17,050,000.00 pursuant to a certain First Amendment to Revolving Credit, Acquisition, Development and Construction Loan and Security Agreement and Other Loan Documents dated as of November 3, 2016 and as evidenced by the Notes (as defined in the Loan Agreement) ("Notes").

B. The Loans are secured by (i) that certain Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents, by Borrower for the benefit of Agent dated as of August 29, 2016 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on September 8, 2016 as Document No. 1625210088 (together with all renewals, modifications, increases and extensions thereof, the "Mortgage"), which granted Agent a first

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priority security interest in the real property described on Exhibit A attached thereto (the "Property"); (ii) that certain Assignment of Leases and Rents dated as of August 29, 2016, from Borrower to Agent (the "Assignment of Rents"); (iii) that certain Environmental Indemnity Agreement dated August 29, 2016 from Borrower and Jeremiah S. James (the "James Guarantor") to Agent (the "Indemnity Agreement"); and (iv) certain other loan documents by Borrower and Guarantors in favor of Agent and the Lender (the Notes, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents"). Capitalized terms, not defined herein shall have the meanings provided for in the Loan Documents.

C. The Loan is further secured by a Guaranty of Non-Recourse Carve-Outs dated as of August 29, 2016 from CL IV REO USA LLC ("Castlelake Guarantor", and together with the James Guarantor, the "Guarantors") to Agent, a Guaranty of Non-Recourse Carve-Outs dated as of August 29, 2016 from the James Guarantor to Agent, and a Guaranty of Completion dated as of August 29, 2016 from the James Guarantor to Agent (collectively, the "Guarantees").

D. The Mortgage was modified by a Mortgage Modification Agreement dated April 11, 2017 and recorded with the Cook County Recorder of Deeds on May 16, 2017 as Document No. 1713619019.

E. The parties desire to amend the Mortgage to extend the Maturity Date of the Loan to December 31, 2021.

## 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 Lenders 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. **Maturity Date.** The Maturity Date is hereby extended to December 31, 2021.
2. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Agent and 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 (as defined in the Mortgage) under the Note, 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 Agreement, they continue to be the legal, valid and binding

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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, either guarantor of the Loan or any other party whose financial statement has been delivered to Agent in connection with the Loan from the date of the most recent financial statement received by Agent.

(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.

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

3. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Agent in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

4. **Miscellaneous.**

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

(b) This Agreement shall not be construed more strictly against Agent or Lenders than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Agent or Lenders, it being recognized that Borrower and Agent have contributed substantially and materially to the preparation of this Agreement, and Borrower and Agent 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.

(c) Notwithstanding the execution of this Agreement by Agent and Lenders, the same shall not be deemed to constitute Agent or Lenders a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

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(d) Borrower, Agent 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 Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor, Agent and Lenders; 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.

(e) This Agreement 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 "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.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

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

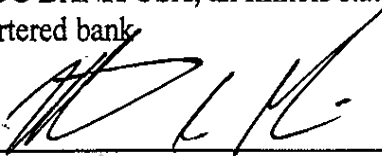
**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

**AGENT:**

**CIBC BANK USA**, an Illinois state chartered bank

By:   
Name: Matthew S. Gumbiner  
Title: Associate Managing Director

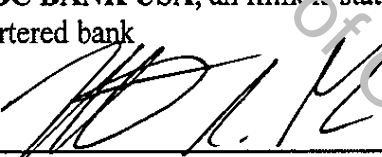
**BORROWER:**

**ANETS WOODS LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDERS:**

**CIBC BANK USA**, an Illinois state chartered bank

By:   
Name: Matthew S. Gumbiner  
Title: Associate Managing Director

**EVERGREEN BANK GROUP**, an Illinois state chartered bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Property of Cook County Clerk's Office

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

**AGENT:**

**CIBC BANK USA**, an Illinois state chartered bank

By: \_\_\_\_\_  
Name: Matthew S. Gumbiner  
Title: Associate Managing Director

**BORROWER:**

**ANETS WOODS LLC**, a Delaware limited liability company

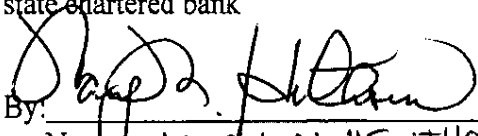
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDERS:**

**CIBC BANK USA**, an Illinois state chartered bank

By: \_\_\_\_\_  
Name: Matthew S. Gumbiner  
Title: Associate Managing Director

**EVERGREEN BANK GROUP**, an Illinois state chartered bank

By:   
Name: MARY M. HENTHORN  
Title: Executive Vice President

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

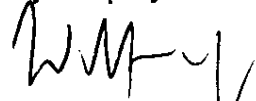
**AGENT:**

**CIBC BANK USA**, an Illinois state chartered bank

By: \_\_\_\_\_  
Name: Matthew S. Gumbiner  
Title: Associate Managing Director

**BORROWER:**

**ANETS WOODS LLC**, a Delaware limited liability company

By:   
Name: William Stephen Venble Jr.  
Title: VP

**LENDERS:**

**CIBC BANK USA**, an Illinois state chartered bank

By: \_\_\_\_\_  
Name: Matthew S. Gumbiner  
Title: Associate Managing Director

**EVERGREEN BANK GROUP**, an Illinois state chartered bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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## CONSENT AND REAFFIRMATION

The undersigned, **JEREMIAH S. JAMES**, an individual ("Guarantor") hereby consents to the foregoing, Second Mortgage Modification Agreement (the "Amendment") and Guarantor ratifies and affirms the Guarantees and agrees that the Guarantees are in full force and effect following the execution and delivery of this Amendment. The representations and warranties of Guarantor in the Guarantees are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guarantees continue to be the valid and binding obligation of Guarantor, enforceable in accordance with their terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Agent thereunder, except as provided in the Guarantees.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Reaffirmation as of this 22<sup>nd</sup> day of September, 2020.

GUARANTOR:

  
\_\_\_\_\_  
**JEREMIAH S. JAMES**



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## CONSENT AND REAFFIRMATION

The undersigned, **CL IV REO USA LLC**, a Delaware limited liability company ("Guarantor") hereby consents to the foregoing, Second Mortgage Modification Agreement (the "Amendment") and Guarantor ratifies and affirms the Guarantees and agrees that the Guarantees are in full force and effect following the execution and delivery of this Amendment. The representations and warranties of Guarantor in the Guarantees are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guarantees continue to be the valid and binding obligation of Guarantor, enforceable in accordance with their terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Agent thereunder, except as provided in the Guarantees.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Reaffirmation as of this 22 day of September, 2020.

### GUARANTOR:

**CL IV REO USA LLC**, a Delaware limited liability company

By: 

Name: William Stephen Veroble Jr.

Its: VP

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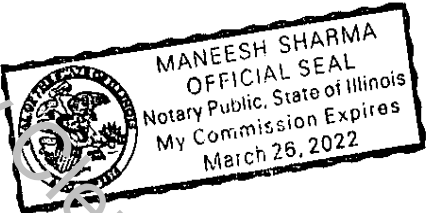
STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I Maneesh Sharma, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Matthew S. Gumbiner, the Associate Managing Director of CIBC BANK USA, 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 22 day of 02, 2020.

[Signature]  
Notary Public

My Commission Expires: 3-26-22



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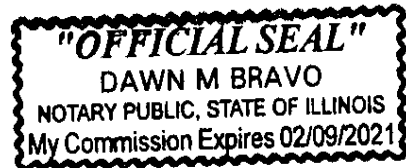
STATE OF ILLINOIS     )  
  ) .ss  
COUNTY OF Cook     )

I Dawn Bravo, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MARY M. HENTHORN, the Ex Vice President of **EVERGREEN BANK GROUP**, 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/she signed and delivered said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24<sup>th</sup> day of September, 2020.

Dawn M Bravo  
Notary Public

My Commission Expires: 2-9-2021



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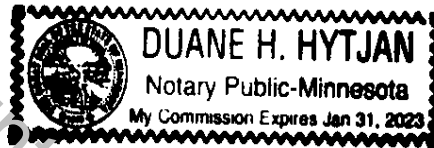
STATE OF Minnesota )  
 ) .ss  
 COUNTY OF Hennepin )

I Duane Hytjan, a Notary Public in and for said County, in the State  
 aforesaid, DO HEREBY CERTIFY that William Stephen Venable Jr., the  
VP of ANETS WOODS LLC, a Delaware limited liability company, 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/she signed and  
 delivered said instrument as his/her own free and voluntary act for the uses and purposes therein  
 set forth.

GIVEN under my hand and Notarial Seal this 22 day of September, 2020.

Duane Hytjan  
 Notary Public

My Commission Expires: Jan 31, 2023





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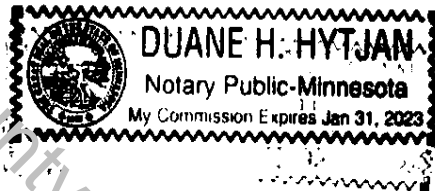
STATE OF Minnesota )  
 ) .SS  
COUNTY OF Hennepin )

I Duane Hytjan, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William Stephen Verbie, the VP of CL IV REO USA LLC, a Delaware limited liability company, 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/she signed and delivered said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of September, 2020.

Duane Hytjan  
Notary Public

My Commission Expires: Jan 31, 2023



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## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

LOTS 1, 2, 9, 10, 12, 15, 17, 19, 21, 30, AND 31 IN ANETS WOODS, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 10 AND PART OF THE NORTHEAST 1/4 OF SECTION 15, ALL IN TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 28, 2016, AS DOCUMENT NUMBER 1630215140, IN COOK COUNTY, ILLINOIS.

**ADDRESS:** Vacant Lots  
NE corner of Waukegan Road and Voltz Road  
Northbrook, IL

**TAX IDs:**

04-10-408-001-0000  
04-10-408-002-0000  
04-10-408-009-0000,  
04-10-408-010-0000  
04-10-408-012-0000  
04-10-408-015-0000  
04-10-408-017-0000  
04-10-408-019-0000  
04-10-408-021-0000  
04-10-408-030-0000  
04-10-408-031-0000

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