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Cook County Recorder 35.50



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THIRD AMENDMENT TO
MORTGAGE AND
SECURITY AGREEMENT

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This THIRD AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as this "Amendment") is made as of February 1, 1999 by and between MCGUIRE CONDOMINIUM LIMITED PARTNERSHIP, an Illinois Limited Partnership ("Mortgagor") and Banco Popular, Illinois n/k/a Banco Popular North America ("Mortgagee"). All capitalized terms which are not defined hereunder shall have the same meanings herein as set forth in the Mortgage (as defined below).

WITNESSETH:

FIRST AMERICAN TITLE order # CC106395

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WHEREAS, Mortgagor conveyed to Mortgagee a mortgage lien on the real estate in Cook County, Illinois described in Exhibit A to the Mortgage (the "Real Estate") pursuant to a mortgage dated May 8, 1997 and recorded with the Cook County Recorder of Deeds on May 12, 1997 as document number 97332575 (the "Mortgage"); and

WHEREAS, on or about March 19, 1998, the parties hereto along with other parties amended various loan documents relating to the Mortgage and the loan secured thereby pursuant to and in accordance with the terms of that certain Modification of Construction Loan Agreement, Mortgage Note, Mortgage and Security Agreement, Assignment of Rents and Interest in Leases, and Related Loan Documents dated March 19, 1998 (the "Modification"); and,

WHEREAS, on or about April 30, 1998, the parties hereto along with other parties further amended various loan documents relating to the Mortgage and the loan secured thereby pursuant to and in accordance with the terms of that certain Second Modification of Construction Loan Agreement, Mortgage Note, Mortgage and Security Agreement, Assignment of Rents and Interest in Leases, and

Related Loan Documents dated April 30, 1998 (the "Second Modification"); and,

WHEREAS, on or about August 1, 1998, the parties hereto along with other parties further amended various loan documents relating to the Mortgage and the loan secured thereby pursuant to and in accordance with the terms of that certain Third Modification of Construction Loan Agreement, Mortgage Note, Mortgage and Security Agreement, Assignment of Rents and Interest in Leases, and Related Loan Documents dated August 1, 1998 (the "Third Modification"); and,

WHEREAS, on or about February 1, 1999, the parties hereto along with other parties further amended various loan documents relating to the Mortgage and the loan secured thereby pursuant to and in accordance with the terms of that certain Fourth Modification of Construction Loan Agreement, Mortgage Note, Mortgage and Security Agreement, Assignment of Rents and Interest in Leases, and Related Loan Documents dated February 1, 1999 (the "Fourth Modification"); and,

WHEREAS, pursuant to the terms of the Fourth Modification, the terms of the present Mortgage are to be modified as set forth herein;

NOW THEREFORE, for and in consideration of the premises and mutual agreements herein contained and for the purposes of setting forth the terms and conditions of this Amendment, the parties, intending to be bound, hereby agree as follows:

1. **AFFIRMATION OF RECITALS.** The recitals set forth above are true and correct and are incorporated herein by this reference.
2. **AMENDMENT OF THE MORTGAGE.** The Mortgage is hereby amended as follows:
 - 2.1 All references in the Mortgage to the Note shall be deemed to be references to the Note as modified pursuant to and in accordance with the terms of the Fourth Modification.
 - 2.2 All references in the Mortgage to the sum of \$1,331,000.00, whether in words or arabic script, are hereby deleted and substituted in lieu therefore are references to the sum of \$275,000.00.
 - 2.3 All references in the Mortgage to Banco Popular, Illinois are hereby deleted and substituted in lieu thereof are corresponding references to Banco Popular North America.

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2.4 The Legal Description of the Mortgage is hereby amended by deleting same in its entirety and inserting in lieu thereof the following:

UNITS C-1, 5N, 5S IN THE MC GUIRE CONDOMINIUM, AS DELINEATED ON THE SURVEY OF LOT 15 IN BLOCK 50 IN CARPENTER'S ADDITION TO CHICAGO IN THE SOUTH EAST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM OWNERSHIP RECORDED MARCH 24, 1998 AS DOCUMENT 98228721 IN COOK COUNTY, ILLINOIS, TOGETHER WITH AN UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS APPURTENANT TO SAID UNIT, AS SET FORTH IN SAID DECLARATION.

2.5 Paragraph 6.19 of the Mortgage, Interest Reserve is hereby modified so that the Interest Reserve shall be further funded with the sum of \$10,000.00 as of the date hereof in accordance with the Settlement Statement attached as Exhibit B to the Fourth Modification and all references in said Paragraph and the Loan Documents shall refer to said Interest Reserve as so funded. In all other respects, paragraph 6.19 remains unmodified and in full force and effect.

2.6 Notwithstanding the provisions of Section 6.18 (g) of the Mortgage, Borrower shall pay to Lender the full outstanding balance of the Existing Note, including all principal, interest, costs, fees and other charges, upon the sale of Unit 5N (as Units are defined in the Loan Agreement), which unit is currently under contract for sale, or upon the sale of the next unit to be sold after the date hereof. Borrower agrees and acknowledges that the failure to pay the loan in full upon the sale of Unit 5N shall constitute an event of default under the Note, the Mortgage and the Loan Documents.

2.7 Except as specifically set forth to the contrary hereinabove, the Mortgage remains unmodified and in full force and effect.

3. **RELATION BACK.** This Amendment constitutes only an amendment to the Mortgage and shall not be deemed to constitute a new security interest or lien or otherwise effect the priority of the mortgage lien granted by the Mortgage. Except as specifically set forth herein, the Mortgage as recorded shall retain its priority position and shall remain in full force and effect and its provisions shall continue to be binding on the parties hereto.

4. **COUNTERPARTS.** This Amendment may be executed in two or more counterparts,

each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5. **ADDITIONAL PROVISIONS.** This Amendment shall be effective only upon:

(a) Delivery by Obligors to Lender of a satisfactory Date Down Endorsement to the existing Mortgagee's title insurance policy issued by Mid American Title Insurance Company insuring the continued validity and priority of the Loan Documents, as herein amended, following the recording of this Agreement (subject only to the matters set forth on Schedule B of said policies and approved by Lender), confirming all previous endorsements thereto, if any, and extending the effective date of the policies through the date of recording of this Agreement.

(b) Payment by Mortgagor to Mortgagee, immediately upon the submission of bills and invoices therefor, of all amounts incurred by or on behalf of Mortgagee for attorneys' fees, recording expenses, title expenses, title charges, title endorsement fees, and all other costs incurred or to be incurred by or on behalf of Mortgagee by reason of the matters specified herein and the preparation of this Amendment and all other documents necessary and required to effectuate the provisions hereof, including, without limitation, all costs and expenses with respect to compliance by the Mortgagor with the terms and conditions hereof and Mortgagee's enforcement thereof.

(c) The recording of a counterpart of this Amendment in the Recorder's Office.

6. **GOVERNING LAW.** This Agreement shall be construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles.

7. **RATIFICATION; AUTHORITY.** Except as herein amended, the Mortgage shall remain in full force and effect, and all of the terms and provisions of the Mortgage, as herein amended, are hereby ratified and reaffirmed. Mortgagor represents to Lender that there is no other ownership interest, mortgage lien, trust deed, or other interest, now outstanding against the Mortgaged Property, other than the lien of the Mortgage; and that the lien of the Mortgage is previously subsisting and, as

herein amended, has been, is and shall remain a valid first, prior and paramount lien on the Mortgaged Property, as described on Exhibit A attached hereto, enjoying the same or superior priority with respect to other claims upon the Mortgaged Property as prevailed prior to the execution of this Agreement. Mortgagor has duly authorized, executed and delivered this Agreement, and acknowledges that the Loan Documents are valid and enforceable in accordance with their terms against Mortgagee.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the date first above written.

MORTGAGOR:

MCGUIRE CONDOMINIUM LIMITED PARTNERSHIP

By: *Judith Heaney*
Title: *Gen. Partner*

[SEAL]

Attest:

Title: _____

MORTGAGEE:

BANCO POPULAR, ILLINOIS n/k/a BANCO POPULAR NORTH AMERICA

By: *Mary A. Kearney*
Title: *VP*

This Document Prepared By
and Return To:
Bruce W. Craig
Banco Popular North America
4801 West Fullerton Avenue
Chicago, Illinois 60639

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EXHIBIT "A"
THE MORTGAGED PROPERTY

LEGAL DESCRIPTION

UNITS C-1, 5N, 5S IN THE MC GUIRE CONDOMINIUM, AS DELINEATED ON THE SURVEY OF LOT 15 IN BLOCK 50 IN CARPENTER'S ADDITION TO CHICAGO IN THE SOUTH EAST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM OWNERSHIP RECORDED MARCH 24, 1998 AS DOCUMENT 99228721 IN COOK COUNTY, ILLINOIS, TOGETHER WITH AN UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS APPURTENANT TO SAID UNIT, AS SET FORTH IN SAID DECLARATION.

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17-08-446-999-1001
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PROPERTY ADDRESS: 1016-18 W. MADISON, CHICAGO, ILLINOIS