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Doc#: 0605449118 Fee: \$40.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/23/2006 12:16 PM Pg: 1 of 9

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FOURTH MODIFICATION OF LOAN DOCUMENTS

6881648-111
2311

THIS FOURTH MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made effective as of the 5th day of January, 2006, by and among **PARKWAY CORPORATE PLACE, L.L.C.**, a Delaware limited liability company ("Borrower"), **MARVIN ROMANEK**, an individual ("Guarantor") and **FIFTH THIRD BANK (CHICAGO)**, a Michigan banking corporation, its successors and assigns (formerly known as Old Kent Bank, a national banking association) ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Twenty Million Nine Hundred Thousand and No/100 Dollars (\$20,900,000) pursuant to the terms and conditions of a Construction Loan Agreement dated as of September 28, 1999 between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated September 28, 1999, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

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

Michael S. Kurtzon, Esq.
Schwartz, Cooper, Greenberger &
Krauss, Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

Permanent Index Number:

07-13-101-013

Address of Property:

915, 935 and 955 National Parkway
Schaumburg, Illinois

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B. The Note is secured by, among other things, (i) that certain Construction Mortgage and Security Agreement with Assignment Rents dated September 28, 1999 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on October 18, 1999, as Document No. 99976839 (the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the "Property"), (ii) that certain Assignment of Rents and Leases dated September 28, 1999, from Borrower to Lender and recorded in the Recorder's Office on October 10, 1999, as Document No. 99976840 (the "Assignment of Leases"), (iii) that certain Security Agreement dated September 28, 1999 from Borrower to Lender (the "Security Agreement"), (iv) that certain Environmental Indemnity Agreement dated September 28, 1999 from Borrower and Guarantor to Lender (the "Indemnity Agreement"), and (v) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Security Agreement, 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").

C. The Loan is further secured by a Guaranty of Payment dated September 28, 1999 from Guarantor to Lender (the "Payment Guaranty") and a Guaranty of Completion from Guarantor to Lender dated September 28, 1999 (the "Completion Guaranty," and together with the Payment Guaranty, the "Guaranties").

D. The Loan Documents were amended by (a) a Modification of Loan Documents between Borrower and Lender dated May 1, 2002 and recorded June 3, 2002 in the Recorder's Office as Document No. 0020619371 and re-recorded on June 14, 2002 as Document No. 0020671147 (the "Modification") which extended the Conversion Date (as defined in the Loan Agreement) and the Maturity Date (as defined in the Note) to November 1, 2002 and amended and restated Section 2(a)(ii) of the Note, (b) a Second Modification of Loan Documents between Borrower and Lender dated November 1, 2002 and recorded January 13, 2003 in the Recorder's Office as Document No. 0030050495 which (i) extended the Maturity Date of the Loan to December 15, 2005, (ii) split the Loan into Facility A in the amount of \$19,483,802.00 and Facility B in the amount of \$1,416,498.00, (iii) split the Note into two separate notes, one evidencing Facility A and defined as the "Facility A Note" and the other evidencing Facility B and defined as the "Facility B Note", (iv) modified the Mortgage to provide that the Mortgage secures the Facility A Note but not the Facility B Note and (v) provided for Borrower to deliver to Lender a Junior Construction Mortgage and Security Agreement with Assignment of Rents (which was dated December 23, 2002 and recorded in the Recorder's Office January 13, 2003 as Document No. 0030050496 (the "Junior Mortgage")) and other security documents (collectively, the "Junior Loan Documents") which secures repayment of the Facility A Note and the Facility B Note and (c) a Third Modification of Loan Documents dated April 8, 2005 and recorded April 25, 2005 in the Recorder's Office as Document No. 0511542295 ("Third Modification").

E. Fifth Third Community Development Corporation has made a mezzanine loan to Borrower in the principal amount of \$2,758,000.00 (the "Mezzanine Loan") to provide funds for the development, lease-up and stabilization of the Property.

F. The Borrower has requested that Lender agree to extend the Maturity Date of the Facility A Note and Facility B Note to March 5, 2006. Lender is willing to agree to extend the Maturity Date to March 5, 2006 on the terms and conditions set forth in this Agreement.

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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 Lender 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. **Extended Maturity Date.** The Maturity Date of the Loan as stated in the Loan Documents and Junior Loan Documents and of the Facility A Note and Facility B Note is hereby extended to March 5, 2006.
2. **Loan Agreement.** The Loan Agreement is amended as follows:
 - (a) The definition of Due Date is amended to read as follows:
 "March 5, 2006."
 - (b) **Mezzanine Loan.** The statement in the Third Amendment that Lender made the Mezzanine Loan is corrected to state that the Mezzanine Loan was made by Fifth Third Community Development Corporation, an affiliate of Lender.
3. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:
 - (a) The representations and warranties in the Loan Agreement, the Mortgages 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 Mortgages) under the Notes, the Mortgages 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 Notes, the Mortgages 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 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, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.
 - (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.

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(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.

4. **Reaffirmation of and Amendment to Guaranty.** Guarantor ratifies and affirms the Guaranties and the Indemnity and agrees that the Guaranties and the Indemnity as heretofore amended are in full force and effect following the execution and delivery of this Agreement and Guarantor acknowledges and agrees that repayment of the Loan will not be deemed to release Guarantor from liability under the Payment Guaranty for repayment of the Mezzanine Loan. The representations and warranties of Guarantor in the Guaranties and the Indemnity are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranties and the Indemnity continue to be the valid and binding obligations of Guarantor, enforceable in accordance with their respective terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranties and the Indemnity.

5. **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 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 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 Lender, the same shall not be deemed to constitute Lender 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.

(d) Borrower, Guarantor and Lender 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

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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 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 "Loan Agreement" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement and the other Loan Documents as amended hereby and any references to the "Note" or "Mortgage" shall be deemed to refer to the Notes and Mortgages. 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.

LENDER:

FIFTH THIRD BANK (CHICAGO)

By: *J. C. Wilks*
Name: John C. Wilks
Title: Sr. Vice President

BORROWER:

**PARKWAY CORPORATE PLACE,
L.L.C., a Delaware limited liability
company**

By: *Marvin Romanek*
Name: Marvin Romanek
Title: Manager

GUARANTOR:

Marvin Romanek
MARVIN ROMANEK

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

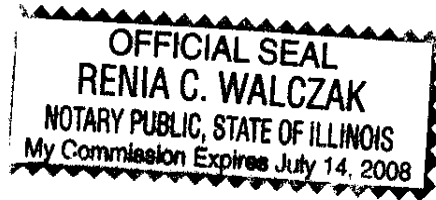
I Renia C. Walczak, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John Wilkins, SVP of **FIFTH THIRD BANK (CHICAGO)**, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and 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 26th day of January, 2006.

Renia C. Walczak
Notary Public

My Commission Expires: 07-14-2008

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

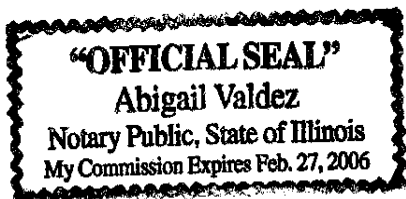


I Abigail Valdez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Marvin Romanek, Manager of **PARKWAY CORPORATE PLACE, L.L.C.**, a Delaware limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he 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 16th day of JANUARY, 2006.

Abigail Valdez
Notary Public

My Commission Expires: 02-27-06



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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

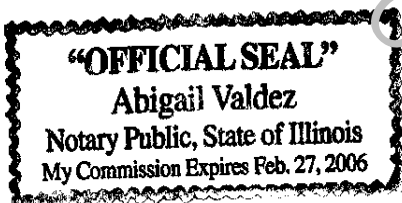
I ABIGAIL VALDEZ, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MARVIN ROMANEK, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered 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 16th day of JANUARY, 2006.

Abigail Valdez

Notary Public

My Commission Expires: FEB. 27. 06



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EXHIBIT A

THE PROPERTY

Lot 2 in Oxford Capital Partner's Resubdivision, being a resubdivision of Lot 1 in Anderson's Third Resubdivision, a resubdivision of part of Lot 2 in Anderson's Second Resubdivision, a resubdivision of Anderson's Resubdivision of part of Lot 11 in Anderson's Woodfield Park, a subdivision of part of the Northwest $\frac{1}{4}$ of Section 13, Township 41 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 07-13-101-013

915, 935 and 955 National Parkway
Schaumburg, IL