

# UNOFFICIAL COPY

## RECORDATION REQUESTED BY:

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603-1806  
Attention: Tonya M. Parravano, Esq.



Doc#: 0707346080 Fee: \$44.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/14/2007 03:25 PM Pg: 1 of 11

## THIS INSTRUMENT PREPARED BY AND WHEN RECORDED RETURN TO:

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603-1806  
Attention: Tonya M. Parravano, Esq.

## MODIFICATION AND EXTENSION AGREEMENT

**THIS MODIFICATION AND EXTENSION AGREEMENT** is made as of the 13th day of January, 2007, by and between PRAIRIE BANK AND TRUST COMPANY, not personally, but as Trustee under Trust Agreement dated September 22, 2005, and known as Trust No. 05-119 ("Trust" or "Trustee") and EQUINOX DEVELOPMENT CORPORATION, an Illinois corporation ("Equinox") (the Trust and Equinox are hereinafter jointly and severally referred to as "Borrower"), and JOSEPH ZIVKOVIC ("Guarantor"), and PRAIRIE BANK AND TRUST COMPANY, an Illinois banking corporation ("Lender").

### WITNESSETH:

**WHEREAS**, on or about January 13, 2006, Lender made a loan (the "Loan") to Borrower in the amount of ONE MILLION NINE HUNDRED TWENTY-THREE THOUSAND ONE HUNDRED TWENTY-FOUR AND NO/100 DOLLARS (\$1,923,124.00) (the "Loan") to finance the construction and development of two (2) four-unit mixed use buildings (the "Project") on the real estate commonly known as 2128 & 2130 West Rice Street, Chicago, Illinois, as legally described in Exhibit A hereto (the "Real Property");

**WHEREAS**, the Loan is evidenced and secured by the following instruments, each dated as of January 13, 2006, unless otherwise noted ("Loan Documents"):

1. Construction Loan Agreement made by and between Borrower and Lender ("Loan Agreement").
2. Non-Revolving Construction Note made by Borrower payable to Lender in the amount of ONE MILLION NINE HUNDRED TWENTY-THREE THOUSAND ONE HUNDRED TWENTY-FOUR AND NO/100 DOLLARS (\$1,923,124.00) ("Note").

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3. Construction Mortgage from the Trust to Lender covering the Real Property, and recorded in the Cook County Recorder's Office, Cook County, Illinois on January 24, 2006 as Document No. 0602439047 ("**Mortgage**").
4. Assignment of Rents from Borrower to Lender covering the Real Property, and recorded in the Cook County Recorder's Office, Cook County, Illinois on January 24, 2006 as Document No. 0602439048.
5. Commercial Guaranty executed by the Guarantor.
6. Guaranty of Completion and Performance executed by the Guarantor.
7. Commercial Security Agreement executed by Equinox.
8. Environmental Indemnity Agreement executed by Equinox and the Guarantor.
9. UCC Financing Statements
10. Collateral Assignment of Sale Contracts executed by Equinox.
11. Collateral Assignment of Construction Contracts executed by Equinox and Zivkovic Development Group, Inc. as contractor.
12. Collateral Assignment of Architect's Contract executed by Equinox.
13. Disbursement Authorization executed by Equinox.
14. any and all other documents and instruments given at any time to evidence and secure the Loan

**WHEREAS**, as of the date hereof, there is a principal balance on the Loan in the amount of ONE MILLION NINE HUNDRED TWENTY-THREE THOUSAND ONE HUNDRED TWENTY-FOUR AND NO/100 DOLLARS (\$1,923,124.00);

**WHEREAS**, Borrower has requested and Lender has agreed to consent to the extension of the Maturity Date of the Loan, subject to the terms and conditions herein provided; and

**WHEREAS**, Lender, Borrower and Guarantor have agreed to modify the Loan Documents as hereinafter provided.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. **Fees & Costs**. Simultaneously with the execution and delivery of this Agreement, and as a condition precedent to the extension of the Maturity Date as provided herein, Borrower shall pay to Lender (a) a non-refundable loan fee in the amount of FIVE HUNDRED AND 00/100 DOLLARS (\$500.00), plus (b) attorney's fees in the amount of TWO HUNDRED NINETY-THREE

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AND 75/100 DOLLARS (\$293.75), plus (c) any and all third party costs incurred by Lender in connection herewith.

2. **Modification of Loan Documents.** Subject to the terms and provisions herein contained, and subject to the payment of the Loan Fee described herein, the terms and provisions of the Loan Agreement, and the corresponding provisions of the other Loan Documents, are hereby modified and amended effective as of the date hereof, so as to provide as follows:

(a) **Maturity Date.** The Maturity Date is hereby extended to June 13, 2007.

(b) **Definitions.** The following definitions in Section 1.1 of the Loan Agreement are hereby modified and amended so as to provide as follows:

**Completion Date:** The words "Completion Date" mean June 13, 2007.

**Maturity Date:** The words "Maturity Date" mean June 13, 2007."

3. **Reaffirmation of Loan Documents.** Except as expressly herein provided, each of the undersigned hereby reaffirms and incorporates herein by reference each and every term, provision, representation and warranty contained in the Loan Documents, and further agrees that said terms, provisions, representations and warranties shall remain in full force and effect. Each of the undersigned further acknowledges that nothing contained herein shall be construed to limit or release the liability or obligations of Borrower or any Guarantor under the Loan Documents.

4. **Reaffirmation of Guaranty.** Each Guarantor hereby consents to the modification of the Loan Documents as herein provided, and hereby reaffirms the Guaranty and agrees that such Guaranty shall continue to secure the Loan, as modified hereby.

5. **No Defenses.** Each of the undersigned represents to Lender that they it has no defenses, setoffs, claims or counterclaims of any kind or nature whatsoever against Lender in connection with the Loan Documents or any amendments to said documents or any action taken or not taken by the Lender with respect thereto or with respect to the collateral. Without limiting the generality of the foregoing, each of the undersigned hereby releases and forever discharges Lender, its affiliates, and each of its officers, agents, employees, attorneys, insurers, successors and assigns, from any and all liabilities, or causes of action, known or unknown, arising out of any action or inaction with respect to the Loan Documents.

6. **Disclaimer.** Each of the undersigned expressly disclaims any reliance on any oral representation made by Lender with respect to the subject matter of this Agreement. Each of the undersigned acknowledges and agrees that Lender is specifically relying upon the representations, warranties, releases and agreements contained herein, and that this Agreement is executed and delivered to Lender as an inducement to extend the term of the Loan.

7. **Costs.** Borrower shall pay upon demand all of Lender's out-of-pocket expenses, including attorneys' fees, incurred in connection with the preparation, negotiation and/or recording of this Agreement.

8. **Jurisdiction, Jury Waiver.** This Agreement has been delivered to Lender and accepted by Lender in the State of Illinois. If there is a lawsuit, under the Loan Documents or this

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Agreement, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Cook County, the State of Illinois. EACH OF THE PARTIES HERETO HEREBY WAIVES THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY HERETO AGAINST THE OTHERS. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

9. **Successors and Assigns.** All covenants and agreements contained by or on behalf of the parties hereto, as applicable, shall bind their respective successors and assigns and shall inure to the benefit of Lender, its successors and assigns. Borrower shall not, however, have the right to assign its rights under this Agreement or the Loan Documents or any interest therein, without the prior written consent of Lender.

10. **Counterparts.** This Agreement may be executed by the parties hereto in any number of counterparts, each of which shall constitute an original document, and all of which when taken together shall constitute one and the same agreement.

11. **Trustee Exculpation.** This Agreement is executed by Prairie Bank and Trust Company, not personally, but as Trustee as aforesaid in the exercise of power and authority conferred upon and vested in it as such Trustee (and said Prairie Bank and Trust Company hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Prairie Bank and Trust Company personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed and acknowledged as of the day and year first above written.

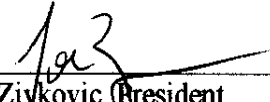
**PRAIRIE BANK AND TRUST COMPANY**, not personally, but as Trustee as aforesaid

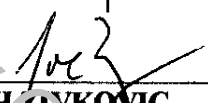
By:   
Its Trust Officer

ATTEST:

By:   
Its Assistant Trust Officer

**EQUINOX DEVELOPMENT CORPORATION**, an Illinois corporation

By:   
Joseph Zivkovic, (President)

  
**JOSEPH ZIVKOVIC**

**EXEMPTORY CLAUSE**  
It is expressly understood and agreed between the parties hereto anything herein to the contrary notwithstanding, that each and every one of the warranties, indemnities, representations, covenants, covenants, undertakings and agreements herein made by the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intent of making said Trustee personally liable and intended for the purpose of binding only the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as Trustee and that no personal liability or personal responsibility is assumed by nor shall at any time be enforceable against PRAIRIE BANK AND TRUST COMPANY under said Trust Agreement or any agreement of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, or such personal liability, if any, being expressly waived and released.

PRAIRIE BANK AND TRUST COMPANY

Cook County Clerk's Office

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IN WITNESS WHEREOF, Lender has caused these presents to be executed the day and year first above written.

**PRAIRIE BANK AND TRUST COMPANY**, an  
Illinois banking corporation

By: \_\_\_\_\_

  
Carl Pedersen  
Vice President

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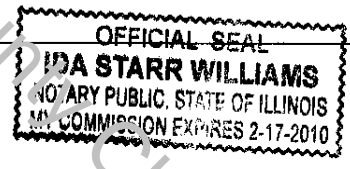
STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Quentin as Trust Officer, and Agay Wilson as Asst. Trust Officer of **PRAIRIE BANK AND TRUST COMPANY**, an Illinois banking corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and Asst. Trust Officer, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trustee as aforesaid, for the uses and purposes therein set forth; and the said Trust Officer then and there acknowledged that the Asst. Trust Officer, as custodian of the corporate seal of said Trustee, did affix the seal of said Trustee to said instrument as the free and voluntary act of said Trust Officer and as the free and voluntary act of said Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28<sup>th</sup> day of February, 2007.

Ida Starr Williams  
NOTARY PUBLIC

My Commission Expires:



# UNOFFICIAL COPY

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 JOSEPH ZIVKOVIC, as President of EQUINOX DEVELOPMENT CORPORATION, an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, 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 Corporation as aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26<sup>th</sup> day of Feb., 2007

Frances V. Owoc

NOTARY PUBLIC

My Commission Expires:

9/5/07





# UNOFFICIAL COPY

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 **JOSEPH ZIVKOVIC**, 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 26<sup>th</sup> day of Feb, 2007.

Frances V. Owe  
NOTARY PUBLIC

My Commission Expires:  
9/5/07




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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 CARL PEDERSEN, personally known to me to be the Vice President of PRAIRIE BANK AND TRUST COMPANY, an Illinois banking corporation, personally appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28 day of February, 2007.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_ 6/10/10 \_\_\_\_\_



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## EXHIBIT A

### LEGAL DESCRIPTION - THE REAL PROPERTY

LOT 18 AND LOT 19 IN SUBDIVISION OF BLOCK 1 IN BLOCK 15 IN SUFFERN'S SUBDIVISION OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common address: 2128 and 2130 W. Rice Street  
Chicago, Illinois 60622

Permanent Index Nos.: 17-06-326-034-0000

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