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Doc#: 0709445019 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/04/2007 10:38 AM Pg: 1 of 15

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT dated as of February 1, 2007, by and among **ENCLAVE AT BROOKMERE, LLC**, an Illinois limited liability company (the "**Borrower**"), **LORD & ESSEX, INC.**, an Illinois corporation ("**L&E**"), **BROOKMERE, LLC**, an Illinois limited liability company ("**Brookmere LLC**"), and **JOHN J. POPP, JR.**, and **CHRISTOPHER M. SMITH** (the "**Individual Guarantors**") (L&E, Brookmere LLC and the Individual Guarantors being sometimes referred to herein collectively as the "**Guarantors**", and the Borrower and the Guarantors being sometimes referred to herein collectively as the "**Borrower/Guarantor Parties**"), and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, on its own behalf and as Agent for Lenders (the "**Lender**");

WITNESSETH:

WHEREAS, the Borrower/Guarantor Parties and the Lender heretofore entered into the following documents (collectively, the "**Documents**");

(i) Construction Loan Agreement dated as of January 1, 2005 (the "**Loan Agreement**"), by and between the Borrower and the Lender;

Permanent Tax Index Numbers and Address:

See Exhibit A

This Instrument Prepared by and to be
Returned After Recording to:

Alvin L. Kruse
Seyfarth Shaw LLP
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603

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(ii) Promissory Note dated January 1, 2006 (the "**Note**"), from the Borrower to the Lender in the principal amount of \$33,100,000;

(iii) Master Letter of Credit Agreement dated as of January 1, 2006, from the Borrower to the Lender.

(iv) Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of January 1, 2006 (the "**Mortgage**"), from by the Borrower to and for the benefit of the Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on January 18, 2006, as Document No. 0601834077;

(v) Assignment of Rents and Leases dated as of January 1, 2006, by the Borrower to and for the benefit of the Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on January 18, 2006, as Document No. 0601834078;

(vi) Assignment of Plans, Permits and Contracts dated as of January 1, 2006, from the Borrower to the Lender;

(vii) Environmental Indemnity Agreement dated as of January 1, 2006, by the Borrower and the Guarantors to and for the benefit of the Lender; and

(viii) Guaranty of Payment and Completion dated as of January 1, 2006, by the Guarantors to and for the benefit of the Lender; and

WHEREAS, the Documents encumber the real estate described in **Exhibit A** attached hereto and the personal property located thereon; and

WHEREAS, the parties desire to make certain modifications and amendments to the Documents, as more fully provided for herein, all as modifications, amendments and continuations of, but not as novations of, the Documents;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Recitals Part of Agreement; Defined Terms.

(a) The foregoing recitals are hereby incorporated into and made a part of this Agreement.

(b) All capitalized terms used and not otherwise defined in this Agreement shall have the meanings set forth in the Loan Agreement.

Section 2. Increase in Commitment Amount, Note and Land and Development Portion Amount.

(a) The amount of the Commitment Amount, the loan under the Documents, and the Note are hereby increased by \$250,000 from \$33,100,000 to \$33,350,000, and all references in

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the Documents to the amount of the Commitment Amount, the loan under the Documents, and the Note are hereby changed from "\$33,100,000" to "\$33,350,000," and all of the Documents are hereby modified and amended accordingly. Without limitation on the generality of the foregoing provisions of this paragraph, the defined term "Commitment Amount" in Section 1.1 of the Loan Agreement is hereby modified and amended in its entirety to read as follows:

Commitment Amount: At any time, the aggregate principal amount of the Loans outstanding at such time plus the sum of the Available Commitment of each Lender at such time. The maximum Commitment Amount is \$33,350,000.

In addition, in the securing clause of the Mortgage and in Section 35(j) of the Mortgage, the amount "\$66,200,000" is hereby changed to "\$66,700,000."

(b) The amount of the Land and Development Portion Amount is hereby increased by \$250,000 from \$21,100,000 to \$21,350,000, and all references in the Documents to the amount of the Land and Development Portion Amount are hereby changed from "\$21,100,000" to "\$21,350,000," and all of the Documents are hereby modified and amended accordingly. Without limitation on the generality of the foregoing provisions of this paragraph, the defined term "Land and Development Portion Amount" in Section 1.1 of the Loan Agreement is hereby modified and amended in its entirety to read as follows:

Land and Development Portion Amount: \$21,350,000.

(c) In order to give effect to the foregoing increase in the Land and Development Portion Amount, each of the following line items in the Project Budget is hereby increased by \$250,000:

Additional Site Work, Phase 1
Total Costs
Land and Development Portion of the Loan
Total Sources

Section 3. Change in Release Prices. Reference is made to the amounts shown in clause (i) of the definition of Release Price in Section 3.9(a) of the Loan Agreement. Notwithstanding the provisions of the Loan Agreement, for each of the first 17 sales of Homes that are closed on and after December 12, 2006, the portion of the Release Price provided for in said clause (i) shall be decreased by \$15,000, and thereafter, for each sale of Homes that is closed, the portion of the Release Price provided for in said clause (i) shall be increased by \$1,500. All of the Documents are hereby modified and amended to incorporate the foregoing provisions of this Section.

Section 4. Financing Fee. As a condition to agreements of the Lender provided for in this Agreement, on the date of the execution and delivery of this Agreement, the Borrower shall pay to the Lender a non-refundable financing fee in the amount of \$2,500.

Section 5. Attachment to Note. The Lender may, and prior to any transfer by it of the Note shall, attach a copy of this Agreement to the original Note and place an endorsement on the original Note making reference to the fact that such attachment has been made.

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Section 6. Representations and Warranties. In order to induce the Lender to enter into this Agreement, the Borrower/Guarantor Parties hereby represent and warrant to the Lender as follows as of the date of this Agreement and if different, as of the date of the execution and delivery of this Agreement:

(a) Each of the Borrower and Brookmere LLC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, has all necessary power and authority to carry on its present business, and has full right, power and authority to enter into this Agreement and each of the Documents to which it is a party and to perform and consummate the transactions contemplated hereby and thereby.

(b) L&E is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, has all necessary power and authority to carry on its present business, and has full right, power and authority to enter into this Agreement and each of the Documents to which it is a party and to perform and consummate the transactions contemplated hereby and thereby.

(c) Each of the Individual Guarantors is under no legal disability and has full right, power and authority to enter into this Agreement and each of the Documents to which he is a party and to perform and consummate the transactions contemplated hereby and thereby.

(d) This Agreement and each of the Documents has been duly authorized, executed and delivered by such of the Borrower/Guarantor Parties as are parties thereto, and this Agreement and each of the Documents constitutes a valid and legally binding obligation enforceable against such of the Borrower/Guarantor Parties as are parties thereto. The execution and delivery of this Agreement and the Documents and compliance with the provisions thereof under the circumstances contemplated therein do not and will not conflict with or constitute a breach or violation of or default under the articles of organization or operating agreement of the Borrower or Brookmere LLC, the articles of incorporation or bylaws of L&E, or any agreement or other instrument to which any of the Borrower/Guarantor Parties are a party, or by which any of them is bound, or to which any of their respective properties are subject, or any existing law, administrative regulation, court order or consent decree to which any of them is subject.

(e) The Borrower/Guarantor Parties are in full compliance with all of the terms and conditions of the Documents to which they are a party, and no Default or Event of Default has occurred and is continuing with respect to any of the Documents.

(f) There is no litigation or administrative proceeding pending or threatened to restrain or enjoin the transactions contemplated by this Agreement or any of the Documents, or questioning the validity thereof, or in any way contesting the existence or powers of any of the Borrower/Guarantor Parties, or in which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement or any of the Documents, or would result in any material adverse change in the financial condition, properties, business or operations of any of the Borrower/Guarantor Parties.

(g) The statements contained in the recitals to this Agreement are true and correct.

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Section 7. Documents to Remain in Effect; Confirmation of Obligations; References. The Documents shall remain in full force and effect as originally executed and delivered by the parties, except as expressly modified and amended herein. The Borrower/Guarantor Parties hereby (i) confirm and reaffirm all of their obligations under the Documents, as modified and amended herein; (ii) acknowledge and agree that the Lender, by entering into this Agreement, does not waive any existing or future default or event of default under any of the Documents, or any rights or remedies under any of the Documents, except as expressly provided herein; (iii) acknowledge and agree that the Lender has not heretofore waived any default or event of default under any of the Documents, or any rights or remedies under any of the Documents; and (iv) acknowledge that they do not have any defense, set-off or counterclaim to the payment or performance of any of their obligations under the Documents, as modified and amended herein. All references in the Documents to any one or more of the Documents, or to the "Loan Documents," shall be deemed to refer to such Document, Documents or Loan Documents, as the case may be, as modified and amended by this Agreement.

Section 8. Certifications, Representations and Warranties. In order to induce the Lender to enter into this Agreement, the Borrower/Guarantor Parties hereby certify, represent and warrant to the Lender that all certifications, representations and warranties contained in the Documents and in all certificates heretofore delivered to the Lender are true and correct as of the date of this Agreement and if different, as of the date of the execution and delivery of this Agreement, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Agreement and if different, as of the date of the execution and delivery of this Agreement.

Section 9. Entire Agreement; No Reliance. This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this Agreement other than as are herein set forth. The Borrower/Guarantor Parties acknowledge that they are executing this Agreement without relying on any statements, representations or warranties, either oral or written, that are not expressly set forth herein.

Section 10. Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

Section 11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12. Amendments, Changes and Modifications. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

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Section 13. Construction.

(a) The words "hereof," "herein," and "hereunder," and other words of a similar import refer to this Agreement as a whole and not to the individual Sections in which such terms are used.

(b) References to Sections and other subdivisions of this Agreement are to the designated Sections and other subdivisions of this Agreement as originally executed.

(c) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(d) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

(e) The Borrower/Guarantor Parties and the Lender, and their respective legal counsel, have participated in the drafting of this Agreement, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Agreement.

Section 14. Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 15. Governing Law. This Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

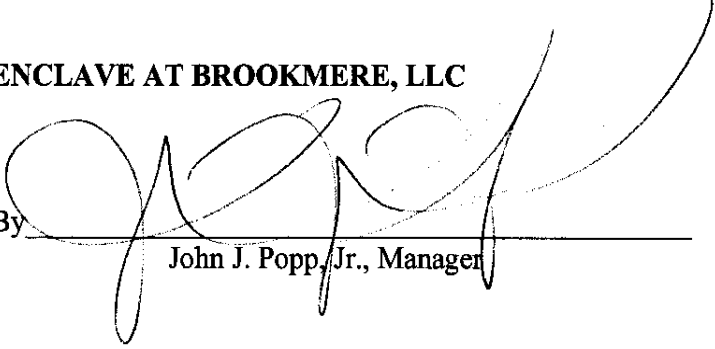
[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]

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

ENCLAVE AT BROOKMERE, LLC

By


 John J. Popp, Jr., Manager

By

Christopher M. Smith, Manager

LORD & ESSEX, INC.

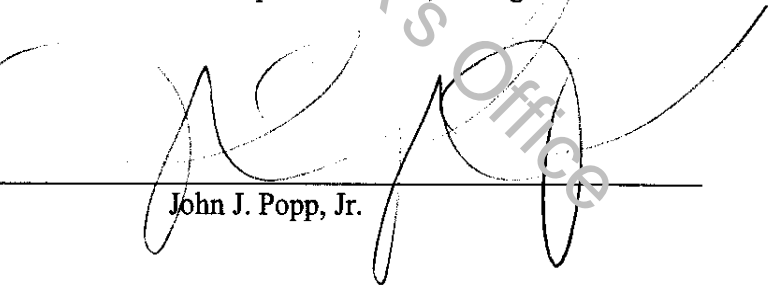
By


 Printed Name: John J. Popp, Jr.
 Title: PRES

BROOKMERE LLC

By

Christopher M. Smith, Manager


 John J. Popp, Jr.

Christopher M. Smith

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

ENCLAVE AT BROOKMERE, LLC

By _____
John J. Popp, Jr., Manager

By _____
Christopher M. Smith, Manager

LORD & ESSEX, INC.

By: _____
Printed Name: _____
Title: _____

BROOKMERE, LLC

By _____
Christopher M. Smith, Manager

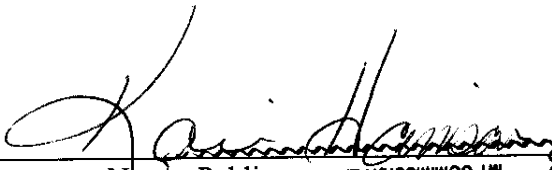
John J. Popp, Jr.

Christopher M. Smith

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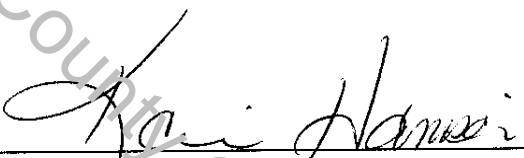
STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this 2nd day of February, 2007, by John J. Popp, Jr., and Christopher M. Smith, Managers of Enclave at Brookmere, LLC, an Illinois limited liability company, on behalf of the company.


 Notary Public
 OFFICIAL SEAL
 KARI HARRISON
 NOTARY PUBLIC - STATE OF ILLINOIS
 MY COMMISSION EXPIRES: 04-30-07

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this 2nd day of February, 2007, by John J. Popp Jr. For & on behalf of of Lord & Essex, Inc., an Illinois corporation, on behalf of the corporation.


 Notary Public
 OFFICIAL SEAL
 KARI HARRISON
 NOTARY PUBLIC - STATE OF ILLINOIS
 MY COMMISSION EXPIRES: 04-30-07

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this _____ day of February, 2007, by Christopher M. Smith, Manager of Enclave at Brookmere, LLC, an Illinois limited liability company, on behalf of the company.

 Notary Public

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this 2nd day of February, 2007, by ~~John J. Popp, Jr.~~, and Christopher M. Smith, Managers of Enclave at Brookmere, LLC, an Illinois limited liability company, on behalf of the company.



Marianne C. Flanagan
 Notary Public

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this _____ day of February, 2007, by _____, _____ of Lord & Essex, Inc., an Illinois corporation, on behalf of the corporation.

 Notary Public

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this 2nd day of February, 2007, by Christopher M. Smith, Manager of Enclave at Brookmere, LLC, an Illinois limited liability company, on behalf of the company.



Marianne C. Flanagan
 Notary Public

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
) SS
 COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 2nd day of February, 2007, by John J. Popp, Jr.

Kari Harrison
 Notary Public

OFFICIAL SEAL
 KARI HARRISON
 NOTARY PUBLIC - STATE OF ILLINOIS
 MY COMMISSION EXPIRES: 04-30-07

STATE OF ILLINOIS)
)
) SS
 COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of February, 2007, by Christopher M. Smith.

 Notary Public

STATE OF ILLINOIS)
)
) SS
 COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of February, 2007, by _____ of LaSalle Bank National Association, a national banking association, on behalf of the association.

 Notary Public

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STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this _____ day of February, 2007, by John J. Popp, Jr.

 Notary Public

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

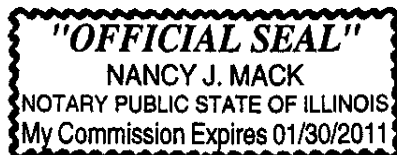
The foregoing instrument was acknowledged before me this 2nd day of February, 2007, by Christopher M. Smith.



Marianne C. Flanagan
 Notary Public

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this 6th day of February, 2007, by BRAD BREMEN ASST. VICE - PRESIDENT of LaSalle Bank National Association, a national banking association, on behalf of the association.



Nancy J. Mack
 Notary Public

UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION OF THE PREMISES**

The following, excluding any Lots which have been released from the Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of January 1, 2006, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on January 18, 2006, as Document No. 0601834077:

Parcel 1

Lots 1, 2 and 3, except that part of Lot 3 described as beginning at the Southeast corner of said Lot 3; thence North 81 degrees 30 minutes 17 seconds West along the Southerly line of said Lot 3 for a distance of 552.94 feet to the Southwest corner of said Lot 3; thence Northeast 400.17 feet along the West line of said Lot 3, being on a curve concave to the East having a radius of 610.00 feet and a chord bearing North 23 degrees 03 minutes 06 seconds East, 393.03 feet to a point of compound curvature; thence continuing Northeast 237.98 feet along the Northwesterly line of said Lot 3, being on a curve concave to the Southeast, having a radius of 11,379.16 feet and a chord bearing North 42 degrees 26 minutes 39 seconds East, 237.97 feet; thence South 15 degrees 53 minutes 25 seconds East, 238.24 feet; thence South 39 degrees 51 minutes 50 seconds East, 77.80 feet; thence South 39 degrees 51 minutes 50 seconds East, 50.40 feet; thence South 81 degrees 30 minutes 36 seconds East 127.06 feet to the East line of said Lot 3, being on the West line of Matteson Avenue; thence South 08 degrees 29 minutes 22 seconds West along the West line of Matteson Avenue, 275.67 feet to the point of beginning, in Brookmere Subdivision, being a resubdivision of part of Matteson Commons Subdivision in the East half of Section 16, Township 35 North Range 13 East of the Third Principal Meridian, according to the plat thereof recorded August 28, 2003 as document 0324019012, in Cook County, Illinois.

Parcel 2

Lots 1 through 37, both inclusive, Outlot A, Outlot B, Outlot C, Outlot D, Outlot E and Outlot F in First Resubdivision of Lots 3 and 5 in Brookmere, being a resubdivision of Lots 3 and 5 in Brookmere Subdivision in the East Half of Section 16, Township 35 North, Range 13 East of the Third Principal Meridian, according to the plat of said Resubdivision recorded September 28, 2005, as Document 0527110137, in Cook County, Illinois.

Parcel 3

Lots 1 through 21, 28 through 32, 35 through 108, 110 through 129, 131 through 136, 138, 140 and 142 through 146, all inclusive, in the First Resubdivision of Lot 4 in Brookmere, being a resubdivision of part of Mattson Commons Subdivision in the East Half of Section 16, Township 35 North, Range 13 East of the Third Principal Meridian, according to the plat recorded August 4, 2004, as document 0421744046, in the Village of Matteson, Cook County, Illinois.

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Parcel 4

Easements for the benefit of Parcels 1, 2 and 3 as contained in Community Declaration for Brookmere recorded October 31, 2005 as document number 0530434007.

Parcel 5

Easements for the benefit of Parcels 1, 2 and 3 as contained in Declaration for Estates at Brookmere Owners Association recorded October 31, 2005 as document number 053043006.

Parcel 6

Easements for the benefit of Parcels 1, 2 and 3 as contained in Cross Easement and Cost Sharing Agreement being recorded on the date of the recording of the Mortgage.

Tax Numbers: 31-16-203-005, 31-16-203-002, 31-16-203-004, 31-16-401-019