

# UNOFFICIAL COPY



Doc#: 0803505013 Fee: \$42.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/04/2008 09:43 AM Pg: 1 of 10

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## LOAN AND MORTGAGE MODIFICATION AGREEMENT

This Loan and Mortgage Modification Agreement ("Agreement") is made and entered into as of this 28th day of December, 2007, by and among K AND H REAL ESTATE DEVELOPMENT, INC., an Illinois corporation ("Borrower"), STEVE HOMATAS ("Homatas") and GEORGE KALKOUNOS ("Kalkounos") Homatas and Kalkounos are hereinafter collectively referred to as "Guarantors") and TCF NATIONAL BANK, a national banking association ("Lender").

### WITNESSETH:

**WHEREAS**, pursuant to a Construction Loan Agreement dated May 17, 2007, by and between Lender and Borrower ("Loan Agreement"), Lender made a loan to Borrower in the original principal amount of NINE MILLION FIVE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$9,525,000.00) ("Loan"); and

**WHEREAS**, the Loan is evidenced by a Note dated May 17, 2007 executed by Borrower and payable to the order of Lender ("Note"); and

**WHEREAS**, the Loan is secured, *inter alia*, by a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated May 17, 2007 executed by Borrower, and recorded on June 1, 2007 in Cook County, Illinois as Document Number 0715202010 ("Mortgage") encumbering the Premises (as defined in the Mortgage) legally described on Exhibit "A" attached hereto; and

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BOX 333-EP

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**WHEREAS**, the Loan is further secured, *inter alia*, by a Guaranty of Payment and Completion dated May 17, 2007 executed by Guarantors to and for the benefit of Lender (“Guaranty”); and

**WHEREAS**, Borrower now desires to borrow from Lender an additional ONE MILLION TWO HUNDRED TWENTY-SEVEN THOUSAND DOLLARS (\$1,227,000.00) on the terms hereinafter provided; and

**WHEREAS**, Borrower, Guarantors and Lender now desire to amend the Loan Agreement, the Note, the Mortgage and the other Loan Documents in the manner hereinafter set forth.

**NOW THEREFORE**, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the parties hereto agree as follows:

1. **Recitals; Defined Terms.** The foregoing recitals are incorporated into this Agreement as if fully set forth herein. Except as specifically defined herein, all capitalized terms used in the recitals and in the body of this Agreement shall have the definitions ascribed therefore in the Loan Agreement.
2. **Additional Proceeds.** Provided no Event of Default exists, Lender agrees to loan to Borrower an additional sum equal to ONE MILLION TWO HUNDRED TWENTY-SEVEN THOUSAND DOLLARS (\$1,227,000.00) (“Additional Loan Proceeds”). The Additional Loan Proceeds shall be used to construct a 10,660 square foot retail center as part of the Project, and shall be disbursed to Borrower in accordance with the terms of the Loan Agreement and this Agreement in the same manner and subject to the same terms and conditions as any other Advance.
3. **Status of Loan.** Borrower acknowledges and agrees that as of the date hereof, the outstanding principal balance of the Loan is SEVEN MILLION FIVE HUNDRED SEVENTY-SEVEN THOUSAND THREE HUNDRED THIRTY TWO DOLLARS AND FORTY-FOUR CENTS (\$7,577,332.44). Including the Additional Loan Proceeds, there will be THREE MILLION ONE HUNDRED SEVENTY-FOUR THOUSAND SIX HUNDRED SIXTY SEVEN DOLLARS AND FIFTY SIX CENTS (\$3,174,667.56) available to Borrower for subsequent Advances.
4. **Loan Agreement Modification.** The Loan Agreement is hereby modified as follows:
  - (a) The last sentence in Section 1.8 of the Loan Agreement, captioned “Interest Reserve” is hereby deleted in its entirety and replaced with the following:

“On or after April 1, 2008, Lender may review the amount remaining in the Interest Reserve and if, in its sole discretion, Lender determines that such amounts are inadequate to secure the remaining interest payments to be made by Borrower,

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Borrower shall replenish the Interest Reserve in amounts as reasonably determined by Lender.”

- (b) Section 7.16 of the Loan Agreement, captioned “Bank Accounts”, is hereby deleted in its entirety and replaced with the following:

“Section 7.16. Bank Account. Throughout the term of the Loan, the primary operating deposit account for the Premises shall be maintained with Lender, and the balance of such account shall be at least ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) (the “**Bank Account**”). Borrower agrees that the Bank Account shall be pledged to Lender as additional collateral for the Obligations. Borrower shall sign any documentation as required by Lender to effectuate the pledge of the Bank Account. In the event Borrower withdraws any funds from the Bank Account, then within thirty (30) days of such withdrawal, Borrower shall: (a) restore to the Bank Account the funds withdrawn and (b) deposit an additional ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) into the Bank Account. Any additional funds deposited into the Bank Account shall be deemed additional collateral for the Obligations.”

- (c) The original Sources and Uses Statement attached to the Loan Agreement as Exhibit “G” is hereby deleted and replaced with the Sources and Uses Statement attached hereto as Exhibit “B,” and made a part hereof.

5. **Note Modification.** Borrower and Guarantors acknowledge and agree that the stated original principal balance of the Note is hereby increased from NINE MILLION FIVE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$9,525,000.00) to TEN MILLION SEVEN HUNDRED FIFTY-TWO THOUSAND DOLLARS (\$10,752,000.00) and the Loan Documents including, without limitation, the Mortgage and the Guaranty, are hereby modified to secure the Note as above modified.
6. **Mortgage.** Paragraph 36(j) of the Mortgage is hereby amended by deleting the number “NINETEEN MILLION FIFTY THOUSAND DOLLARS (\$19,050,000.00)” and inserting the number “TWENTY-ONE MILLION FIVE HUNDRED FOUR THOUSAND DOLLARS (\$21,504,000.00)” in its place.
7. **Loan Fee.** In consideration of the loan of the Additional Loan Proceeds, Borrower shall pay to Lender a non-refundable loan fee of SIX THOUSAND ONE HUNDRED THIRTY FIVE DOLLARS (\$6,135.00) (“Loan Fee”). The unpaid balance of the Loan Fee shall be due and payable to Lender concurrently with the execution of this Agreement.
8. **Conditions Precedent.** Lender’s obligations under this Agreement are expressly conditioned upon:

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- (a) The execution and delivery of this Agreement to Lender by Borrower and Guarantors;
  - (b) Delivery to Lender of a date down endorsement and amendment to Lender's Title Insurance Policy increasing the amount to TEN MILLION SEVEN HUNDRED FIFTY-TWO THOUSAND DOLLARS (\$10,752,000.00) and showing no exceptions thereto other than the Permitted Exceptions; and
  - (c) Execution and delivery to Lender of such other documents as Lender shall reasonably require in connection with this Agreement.
9. **Additional Loan Expenses.** Borrower hereby agrees to pay all reasonable expenses, charges, costs and fees relating to this Agreement, including, without limitation, Lender's reasonable attorneys' fees in connection with the documentation and negotiation of this Agreement, and all other expenses, charges, costs and fees referred to or necessitated by the terms of this Agreement (collectively, the "Additional Loan Expenses"). In the event the Additional Loan Expenses are not paid to Lender within five (5) days after the written demand therefore by Lender, the Additional Loan Expenses shall bear interest from the date so incurred until paid at the Default Rate.
10. **Representations and Warranties.** Borrower and Guarantors each represent and warrant to Lender that: (i) each has full power and authority to execute and deliver this Agreement and to perform their respective obligations hereunder; (ii) upon the execution and delivery of this Agreement, it shall be valid, binding and enforceable upon Borrower and each Guarantor in accordance with its terms; (iii) the execution and delivery of this Agreement does not and will not contravene, conflict with, violate or constitute a default under any agreement or any applicable law, rule, regulation, judgment, decree or order, or any agreement, indenture or instrument to which Borrower or each Guarantor is a party or by which any of said parties is bound; (iv) no Event of Default or event or condition which would become an Event of Default with the giving of notice and/or the passage of time, exists under the Loan Agreement or any other Loan Documents, as amended by this Agreement; and (v) there is not any condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending, or to the best of Borrower's or Guarantors' knowledge threatened, affecting Borrower or Guarantors, or which could prevent any of said parties from complying with or performing its or their respective obligations under the Loan Documents, as amended by this Agreement, within the time limits set forth therein for such compliance for performance, and no basis for any such matter exists.
11. **Amendment.** Except as specifically modified by the terms of this Agreement, the terms and conditions of the Loan Documents shall be and remain in full force and effect and shall continue to govern the rights and obligations of the parties. Without in any way limiting the foregoing, Borrower and Guarantors hereby represent and warrant that they currently know of no defenses to the enforcement of any of the Loan Documents, as modified hereby.

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Borrower and Guarantors hereby restate, remake and reaffirm any and all covenants, representations and warranties contained in any of the Loan Documents, as if all such instruments had been executed as of the date hereof.

12. **General Release.** In consideration of Lender entering into this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, its members and officers and Guarantors hereby release and forever discharge Lender, its past, present and future shareholders, successors, assigns, officers, directors, agents, attorneys and employees together with their respective heirs, legal representatives, legatees, successors and assigns of and from all actions, claims, demands, damages, debts, losses, liabilities, indebtedness, causes of action either at law or in equity and of whatever kind or nature, whether known or unknown, direct or indirect, new or existing as of the date hereof, by reason of any matter, cause or thing whatsoever arising out of or relating to any matter or thing whatsoever, including, without limitation, the claims asserted or which could have been asserted by Borrower or Guarantors in connection with the transactions which are the subject of this Agreement or the Loan.
- (a) It is acknowledged that Borrower and Guarantors have read the General Release provisions of this Paragraph 12 and consulted legal counsel before executing same; that Borrower has relied upon its own judgment and that of its legal counsel in executing the General Release provisions of this Paragraph 12 and have not relied on or been induced by any representation, statement or act by any other party referenced to herein which is not referred to in this instrument; that Borrower and Guarantors enter into the General Release provisions of this Paragraph 12 voluntarily, with full knowledge of its significance; and that the General Release provisions of this Paragraph 12 are in all respects complete and final.
- (b) If any term or provision of the General Release contained herein or the application thereof to any person, entity or circumstance shall, to any extent, be held invalid and/or unenforceable by a court of competent jurisdiction, the remainder of the General Release contained herein, or the application of such term or provisions to persons, entities or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of the General Release contained herein shall be valid and be enforced to the fullest extent permitted by law.

**IN WITNESS WHEREOF**, Borrower, Guarantors and Lender have duly authorized and executed this Loan and Mortgage Modification Agreement as of the date first above written.

**BORROWER**

**LENDER**

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**K AND H REAL ESTATE DEVELOPMENT, INC.,** an Illinois corporation

**TCFNATIONAL BANK,** a national banking association

By: *S. Homatas*  
Print Name: Steve Homatas  
Its: Pres.

By: *[Signature]*  
Print Name: Michael Chin  
Its: SVP

**GUARANTORS**

*S. Homatas*  
**STEVE HOMATAS, personally**

*[Signature]*  
**GEORGE KALKOUNOS, personally**

**This instrument was prepared by and after recording return to:**

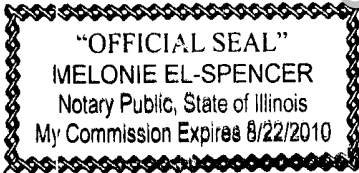
Andrew M. Sachs, Esq.  
ROBBINS, SALOMON & PATT, LTD.  
25 East Washington Street, Suite 1000  
Chicago, Illinois 60602  
(312) 782-9000

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STATE OF IL )  
 ) SS  
COUNTY OF Cook )

I, Melanie El-Spencer, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Chin of TCF NATIONAL BANK, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice Pres, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/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 8th day of January, 2007.



[Signature]  
NOTARY PUBLIC  
My Commission Expires: 8-22-2010

STATE OF IL )  
 ) SS  
COUNTY OF Cook )

I, Melanie El-Spencer, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that Steve Hamatas, the George Kalounas of K AND H REAL ESTATE DEVELOPMENT, INC., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Members, 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 for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 8th day of January, 2007.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 8-22-2010

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STATE OF IL )  
 ) SS  
COUNTY OF Cook )

I, Melanie El-Spencer, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that STEVE HOMATAS, 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 8th day of January, 2007.

[Signature]  
NOTARY PUBLIC

My Commission Expires: 8-22-2010

STATE OF IL )  
 ) SS  
COUNTY OF Cook )

I, Melanie El-Spencer, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that GEORGE KALKOUNOS, 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 8th day of January, 2007.

[Signature]  
NOTARY PUBLIC

My Commission Expires: 8-22-2010



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## EXHIBIT "A"

### LEGAL DESCRIPTION

LOT 1 IN THE SHOPPES AT PRIME VILLAGE SUBDIVISION RECORDED MAY 14, 2007 AS DOCUMENT NUMBER 0713415145, BEING A RESUBDIVISION OF LOTS 1, 2, 3, 6, 7 AND 8 (EXCEPT THE EAST 225 FEET OF LOT 8) TOGETHER WITH THE NORTH 200 FEET OF LOT 11, IN FIRST ADDITION TO PLUM GROVE HIGH CREST, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 2, 1955, AS DOCUMENT 1631852, IN COOK COUNTY, ILLINOIS

P.I.N.:	02-35-305-007-0000	02-35-305-024-0000
	02-35-305-008-0000	02-35-305-030-0000
	02-35-305-012-0000	02-35-305-033-0000
	02-35-305-019-0000	02-35-305-034-0000
	02-35-305-020-0000	02-35-305-038-0000
	02-35-305-023-0000	

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## EXHIBIT "B"

### SOURCES AND USES STATEMENT

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