

# UNOFFICIAL COPY

**RECORDATION REQUESTED BY:**

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



Doc#: 0804555061 Fee: \$38.50  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 02/14/2008 02:12 PM Pg: 1 of 8

**WHEN RECORDED MAIL TO:**

Fifth Third Bank (Chicago)  
1701 West Golf Road  
Building 4, 7<sup>th</sup> Floor  
Rolling Meadows, Illinois 60008  
Attention: Adam Howard

**This Instrument prepared by:**

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

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**SECOND MODIFICATION AGREEMENT**

This Second Modification Agreement (this "Agreement") is made as of January 17, 2008, among FIFTH THIRD BANK (CHICAGO), a Michigan banking corporation ("Lender"), AMS BUILDERS, LLC, an Illinois limited liability company ("Borrower") and MAHENDRA D. SHAH, also known as MIKE SHAH, individually ("Guarantor").

**WITNESSETH**

**WHEREAS**, Borrower and Lender entered into a Construction Loan Agreement, dated April 17, 2006 (as amended from time to time, the "Loan Agreement");

**WHEREAS**, Borrower executed a Promissory Note in the principal amount of Five Hundred Thousand and no/100 Dollars (\$500,000.00), dated April 17, 2006 (as amended from time to time, the "Note") in favor of Lender;

**WHEREAS**, Borrower executed a Construction Mortgage, dated April 17, 2006 (as amended from time to time, the "Mortgage"), in favor of Lender, recorded on April 24, 2006 in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0611441036, for the real property described on the attached Exhibit A, commonly known as 3200 Potter Road, Glenview, Cook County, Illinois ("Property");

**WHEREAS**, the Loan Agreement, the Mortgage, and the Note (collectively, the "Loan Documents") were modified and amended by the First Modification Agreement dated July 17,

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2007, recorded on September 17, 2007 in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0726031107, whereby the Commitment Termination Date and the Maturity Date were extended from July 17, 2007 to January 17, 2008;

**WHEREAS**, Borrower has requested Lender to further amend certain provisions of the Loan Documents in order to extend the Commitment Termination Date and the Maturity Date from January 17, 2008 to July 17, 2008; and

**WHEREAS**, Lender is willing to grant Borrower's requests on the terms and condition hereinafter set forth.

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein, and of any amendments or modifications heretofore, now or hereafter made by Lender to Borrower, the parties hereto hereby agree as follows:

All capitalized terms used herein without definition shall have the meaning as set forth in the Loan Documents.

1. **Amendment to definitions of the Loan Agreement.** The Loan Agreement is hereby modified by replacing the definitions of "Agreement," "Commitment Termination Date" and "Completion Date" with the following:

"Agreement" - The word "Agreement" means this Construction Loan Agreement dated as of April 17, 2006, between Borrower and Lender, as amended by that certain First Modification Agreement between Borrower and Lender, dated as of July 17, 2007, as further amended by that certain Second Modification Agreement dated January 17, 2008, and as may be further amended from time to time.

"Commitment Termination Date" - July 17, 2008 or the date of the termination of the Lender's Commitment pursuant to Section 6.02 hereof, whichever date occurs earlier.

"Completion Date" - July 17, 2008 (provided that if the Lender shall extend such date in writing, then the Completion Date shall be such later date), being the date of required completion of the Project. Notwithstanding the foregoing, the Completion Date shall be no later than the Commitment Termination Date.

2. **Amendment to Note.** The Note is hereby modified by replacing Paragraph 2 and replacing it with the following in its entirety:

2. **PAYMENT.** Subject to the terms of this Note, Borrower will repay the Loan in monthly installments of interest only, as determined by Lender based upon the Interest Rate in effect from time to time, with the first payment due on February 17, 2008 and then on the same day of each month thereafter. Unless otherwise accelerated by Lender, a final payment of all amounts due and owing hereunder shall be due on July 17, 2008 (the "Maturity Date").

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3. **Amendment to Note.** The Note is hereby modified by replacing the definition of "Note" with the following:

**Note.** The word "Note" means this Promissory Note by Borrower in favor of Lender, as amended by that certain First Modification Agreement between Borrower and Lender, dated as of July 17, 2007 ("First Modification"), and by that certain Second Modification Agreement between Borrower and Lender, dated as of January 17, 2008 ("Second Modification"), and as may be further amended from time to time.

4. **Amendment to Mortgage.** The Mortgage is hereby modified by replacing the definitions of "Mortgage" and "Note" with the following:

**Mortgage.** The word "Mortgage" means this Construction Mortgage between Grantor and Lender, as amended by that certain First Modification Agreement between Grantor and Lender, dated as of July 17, 2007 ("First Modification"), and by that certain Second Modification Agreement between Grantor and Lender, dated as of January 17, 2008 ("Second Modification"), and as may be further amended from time to time.

**Note.** The word "Note" means that certain Promissory Note executed by Borrower to Lender dated April 17, 2006 in the principal amount of Five Hundred Thousand and no/100 Dollars (\$500,000.00), as amended by that certain First Modification Agreement dated July 17, 2007, and by the Second Modification Agreement, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory note. **The Note has a maturity date of July 17, 2008.**

5. **Fees and Costs.** Borrower acknowledges that, as partial consideration for Lender modifying the terms of the Loan, as set forth herein, Borrower shall pay (a) all of Lender's attorney's fees and costs in the preparation and negotiation of this Agreement, (b) all appraisal fees, all title and recording charges, which fees have been fully earned by Lender, are nonrefundable and are due and payable to Lender as of the date of this Agreement.

6. **Related Documents.** Effective as of the date hereof, and without further notice, revision, modification or amendment, the Related Documents are hereby amended as appropriate to be consistent with the terms hereof.

7. **Continuation.** Except as otherwise specifically modified or amended by the terms of this Agreement or other amendments, which have been mutually agreed in writing by and between Borrower and Lender, the Loan Documents and all provisions contained therein, respectively, shall continue in full force and effect.

8. **Reaffirmation.** Borrower and Guarantor, by execution of this Agreement, each hereby reaffirm, ratify, and remake the covenants, warranties and representations contained in the Loan Documents.

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9. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, which shall, collectively and separately, constitute one agreement.

10. **No Defenses.** Borrower and Guarantor each represent to the Lender that, as of the date hereof, they have 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, Borrower and Guarantor each 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 as of the date hereof with respect to the Loan Documents.

11. **Disclaimer.** Borrower and Guarantor each expressly disclaim any reliance on any oral representation made by Lender with respect to the subject matter of this Agreement. Borrower and Guarantor acknowledge and agree that Lender is specifically relying upon the representations, warranties, releases and agreements contained herein, and that this Agreement is executed by Borrower and Guarantor and delivered to Lender as an inducement to extend further funds to the Borrower.

12. **Costs.** Lender may pay someone else to help collect the loans secured by the Loan Documents and to enforce the Loan Documents and the Borrower will pay that amount, provided an Event of Default has occurred. This includes, subject to any limits under applicable law, Lender's attorneys' fees and legal expenses, whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also will pay any court costs, in addition to all other sums provided by law.

13. **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, this Agreement, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Cook County, the State of Illinois. **LENDER AND BORROWER HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER LENDER AND BORROWER AGAINST THE OTHER. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.**

14. **Successors and Assigns.** All covenants and agreements contained by or on behalf of Borrower shall bind its 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.


(signatures to follow)

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**IN WITNESS WHEREOF**, the parties named below have caused this First Modification Agreement to be executed and delivered personally or by their respective duly authorized officers as of the day and year specified at the beginning hereof.

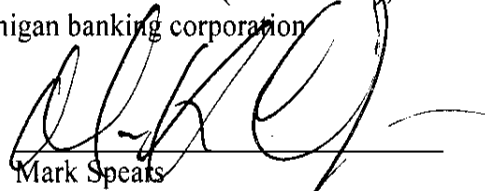
**BORROWER:**

**AMS BUILDERS, LLC,**  
an Illinois limited liability company


By:   
Name: Mahendra D. Shah, also known as  
Mike Shah  
Its: Manager

**LENDER:**

**FIFTH THIRD BANK (CHICAGO),**  
a Michigan banking corporation

By:   
Mark Spears  
Assistant Vice President

**GUARANTOR:**

  
**MAHENDRA D. SHAH, also known as**  
**MIKE SHAH, individually**

Property of Cook County Clerk's Office

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## BORROWER ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that MAHENDRA D. SHAH, also known as MIKE SHAH, personally known to me to be the President of AMS BUILDERS, LLC, an Illinois limited liability company, and the same person whose name is subscribed to the foregoing instrument appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act for said company, for the uses and purposes therein set forth.

Given under my hand and official seal, this 7 day of January, 2008.

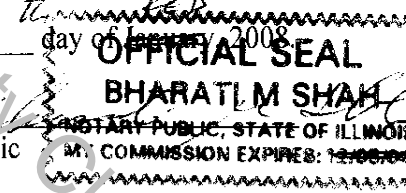


Notary Public

## GUARANTOR ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that MAHENDRA D. SHAH, also known as MIKE SHAH, 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, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 7 day of January, 2008.



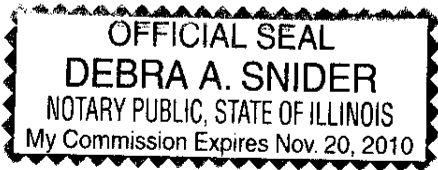
Notary Public

## LENDER ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that MARK SPEARS, personally known to me to be the same person whose name is subscribed to the foregoing instrument as the Assistant Vice President of FIFTH THIRD BANK (CHICAGO), an Michigan banking corporation, whose name is subscribed to the foregoing instrument as Lender, appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, and as the free and voluntary act of Lender, for the uses and purposes therein set forth.

Given under my hand and official seal, this 8th day of February, 2008.

Debra A. Snider  
Notary Public



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LAWYERS TITLE INSURANCE CORPORATION

SCHEDULE A CONTINUED

**LEGAL DESCRIPTION:**

LOT 5 IN EAGLE'S NEST SUBDIVISION, BEING A RESUBDIVISION OF PART OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

SCHEDULE A - PAGE 2

CASE NUMBER 06-06597

POLICY NUMBER 06-06597

ALTA LOAN POLICY 10/17/92

5750 OLD ORCHARD RD., #300

SKOKIE, IL 60077

847-966-8660 FAX: 847-966-8697

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FIRST MODIFICATION AGREEMENT  
Exhibit A  
Real Property

LEGAL DESCRIPTION

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